



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB5337

Introduced 01/26/06, by Rep. Roger Jenisch

SYNOPSIS AS INTRODUCED:

New Act

215 ILCS 158/Act rep.

5 ILCS 140/7

215 ILCS 5/424

815 ILCS 5/2.1

815 ILCS 5/2.33 new

from Ch. 116, par. 207

from Ch. 73, par. 1031

from Ch. 121 1/2, par. 137.2-1

Creates the Viatical Settlements Act of 2006. Provides for the regulation of viatical settlement providers, brokers, and life insurance producers who enter into viatical settlements. Provides license requirements and establishes grounds for the suspension, denial, nonrenewal, or revocation of a license. Requires viatical settlement contracts and disclosure statements to be approved by the Secretary of Financial and Professional Regulation. Requires certain documents to be kept by licensees for examination by the Secretary and sets guidelines for examination by the Secretary. Provides a period of time for rescission after certain disclosures are made. Sets forth rules that must be complied with by viatical settlement providers and insurers. Requires certain disclosures to be made in connection with viatical settlements. Sets forth prohibited practices and exceptions. Grants the Secretary the authority to adopt rules. Provides standards for application by current viatical settlement providers. Sets forth violations and penalties for violations. Provides standards for advertisement of viatical settlement services and contracts. Provides that the Illinois Securities Law of 1953 is not preempted or limited by the Act and amends the Illinois Security Law of 1953 to include viatical investments in a definition of "security" and to add a definition of "viatical investment". Provides that the provisions of the Act are severable. Repeals the Viatical Settlements Act. Amends the Freedom of Information Act to exempt from disclosure certain documents required under the Viatical Settlements Act of 2006. Amends the Illinois Insurance Code to provide that engaging in acts or practices prohibited by the Viatical Settlements Act of 2006 constitutes an unfair method of competition and unfair and deceptive act or practice in the business of insurance. Effective immediately.

LRB094 19270 LJB 54901 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning insurance.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Viatical Settlements Act of 2006.

6 Section 5. Definitions.

7 "Advertising" means any written, electronic, or printed
8 communication or any communication by means of recorded
9 telephone messages or transmitted on radio, television, the
10 Internet, or similar communications media, including film
11 strips, motion pictures, and videos published, disseminated,
12 circulated, or placed directly before the public in this State,
13 for the purpose of creating an interest in or inducing a person
14 to sell, assign, devise, bequest, or transfer the death benefit
15 or ownership of a policy pursuant to a viatical settlement
16 contract.

17 "Business of viatical settlements" means any activity
18 involved in the offering, solicitation, negotiation,
19 procurement, effectuation, purchasing, investing, financing,
20 monitoring, tracking, underwriting, selling, transferring,
21 assigning, pledging, or hypothecating of viatical settlement
22 contracts or any other action affecting viatical settlement
23 contracts.

24 "Chronically ill" means:

25 (1) having a level of disability as determined by the
26 Secretary of Health and Human Services or being unable to
27 perform at least 2 activities of daily living, such as
28 eating, toileting, transferring, bathing, dressing, or
29 continence; or

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

1 "Department" means the Department of Financial and
2 Professional Regulation.

3 "Financing entity" means an underwriter, placement agent,
4 lender, purchaser of securities, purchaser of a policy or
5 certificate from a viatical settlement provider, credit
6 enhancer, or an entity that has a direct ownership in a policy
7 that is the subject of a viatical settlement contract and:

8 (1) whose principal activity related to the
9 transaction is providing funds to effect the viatical
10 settlement or purchase of one or more viaticated policies;
11 and

12 (2) who has an agreement in writing with one or more
13 licensed viatical settlement providers to finance the
14 acquisition of viatical settlement contracts or to provide
15 stop loss insurance.

16 "Financing entity" does not include a nonaccredited investor.

17 "Fraudulent viatical settlement act" includes:

18 (1) Acts or omissions committed by a person who,
19 knowingly or with intent to defraud for the purpose of
20 depriving another of property or for pecuniary gain,
21 commits or permits its employees or its agents to engage in
22 acts including:

23 (A) presenting, causing to be presented, or
24 preparing with knowledge or belief that it will be
25 presented to or by a viatical settlement provider,
26 financing entity, insurer, insurance producer, or
27 another person, false material information or
28 concealing material information as part of, in support
29 of, or concerning a fact material to one or more of the
30 following:

31 (i) an application for the issuance of a
32 viatical settlement contract or policy;

33 (ii) the underwriting of a viatical settlement
34 contract or policy;

35 (iii) a claim for payment or benefit pursuant
36 to a viatical settlement contract or policy;

- 1 (iv) premiums paid on a policy;
- 2 (v) payments and changes in ownership or
3 beneficiary made in accordance with the terms of a
4 viatical settlement contract or policy;
- 5 (vi) the reinstatement or conversion of a
6 policy;
- 7 (vii) in the solicitation, offer,
8 effectuation, or sale of a viatical settlement
9 contract or policy;
- 10 (viii) the issuance of written evidence of a
11 viatical settlement contract or policy; or
- 12 (ix) a financing transaction;
- 13 (B) employing any device, scheme, or artifice to
14 defraud related to viaticated policies.
- 15 (2) In the furtherance of a fraud or to prevent the
16 detection of a fraud a person commits or permits its
17 employees or its agents to:
- 18 (A) remove, conceal, alter, destroy, or sequester
19 from the Secretary the assets or records of a licensee
20 or other person engaged in the business of viatical
21 settlements;
- 22 (B) misrepresent or conceal the financial
23 condition of a licensee, financing entity, insurer, or
24 other person;
- 25 (C) transact the business of viatical settlements
26 in violation of laws requiring a license, certificate
27 of authority, or other legal authority for the
28 transaction of the business of viatical settlements;
29 or
- 30 (D) file with the Secretary or the chief insurance
31 regulatory official of another jurisdiction a document
32 containing false information or otherwise conceals
33 information about a material fact from the Secretary.
- 34 (3) Embezzlement, theft, misappropriation, or
35 conversion of monies, funds, premiums, credits, or other
36 property of a viatical settlement provider, life insurance

1 producer, insurer, insured, viator, policyowner, or
2 another person engaged in the business of viatical
3 settlements or insurance.

4 (4) Recklessly entering into, negotiating, or
5 otherwise dealing in a viatical settlement contract or life
6 insurance policy, the subject of which is a policy that was
7 obtained by presenting false information concerning a fact
8 material to the policy, or by concealing, for the purpose
9 of misleading another, information concerning a fact
10 material to the policy, where the person or persons
11 intended to defraud the insurance company that issued the
12 policy, viatical settlement provider, or viator. For the
13 purposes of this definition, "recklessly" means engaging
14 in the conduct in conscious and clearly unjustifiable
15 disregard of a substantial likelihood of the existence of
16 the relevant facts or risks, this disregard involving a
17 gross deviation from acceptable standards of conduct.

