

SENATE, No. 1940

STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED OCTOBER 4, 2004

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator JOSEPH M. KYRILLOS, JR.

District 13 (Middlesex and Monmouth)

SYNOPSIS

Regulates life insurance viatical settlement practices; repeals existing law regulating viatical settlements.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain viatical settlements, amending P.L.1967,
2 c.93 and repealing P.L.1999, c.211.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. (New section) This act shall be known and may be cited as the
8 "Viatical Settlements Act."

9
10 2. (New section) As used in this act:
11 "Advertising" means any written, electronic or printed
12 communication or any communication by means of recorded telephone
13 messages or transmitted on radio, television, the Internet or similar
14 communications media, including film strips, motion pictures and
15 videos, published, disseminated, circulated or placed before the public,
16 directly or indirectly, for the purpose of creating an interest in or
17 inducing a person to sell a life insurance policy pursuant to a viatical
18 settlement contract.

19 "Business of viatical settlements" means an activity involved in, but
20 not limited to, the offering, solicitation, negotiation, procurement,
21 effectuation, financing, monitoring, tracking, underwriting, selling,
22 transferring, assigning, pledging, hypothecating of, or in any other
23 manner involving, viatical settlement contracts.

24 "Chronically ill" means:

25 (1) Being unable to perform at least two activities of daily living,
26 including, but not limited, to eating, toileting, transferring, bathing,
27 dressing or continence;

28 (2) Requiring substantial supervision to protect the individual from
29 threats to health and safety due to severe cognitive impairment; or

30 (3) Having a level of disability similar to that described in paragraph
31 (1) of this subsection as determined by the United States Secretary of
32 Health and Human Services.

33 "Commissioner" means the Commissioner of Banking and
34 Insurance.

35 "Department" means the Department of Banking and Insurance.

36 "Financing entity" means:

37 (1) an underwriter, placement agent, lender, purchaser of securities,
38 purchaser of a policy from a viatical settlement provider, credit
39 enhancer, or any entity that has a direct ownership in a policy that is
40 the subject of a viatical settlement contract but:

41 (a) whose principal activity related to the transaction is providing
42 funds to effect the viatical settlement contract or purchase of one or
43 more viaticated policies; and

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 (b) who has an agreement in writing with one or more licensed
2 viatical settlement providers to finance the acquisition of viatical
3 settlement contracts.

4 (2) "Financing entity" does not include a non-accredited investor or
5 purchaser of a policy from a viatical settlement provider.

6 "Fraudulent viatical settlement act" means and includes:

7 (1) Acts or omissions committed by any person who, knowingly or
8 with intent to defraud, for the purpose of depriving another of
9 property or for pecuniary gain, commits, or permits its employees or
10 its agents to engage in acts including:

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

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

19 (ii) The underwriting of a viatical settlement contract or insurance
20 policy;

21 (iii) A claim for payment or benefit pursuant to a viatical settlement
22 contract or insurance policy;

23 (iv) Premiums paid on an insurance policy;

24 (v) Payments and changes in ownership or beneficiary made in
25 accordance with the terms of a viatical settlement contract or
26 insurance policy;

27 (vi) The reinstatement or conversion of an insurance policy;

28 (vii) The solicitation, offer, effectuation or sale of a settlement
29 contract or insurance policy;

30 (viii) The issuance of written evidence of a viatical settlement
31 contract or insurance; or

32 (ix) A financing transaction;

33 (b) Employing any device, scheme, or artifice to defraud related to
34 viaticated policies;

35 (2) In the furtherance of a fraud or to prevent the detection of a
36 fraud any person commits or permits its employees or its agents to:

37 (a) Remove, conceal, alter, destroy or sequester from the
38 commissioner the assets or records of a viatical settlement provider
39 licensee or other person engaged in the business of viatical
40 settlements;

41 (b) Misrepresent or conceal the financial condition of a licensee,
42 financing entity, insurer or other person;

43 (c) Transact the business of viatical settlements in violation of laws
44 requiring a license, certificate of authority or other legal authority for
45 the transaction of the business of viatical settlements; or

46 (d) File with the commissioner or the chief insurance regulatory

1 official of another jurisdiction a document containing false information
2 or otherwise concealing information about a material fact from the
3 commissioner;

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

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

19 (5) Attempting to commit, assisting, aiding or abetting in the
20 commission of, or conspiracy to commit the acts or omissions
21 specified in this subsection.

22 "Life insurance producer" means any person licensed as a resident
23 or nonresident insurance producer with a life insurance line of
24 authority pursuant to the "New Jersey Insurance Producer Licensing
25 Act of 2001," P.L.2001, c.210 (C.17:22A-26 et seq.).

26 "Person" means a natural person or a legal entity, including, but not
27 limited to, an individual, partnership, limited liability partnership,
28 limited liability company, association, trust or corporation.

29 "Policy" means an individual or group policy, group certificate,
30 contract or arrangement of life insurance affecting the rights of a
31 resident of this State or bearing a reasonable relation to this State,
32 regardless of whether delivered or issued for delivery in this State.

33 "Related provider trust" means a titling trust or other trust
34 established by a licensed viatical settlement provider or a financing
35 entity for the sole purpose of holding the ownership or beneficial
36 interest in viaticated policies in connection with a financing
37 transaction. The trust shall have a written agreement with the licensed
38 viatical settlement provider under which the licensed viatical
39 settlement provider is responsible for ensuring compliance with all
40 statutory and regulatory requirements and under which the trust agrees
41 to make all records and files related to viatical settlement transactions
42 available to the commissioner as if those records and files were
43 maintained directly by the licensed viatical settlement provider.

44 "Special purpose entity" means a corporation, partnership, trust,
45 limited liability company or other similar entity formed solely to
46 provide, either directly or indirectly, access to institutional capital

1 markets for a financing entity or licensed viatical settlement provider.

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

4 "Viatical settlement contract" means a written agreement
5 establishing the terms under which compensation or anything of value
6 will be paid, which compensation or value is less than the expected
7 death benefit of the policy, in return for the viator's assignment,
8 transfer, sale, devise or bequest of the death benefit or ownership of
9 any portion of the policy. A viatical settlement contract also includes
10 a contract for a loan or other financing transaction with a viator
11 secured primarily by an individual or group life insurance policy, other
12 than a loan by a life insurance company pursuant to the terms of the
13 life insurance contract, or a loan secured by the cash value of a policy.
14 A viatical settlement contract includes an agreement with a viator to
15 transfer ownership or change the beneficiary designation at a later date
16 regardless of the date that compensation is paid to the viator. A
17 viatical settlement contract does not mean or include a written
18 agreement between a viator and a person having an insurable interest
19 in the insured's life.

20 "Viatical settlement provider" means a person, other than a viator,
21 that enters into or effectuates a viatical settlement contract. Viatical
22 settlement provider does not include:

23 (1) A bank, savings bank, savings and loan association, credit union
24 or other licensed lending institution that takes an assignment of a life
25 insurance policy as collateral for a loan;

26 (2) The issuer of a life insurance policy providing accelerated
27 benefits pursuant to regulations prescribed by the commissioner and
28 pursuant to the policy;

29 (3) An authorized or eligible insurer that provides stop loss
30 coverage to a viatical settlement provider, financing entity, special
31 purpose entity or related provider trust;

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

35 (5) A financing entity;

36 (6) A special purpose entity;

37 (7) A related provider trust; or

38 (8) An accredited investor or qualified institutional buyer as defined
39 respectively in Regulation D, Rule 501 (17 C.F.R. 230.501 through
40 230.508) or Rule 144A (17 C.F.R. 230.144A) of the Federal Securities
41 Act of 1933 (15 U.S.C. s.77a et seq.) as amended, and who purchases
42 a viaticated policy from a viatical settlement provider.

43 "Viaticated policy" means a life insurance policy or certificate that
44 has been acquired by a viatical settlement provider pursuant to a
45 viatical settlement contract.

46 "Viator" means the owner of a policy who enters or seeks to enter

1 into a viatical settlement contract. For the purposes of this act, a
2 viator shall not be limited to an owner of a policy insuring the life of
3 an individual with a terminal or chronic illness or condition except
4 where specifically addressed. If there is more than one viator on a
5 single policy and the viators are residents of different states, the
6 transaction shall be governed by the law of the state in which the
7 viator having the largest percentage ownership resides or, if the viators
8 hold equal ownership, the state of residence of one viator agreed upon
9 in writing by all viators. Viator shall not include:

10 (1) A viatical settlement provider licensed under this act;

11 (2) An accredited investor or qualified institutional buyer as defined
12 respectively in Regulation D, Rule 501 (17 C.F.R. 230.501 through
13 230.508) or Rule 144A (17 C.F.R. 230.144A) of the Federal Securities
14 Act of 1933 (15 U.S.C. s.77a et seq.), as amended;

15 (3) A financing entity;

16 (4) A special purpose entity; or

17 (5) A related provider trust.

18
19 3. (New section) a. (1) A person shall not operate as a viatical
20 settlement provider without first obtaining a license from the
21 commissioner of the state of residence of the viator. No person shall
22 act on behalf of a viator residing in this State unless that person is
23 licensed pursuant to this act or is a life insurance producer operating
24 pursuant to subsection b. of this section.

25 b. A life insurance producer shall be permitted to negotiate, as that
26 term is defined in section 3 of P.L.2001, c.210 (C.17:22A-28), viatical
27 settlement contracts between a viator and one or more viatical
28 settlement providers pursuant to that producer license. Irrespective of
29 the manner in which the life insurance producer is compensated, a life
30 insurance producer is deemed to represent only the viator and owes a
31 fiduciary duty to the viator to act according to the viator's instructions
32 and in the best interest of the viator. Not later than 30 days from the
33 first day of negotiating a viatical settlement conducted on behalf of a
34 viator, such producer shall notify the commissioner of that activity on
35 a form or in a manner that may be prescribed by, and shall pay any
36 applicable fees determined by, the commissioner by regulation. The
37 notification shall include an acknowledgment by the producer that he
38 will operate in accordance with the provisions of this act.