18 (5) Facilitating, directly or indirectly, the change
19 of state of ownership of a policy or the state of residency
20 of a viator to avoid the provisions of this Act.

21 (6) Facilitating, directly or indirectly, the issuance
22 of a policy on an insured who is a resident of this State
23 such that the policy is owned in another state in order to
24 avoid the provisions of this Act.

25 (7) Attempting to commit, assist, aid, or abet in the
26 commission of or conspiracy to commit the acts or omissions
27 specified in this definition.

28 "Licensee" means any viatical settlement provider or any
29 life insurance producer acting as a viatical settlement broker.

30 "Life insurance producer" means a person licensed as a
31 resident or nonresident insurance producer pursuant to Article
32 XXXI of the Illinois Insurance Code with a life line of
33 authority pursuant to Section 500-35 of the Illinois Insurance
34 Code.

35 "Person" means any natural or artificial entity including,
36 but not limited to, individuals, partnerships, limited

1 liability company, associations, trusts, or corporations.

2 "Policy" means an individual or group policy, group
3 certificate, contract, or arrangement of life insurance
4 affecting the rights of a resident of this State or bearing a
5 reasonable relation to this State, regardless of whether
6 delivered or issued for delivery in this State.

7 "Related provider trust" means a titling trust or other
8 trust established by a licensed viatical settlement provider or
9 a financing entity for the sole purpose of holding the
10 ownership or beneficial interest in purchased policies in
11 connection with a financing transaction. The trust shall have a
12 written agreement with the licensed viatical settlement
13 provider under which the licensed viatical settlement provider
14 is responsible for ensuring compliance with all statutory and
15 regulatory requirements and under which the trust agrees to
16 make all records and files related to viatical settlement
17 transactions available to the Secretary as if those records and
18 files were maintained directly by the licensed viatical
19 settlement provider.

20 "Secretary" means the Secretary of Financial and
21 Professional Regulation.

22 "Special purpose entity" means a corporation, partnership,
23 trust, limited liability company, or other similar entity
24 formed only to provide, directly or indirectly, access to
25 institutional capital markets for a financing entity or
26 licensed viatical settlement provider.

27 "Terminally ill" means having an illness or sickness that
28 reasonably is expected to result in death in 24 months or less.

29 "Viatical settlement contract" means a written agreement
30 establishing, between a viator and a viatical settlement
31 provider, the terms under which the viatical settlement
32 provider will pay compensation or anything of value is paid,
33 which compensation or value is less than the expected death
34 benefit of the policy, in return for the viator's assignment,
35 transfer, sale, devise, or bequest of the death benefit or
36 ownership of any portion of the policy. A viatical settlement

1 contract also includes a contract for a loan or other financing
2 transaction with a viator secured primarily by an individual or
3 group life insurance policy, other than a loan by a life
4 insurance company pursuant to the terms of the policy, or a
5 loan secured by the cash value of a policy. A viatical
6 settlement contract includes an agreement with a viator to
7 transfer ownership or change the beneficiary designation at a
8 later date regardless of the date that compensation is paid to
9 the viator.

10 "Viatical settlement provider" means a person, other than a
11 viator, that, in this State, from this State, or with a
12 resident of this State, enters into or effectuates a viatical
13 settlement contract. "Viatical settlement provider" does not
14 include:

15 (1) a bank, savings and loan association, credit union,
16 or other licensed lending institution that takes an
17 assignment of a policy as collateral for a loan;

18 (2) the issuer of a policy providing accelerated
19 benefits under the policy;

20 (3) an authorized or eligible insurer that provides
21 stop loss coverage to a viatical settlement provider,
22 financing entity, special purpose entity, or related
23 provider trust;

24 (4) a natural person who enters into or effectuates no
25 more than one agreement in a calendar year for the transfer
26 of policies for any value less than the expected death
27 benefit;

28 (5) a financing entity;

29 (6) a special purpose entity;

30 (7) a related provider trust; or

31 (8) an accredited investor or qualified institutional
32 buyer as defined, respectively, in Regulation D, Rule 501
33 or Rule 144A of the Federal Securities Act of 1933, as
34 amended, and who purchases a purchased policy from a
35 viatical settlement provider.

36 "Viaticated policy" means a life insurance policy held by a

1 viatical settlement provider, directly or indirectly, that has
2 been acquired by a viatical settlement provider pursuant to a
3 viatical settlement contract.

4 "Viator" means the owner of a life insurance policy or a
5 life insurance certificate holder who enters or seeks to enter
6 into a viatical settlement contract. For the purposes of this
7 Act, a viator is not limited to an owner of a policy insuring
8 the life of an individual with a terminal or chronic illness or
9 condition except where specifically addressed. If there is more
10 than one owner on a single policy and the owners are residents
11 of different states, the transaction shall be governed by the
12 law of the state in which the owner having the largest
13 percentage ownership resides or, if the owners hold equal
14 ownership, the state of residence of one owner agreed upon in
15 writing by all owners. Viator does not include:

- 16 (1) a licensee under this Act, including a life
17 insurance producer acting as a viatical settlement broker;
18 (2) a qualified institutional buyer as defined in Rule
19 144A of the Federal Securities Act of 1933, as amended;
20 (3) a financing entity;
21 (4) a special purpose entity; or
22 (5) a related provider trust.

23 Section 10. License Requirements.

24 (a) A person shall not negotiate viatical settlement
25 contracts between a viator and one or more viatical settlement
26 providers or otherwise act on behalf of a viator unless the
27 person is a life insurance producer.

28 (b) A life insurance producer, as defined in this Act, who
29 has been licensed for at least one year, shall be permitted to
30 negotiate, as defined in Section 500-10 of the Illinois
31 Insurance Code, viatical settlement contracts. For purposes of
32 this Section, the one year requirement is deemed to be
33 satisfied if the person has been licensed as a resident life
34 insurance producer in his or her home state for at least one
35 year. Not later than 30 days from the first day of negotiating

1 a viatical settlement contract on behalf of a viator, the life
2 insurance producer shall notify the Secretary of the activity
3 on a form prescribed by the Secretary, and shall pay any
4 applicable fees as determined by the Secretary. Notification
5 must include an acknowledgment by the producer that he or she
6 will operate in accordance with this Act.

7 (c) Notwithstanding any other provision of this Section, a
8 person licensed as an attorney, certified public accountant, or
9 financial planner accredited by a nationally recognized
10 accreditation agency who is retained to represent the viator
11 and whose compensation is not paid directly or indirectly by
12 the viatical settlement provider may negotiate viatical
13 settlement contracts without having to obtain a license as a
14 life insurance producer.

15 (d) A person shall not operate as a viatical settlement
16 provider from within this State or for persons residing in this
17 State without first having obtained a viatical settlement
18 provider license from the Secretary.