39 c. Application for a viatical settlement provider license pursuant to
40 subsection a. of this section shall be made to the commissioner by the
41 applicant on a form prescribed by the commissioner, and the
42 application shall be accompanied by a fee, the amount of which shall
43 be set by the commissioner by regulation, provided, however, that the
44 license and renewal fees for a viatical settlement license shall not
45 exceed that established by law or regulation for a domestic stock life
46 insurance company.

1 d. A viatical settlement provider license may be renewed from year
2 to year on the anniversary date upon payment of the annual renewal
3 fee in an amount set by the commissioner by regulation. Failure to pay
4 the fee by the renewal date shall result in expiration of the license.

5 e. The applicant for a license pursuant to subsection a. of this
6 section shall provide information on forms required by the
7 commissioner. The commissioner shall have the authority, at any time,
8 to require the applicant to fully disclose the identity of all stockholders
9 except those owning fewer than five percent of the shares of an
10 applicant whose shares are publicly traded, partners, officers, members
11 and employees, and the commissioner may, in his discretion, refuse to
12 issue a license in the name of a legal entity if not satisfied that any
13 officer, employee, stockholder, partner or member thereof who may
14 materially influence the applicant's conduct meets the standards of this
15 act.

16 f. A license pursuant to subsection a. of this section issued to a
17 legal entity authorizes all partners, officers, members and designated
18 employees to act as viatical settlement providers, under the license,
19 and all those persons shall be named in the application and any
20 supplements to the application.

21 g. Upon the filing of an application and the payment of the license
22 fee, the commissioner shall make an investigation of each applicant
23 and issue a license if the commissioner finds that the applicant:

24 (1) Has provided a detailed plan of operation;

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

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

30 (4) If a legal entity, provides a certificate of good standing from the
31 state of its domicile; and

32 (5) Has provided an anti-fraud plan that meets the requirements of
33 section 12 of this act.

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

40 i. A viatical settlement provider shall provide to the commissioner
41 any new or revised information about officers, stockholders holding
42 10% or more of the outstanding shares, partners, directors, members
43 or designated employees within 30 days of the change.

44 j. A person licensed as an attorney, or a certified public accountant,
45 who is retained to represent the viator whose compensation is not paid
46 directly or indirectly by the viatical settlement provider may negotiate

1 viatical settlement contracts without having to obtain a license as a life
2 insurance producer.

3
4 4. (New section) a. The commissioner may refuse to issue,
5 suspend, revoke or refuse to renew the license of a viatical settlement
6 provider, if the commissioner finds that:

7 (1) There was any material misrepresentation in the application for
8 the license;

9 (2) The licensee or any officer, partner, member or key management
10 personnel has been convicted of fraudulent or dishonest practices, is
11 subject to a final administrative action or is otherwise shown to be
12 untrustworthy or incompetent to act as a licensee;

13 (3) The licensee demonstrates a pattern of unreasonable payments
14 to viators;

15 (4) The licensee or any officer, partner, member or key management
16 personnel has been found guilty of, or has pleaded guilty or nolo
17 contendere to, any felony, or to a misdemeanor involving fraud or
18 moral turpitude, regardless of whether a judgment of conviction has
19 been entered by the court;

20 (5) The licensee has entered into any settlement contract that has
21 not been approved pursuant to this act;

22 (6) The licensee has failed to honor contractual obligations set out
23 in a viatical settlement contract;

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

26 (8) The licensee has assigned, transferred or pledged a viaticated
27 policy to a person other than a viatical settlement provider licensed in
28 this State, an accredited investor or qualified institutional buyer as
29 defined respectively in Regulation D, Rule 501 (17 C.F.R. 230.501
30 through 230.508) or Rule 144A (17 C.F.R. 230.144A) of the Federal
31 Securities Act of 1933 (15 U.S.C. s.77a et seq.), as amended,
32 financing entity, special purpose entity or related provider trust; or

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

35 b. Before the commissioner denies a license application or
36 suspends, revokes or refuses to renew the license of a viatical
37 settlement provider the commissioner shall conduct a hearing in
38 accordance with the "Administrative Procedure Act." P.L.1968, c.410
39 (C.52:14B-1 et seq.)
40

41 5. (New section) A person shall not use a viatical settlement
42 contract form or provide a disclosure statement or application form to
43 a viator in this State unless it has been filed with and approved by the
44 commissioner. The commissioner shall disapprove a viatical settlement
45 contract form or disclosure statement form if, in the commissioner's
46 opinion, the contract form, disclosure form, or provisions contained
47 therein are unreasonable, contrary to the interests of the public, or

1 otherwise misleading or unfair to the viator. The commissioner may
2 require the submission of advertising material used in connection with
3 a viatical settlement contract.

4
5 6. (New section) a. Each viatical settlement provider licensee shall
6 file with the commissioner on or before March 1 of each year an
7 annual statement containing that information which the commissioner
8 by regulation may prescribe. This information is limited to only those
9 transactions in which the viator is a resident of this State and shall not
10 include individual transaction data or data which compromises the
11 privacy of personal, financial, and health information of the viator or
12 insured.

13 b. Except as otherwise allowed or required by law, a viatical
14 settlement provider, insurance company, life insurance producer,
15 information bureau, rating agency or company, or any other person
16 with actual knowledge of the identity of the insured, shall not disclose
17 that identity, or the insured's financial or medical information, to any
18 other person unless the disclosure:

19 (1) Is necessary to effect a viatical settlement contract between the
20 viator and a viatical settlement provider and the viator and insured
21 have provided prior written consent to the disclosure;

22 (2) Is provided in response to an investigation or examination by
23 the commissioner or any other governmental officer or agency or
24 pursuant to the requirements of subsection e. of section 12 of this act;

25 (3) Is a term of or condition to the transfer of a policy by one
26 viatical settlement provider to another viatical settlement provider;

27 (4) Is necessary to permit a financing entity, related provider trust
28 or special purpose entity to finance the purchase of policies by a
29 viatical settlement provider and the viator and insured have provided
30 prior written consent to the disclosure;

31 (5) Is necessary to allow the viatical settlement provider or its
32 authorized representative to make contacts for the purpose of
33 determining health status; or

34 (6) Is required to purchase stop loss coverage.

35 c. In addition to the information required in this section, the
36 commissioner may require that either or both viatical settlement
37 providers and life insurance producers provide to the commissioner
38 that information the commissioner determines by regulation, regarding
39 the amount and method of compensation paid to life insurance
40 producers for negotiating a viatical settlement contract pursuant to
41 this act.

42
43 7. (New section) a. (1) The commissioner may conduct an
44 examination of a licensee under this act as often as the commissioner,
45 in his sole discretion, deems appropriate.

46 (2) For purposes of completing an examination of a licensee under
47 this act, the commissioner may examine or investigate any person, or

1 the business of any person, insofar as the examination or investigation
2 is, in the sole discretion of the commissioner, necessary or material to
3 the examination of the licensee.

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

9 b. (1) A person required to be licensed by this act shall for five
10 years retain copies of all:

11 (a) Proposed, offered or executed viatical settlement contracts,
12 underwriting documents, policy forms and applications from the date
13 of the proposal, offer, or execution of the viatical settlement contract,
14 whichever is later;

15 (b) All checks, drafts or other evidence and documentation related
16 to the payment, transfer, deposit or release of funds from the date of
17 the transaction; and

18 (c) All other records and documents related to the requirements of
19 this act.

20 (2) This subsection shall not relieve a person of the obligation to
21 produce these documents to the commissioner after the retention
22 period has expired if that person has retained the documents.

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

28 c. (1) Upon determining that an examination should be conducted,
29 the commissioner shall issue an examination warrant appointing one or
30 more examiners to perform the examination and instructing them as to
31 the scope of the examination. In conducting the examination, the
32 examiner shall observe those guidelines and procedures set forth in the
33 Examiners' Handbook adopted by the National Association of
34 Insurance Commissioners (NAIC). The commissioner may also employ
35 other guidelines or procedures as the commissioner deems appropriate.

36 (2) Every licensee or person from whom information is sought, its
37 officers, directors and agents shall provide to the examiners timely,
38 convenient and free access at all reasonable hours at its offices to all
39 books, records, accounts, papers, documents, assets and computer or
40 other recordings relating to the property, assets, business and affairs
41 of the licensee being examined. The officers, directors, employees and
42 agents of the licensee or person shall facilitate the examination and aid
43 in the examination so far as it is in their power to do so. The refusal
44 of a licensee, by its officers, directors, employees or agents, to submit
45 to examination or to comply with any reasonable written request of the
46 commissioner shall be grounds for suspension or refusal of, or
47 nonrenewal of any license or authority held by the licensee to engage

1 in the business of viatical settlements or other business subject to the
2 commissioner's jurisdiction. Any proceedings for suspension,
3 revocation or refusal of any license or authority shall be conducted
4 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
5 (C.52:14B-1 et seq.).

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

14 (4) When making an examination under this act, the commissioner
15 may retain attorneys, appraisers, independent actuaries, independent
16 certified public accountants or other professionals and specialists as
17 examiners, the reasonable cost of which shall be borne by the licensee
18 that is the subject of the examination.

19 (5) Nothing contained in this act shall be construed to limit the
20 commissioner's authority to terminate or suspend an examination in
21 order to pursue other legal or regulatory action pursuant to the
22 insurance laws of this State. Findings of fact and conclusions made
23 pursuant to any examination shall be prima facie evidence in any legal
24 or regulatory action.

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

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

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

46 (3) Within 30 days of the end of the period allowed for the receipt
47 of written submissions or rebuttals, the commissioner shall fully

1 consider and review the report, together with any written submissions
2 or rebuttals, and any relevant portions of the examiner's workpapers
3 and either:

4 (a) Adopt the examination as filed or with modification or
5 corrections. If the examination report reveals that the company is
6 operating in violation of any law, regulation or prior order of the
7 commissioner, the commissioner may order the company to take any
8 action the commissioner considers necessary and appropriate to cure
9 the violation; or

10 (b) Reject the examination report with directions to the examiners
11 to reopen the examination for purposes of obtaining additional data,
12 documentation or information, and refiling pursuant to paragraph (1)
13 of this subsection; or

14 (c) Call for an investigatory hearing with no less than 20 days'
15 notice to the company for purposes of obtaining additional
16 documentation, data, information and testimony.

17 (4) (a) All determinations made pursuant to subparagraph (a) of
18 paragraph (3) of this subsection shall be accompanied by findings and
19 conclusions resulting from the commissioner's consideration and
20 review of the examination report, relevant examiner workpapers and
21 any written submissions or rebuttals. Any such determination shall be
22 served upon the company, together with a copy of the adopted
23 examination report. Within 30 days of the issuance of the adopted
24 report, the company shall file affidavits executed by each of its
25 directors stating under oath that they have received a copy of the
26 adopted report and related orders.

27 (b) Any hearing under subparagraph (c) of paragraph (3) of this
28 subsection shall be conducted by the commissioner or an authorized
29 representative of the commissioner as a nonadversarial, confidential
30 investigatory proceeding, as necessary for the resolution of any
31 inconsistencies, discrepancies or disputed issues apparent upon the
32 face of the filed examination report or raised by or as a result of the
33 commissioner's review of relevant workpapers or by the written
34 submission or rebuttal of the company. Within 20 days of the
35 conclusion of any such hearing, the commissioner shall make a
36 determination pursuant to subparagraph (a) of paragraph (3) of this
37 subsection.

38 (i) The hearing shall proceed expeditiously with discovery by the
39 company limited to the examiner's workpapers which tend to
40 substantiate any assertions set forth in any written submission or
41 rebuttal. The commissioner or his representative may issue subpoenas
42 for the attendance of any witnesses or the production of any
43 documents relevant to the investigation whether under the control of
44 the department, the company or other persons. Nothing contained in
45 this section shall require the department to disclose any information or
46 records which would indicate or show the existence or content of any
47 investigation or activity of a criminal justice agency.

1 (ii) The hearing shall proceed with the commissioner or his
2 representative posing questions to the persons subpoenaed. Thereafter
3 the company and the department may present testimony relevant to the
4 investigation. Cross-examination shall be conducted only by the
5 commissioner or his representative. The company and the department
6 shall be permitted to make closing statements and may be represented
7 by counsel of their choice.

8 (5) Upon the adoption of the examination report under
9 subparagraph (a) of paragraph (3) of this subsection, the commissioner
10 may continue to hold the content of the examination report as private
11 and confidential information for a period of 90 days except to the
12 extent provided in paragraph (6) of subsection c. of this section.

13 (6) If the commissioner determines that regulatory action is
14 appropriate as a result of an examination, the commissioner may
15 initiate any proceedings or actions provided by law.

16 e. (1) Names and individual identification data for all viators shall
17 be considered private and confidential information and shall not be
18 disclosed by the commissioner, unless required by law.

19 (2) Except as otherwise provided in this act, all examination
20 reports, working papers, recorded information, documents and copies
21 thereof produced by, obtained by or disclosed to the commissioner or
22 any other person in the course of an examination made under this act,
23 or in the course of analysis or investigation by the commissioner of the
24 financial condition or market conduct of a licensee shall be confidential
25 by law and privileged, shall not be subject to any State or federal
26 freedom of information law, shall not be subject to subpoena, and shall
27 not be subject to discovery or admissible in evidence in any private
28 civil action. The commissioner is authorized to use the documents,
29 materials or other information in the furtherance of any regulatory or
30 legal action brought as part of the commissioner's official duties.

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

37 (a) Created, produced or obtained by or disclosed to the NAIC and
38 its affiliates and subsidiaries in the course of assisting an examination
39 made under this act, or assisting the commissioner in the analysis or
40 investigation of the financial condition or market conduct of a licensee;
41 or

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

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

47 (4) Neither the commissioner nor any person that received the

1 documents, material or other information while acting under the
2 authority of the commissioner, including the NAIC and its affiliates
3 and subsidiaries, shall be permitted to testify in any private civil action
4 concerning any confidential documents, materials or information
5 subject to paragraph (1) of this subsection.

6 (5) In order to assist in the performance of the commissioner's
7 duties, the commissioner:

8 (a) May share documents, materials or other information, including
9 the confidential and privileged documents, materials or information
10 subject to paragraph (1) of this subsection, with other state, federal
11 and international regulatory agencies, with the NAIC and its affiliates
12 and subsidiaries, and with state, federal and international law
13 enforcement authorities, provided that the recipient agrees to maintain
14 the confidentiality and privileged status of the document, material,
15 communication or other information; and

16 (b) May receive documents, materials, communications or
17 information, including otherwise confidential and privileged
18 documents, materials or information, from the NAIC and its affiliates
19 and subsidiaries, and from regulatory and law enforcement officials of
20 other foreign or domestic jurisdictions, and shall maintain as
21 confidential or privileged any document, material or information
22 received with notice or the understanding that it is confidential or
23 privileged under the laws of the jurisdiction that is the source of the
24 document, material or information.

25 (6) No waiver of any applicable privilege or claim of confidentiality
26 in the documents, materials or information shall occur as a result of
27 disclosure to the commissioner under this section or as a result of
28 sharing as authorized in paragraph (5) of this subsection.

29 (7) A privilege established under the law of any state or jurisdiction
30 that is substantially similar to the privilege established under this
31 subsection shall be available and enforced in any proceeding in, and in
32 any court of, this State.

33 (8) Nothing contained in this act shall prevent or be construed as
34 prohibiting the commissioner from disclosing the content of an
35 examination report, preliminary examination report or results, or any
36 matter relating thereto, to the commissioner of any other state or
37 country, or to law enforcement officials of this or any other state or
38 agency of the federal government at any time or to the NAIC, so long
39 as that agency or office receiving the report or matters relating thereto
40 agrees in writing to hold it confidential and in a manner consistent with
41 this act.

42 f. (1) An examiner may not be appointed by the commissioner if the
43 examiner, either directly or indirectly, has a conflict of interest or is
44 affiliated with the management of or owns a pecuniary interest in any
45 person subject to examination under this act. This subsection shall not
46 be construed to automatically preclude an examiner from being:

47 (a) A viator;

1 (b) An insured in a viaticated insurance policy; or

2 (c) A beneficiary in an insurance policy that is proposed to be
3 viaticated.

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

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

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

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

32 h. The commissioner may investigate suspected fraudulent viatical
33 settlement acts and persons engaged in the business of viatical
34 settlements.

35
36 8. (New section) a. With each application for a viatical settlement,
37 a viatical settlement provider shall provide the viator with at least the
38 following disclosures no later than the time the application for the
39 viatical settlement contract is signed by all parties. The disclosures
40 shall be provided in a separate document that is signed by the viator
41 and the viatical settlement provider, and shall provide the following
42 information:

43 (1) There are possible alternatives to viatical settlement contracts,
44 including any accelerated death benefits or policy loans offered under
45 the viator's life insurance policy;

46 (2) Some or all of the proceeds of the viatical settlement contract
47 may be taxable under federal income tax and state franchise and

1 income taxes, and assistance should be sought from a professional tax
2 advisor;

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

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

9 (5) The viator has the right to rescind a viatical settlement contract
10 before the earlier of 30 calendar days after the date upon which the
11 settlement contract is executed by all parties or 15 calendar days after
12 the receipt of the viatical settlement proceeds by the viator, as
13 provided in subsection c. of section 9 of this act. If exercised by the
14 viator, rescission is effective only if both notice of the rescission is
15 given and repayment of all proceeds and any premiums, loans and loan
16 interest to the settlement provider is made within the rescission period.
17 If the insured dies during the rescission period, the viatical settlement
18 contract shall be deemed to have been rescinded, subject to repayment
19 of all viatical settlement proceeds and any premiums, loans and loan
20 interest to the viatical settlement provider;

21 (6) Funds will be sent to the viator within three business days after
22 the viatical settlement provider has received the insurer or group
23 administrator's acknowledgment that ownership of the policy has been
24 transferred and the beneficiary has been designated pursuant to the
25 viatical settlement contract;

26 (7) Entering into a viatical settlement contract may cause other
27 rights or benefits, including conversion rights and waiver of premium
28 benefits that may exist under the policy, to be forfeited by the viator
29 and that assistance should be sought from a financial adviser;

30 (8) Disclosure to a viator shall include distribution of a brochure,
31 describing the process of viatical settlements approved by the
32 commissioner. The National Association of Insurance Commissioner
33 (NAIC) form for the brochure shall be used unless one is developed by
34 the commissioner;

35 (9) The disclosure document shall contain the following language:

36 "All medical, financial or personal information solicited or obtained
37 by a viatical settlement provider or life insurance producer about an
38 insured, including the insured's identity or the identity of family
39 members, a spouse or a significant other, may be disclosed as
40 necessary to effect the viatical settlement between the viator and the
41 viatical settlement provider. If you are asked to provide this
42 information, you will be asked to consent to the disclosure. The
43 information may be provided to someone who buys the policy or
44 provides funds for the purchase. You may be asked to renew your
45 permission to share information every two years."; and

46 (10) The insured may be contacted by the viatical settlement
47 provider or its authorized representative for the purpose of

1 determining the insured's health status. This contact shall be limited to
2 once every three months if the insured has a life expectancy of more
3 than one year, and no more than once per month if the insured has a
4 life expectancy of one year or less.