19 (e) Application for a viatical settlement provider license
20 shall be made to the Secretary by the applicant on a form
21 prescribed by the Secretary. The application shall be
22 accompanied by a fee of \$1,500, which shall be deposited into
23 the Insurance Producer Administration Fund.

24 Viatical settlement providers' licenses may be renewed
25 from year to year on the anniversary date of the license upon
26 (i) submission of renewal forms prescribed by the Secretary and
27 (ii) payment of the annual renewal fee of \$750, which shall be
28 deposited into the Insurance Producer Administration Fund.
29 Failure to pay the fee within the terms prescribed by the
30 Secretary shall result in the expiration of the license.

31 (f) Applicants for a viatical settlement provider's
32 license shall provide information prescribed by the Secretary
33 on forms prescribed by the Secretary. The Secretary shall have
34 authority, at any time, to require the applicant to fully
35 disclose the identity of all stockholders, partners, officers,
36 members, and employees, except stockholders owning fewer than

1 10% of the shares of an applicant whose shares are publicly
2 traded. The Secretary may, in the exercise of discretion,
3 refuse to issue a license in the name of a legal entity, if not
4 satisfied that an officer, employee, stockholder, member, or
5 partner thereof who may materially influence the applicant's
6 conduct meets the standards of this Act.

7 (g) A viatical settlement provider's license issued to a
8 legal entity authorizes all partners, members, officers, and
9 designated employees to act as viatical settlement providers,
10 as applicable, under the license. All those persons must be
11 named in the application and any supplements thereto.

12 (h) Upon the filing of an application for a viatical
13 settlement provider's license and the payment of the license
14 fee, the Secretary may request information from the applicant
15 relating to the applicant's qualifications to be licensed as a
16 viatical settlement provider and shall issue a license if the
17 Secretary finds that the applicant:

18 (1) has provided a detailed plan of operation;

19 (2) is competent and trustworthy and intends to act in
20 good faith in the capacity authorized by the license
21 applied for;

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

25 (4) provides a certificate of good standing from the
26 state of its domicile if the applicant is a legal entity;
27 and

28 (5) has provided an anti-fraud plan that meets the
29 requirements of this Act.

30 The Secretary may not issue a license to a nonresident
31 applicant unless a written designation of an agent for service
32 of process is filed and maintained with the Secretary or the
33 applicant has filed with the Secretary the applicant's written
34 irrevocable consent that any action against the applicant may
35 be commenced against the applicant by service of process on the
36 Secretary.

1 A viatical settlement provider shall provide to the
2 Secretary new or revised information about officers, 10% or
3 more stockholders, partners, directors, members, or designated
4 employees within 30 days of a change.

5 Section 15. License suspension, denial, nonrenewal, and
6 revocation.

7 (a) The Secretary may refuse to issue or renew or may
8 suspend or revoke the license of any viatical settlement
9 provider if the Secretary finds any of the following:

10 (1) there was material misrepresentation in the
11 application for the license;

12 (2) the licensee or any officer, partner, member, or
13 key management personnel has been convicted of fraudulent
14 or dishonest practices, is subject to a final
15 administrative action, or is otherwise shown to be
16 untrustworthy or incompetent;

17 (3) the licensee demonstrates a pattern of
18 unreasonable payments to viators;

19 (4) the licensee or any officer, partner, member, or
20 key management personnel has been found guilty of, or
21 pleaded guilty or nolo contendere to, any felony or
22 misdemeanor involving fraud or moral turpitude, regardless
23 of whether a judgment or conviction has been entered by the
24 court;

25 (5) the licensee uses any viatical settlement contract
26 form that has not been approved pursuant to this Act;

27 (6) the licensee has failed to honor contractual
28 obligations set out in a viatical settlement contract;

29 (7) the licensee no longer meets the requirements for
30 initial licensure;

31 (8) the licensee has assigned, transferred, or pledged
32 a viaticated policy to a person other than a viatical
33 settlement provider licensed in this State, an accredited
34 investor or qualified institutional buyer as defined,
35 respectively, in Regulation D, Rule 501 or Rule 144A of the

1 Federal Securities Act of 1933, as amended, a financing
2 entity, a special purpose entity, or a related provider
3 trust; or

4 (9) the licensee or any officer, partner, member, or
5 key management personnel has violated any of the provision
6 of this Act.

7 (b) The Secretary may suspend, revoke, or refuse to renew
8 the license of a life insurance producer if the Secretary finds
9 that the life insurance producer:

10 (1) has violated any provision of this Act;

11 (2) has received a fee, commission, or other valuable
12 consideration for his or her services with respect to
13 viatical settlement transactions that involved unlicensed
14 viatical settlement providers or life insurance producers
15 who have not complied with Section 10 of this Act; or

16 (3) deals in bad faith with viators.

17 (c) Before the Secretary denies a license application or
18 suspends, revokes, or refuses to renew the license of a
19 viatical settlement provider or life insurance producer the
20 Secretary shall conduct a hearing in accordance with the
21 Illinois Administrative Procedure Act.

22 Section 20. Approval of viatical settlement contracts. No
23 viatical settlement provider may use a viatical settlement
24 contract or provide to a viator a disclosure statement form in
25 this State unless it has been filed with and approved by the
26 Secretary. A viatical settlement contract form filed with the
27 Secretary shall be deemed approved if it has not been
28 disapproved within 60 days of the filing. The Secretary shall
29 disapprove a viatical settlement contract form or a disclosure
30 statement form if, in the Secretary's opinion, the contract or
31 provisions contained therein are unreasonable, contrary to the
32 interests of the public, or otherwise misleading or unfair to
33 the viator. At the Secretary's discretion, the Secretary may
34 require the viatical settlement provider to submit copies of
35 its advertising material.

1 Section 25. Reporting requirements.

2 (a) Each viatical settlement provider shall file with the
3 Secretary on or before March 1 of each year an annual statement
4 containing information that the Secretary may prescribe by
5 rule. This information shall not include individual
6 transaction data regarding the business of viatical
7 settlements or data that compromises the privacy of personal,
8 financial, and health information of the viator or insured.

9 (b) Any information relating to the identity of an insured
10 individual and an insured individual's financial or medical
11 information collected, received, or maintained by any entity
12 directly or indirectly involved with a viatical settlement
13 transaction, including a viatical settlement provider, life
14 insurance producer, information bureau, rating agency or
15 company, or any other person with actual knowledge of a
16 viator's or insured's identity, shall be subject to the
17 requirements of Article XL of the Illinois Insurance Code,
18 except as provided below or otherwise allowed or required by
19 law. The information may not be disclosed unless the disclosure
20 is:

21 (1) necessary to effect a viatical settlement contract
22 between the viator and a viatical settlement provider and
23 the viator or insured or both, as may be required, have
24 provided prior written consent to the disclosure;

25 (2) provided in response to an investigation or
26 examination by the Secretary or another governmental
27 officer or agency;

28 (3) a term of or condition to the transfer of a policy
29 by one viatical settlement provider to another viatical
30 settlement provider;

31 (4) necessary to permit a financing entity, related
32 provider trust, or special purpose entity to finance the
33 purchase of policies by a viatical settlement provider and
34 the viator and insured have provided prior written consent
35 to the disclosure;

- 1 (5) necessary to allow the viatical settlement
2 provider or their authorized representatives to make
3 contacts for the purpose of determining health status; or
4 (6) required to purchase stop loss coverage.