5 b. A viatical settlement provider shall provide the viator with at
6 least the following disclosures no later than the date the viatical
7 settlement contract is signed by all parties. The disclosures shall be
8 conspicuously displayed in the viatical settlement contract or in a
9 separate document signed by the viator and the viatical settlement
10 provider and provide the following information:

11 (1) State the affiliation, if any, between the viatical settlement
12 provider and the issuer of the insurance policy to be acquired pursuant
13 to a viatical settlement contract;

14 (2) The document shall include the name, address and telephone
15 number of the viatical settlement provider;

16 (3) If the policy to be acquired pursuant to a viatical settlement
17 contract has been issued as a joint policy or involves family riders or
18 any coverage of a life other than the insured under the policy to be
19 acquired pursuant to a viatical settlement contract, the viator shall be
20 informed of the possible loss of coverage on the other lives and shall
21 be advised to consult with his insurance producer or the company
22 issuing the policy for advice on the proposed viatical settlement
23 contract;

24 (4) State the dollar amount of the current death benefit payable to
25 the viatical settlement provider under the policy. The viatical
26 settlement provider shall, if known, also disclose the availability of any
27 additional guaranteed insurance benefits, the dollar amount of any
28 accidental death and dismemberment benefits under the policy and the
29 viatical settlement provider's interest in those benefits; and

30 (5) State the name, business address and telephone number of the
31 independent third party escrow agent, and the fact that the viator or
32 owner may inspect or receive copies of the relevant escrow or trust
33 agreements or documents.

34 c. If the viatical settlement provider transfers ownership or changes
35 the beneficiary of the policy, the viatical settlement provider shall
36 communicate the change in ownership or beneficiary to the insured
37 within 20 days after the change.

38
39 9. (New section) a. (1) A viatical settlement provider entering into
40 a viatical settlement contract shall first obtain:

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

45 (b) A document in which the insured consents to the release of his
46 medical records to a viatical settlement provider, life insurance
47 producer and, if the policy was issued less than two years from the

1 date of application for a viatical settlement contract, to the insurance
2 company that issued the policy covering the life of the insured.

3 (2) The insurer shall respond to a request for verification of
4 coverage submitted by a viatical settlement provider not later than 30
5 calendar days after the date the request is received. The request for
6 verification of coverage shall be made on a form approved by the
7 commissioner. The insurer shall complete and issue the verification of
8 coverage or indicate in which respects it is unable to respond. In its
9 response, the insurer shall indicate whether, based on the medical
10 evidence and documents provided, the insurer intends to pursue an
11 investigation at that time regarding the validity of the insurance
12 contract.

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

24 (4) If a life insurance producer performs any of the activities
25 required of the viatical settlement provider, the life insurance producer
26 is deemed to have fulfilled the requirements of this section.

27 b. All medical information solicited or obtained by any licensee
28 shall be subject to the applicable provisions of State law relating to
29 confidentiality of medical information.

30 c. All viatical settlement contracts entered into in this State shall
31 provide the viator with an unconditional right to rescind the contract
32 before the earlier of 30 calendar days after the date upon which the
33 settlement contract is executed by all parties or 15 calendar days after
34 the receipt of the viatical settlement proceeds by the viator. If
35 exercised by the viator, rescission is effective only if both notice of the
36 rescission is given and a full repayment of all proceeds and any
37 premiums, loans and loan interest to the settlement provider is made
38 within the rescission period. If the insured dies during the rescission
39 period, the viatical settlement contract shall be deemed to have been
40 rescinded, subject to repayment to the viatical settlement provider or
41 purchaser of all viatical settlement proceeds, and any premiums, loans
42 and loan interest that have been paid by the settlement provider.

43 d. The viatical settlement provider shall instruct the viator to send
44 the executed documents required to effect the change in ownership,
45 assignment or change in beneficiary directly to the independent escrow
46 agent. Within three business days after the date the escrow agent
47 receives the documents (or from the date the viatical settlement

1 provider receives the documents, if the viator erroneously provides the
2 documents directly to the provider), the provider shall pay or transfer
3 the proceeds of the viatical settlement into an escrow or trust account
4 maintained in a State or federally-chartered financial institution whose
5 deposits are insured by the Federal Deposit Insurance Corporation
6 (FDIC). Upon payment of the settlement proceeds into the escrow
7 account, the escrow agent shall deliver the original change in
8 ownership, assignment or change in beneficiary forms to the viatical
9 settlement provider or related provider trust. Upon the escrow agent's
10 receipt of the acknowledgment of the properly completed transfer of
11 ownership or designation of beneficiary from the insurance company,
12 the escrow agent shall pay the viatical settlement proceeds to the
13 viator.

14 e. Failure to tender consideration to the viator for the viatical
15 settlement contract within the time disclosed pursuant to paragraph (6)
16 of subsection a. of section 8 of this act renders the viatical settlement
17 contract voidable by the viator for lack of consideration until the time
18 consideration is tendered to and accepted by the viator.

19 f. Contacts with the insured for the purpose of determining the
20 health status of the insured by the viatical settlement provider after the
21 viatical settlement has occurred shall only be made by the settlement
22 provider licensed in this State or its authorized representatives and
23 shall be limited to once every three months for insureds with a life
24 expectancy of more than one year, and to no more than once per
25 month for insureds with a life expectancy of one year or less. The
26 provider shall explain to the insured the procedure for these contacts
27 at the time the viatical settlement contract is entered into. The
28 limitations set forth in this subsection shall not apply to any contacts
29 with an insured for reasons other than determining the insured's health
30 status. Viatical settlement providers shall be responsible for the
31 actions of their authorized representatives.

32 g. If the insured is not terminally or chronically ill, viatical
33 settlement providers shall pay an amount greater than the cash
34 surrender value or accelerated death benefit then available.

35

36 10. (New section) a. It is a violation of this act for an insurance
37 company to prohibit, restrict, limit or impair a life insurance producer
38 from lawfully negotiating a viatical settlement contract on behalf of a
39 viator, aiding and assisting a viator with a settlement, or otherwise
40 participating in a viatical settlement transaction under this act or to
41 engage in any transaction, act, practice or course of business or
42 dealing which restricts, limits or impairs in any way the lawful transfer
43 of ownership, change of beneficiary, or assignment of a policy to
44 effectuate a viatical settlement contract.

45 b. It is a violation of this act for any person to enter into a viatical
46 settlement contract within a two-year period commencing with the
47 date of issuance of the insurance policy unless the viator certifies to

1 the viatical settlement provider that one or more of the following
2 conditions have been met within the two-year period:

3 (1) The policy was issued upon the viator's exercise of conversion
4 rights arising out of a group or individual life insurance policy, so long
5 as the total amount of time covered under the conversion policy plus
6 the time covered under the prior policy is at least 24 months. The time
7 covered under a group policy shall be calculated without regard to any
8 change in insurance carriers, provided the coverage has been
9 continuous and under the same group sponsorship;

10 (2) (a) The viator submits independent evidence to the viatical
11 settlement provider that within the two-year period the viator or
12 insured was terminally ill or chronically ill; or the viator or insured
13 disposed of his ownership interests in a closely held corporation
14 pursuant to a buyout or other similar agreement in effect at the time
15 the insurance policy was initially issued; or both.

16 (b) Copies of the independent evidence described in paragraph (1)
17 of this subsection and documents required by subsection a. of section
18 9 of this act shall be submitted to the insurer when the viatical
19 settlement provider submits a request to the insurer for verification of
20 coverage. The copies shall be accompanied by a letter of attestation
21 from the viatical settlement provider that the copies are true and
22 correct copies of the documents received by the viatical settlement
23 provider.

24 (c) If the viatical settlement provider submits to the insurer a copy
25 of the owner or insured's certification described in subparagraph (a) of
26 this paragraph when the provider submits a request to the insurer to
27 effect the transfer of the policy to the viatical settlement provider,
28 the copy shall be deemed to conclusively establish that the viatical
29 settlement contract satisfies the requirements of this section and the
30 insurer shall timely respond to the request.

31

32 11. (New section) The purpose of this section is to provide
33 prospective viators with clear and unambiguous statements in the
34 advertisement of viatical settlement contracts and to assure the clear,
35 truthful and adequate disclosure of the benefits, risks, limitations and
36 exclusions of any viatical settlement contract. This purpose is
37 intended to be accomplished by the establishment of guidelines and
38 standards of permissible and impermissible conduct in the advertising
39 of viatical settlement contracts to assure that product descriptions are
40 presented in a manner that prevents unfair, deceptive or misleading
41 advertising and is conducive to accurate presentation and description
42 of viatical settlements through the advertising media and material used
43 by licensees under this act.

44 a. This section shall apply to any advertising of viatical settlement
45 contracts or related products or services intended for dissemination in
46 this State, including Internet advertising viewed by persons located in
47 this State. Where disclosure requirements are established pursuant to

1 federal regulation, this section shall be interpreted so as to minimize
2 or eliminate conflict with federal regulation wherever possible.

3 b. Every viatical settlement provider licensee shall establish and at
4 all times maintain a system of control over the content, form and
5 method of dissemination of all advertisements of its contracts,
6 products and services. All advertisements, regardless of by whom
7 written, created, designed or presented, shall be the responsibility of
8 the viatical settlement provider licensee, as well as the individual who
9 created or presented the advertisement. A system of control shall
10 include regular, routine notification, at least once a year, to life
11 insurance producers and others authorized by the viatical settlement
12 provider who disseminates advertisements, of the requirements and
13 procedures for approval prior to the use of any advertisements not
14 furnished by the viatical settlement provider.