5 Section 30. Examination of applicants and licensees.

6 (a) The Secretary may conduct an examination of a licensee
7 as often as the Secretary in his or her sole discretion deems
8 appropriate. The Secretary has the authority to order a
9 licensee or applicant to produce any records, books, files, or
10 other information reasonably necessary to ascertain whether or
11 not the licensee or applicant is acting or has acted in
12 violation of the law or otherwise contrary to the interests of
13 the public.

14 For purposes of completing an examination of a licensee
15 under this Act, the Secretary may examine or investigate any
16 person, or the business of any person, insofar as the
17 examination or investigation is, in the sole discretion of the
18 Secretary, necessary or material to the examination of the
19 licensee.

20 In lieu of an examination under this Act of any foreign or
21 alien licensee licensed in this State, the Secretary may, at
22 the Secretary's discretion, accept an examination report on the
23 licensee as prepared by the chief insurance regulatory official
24 for the licensee's state of domicile or port-of-entry state.

25 (b) A person required to be licensed by this Act shall for
26 5 years retain copies of:

27 (1) proposed, offered, or executed contracts,
28 underwriting documents, policy forms, and applications
29 from the date of the proposal, offer, or execution of the
30 contract, which ever is later;

31 (2) all checks, drafts, or other evidence and
32 documentation related to the payment, transfer, deposit,
33 or release of funds from the date of the transaction;

34 (3) all complaints received against the licensee and
35 those viatical settlement agents representing the

1 licensee; and

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

4 This subsection (b) does not relieve a person of the
5 obligation to produce these documents to the Secretary after
6 the retention period has expired if the person has retained the
7 documents.

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

13 The Secretary may adopt rules to prescribe the minimum
14 records that must be maintained by licensees.

15 (c) Upon determining that an examination should be
16 conducted, the Secretary shall issue an examination warrant
17 appointing one or more examiners to perform the examination and
18 instructing them as to the scope of the examination. In
19 conducting the examination, the examiner may employ guidelines
20 or procedures that the Secretary may deem appropriate.

21 Every licensee, its officers, directors, and agents, and
22 any other person from whom information is sought shall provide
23 to the examiners timely, convenient, and free access at all
24 reasonable hours at its offices to all books, records,
25 accounts, papers, documents, assets, and computer or other
26 recordings relating to the property, assets, business, and
27 affairs of the licensee being examined. The officers,
28 directors, employees, and agents of the licensee or person
29 shall facilitate the examination and aid in the examination so
30 far as it is in their power to do so. The refusal of a licensee
31 by its officers, directors, employees, or agents, to submit to
32 examination or to comply with any reasonable written request of
33 the Secretary shall be grounds for suspension or refusal to
34 renew of any license or authority held by the licensee to
35 engage in the viatical settlement business or other business
36 subject to the Secretary's jurisdiction. Any proceedings for

1 suspension, revocation, or refusal of any license or authority
2 shall be conducted pursuant to the Illinois Administrative
3 Procedures Act.

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

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

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

25 (e) Nothing contained in this Act shall be construed to
26 limit the Secretary's authority to use and, if appropriate, to
27 make public any final report.

28 (f) The Secretary may charge the expenses incurred in any
29 examination authorized by this Section to the person being
30 examined. The charge shall be reasonably related to the cost of
31 the examination, including, but not limited to, a per diem
32 charge of \$300 per examiner, electronic data processing costs,
33 supervision and preparation of an examination report, and
34 lodging and travel expenses. All lodging and travel expenses
35 shall be in accord with the applicable travel regulations
36 published by the Department of Central Management Services and

1 approved by the Governor's Travel Control Board, except that
2 out-of-state lodging and travel expenses shall be in accordance
3 with travel rates prescribed under 41 C.F.R. 301 for
4 reimbursement of subsistence expenses incurred during official
5 travel. All lodging and travel expenses may be reimbursed
6 directly upon authorization by the Secretary. All electronic
7 data processing costs incurred by the Department in the
8 performance of any examination shall be billed directly to the
9 person being examined for payment to the Statistical Services
10 Revolving Fund. With the exception of the direct reimbursements
11 authorized by the Secretary, all other examination charges
12 collected by the Department shall be paid to the Insurance
13 Producers Administration Fund.

14 The payment of fees or charges shall be made by separate
15 check, or other payment method approved by the Secretary, for
16 each invoice issued by the Department.

17 Any fee or charge assessed pursuant to this Part, in which
18 a payment due date has not been established, must be paid
19 within 30 days after the date of the Department's invoice.

20 Any company, person, or entity failing to make any payment
21 of \$100 or more as required under this subsection (f) is
22 liable, in addition to the tax and any penalties, for interest
23 on the deficiency at the rate of 12% per annum, or at higher
24 adjusted rates as are or may be established under subsection
25 (b) of Section 6621 of the Internal Revenue Code, from the date
26 that payment was due, determined without regard to any
27 extensions, to the date of payment of the amount.

28 When a licensee fails to pay the full amount of any fee of
29 \$200 or more due under this subsection (f), there shall be
30 added to the amount due, as a penalty, the greater of \$100 or
31 an amount equal to 10% of the deficiency for each month or part
32 of a month that the deficiency remains unpaid.

33 When a licensee fails to timely pay the full amount of any
34 fee or charge of \$100 or more due under this subsection (f),
35 there may be added to the amount due, as a penalty, the greater
36 of \$50 or an amount equal to 5% of the deficiency for each

1 month or part of a month that the deficiency remains unpaid. In
2 addition to the fee or charge, interest on the deficiency shall
3 be assessed at the rate of 12% per annum, or at higher adjusted
4 rates as are or may be established under subsection (b) of
5 Section 6621 of the Internal Revenue Code, from the date that
6 payment of the fee or charge was due to the date of payment of
7 the amount.

8 Any person or company required to pay a fee or charge
9 pursuant to this Section may request a hearing to be held for
10 the purposes of determining if the assessed fee or charge is
11 appropriate. The hearing request shall be made pursuant to 50
12 Ill. Admin. Code 2500.50 and shall be based only on (i) the
13 grounds set forth in Section 412 of the Illinois Insurance
14 Code, (ii) a mistake of fact, (iii) an error in calculation, or
15 (iv) an erroneous interpretation of a statute of this or any
16 other state.

17 (g) Examination reports shall be comprised only of facts
18 appearing upon the books, records, or other documents of the
19 licensee, its agents, or other persons examined, or as
20 ascertained from the testimony of its officers or agents or
21 other persons examined concerning its affairs and the
22 conclusions and recommendations that the examiners find
23 reasonably warranted from the facts.

24 (h) No later than 60 days following completion of the
25 examination, the examiner in charge shall file with the
26 Secretary a verified written report of examination under oath.
27 Upon receipt of the verified report, the Secretary shall
28 transmit the report to the licensee examined, together with a
29 notice that shall afford the licensee examined a reasonable
30 opportunity of not more than 30 days to make a written
31 submission or rebuttal with respect to any matters contained in
32 the examination report.

33 Within 30 days after the end of the period allowed for the
34 receipt of written submissions or rebuttals the Secretary shall
35 fully consider and review the report, together with any written
36 submissions or rebuttals and any relevant portions of the

1 examiner's workpapers and enter an order doing one of the
2 following:

3 (1) Adopting the examination report as filed or with
4 modification or corrections. If the examination report
5 reveals that the company is operating in violation of any
6 law, rule, or prior order of the Secretary, the Secretary
7 may order the company to take any action the Secretary
8 considers necessary and appropriate to cure the violation.

9 (2) Rejecting the examination report with directions
10 to the examiners to reopen the examination for purposes of
11 obtaining additional data, documentation, or information
12 and refiling.

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

17 All orders entered pursuant to this subsection (h) shall be
18 accompanied by findings and conclusions resulting from the
19 Secretary's consideration and review of the examination
20 report, relevant examiner workpapers, and any written
21 submissions or rebuttals. Any order issued pursuant to
22 paragraph (3) of this subsection (h) shall be considered a
23 final administrative decision and may be appealed pursuant to
24 the Administrative Review Law and shall be served upon the
25 company by certified mail, together with a copy of the adopted
26 examination report. Within 30 days of the issuance of the
27 adopted report the company shall file affidavits executed by
28 each of its directors stating under oath that they have
29 received a copy of the adopted report and related orders.

30 (i) Hearings conducted pursuant to this Section shall be
31 subject to the following requirements:

32 (1) Any hearing conducted pursuant to this Section by
33 the Secretary or the Secretary's authorized representative
34 shall be conducted as a nonadversarial confidential
35 investigatory proceeding as necessary for the resolution
36 of any inconsistencies, discrepancies, or disputed issues

1 apparent upon the face of the filed examination report or
2 raised by or as a result of the Secretary's review of
3 relevant workpapers or by the written submission or
4 rebuttal of the company. Within 20 days of the conclusion
5 of any hearing, the Secretary shall enter an order pursuant
6 to paragraph (1) of subsection (h) of this Section.

7 (2) The Secretary may appoint an authorized
8 representative to conduct the hearing, except that the
9 authorized representative may not be an examiner. The
10 hearing shall proceed expeditiously with discovery by the
11 company limited to the examiner's workpapers that tend to
12 substantiate any assertions set forth in any written
13 submission or rebuttal. The Secretary or the Secretary's
14 representative may issue subpoenas for the attendance of
15 any witnesses or the production of any documents considered
16 relevant to the investigation whether under the control of
17 the Secretary, the company, or other persons. The documents
18 produced shall be included in the record and testimony
19 taken by the Secretary or the Secretary's representative
20 shall be under oath and preserved for the record. Nothing
21 contained in this Section shall require the Secretary to
22 disclose any information or records that would indicate or
23 show the existence or content of any investigation or
24 activity of a criminal justice agency.

25 (3) The hearing shall proceed with the Secretary or the
26 Secretary's representative posing questions to the persons
27 subpoenaed. Thereafter, the company and the Secretary may
28 present testimony relevant to the investigation.
29 Cross-examination may be conducted only by the Secretary or
30 the Secretary's representative. The company and the
31 Secretary shall be permitted to make closing statements and
32 may be represented by the counsel of their choice.

33 (j) In the event the Secretary determines that regulatory
34 action is appropriate as a result of an examination, the
35 Secretary may initiate any proceedings or actions provided by
36 law.

1 (k) Names and individual identification data for all
2 viators shall be considered private and confidential
3 information and shall not be disclosed by the Secretary unless
4 required by law.

5 Except as otherwise provided in this Act, all examination
6 reports, working papers, recorded information, documents and
7 copies thereof produced by, obtained by or disclosed to the
8 Secretary or any other person in the course of an examination
9 made under this Act or the law of another state or jurisdiction
10 that is substantially similar to this Act, or in the course of
11 analysis or investigation by the Secretary of the financial
12 condition or market conduct of a licensee are (i) confidential
13 by law and privileged, (ii) not subject to the Freedom of
14 Information Act, (iii) not subject to subpoena, and (iv) not
15 subject to discovery or admissible in evidence in any private
16 civil action.

17 The Secretary is authorized to use the documents,
18 materials, or other information in the furtherance of any
19 regulatory or legal action brought as part of the Secretary's
20 official duties.

21 Documents, materials, or other information, including, but
22 not limited to, all working papers and copies thereof, in the
23 possession or control of the NAIC and its affiliates and
24 subsidiaries are:

25 (1) confidential by law and privileged;

26 (2) not subject to subpoena; and

27 (3) not subject to discovery or admissible in evidence
28 in any private civil action if they are:

29 (A) created, produced or obtained by or disclosed
30 to the NAIC and its affiliates and subsidiaries in the
31 course of assisting an examination made under this Act
32 or assisting the Secretary in the analysis or
33 investigation of the financial condition or market
34 conduct of a licensee; or

35 (B) disclosed to the NAIC and its affiliates and
36 subsidiaries under this subsection (k) by the

1 Secretary.

2 The Secretary or any person that received the documents,
3 material, or other information while acting under the authority
4 of the Secretary, including, but not limited to, the NAIC and
5 its affiliates and subsidiaries, is permitted to testify in any
6 private civil action concerning any confidential documents,
7 materials, or information subject to this subsection (k).

8 (l) In order to assist in the performance of the
9 Secretary's duties, the Secretary may:

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

20 (2) receive documents, materials, communications, or
21 information, including otherwise confidential and
22 privileged documents, materials, or information, from the
23 NAIC and its affiliates and subsidiaries and from
24 regulatory and law enforcement officials of other foreign
25 or domestic jurisdictions, and shall maintain as
26 confidential or privileged any document, material, or
27 information received with notice or the understanding that
28 it is confidential or privileged under the laws of the
29 jurisdiction that is the source of the document, material,
30 or information; and

31 (3) enter into agreements governing sharing and use of
32 information consistent with this Section.