15 c. Advertisements shall be truthful and not misleading in fact or by
16 implication. The form and content of an advertisement of a viatical
17 settlement contract, product or service shall be sufficiently complete
18 and clear so as to avoid deception. It shall not have the capacity or
19 tendency to mislead or deceive. Whether an advertisement has the
20 capacity or tendency to mislead or deceive shall be determined by the
21 commissioner from the overall impression that the advertisement may
22 be reasonably expected to create upon a person of average education
23 or intelligence within the segment of the public to which it is directed.

24 d. Certain advertisements are deemed false and misleading on their
25 face and are prohibited. False and misleading advertisements include,
26 but are not limited to, the following representations:

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

31 (2) "No risk," "minimal risk," "low risk," "no speculation," "no
32 fluctuation," or similar representations;

33 (3) "Qualified or approved for individual retirement accounts
34 (IRAs), Roth IRAs, 401(k) plans, simplified employee pensions (SEP),
35 403(b), Keogh plans, TSA, other retirement account rollovers," "tax
36 deferred," or similar representations;

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

40 (5) "No sales charges or fees" or similar representations; and

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

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

47 e. The information required to be disclosed under this section shall

1 not be minimized, rendered obscure, or presented in an ambiguous
2 fashion or intermingled with the text of the advertisement so as to be
3 confusing or misleading.

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

14 (2) An advertisement shall not use the name or title of a life
15 insurance company or a life insurance policy unless the advertisement
16 has been approved by the insurer.

17 (3) An advertisement shall not represent that premium payments
18 will not be required to be paid on the life insurance policy that is the
19 subject of a viatical settlement contract in order to maintain that
20 policy, unless that is the fact.

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

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

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

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

44 (b) An advertisement shall not state or imply that a viatical
45 settlement contract, benefit or service has been approved or endorsed
46 by a group of individuals, society, association or other organization
47 unless that is the fact and unless any relationship between an

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

6 (c) When an endorsement refers to benefits received under a viatical
7 settlement contract all pertinent information shall be retained for a
8 period of five years after its use.

9 f. An advertisement shall not contain statistical information unless
10 it accurately reflects recent and relevant facts. The source of all
11 statistics used in an advertisement shall be identified.

12 g. An advertisement shall not disparage insurers, viatical settlement
13 providers, life insurance producers, policies, services or methods of
14 marketing.

15 h. The name of the licensee shall be clearly identified in all
16 advertisements about the licensee or its viatical settlement contract,
17 products or services, and if any specific viatical settlement contract is
18 advertised, the viatical settlement contract shall be identified either by
19 form number or some other appropriate description. If an application
20 is part of the advertisement, the name of the viatical settlement
21 provider shall be shown on the application.

22 i. An advertisement shall not use a trade name, group designation,
23 name of the parent company of a licensee, name of a particular division
24 of the licensee, service mark, slogan, symbol or other device or
25 reference without disclosing the name of the licensee, if the
26 advertisement would have the capacity or tendency to mislead or
27 deceive as to the true identity of the licensee, or to create the
28 impression that a company other than the licensee would have any
29 responsibility for the financial obligation under a viatical settlement
30 contract.

31 j. An advertisement shall not use any combination of words,
32 symbols or physical materials that by their content, phraseology,
33 shape, color or other characteristics are so similar to a combination of
34 words, symbols or physical materials used by a government program
35 or agency or otherwise appear to be of such a nature that they tend to
36 mislead prospective viators into believing that the solicitation is in
37 some manner connected with a government program or agency.

38 k. An advertisement may state that a licensee is licensed in the state
39 where the advertisement appears so long as it does not exaggerate that
40 fact or suggest or imply that competing licensees may not be so
41 licensed. The advertisement may ask the audience to consult the
42 licensee's website or contact the department to find out if the state
43 requires licensing and, if so, whether the viatical settlement provider,
44 or life insurance producer is licensed.

45 l. An advertisement shall not create the impression that the viatical
46 settlement provider, its financial condition or status, the payment of its
47 claims or the merits, desirability, or advisability of its viatical

1 settlement contracts forms are recommended or endorsed by any
2 government entity.

3 m. The name of the actual licensee shall be stated in all of its
4 advertisements. An advertisement shall not use a trade name, any
5 group designation, name of any affiliate or controlling entity of the
6 licensee, service mark, slogan, symbol or other device in a manner that
7 would have the capacity or tendency to mislead or deceive as to the
8 true identity of the actual licensee or create the false impression that
9 an affiliate or controlling entity would have any responsibility for the
10 financial obligation of the licensee.

11 n. An advertisement shall not directly or indirectly create the
12 impression that any division or agency of the State or of the federal
13 government endorses, approves or favors:

14 (1) Any viatical settlement provider licensee or its business
15 practices or methods of operation;

16 (2) The merits, desirability or advisability of any viatical settlement
17 contract;

18 (3) Any viatical settlement contract; or

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

20 o. If the advertiser emphasizes the speed with which the viatication
21 will occur, the advertising shall disclose the average time from the date
22 of the completed application to the date of offer and from acceptance
23 of the offer to receipt of the funds by the viator.

24 p. If the advertising emphasizes the dollar amounts available to
25 viators, the advertising shall disclose the average purchase price as a
26 percent of face value obtained by viators contracting with the licensee
27 during the past six months.

28

29 12. (New section) a. A person shall not commit a fraudulent
30 viatical settlement act as defined in section 2 of this act.

31 b. A person shall not knowingly or intentionally interfere with the
32 enforcement of the provisions of this act or investigations of suspected
33 or actual violations of this act.

34 c. A person in the business of viatical settlements shall not
35 knowingly or intentionally permit any person convicted of a felony
36 involving dishonesty or breach of trust to participate in the business of
37 viatical settlements.

38 d. (1) Viatical settlement contracts and applications for viatical
39 settlement contracts, regardless of the form of transmission, shall
40 contain the following statement or a substantially similar statement:
41 "Any person who knowingly presents false information in an
42 application for insurance or viatical settlement contract is guilty of a
43 crime and may be subject to fines and confinement in prison."

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

47 e. (1) Any person engaged in the business of viatical settlements

1 having knowledge or a reasonable belief that a fraudulent viatical
2 settlement act is being, will be or has been committed shall provide to
3 the commissioner the information required by, and in a manner
4 prescribed by, the commissioner.

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

9 f. (1) No civil liability shall be imposed on and no cause of action
10 shall arise from the furnishing of information concerning suspected,
11 anticipated or completed fraudulent viatical settlement acts or
12 suspected or completed fraudulent insurance acts, if the information
13 is provided to or received from:

14 (a) The commissioner or the commissioner's employees, agents or
15 representatives;

16 (b) Federal, state or local law enforcement or regulatory officials or
17 their employees, agents or representatives;

18 (c) A person involved in the prevention and detection of fraudulent
19 viatical settlement acts or that person's agents, employees or
20 representatives;

21 (d) The National Association of Insurance Commissioners (NAIC),
22 National Association of Securities Dealers (NASD), the North
23 American Securities Administration Association or their employees,
24 agents or representatives, or other regulatory body overseeing life
25 insurance, viatical settlements, securities or investment fraud; or

26 (e) The life insurer that issued the life insurance policy covering the
27 life of the insured.

28 (2) Paragraph (1) of this subsection shall not apply to statements
29 made with actual malice. In an action brought against a person for
30 filing a report or furnishing other information concerning a fraudulent
31 viatical settlement act or a fraudulent insurance act, the party bringing
32 the action shall plead specifically any allegation that paragraph (1)
33 does not apply because the person filing the report or furnishing the
34 information did so with actual malice.

35 (3) A person identified in paragraph (1) of this subsection shall be
36 entitled to an award of attorney's fees and costs if he is the prevailing
37 party in a civil cause of action for libel, slander or any other relevant
38 tort arising out of activities in carrying out the provisions of this act
39 and the party bringing the action was not substantially justified in
40 doing so. For purposes of this section a proceeding is "substantially
41 justified" if it had a reasonable basis in law or fact at the time that it
42 was initiated.

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

46 g. (1) The documents and evidence provided pursuant to
47 subsection e. of this section or obtained by the commissioner in an

1 investigation of suspected or actual fraudulent viatical settlement acts
2 shall be privileged and confidential and shall not be a public record and
3 shall not be subject to discovery or subpoena in a civil or criminal
4 action.

5 (2) The provisions of paragraph (1) of this subsection shall not
6 prohibit release by the commissioner of documents and evidence
7 obtained in an investigation of suspected or actual fraudulent viatical
8 settlement acts:

9 (a) In administrative or judicial proceedings to enforce laws
10 administered by the commissioner;

11 (b) To federal, state or local law enforcement or regulatory
12 agencies, to an organization established for the purpose of detecting
13 and preventing fraudulent viatical settlement acts or to the National
14 Association of Insurance Commissioners (NAIC); or

15 (c) At the discretion of the commissioner, to a person in the
16 business of viatical settlements that is aggrieved by a fraudulent
17 viatical settlement act.

18 (3) Release of documents and evidence under paragraph (2) of this
19 subsection shall not abrogate or modify the privilege granted in
20 paragraph (1) of this subsection.

21 h. This act shall not:

22 (1) Preempt the authority or relieve the duty of other law
23 enforcement or regulatory agencies to investigate, examine and
24 prosecute suspected violations of law;

25 (2) Prevent or prohibit a person from disclosing voluntarily
26 information concerning fraudulent viatical settlement act to a law
27 enforcement or regulatory agency other than the department; or

28 (3) Limit the powers granted elsewhere by the laws of this State to
29 the commissioner or the Insurance Fraud Prosecutor to investigate and
30 examine possible violations of law and to take appropriate action
31 against wrongdoers.