33 (m) No waiver of any applicable privilege or claim of
34 confidentiality in the documents, materials, or information
35 shall occur as a result of disclosure to the Secretary under
36 this Section or as a result of sharing as authorized in

1 subsection (l) of this Section.

2 (n) A privilege established under the law of any state or
3 jurisdiction that is substantially similar to the privilege
4 established under this Section shall be available and enforced
5 in any proceeding in and in any court of this State.

6 (o) Nothing contained in this Act shall prevent or be
7 construed as prohibiting the Secretary from disclosing the
8 content of an examination report, preliminary examination
9 report or results, or any matter relating thereto, to the chief
10 insurance regulatory official of any other state or country, or
11 to law enforcement officials of this or any other state or
12 agency of the federal government at any time or to the NAIC, so
13 long as the agency or office receiving the report or matters
14 relating thereto agrees in writing to hold it confidential and
15 in a manner consistent with this Act.

16 (p) An examiner may not be appointed by the Secretary if
17 the examiner, either directly or indirectly, has a conflict of
18 interest or is affiliated with the management of or owns a
19 pecuniary interest in any person subject to examination under
20 this Act. This Section shall not be construed to automatically
21 preclude an examiner from being:

22 (1) a viator;

23 (2) an insured in a purchased policy; or

24 (3) a beneficiary in an insurance policy that is
25 proposed to be the subject of a viatical settlement
26 contract.

27 Notwithstanding the requirements of this subsection (p),
28 the Secretary may retain from time to time, on an individual
29 basis, qualified actuaries, certified public accountants, or
30 other similar individuals who are independently practicing
31 their professions, even though these persons may from time to
32 time be similarly employed or retained by persons subject to
33 examination under provisions of this Act.

34 (q) The expenses incurred in conducting any examination
35 shall be paid by the licensee or applicant.

36 (r) No cause of action shall arise nor shall any liability

1 be imposed against the Secretary, the Secretary's authorized
2 representatives, or any examiner appointed by the Secretary for
3 any statements made or conduct performed in good faith while
4 carrying out the provisions of this Section.

5 No cause of action shall arise, nor shall any liability be
6 imposed against any person for the act of communicating or
7 delivering information or data to the Secretary or the
8 Secretary's authorized representative or examiner pursuant to
9 an examination made under this Section, if the act of
10 communication or delivery was performed in good faith and
11 without fraudulent intent or the intent to deceive. This
12 subsection (r) does not abrogate or modify in any way any
13 common law or statutory privilege or immunity heretofore
14 enjoyed by any person identified in this subsection (r).

15 A person identified in this subsection (r) shall be
16 entitled to an award of attorney's fees and costs if he or she
17 is the prevailing party in a civil cause of action for libel,
18 slander, or any other relevant tort arising out of activities
19 in carrying out the provisions of this Section and the party
20 bringing the action was not substantially justified in doing
21 so. For purposes of this Section, a proceeding is
22 "substantially justified" if it had a reasonable basis in law
23 or fact at the time that it was initiated.

24 (s) The Secretary may investigate suspected fraudulent
25 viatical settlement acts and persons engaged in the business of
26 viatical settlements.

27 Section 35. Disclosure.

28 (a) With each application for a viatical settlement
29 contract, a viatical settlement provider or life insurance
30 producer shall provide the viator with at least the following
31 disclosures no later than the time the viatical settlement
32 contract is signed by all parties. The disclosures must be
33 provided in a separate document that is signed by the viator
34 and the viatical settlement provider or life insurance
35 producer, and shall provide the following information:

1 (1) That there exist possible alternatives to a
2 viatical settlement contract including any accelerated
3 death benefits or policy loans offered under the viator's
4 life insurance policy.

5 (2) That some or all of the proceeds of the viatical
6 settlement contract may be taxable under federal income tax
7 and state franchise and income taxes, and assistance may be
8 sought from a professional tax advisor.

9 (3) That proceeds of the viatical settlement contract
10 may be subject to the claims of creditors.

11 (4) That receipt of the proceeds of a viatical
12 settlement contract may adversely affect the viator's
13 eligibility for Medicaid or other government benefits or
14 entitlements, and advice may be obtained from the
15 appropriate government agencies.

16 (5) That the viator has the right to rescind a viatical
17 settlement contract before the earlier of 30 calendar days
18 after the date the viatical settlement contract is executed
19 by all parties or for 15 calendar days after the receipt of
20 the viatical settlement proceeds by the viator.
21 Rescission, if exercised by the viator, is effective only
22 if both notice of the rescission is given and repayment of
23 all proceeds and any premiums, loans, and loan interest to
24 the viatical settlement provider is made within the
25 rescission period. If the insured dies during the
26 rescission period, the viatical settlement contract is
27 deemed to have been rescinded, subject to repayment being
28 made to the viatical settlement provider of all viatical
29 settlement proceeds and any premiums, loans, and loan
30 interest within 90 days after the death of the insured.

31 (6) That funds must be sent to the viator within 3
32 business days after the viatical settlement provider has
33 received the insurer or group administrator's
34 acknowledgment that ownership of the purchased policy has
35 been transferred and the beneficiary has been designated.

36 (7) That entering into a viatical settlement contract

1 may cause other rights or benefits, including conversion
2 rights and waiver of premium benefits that may exist under
3 the policy, to be forfeited by the viator. Assistance may
4 be sought from a financial adviser.

5 (8) That the disclosure to a viator must include
6 distribution of a brochure, approved by the Secretary,
7 describing the process of viatical settlements.

8 (9) That the disclosure document must contain the
9 following language: "All medical, financial, or personal
10 information solicited or obtained by a viatical settlement
11 provider or a life insurance producer about an insured,
12 including the insured's identity or the identity of family
13 members, a spouse, or a significant other may be disclosed
14 as necessary to effect the viatical settlement contract
15 between the viator and the viatical settlement provider. If
16 you are asked to provide this information, you will be
17 asked to consent to the disclosure. The information may be
18 provided to someone who buys the policy or provides funds
19 for the purchase. You may be asked to renew your permission
20 to share information every 2 years.".

21 (10) That the insured may be contacted by either the
22 viatical settlement provider or its authorized
23 representative for the purpose of determining the
24 insured's health status. This contact is limited to once
25 every 3 months if the insured has a life expectancy of more
26 than one year, and no more than once each month if the
27 insured has a life expectancy of one year or less.

28 (b) A viatical settlement provider shall provide the viator
29 with at least the following disclosures no later than the date
30 the viatical settlement contract is signed by all parties. The
31 disclosures must be displayed conspicuously in the viatical
32 settlement contract or in a separate document signed by the
33 viator and the viatical settlement provider, and provide the
34 following information:

35 (1) The affiliation, if any, between the viatical
36 settlement provider and the issuer of the insurance policy

1 to be acquired pursuant to a viatical settlement contract.

2 (2) The name, address, and telephone number of the
3 viatical settlement provider.

4 (3) If a policy to be acquired pursuant to a viatical
5 settlement contract has been issued as a joint policy or
6 involves family riders or any coverage of a life other than
7 the insured under the policy to be acquired pursuant to a
8 viatical settlement contract, the viator must be informed
9 of the possible loss of coverage on the other lives under
10 the policy and must be advised to consult with his or her
11 insurance producer or the insurer issuing the policy for
12 advice on the proposed viatical settlement contract.

13 (4) The dollar amount of the current death benefit
14 payable to the viatical settlement provider under the
15 policy. If known, the viatical settlement provider also
16 shall disclose the availability of additional guaranteed
17 insurance benefits, the dollar amount of accidental death
18 and dismemberment benefits under the policy or
19 certificate, and the viatical settlement provider's
20 interest in those benefits.

21 (5) The name, business address, and telephone number of
22 the independent third party escrow agent, and the fact that
23 the viator may inspect or receive copies of the relevant
24 escrow or trust agreements or documents.

25 (c) If the viatical settlement provider transfers
26 ownership or changes the beneficiary of the policy, the
27 viatical settlement provider shall communicate the change in
28 ownership or beneficiary to the insured within 20 days after
29 the change.

30 Section 40. General rules.

31 (a) A viatical settlement provider entering into a viatical
32 settlement contract shall first obtain:

33 (1) if the viator is the insured, a written statement
34 from a licensed attending physician that the viator is of
35 sound mind and under no constraint or undue influence to

1 enter into a viatical settlement contract; and

2 (2) a document in which the insured consents to the
3 release of his or her medical records to a viatical
4 settlement provider or insurance producer and, if the
5 policy was issued less than 2 years from the date of
6 application for a viatical settlement contract, to the
7 insurance company that issued the policy.

8 (b) The insurer shall respond to a request for verification
9 of coverage submitted by a viatical settlement provider or life
10 insurance producer not later than 30 calendar days after the
11 date the request is received. The request for verification of
12 coverage must be made on a form approved by the Secretary. The
13 insurer shall complete and issue the verification of coverage
14 or indicate in which respects it is unable to respond. In its
15 response, the insurer shall indicate whether, based on the
16 medical evidence and documents provided, the insurer intends to
17 pursue an investigation regarding the validity of the insurance
18 contract or possible fraud, and shall provide sufficient detail
19 of all reasons for the investigation to the viatical settlement
20 provider or life insurance producer.

21 (c) Before or at the time of execution of the viatical
22 settlement contract, the viatical settlement provider shall
23 obtain a witnessed document in which the viator consents to the
24 viatical settlement contract, represents that the viator has a
25 full and complete understanding of the viatical settlement
26 contract and the benefits of the policy, acknowledges that the
27 viator is entering into the viatical settlement contract freely
28 and voluntarily, and, for persons with a terminal or chronic
29 illness or condition, acknowledges that the insured has a
30 terminal or chronic illness or condition and that the terminal
31 or chronic illness or condition was diagnosed after the policy
32 was issued.

33 (d) If a life insurance producer performs any of these
34 activities required of the viatical settlement provider, the
35 viatical settlement provider is deemed to have fulfilled the
36 requirements of this Section.

1 (e) All medical information solicited or obtained by any
2 licensee shall be subject to the requirements of Article XL of
3 the Illinois Insurance Code.

4 (f) A viatical settlement contract entered into in this
5 State shall provide the viator with an unconditional right to
6 rescind the contract before the earlier of 30 calendar days
7 after the date the viatical settlement contract is executed by
8 all parties or 15 calendar days from the receipt of the
9 viatical settlement proceeds by the viator. Rescission, if
10 exercised by the viator, is effective only if both notice of
11 the rescission is given and repayment of all proceeds and any
12 premiums, loans, and loan interest to the viatical settlement
13 provider is made within the rescission period. If the insured
14 dies during the rescission period, the viatical settlement
15 contract shall be deemed to have been rescinded, subject to
16 repayment being made to the viatical settlement provider of all
17 viatical settlement proceeds and any premiums, loans, and loan
18 interest within 45 days after the death of the insured.

19 (g) The viatical settlement provider shall instruct the
20 viator to send the executed documents required to effect the
21 change in ownership, assignment, or change in beneficiary
22 directly to the independent escrow agent. Within 3 business
23 days after the date the escrow agent receives the documents, or
24 within 3 days after the date the viatical settlement provider
25 receives the documents if the viator erroneously provides the
26 documents directly to the viatical settlement provider, the
27 viatical settlement provider shall pay or transfer the proceeds
28 of the viatical settlement contract into an escrow or trust
29 account maintained in a State or federally chartered financial
30 institution whose deposits are insured by the Federal Reserve
31 System. Upon payment of the viatical settlement proceeds into
32 the escrow account, the escrow agent shall deliver the original
33 change in ownership, assignment, or change in beneficiary forms
34 to the viatical settlement provider or related provider trust.
35 Upon the escrow agent's receipt of the acknowledgment of the
36 properly completed transfer of ownership, assignment, or

1 designation of beneficiary from the insurance company, the
2 escrow agent shall pay the viatical settlement proceeds to the
3 viator.

4 (h) Failure to tender consideration to the viator for the
5 viatical settlement by contract within the time disclosed
6 pursuant to this Code renders the viatical settlement contract
7 voidable by the viator for lack of consideration until the time
8 consideration is tendered to and accepted by the viator.

9 (i) Contact with the insured, for the purpose of
10 determining the health status of the insured by the viatical
11 settlement provider after the viatical settlement contract has
12 been executed, may only be made by the licensed viatical
13 settlement provider or its authorized representatives and is
14 limited to once every 3 months for insureds with a life
15 expectancy of more than one year, and not more than once each
16 month for insureds with a life expectancy of one year or less.
17 The viatical settlement provider shall explain the procedure
18 for these contacts at the time the viatical settlement contract
19 is entered into. The limitations provided for in this
20 subsection (i) do not apply to a contact with an insured for
21 reasons other than determining the insured's health status. A
22 viatical settlement provider is responsible for the actions of
23 its authorized representatives.

24 Section 45. Authority to adopt rules.

25 (a) The Secretary shall have the authority to do all the
26 following:

27 (1) Issue rules implementing this Act.

28 (2) Establish standards for evaluating reasonableness
29 of payments under a viatical settlement contract where the
30 insured under the policy that is the subject of a viatical
31 settlement contract is terminally ill or chronically ill.
32 This authority includes, but is not limited to, regulation
33 of discount rates used to determine the amount paid in
34 exchange for assignment, transfer, sale, devise, or
35 bequest of a benefit under a policy. A viatical settlement

1 provider, where the insured is not terminally ill or
2 chronically ill, shall pay an amount greater than the cash
3 surrender value or accelerated death benefit then
4 available.