32 i. Viatical settlement providers shall have in place antifraud
33 initiatives reasonably calculated to detect, prosecute and prevent
34 fraudulent viatical settlement acts. At the discretion of the
35 commissioner, the commissioner may order, or a licensee may request
36 and the commissioner may grant, modifications of the following
37 required initiatives as necessary to ensure an effective antifraud
38 program. The modifications may be more or less restrictive than the
39 required initiatives so long as the modifications may reasonably be
40 expected to accomplish the purpose of this section. Antifraud
41 initiatives shall include:

42 (1) Fraud investigators, who may be viatical settlement provider
43 employees or independent contractors; and

44 (2) An antifraud plan, which shall be submitted to the
45 commissioner. The antifraud plan shall include, but not be limited to:

46 (a) A description of the procedures for detecting and investigating
47 possible fraudulent viatical settlement acts and procedures for

1 resolving material inconsistencies between medical records and
2 insurance applications;

3 (b) A description of the procedures for reporting possible
4 fraudulent viatical settlement acts to the commissioner;

5 (c) A description of the plan for antifraud education and training
6 of underwriters and other personnel; and

7 (d) A description or chart outlining the organizational arrangement
8 of the antifraud personnel who are responsible for the investigation
9 and reporting of possible fraudulent viatical settlement acts and
10 investigating unresolved material inconsistencies between medical
11 records and insurance applications.

12 (3) Antifraud plans submitted to the commissioner shall be
13 privileged and confidential and shall not be a public record and shall
14 not be subject to discovery or subpoena in a civil or criminal action.

15 (4) The commissioner may refer suspected fraudulent viatical
16 settlement acts to the Department of Law and Public Safety, Office of
17 Insurance Fraud Prosecutor, for investigation, prosecution or other
18 action or disposition involving such suspected fraudulent viatical
19 settlement acts.

20

21 13. (New section) a. In addition to the penalties and other
22 enforcement provisions of this act, if any person violates this act or
23 any regulation implementing this act, the commissioner may seek an
24 injunction in a court of competent jurisdiction and may apply for
25 temporary and permanent orders that the commissioner determines are
26 necessary to restrain the person from committing the violation.

27 b. Any person damaged by the acts of a person in violation of this
28 act may bring a civil action against the person committing the violation
29 in a court of competent jurisdiction.

30 c. The commissioner may issue, in accordance with the
31 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
32 seq.), a cease and desist order upon a person that violates any
33 provision of this act, any regulation or order adopted by the
34 commissioner, or any written agreement entered into with the
35 commissioner.

36 d. When the commissioner finds that an activity in violation of this
37 act presents an immediate danger to the public that requires an
38 immediate final order, the commissioner may issue an emergency cease
39 and desist order reciting with particularity the facts underlying the
40 findings. The emergency cease and desist order is effective
41 immediately upon service of a copy of the order on the respondent and
42 remains effective for 90 days. If the commissioner begins non-
43 emergency cease and desist proceedings, the emergency cease and
44 desist order remains effective, absent an order by a court of competent
45 jurisdiction pursuant to the "Administrative Procedure Act," P.L.1968,
46 c.410 (C.52:14B-1 et seq.).

47 e. In addition to the penalties and other enforcement provisions of

1 this act, any person who violates this act shall be subject to civil
2 penalties of up to \$10,000 per violation which may be collected in a
3 summary proceeding pursuant to the "Penalty Enforcement Law of
4 1999," P.L.1999, c.274 (C.2A:58-10 et seq.). The commissioner's
5 order may require a person found to be in violation of this act to make
6 restitution to persons aggrieved by violations of this act.

7 f. A person convicted of a violation of this act shall be ordered to
8 pay restitution to persons aggrieved by the violation of this act.
9 Restitution shall be ordered in addition to a fine or imprisonment, but
10 not in lieu of a fine or imprisonment.

11 g. A person convicted of a violation of this act may be sentenced
12 in accordance with paragraphs (1), (2), (3) or (4) of this subsection
13 based on the greater of: the value of property, services, or other
14 benefit wrongfully obtained or attempted to be obtained; or the
15 aggregate economic loss suffered by any person as a result of the
16 violation. A person convicted of a fraudulent viatical settlement act
17 shall be ordered to pay restitution to persons aggrieved by the
18 fraudulent viatical settlement act. Restitution shall be ordered in
19 addition to a fine or imprisonment but not in lieu of a fine or
20 imprisonment.

21 (1) Imprisonment for not more than 20 years or payment of a fine
22 of not more than \$100,000, or both, if the value of the viatical
23 settlement contract is more than \$35,000;

24 (2) Imprisonment for not more than 10 years or payment of a fine
25 of not more than \$20,000, or both, if the value of the viatical
26 settlement contract is more than \$2,500 but not more than \$35,000;

27 (3) Imprisonment for not more than five years or payment of a fine
28 of not more than \$10,000, or both, if the value of the viatical
29 settlement contract is more than \$500 but not more than \$2,500; or

30 (4) Imprisonment for not more than one year or payment of a fine
31 of not more than \$3,000, or both, if the value of the viatical settlement
32 contract is \$500 or less.

33 h. In any prosecution under paragraphs (1), (2), (3) and (4) of
34 subsection g. of this section the value of the viatical settlement
35 contracts within any six-month period may be aggregated and the
36 defendant charged accordingly in applying the provisions of this
37 section; provided that, when two or more offenses are committed by
38 the same person in two or more counties, the accused may be
39 prosecuted in any county in which one of the offenses was committed
40 for all of the offenses aggregated under this section. The applicable
41 statute of limitations provision shall not begin to run until the
42 insurance company or law enforcement agency is aware of the fraud,
43 but in no event may the prosecution be commenced later than seven
44 years after the act has occurred.

45

46 14. (New section) A violation of this act shall be considered an
47 unfair trade practice pursuant to N.J.S.17B:30-1 et seq. and shall be

1 subject to the penalties contained in N.J.S.17B:30-17.

2

3 15. (New section) The commissioner shall have the authority to
4 promulgate regulations implementing the provisions of this act
5 pursuant to the "Administration Procedure Act," P.L.1968 c.410
6 (C.52:14B-1 et seq.) including, but not limited to, the following:

7 a. Establishing standards for evaluating reasonableness of payments
8 under viatical settlement contracts for persons terminally or
9 chronically ill;

10 b. Establishing appropriate licensing requirements, fees and
11 standards for continued licensure for viatical settlement providers;

12 c. Requiring a bond or other mechanism for financial accountability
13 for viatical settlement providers; and

14 d. Governing the relationship and responsibilities of insurers,
15 viatical settlement providers, life insurance producers and others in the
16 business of viatical settlements during the period of consideration or
17 effectuation of a viatical settlement contract.

18

19 16. (New section) Nothing in this act shall be construed to
20 preempt or otherwise limit the provisions of the "Uniform Securities
21 Law (1967)," P.L.1967, c.93 (C.49:3-47 et seq.) or any regulations,
22 orders, policy statements, notices, bulletins, or other interpretations
23 issued by or through the Attorney General or his designee acting
24 pursuant thereto. Compliance with the provisions of this act does not
25 constitute compliance with any applicable provisions of the "Uniform
26 Securities Law (1967)."

1 17. (New section) a. Notwithstanding the provisions of sections
2 1 through 16 of this act, a person who has lawfully negotiated viatical
3 settlement contracts between a viator and one or more viatical
4 settlement providers for at least one year immediately prior to the
5 effective date of this act may continue to negotiate viatical settlements
6 in this State for a period of one year from the effective date of this act,
7 provided that person registers with the department on a form
8 prescribed by the department. The registration form shall be published
9 by the department not later than 30 days from the effective date of
10 this act and shall require a person registering to evidence that he has
11 lawfully negotiated viatical settlement contracts and include an
12 acknowledgment by that person that he will operate in accordance
13 with and comply with this act.

14 b. A viatical settlement provider that is either licensed or is
15 lawfully transacting business in this State immediately prior to the
16 effective date of this act may continue to do so pending approval or
17 disapproval of the viatical settlement provider's application for a
18 license pursuant to this act.

19

20 18. Section 2 of P.L.1967, c.93 (C.49:3-49) is amended to read as
21 follows:

22 2. When used in this act, unless the context requires otherwise:

23 (a) "Bureau" means the agency designated in subsection (a) of
24 section 19 of P.L.1967, c.93 (C.49:3-66);

25 (b) "Agent" means any individual other than a broker-dealer, who
26 represents a broker-dealer or issuer in effecting or attempting to effect
27 purchases or sales of securities. "Agent" does not include an
28 individual who represents an issuer in (1) effecting transactions in a
29 security exempted by paragraph (1), (2), (3), or (11) of subsection (a)
30 of section 3 of P.L.1967, c.93 (C.49:3-50); (2) effecting transactions
31 exempted by subsection (b) of section 3 of P.L.1967, c.93
32 (C.49:3-50); (3) effecting transactions with existing employees,
33 partners, or directors of the issuer, if no commission or other
34 remuneration is paid or given directly or indirectly for soliciting any
35 person in this State; or (4) a broker-dealer in effecting transactions in
36 this State limited to those transactions described in paragraph (2) of
37 subsection (h) of section 15 of the "Securities Exchange Act of 1934,"
38 15 U.S.C. s.78o(h)(2); or (5) such other persons not otherwise within
39 the intent of this subsection (b), as the bureau chief may by rule or
40 order designate. A partner, officer, or director of a broker-dealer or
41 issuer, or a person occupying a similar status or performing similar
42 functions, is an agent only if he otherwise comes within this definition.
43 The bureau chief may by rule or order, as to any transaction, waive the
44 requirement of agent registration. The bureau chief may by rule define
45 classes of persons as "agents," if those persons are regulated as
46 "agents" by the Securities and Exchange Commission or any
47 self-regulatory organization established pursuant to the laws of the

1 United States;

2 (c) "Broker-dealer" means any person engaged in the business of
3 effecting or attempting to effect transactions in securities for the
4 accounts of others or for his own account. "Broker-dealer" does not
5 include (1) an agent, (2) an issuer, (3) a person who effects
6 transactions in this State exclusively in securities described in
7 paragraphs (1) and (2) of subsection (a) of section 3 of P.L.1967,
8 c.93 (C.49:3-50), (4) a bank, savings institution, or trust company, or
9 (5) a person who effects transactions in this State exclusively with or
10 through (i) the issuers of the securities involved in the transactions, (ii)
11 other broker-dealers, (iii) banks, savings institutions, trust companies,
12 insurance companies, investment companies as defined in the
13 "Investment Company Act of 1940," pension or profit-sharing trusts,
14 or other financial institutions or institutional buyers, whether acting for
15 themselves or as trustees or (iv) such other persons not otherwise
16 within the intent of this subsection (c), as the bureau chief may by rule
17 or order designate;

18 (d) "Capital" shall mean net capital, as defined and adjusted under
19 the formula established by the Securities and Exchange Commission
20 in Rule 15c3-1, 17 C.F.R. s.240.15c3-1, made pursuant to the
21 "Securities Exchange Act of 1934," prescribing a minimum permissible
22 ratio of aggregate indebtedness to net capital as such formula presently
23 exists or as it may hereafter be amended;

24 (e) "Fraud," "deceit," and "defraud" are not limited to common-law
25 fraud or deceit. "Fraud," "deceit" and "defraud" in addition to the
26 usual construction placed on these terms and accepted in courts of
27 law and equity, shall include the following, provided, however, that
28 any promise, representation, misrepresentation or omission be made
29 with knowledge and with intent to deceive or with reckless disregard
30 for the truth and results in a detriment to the purchaser, including a
31 purchase of a policy from a viatical settlement provider, or client of an
32 investment adviser:

33 (1) Any misrepresentation by word, conduct or in any manner of
34 any material fact, either present or past, and any omission to disclose
35 any such fact;

36 (2) Any promise or representation as to the future which is beyond
37 reasonable expectation or is unwarranted by existing circumstances;

38 (3) The gaining of, or attempt to gain, directly or indirectly,
39 through a trade in any security, a commission, fee or gross profit so
40 large and exorbitant as to be unconscionable, unreasonable or in
41 violation of any law, regulation, rule, order or decision of the
42 Securities and Exchange Commission, or the bureau chief; or to the
43 extent that such law, regulation, rule or order directly applies to the
44 person involved, the gaining of, or attempt to gain, directly or
45 indirectly, through a trade in any security, a commission, fee or gross
46 profit so large and exorbitant as to be in violation of any law,
47 regulation, rule, order or decision of any other state or Canadian

1 securities administrator, or any self-regulatory organization established
2 pursuant to the laws of the United States;

3 (4) Generally any course of conduct or business which is calculated
4 or put forward with intent to deceive the public or the purchaser of
5 any security or investment advisory services as to the nature of any
6 transaction or the value of such security;

7 (5) Any artifice, agreement, device or scheme to obtain money,
8 profit or property by any of the means herein set forth or otherwise
9 prohibited by this act;

10 (f) "Guaranteed" means guaranteed as to payment of principal,
11 interest or dividends;

12 (g) (1) "Investment adviser" means:

13 (i) any person who, for direct or indirect compensation, engages in
14 the business of advising others, either directly or through publications
15 or writings, as to the value of securities or as to the advisability of
16 investing in, purchasing, selling or holding securities, or who, for
17 compensation and as a part of a regular business, issues or
18 promulgates analyses or reports concerning securities; and

19 (ii) any financial planner and other person who provides investment
20 advisory services to others for compensation and as part of a business
21 or who holds himself out as providing investment advisory services to
22 others for compensation.

23 (2) "Investment adviser " does not include:

24 (i) a bank, savings institution, or trust company;

25 (ii) a lawyer, accountant, engineer, or teacher whose performance
26 of these services is solely incidental to the practice or conduct of the
27 profession and who does not hold himself out as providing investment
28 advisory or financial planning services, and who receives no special
29 compensation for those investment advisory or financial planning
30 services;

31 (iii) a broker-dealer registered under this act;

32 (iv) a publisher of any bona fide newspaper, news magazine, or
33 business or financial publication of general, regular, and paid
34 circulation;

35 (v) a person whose advice, analyses, or reports relate only to
36 securities exempted by paragraphs (1) and (2) of subsection (a) of
37 section 3 of P.L.1967, c.93 (C.49:3-50);

38 (vi) a person whose only clients in this State are other investment
39 advisers, any person that is registered as an "investment adviser" under
40 section 203 of the "Investment Advisers Act of 1940," 15 U.S.C.
41 s.80b-3, or excluded from the definition of an "investment adviser"
42 under paragraph (11) of subsection (a) of section 202 of the
43 "Investment Advisers Act of 1940," 15 U.S.C. s.80b-2(a)(11),
44 broker-dealers, banks, bank holding companies, savings institutions,
45 trust companies, insurance companies, investment companies as
46 defined in the "Investment Company Act of 1940," pension or
47 profit-sharing trusts, or other financial institutions or institutional

1 buyers, whether acting for themselves or as trustees;

2 (vii) any person that is registered as an "investment adviser" under
3 section 203 of the "Investment Advisers Act of 1940," 15 U.S.C.
4 s.80b-3, or excluded from the definition of an "investment adviser"
5 under paragraph (11) of subsection (a) of section 202 of the
6 "Investment Advisers Act of 1940," 15 U.S.C. s.80b-2(a)(11);

7 (viii) an investment adviser representative; or

8 (ix) such other persons not otherwise within the intent of this
9 subsection (g) as the bureau chief may by rule or order designate.

10 Subject to applicable federal law, the bureau chief may by rule limit
11 the exclusions set out in this paragraph (2), except for those exclusions
12 provided in subparagraph (i) of paragraph (2).

13 For purposes of this act, "investment advisory services" means
14 those services rendered by an "investment adviser" as defined in this
15 subsection;

16 (h) "Issuer" means any person who issues or proposes to issue any
17 security, except that (1) with respect to certificates of deposit,
18 voting-trust certificates, or collateral-trust certificates, or with respect
19 to certificates of interest or shares in an unincorporated investment
20 trust not having a board of directors (or persons performing similar
21 functions) or of the fixed, restricted management, or unit type, the
22 term "issuer" means the person or persons performing the acts and
23 assuming the duties of depositor or manager pursuant to the provisions
24 of the trust or other agreement or instrument under which the security
25 is issued; and (2) with respect to certificates of interest in oil, gas, or
26 mining titles or leases, there is not considered to be any "issuer";

27 (i) "Person" means an individual, a corporation, a partnership, an
28 association, a joint-stock company, a trust where the interests of the
29 beneficiaries are evidenced by a security, an unincorporated
30 organization, a government, or a political subdivision of a government;

31 (j) (1) "Sale" or "sell" includes every contract of sale of, contract
32 to sell, or disposition of, a security or interest in a security or
33 investment advisory services for value;

34 (2) "Offer" or "offer to sell" includes every attempt or offer to
35 dispose of, or solicitation of any offer to buy, a security or interest in
36 a security or investment advisory services for value;

37 (3) Any security given or delivered with, or as a bonus on account
38 of, any purchase of securities or any other thing is considered to
39 constitute part of the subject of the purchase and to have been offered
40 and sold for value;

41 (4) A purported gift of assessable stock is considered to involve an
42 offer and sale;

43 (5) Every sale or offer of a warrant or right to purchase or
44 subscribe to another security of the same or another issuer, as well as
45 every sale or offer of a security which gives the holder a present or
46 future right or privilege to convert into another security of the same
47 or another issuer, is considered to include an offer of the other

1 security;

2 (6) The terms defined in this subsection (j) do not include (i) any
3 bona fide pledge or loan; (ii) any stock dividend, whether the
4 corporation distributing the dividend is the issuer of the stock or not,
5 if nothing of value is given by stockholders for the dividend other than
6 the surrender of a right to a cash or property dividend when each
7 stockholder may elect to take the dividend in cash or property or in
8 stock; (iii) any act incident to a class vote by stockholders, pursuant
9 to the certificate of incorporation or the applicable corporation statute,
10 on a merger, consolidation, reclassification of securities, or sale of
11 corporate assets in consideration of the issuance of securities of
12 another corporation; or (iv) any act incident to a judicially approved
13 reorganization in which a security is issued in exchange for one or
14 more outstanding securities, claims, or property interests, or partly in
15 such exchange and partly for cash;

16 (k) "Savings institutions" shall mean any savings and loan
17 association or building and loan association operating pursuant to the
18 "Savings and Loan Act (1963)," P.L.1963, c.144 (C.17:12B-2 et seq.),
19 and any federal savings and loan association and any association or
20 credit union organized under the laws of the United States or of any
21 state whose accounts are insured by a federal corporation or agency;

22 (l) "Securities Act of 1933," 15 U.S.C. s.77a et seq.; "Securities
23 Exchange Act of 1934," 15 U.S.C. s.78a et seq.; "Public Utility
24 Holding Company Act of 1935," 15 U.S.C. s.79 et seq.; "Investment
25 Advisers Act of 1940," 15 U.S.C. s.80b-1 et seq.; "Investment
26 Company Act of 1940," 15 U.S.C. s.80a-1 et seq.; and "Commodity
27 Exchange Act," 7 U.S.C. s.1 et seq. mean the federal statutes of those
28 names;

29 (m) "Security" means any note; stock; treasury stock; bond;
30 debenture; evidence of indebtedness; certificate of interest or
31 participation in any profit-sharing agreement, including, but not limited
32 to, certificates of interest or participation in real or personal property;
33 collateral-trust certificate; preorganization certificate or subscription;
34 transferable share; investment contract; voting-trust certificate;
35 certificate of deposit for a security; certificate of interest in an oil, gas
36 or mining title or lease; a viatical investment; or, in general, any
37 interest or instrument commonly known as a "security," or any
38 certificate of interest or participation in, temporary or interim
39 certificate for, guarantee of, or warrant or right to subscribe to or
40 purchase, any of the foregoing. "Security" does not include any
41 insurance or endowment policy or annuity contract under which an
42 insurance company promises to pay a fixed or variable number of
43 dollars either in a lump sum or periodically for life or some other
44 specified period;

45 (n) "State" means any state, territory, or possession of the United
46 States, as well as the District of Columbia and Puerto Rico;

47 (o) "Nonissuer" means secondary trading not involving the issuer

1 of the securities or any person in a control relationship with the issuer;

2 (p) "Accredited investor" means any person who is an "accredited
3 investor" as defined by subsection (15) of section 2 of the "Securities
4 Act of 1933," 15 U.S.C. s.77b(15), and 17 C.F.R. s.230.215 and
5 s.230.501 or any successor rule promulgated pursuant to that act.

6 The bureau chief may rule, or order, waive or modify the conditions
7 in this subsection (p) and shall interpret and apply this subsection (p)
8 so as to effectuate greater uniformity and coordination in federal-state
9 securities registration exemptions;

10 (q) "Direct participation security" means a security which provides
11 for flow-through tax consequences (tax shelter), regardless of the
12 structure of the legal entity or vehicle for distribution, including, but
13 not limited to, a security representing an interest in gas, oil, real estate,
14 agricultural property, cattle, a condominium, a Subchapter S
15 corporation, a limited liability company and all other securities of a
16 similar nature, regardless of the industry represented by the security,
17 or any combination thereof. Excluded from this definition are real
18 estate investment trusts, tax qualified pension and profit-sharing plans
19 pursuant to sections 401 and 403(a) of the Internal Revenue Code of
20 1986, 26 U.S.C.401 and 403(a), and individual retirement plans under
21 section 408 of the Internal Revenue Code of 1986, 26 U.S.C.408, tax
22 sheltered annuities pursuant to the provisions of section 403(b) of the
23 Internal Revenue Code of 1986, 26 U.S.C.403(b), and any company
24 including separate accounts registered pursuant to the "Investment
25 Company Act of 1940;"

26 (r) "Blind pool" means an offering of securities in which, as to 65%
27 or more of the proceeds of the offering, the prospectus discloses no
28 specific purpose to which the proceeds of the offering will be put, or
29 the prospectus discloses no specific assets to be purchased, projects
30 to be undertaken, or business to be conducted, except for:

31 (1) an offering of securities to provide working capital for an
32 operating company (as opposed to a development stage company);

33 (2) an offering of securities by an investment company registered
34 under the "Investment Company Act of 1940," including a business
35 development company; or

36 (3) an offering of securities by a small business investment company
37 licensed by the Small Business Administration or a business
38 development company within the meaning of the "Investment Advisers
39 Act of 1940;"

40 (s) "Investment adviser representative" means any person,
41 including, but not limited to, a partner, officer, or director, or a person
42 occupying a similar status or performing similar functions, or other
43 individual, except clerical or ministerial personnel, who is employed by
44 or associated with an investment adviser registered under this act, or
45 who has a place of business located in this State and is employed by or
46 associated with a person registered or required to be registered as an
47 investment adviser under section 203 of the "Investment Advisers Act

1 of 1940," 15 U.S.C. s.80b-3; and who does any of the following:

2 (1) makes any recommendations or otherwise renders advice
3 regarding securities if the person has direct advisory client contact;

4 (2) manages accounts or portfolios of clients;

5 (3) determines recommendations or advice regarding securities;

6 (4) solicits, offers or negotiates for the sale of or sells investment
7 advisory services; or

8 (5) directly supervises any investment adviser representative or the
9 supervisors of those investment adviser representatives. "Investment
10 adviser representative" does not include a broker-dealer or an agent;

11 (t) "Institutional buyer" includes, but is not limited to, a "qualified
12 institutional buyer" as defined in SEC Rule 144A, 17 C.F.R.
13 s.230.144A;

14 (u) "Willful" or "willfully" means a person who acts intentionally in
15 the sense that the person is aware of what he is doing;

16 (v) "Federal covered security" means any security described as a
17 covered security in subsection (b) of section 18 of the "Securities Act
18 of 1933," 15 U.S.C.77r(b).

19 (w) "Viatical investment" means the contractual right to receive any
20 portion of the death benefit or ownership of a life insurance policy or
21 certificate, for consideration that is less than the expected death
22 benefit of the life insurance policy or certificate. Viatical investment
23 does not include:

24 (1) any transaction between a viator and a viatical settlement
25 provider as defined by the "Viatical Settlements Act", P.L. , c.
26 (C.) (now before the Legislature as this bill);

27 (2) any transfer of ownership or beneficial interest in a life
28 insurance policy from a viatical settlement provider to another viatical
29 settlement provider as defined in "Viatical Settlements Act", P.L. .
30 c. (C.) (now before the Legislature as this bill) or to any legal
31 entity formed solely for the purpose of holding ownership or beneficial
32 interest in a life insurance policy or policies;

33 (3) the bona fide assignment of a life insurance policy to a bank,
34 savings bank, savings and loan association, credit union, or other
35 licensed lending institution as collateral for a loan; or

36 (4) the exercise of accelerated benefits pursuant to the terms of a
37 life insurance policy issued in accordance with the provisions of Title
38 17B of the New Jersey Statutes.

39 (cf: P.L.1997, c.276, s.2)

40

41 19. P.L.1999, c.211 (17B:30A-1 et seq.) is repealed.

42

43 20. Section 15 of this act shall take effect immediately and the
44 remainder of this act shall take effect on the 90th day after enactment.

45

46

47

1 This bill, the "Viatical Settlements Act," repeals the current law
2 regulating viatical settlements and replaces it with a broader regulatory
3 scheme which follows, in large part, the Viatical Settlements Model
4 Act developed by the National Association of Insurance
5 Commissioners (NAIC).

6 A viatical settlement is the sale or transfer of an existing life
7 insurance policy, while the owner or insured, or viator, is still alive, for
8 a value less than the expected death benefit under the insurance policy,
9 but which must be at least greater than the cash surrender value or
10 value of any accelerated death benefit available at the time of a viatical
11 settlement. A viatical settlement contract may also include a contract
12 for a loan or other financing transaction.

13 The bill licenses viatical settlement providers, who purchase life
14 insurance policies. The bill provides that insurance producers licensed
15 under the "New Jersey Insurance Producer Licensing Act of 2001,"
16 with a life insurance line of authority may negotiate viatical settlement
17 contracts on behalf of owners of life insurance policies. The bill
18 requires disclosure of certain information to viators at the time of
19 application for a viatical settlement contract and prior to executing a
20 final viatical settlement contract. The disclosures are designed to
21 inform the viator of alternatives to viatical settlement contracts and
22 that there may be tax consequences, among other things. The bill also
23 requires disclosure to viators of available alternatives to the lapse or
24 surrender of the life insurance policy in other situations. Other
25 provisions of the bill are designed to ensure that the viator has entered
26 into an agreement to sell the policy willingly, and the viator has an
27 unconditional right to rescind a viatical settlement contract for a
28 period of time after execution of the viatical settlement contract.

29 The bill requires viatical settlement providers to file their contract
30 forms and disclosure statements with the Commissioner of Banking
31 and Insurance for approval. The commissioner is also authorized to
32 conduct examinations and investigations of all licensees. The
33 commissioner is given general implementation and enforcement
34 responsibilities as well.

35 The bill also regulates the advertisement of offers of viatical
36 settlement contracts to provide prospective viators with accurate
37 descriptions of viatical settlements contracts and to ensure that
38 product descriptions are not unfair, deceptive or misleading.
39 Fraudulent practices in the offering, application or execution of
40 viatical settlement contracts are prohibited and viatical settlement
41 providers are required to put into effect antifraud initiatives, which
42 may include fraud investigators and an antifraud plan.

43 Violations of the bill are considered unfair trade practices pursuant
44 to N.J.S. 17B:30-1 et seq., and are subject to the penalties of that act.
45 In addition, the commissioner may seek injunctive relief and civil
46 penalties, and persons who have violated the bill's provisions may be
47 subject to imprisonment and ordered to pay restitution to persons

1 aggrieved by the violation.

2 Although the bill repeals the 1999 law on viatical settlements, it
3 continues many of the concepts of the regulatory scheme with the
4 following changes:

5 (1) Regulates all viatical settlement contract transactions regardless
6 of the health of the insured. Current law only regulates viatical
7 settlements when the insured is terminally or chronically ill.

8 (2) Protects the property and contractual rights of life insurance
9 policy owners by prohibiting anti-assignment activities and other unfair
10 trade practices.

11 (3) Expands consumer protections by adding significant disclosure
12 requirements, mandatory anti-fraud measures, including requiring anti-
13 fraud plans by licensees; mandatory reporting of suspected fraudulent
14 activities; prohibiting anti-assignment activities and eliminating third-
15 party brokers and unlicensed agents.

16 (4) Supplies life insurance policy owners with information about all
17 of their options when considering the disposition of their life insurance
18 policies by requiring disclosure of relevant information.