5 (3) Establish appropriate licensing requirements,
6 fees, and standards for continued licensure for a viatical
7 settlement provider and a fee for life insurance producers.

8 (4) Require a bond or other mechanism for financial
9 accountability for a viatical settlement provider.

10 (5) Adopt rules governing the relationship and
11 responsibilities of an insurer and a viatical settlement
12 provider, life insurance producer, and others in the
13 business of viatical settlements during the period of
14 consideration or effectuation of a viatical settlement
15 contract.

16 (b) Any rules adopted pursuant to the authority granted in
17 the Viatical Settlements Act shall remain in effect until
18 repealed or modified by rules adopted by the Secretary pursuant
19 to this Act.

20 Section 50. Application.

21 (a) A viatical settlement provider lawfully transacting
22 business in this State may continue to do so pending approval
23 or disapproval of the viatical settlement provider's
24 application for a license under this Act as long as the
25 application is filed with the Secretary not later than 30 days
26 after the effective date of this Act. A viatical settlement
27 provider currently licensed in this State may continue to
28 transact business under that license, but must revise any
29 licensing information at the time of the license renewal, if
30 applicable.

31 (b) A person who has lawfully negotiated viatical
32 settlement contracts between a viator and one or more viatical
33 settlement providers in this State for at least one year
34 immediately prior to the effective date of this Act may
35 continue to negotiate viatical settlements in this State for a

1 period of 60 days after the effective date of this Act, at
2 which time the person must either become a licensed life
3 insurance producer or cease negotiating viatical settlement
4 contracts.

5 Section 55. Violations. It is a violation of this Act for a
6 person to enter into a viatical settlement contract at any time
7 prior to the application or issuance of a policy which is the
8 subject of a viatical settlement contract or for a 2-year
9 period commencing with the date of issuance of the policy
10 unless the viator certifies to the viatical settlement provider
11 that one or more of the following conditions have been met
12 within the 2-year period:

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

21 (2) The viator submits independent evidence to the
22 viatical settlement provider that one or more of the
23 following conditions have been met within the 2-year
24 period:

25 (A) the viator or insured is terminally ill or
26 chronically ill; or

27 (B) a final order, judgment, or decree is entered
28 by a court of competent jurisdiction on the application
29 of a creditor of the viator adjudicating the viator
30 bankrupt or insolvent or approving a petition seeking
31 reorganization of the viator or appointing a receiver,
32 trustee, or liquidator to all or a substantial part of
33 the viator's assets.

34 Copies of the independent evidence described in paragraph
35 (2) of this Section and documents required by this Act must be

1 submitted to the insurer when the viatical settlement provider
2 submits a request to the insurer for verification of coverage.
3 The copies must be accompanied by a letter of attestation from
4 the viatical settlement provider that the copies are true and
5 correct copies of the documents received by the viatical
6 settlement provider.

7 If the viatical settlement provider submits to the insurer
8 a copy of independent evidence provided for in paragraph (2) of
9 this Section when the viatical settlement provider submits a
10 request to the insurer to effect the transfer of the policy to
11 the viatical settlement provider, the copy is deemed to
12 conclusively establish that the viatical settlement contract
13 satisfies the requirements of this Section and the insurer
14 shall respond timely to the request.

15 Section 60. Advertisements.

16 (a) The purpose of this Section is to provide a prospective
17 viator with clear and unambiguous statements in the
18 advertisement of a viatical settlement contract and to assure
19 the clear, truthful, and adequate disclosure of the benefits,
20 risks, limitations, and exclusions of a viatical settlement
21 contract. This purpose is to be accomplished by the
22 establishment of guidelines and standards of permissible and
23 impermissible conduct in the advertising of a viatical
24 settlement contract to assure that a product description is
25 presented in a manner that prevents unfair, deceptive, or
26 misleading advertising and is conducive to accurate
27 presentation and description of a viatical settlement contract
28 through the advertising media and material used by a licensee.

29 (b) This Section applies to an advertising of a viatical
30 settlement contract or a related product or service intended
31 for dissemination in this State, including Internet
32 advertising viewed by a person located in this State. Where
33 disclosure requirements are established pursuant to federal
34 regulation, this Section must be interpreted so as to minimize
35 or eliminate conflict with federal regulation wherever

1 possible.

2 (c) Each viatical settlement licensee shall establish and
3 at all times maintain a system of control over the content,
4 form, and method of dissemination of an advertisement of its
5 contracts, products, and services. An advertisement,
6 regardless of who wrote, created, designed, or presented, is
7 the responsibility of the licensee, as well as the individual
8 who created or presented the advertisement. A system of control
9 by the licensee must include regular routine notification at
10 least once a year to agents and others authorized to
11 disseminate advertisements of the requirements and procedures
12 for approval before the use of an advertisement not furnished
13 by the licensee.

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

25 (e) The information required to be disclosed pursuant to
26 the provisions of this Section may not be minimized, rendered
27 obscure, or presented in an ambiguous fashion or intermingled
28 with the text of the advertisement so as to be confusing or
29 misleading.

30 (1) An advertisement may not omit material information
31 or use words, phrases, statements, references, or
32 illustrations if the omission or use has the capacity,
33 tendency, or effect of misleading or deceiving the public
34 as to the nature or extent of any benefit, loss covered, or
35 State or federal tax consequence. The fact that the
36 viatical settlement contract offered is made available for

1 inspection before consummation of the sale, or an offer is
2 made to refund the payment if the viator is not satisfied,
3 or that the viatical settlement contract includes a "free
4 look" period that satisfies or exceeds legal requirements
5 does not remedy misleading statements.

6 (2) An advertisement may not use the name or title of a
7 life insurance company or a life insurance policy unless
8 the advertisement has been approved by the insurer.

9 (3) An advertisement may not state or imply that
10 interest charged on an accelerated death benefit or a
11 policy loan is unfair, inequitable, or in any manner an
12 incorrect or improper practice.

13 (4) The words "free", "no cost", "without cost", "no
14 additional cost", "at no extra cost", or words of similar
15 import may not be used with respect to a benefit or service
16 unless true. An advertisement may specify the charge for a
17 benefit or service or may state that a charge is included
18 in the payment or use other appropriate language.

19 (5) Any testimonial, appraisal, or analysis used in an
20 advertisement must:

21 (A) be genuine;

22 (B) represent the current opinion of the author;

23 (C) be applicable to the viatical settlement
24 contract, product, or service advertised, if any; and

25 (D) be accurately reproduced with sufficient
26 completeness to avoid misleading or deceiving
27 prospective viators as to the nature or scope of any
28 testimonial, appraisal, analysis, or endorsement.

29 In using any testimonial, appraisal, or analysis, the
30 viatical settlement licensee makes as its own all the
31 statements contained in them, and the statements are
32 subject to all the provisions of this Section.

33 If the individual making a testimonial, appraisal,
34 analysis, or an endorsement has a financial interest in the
35 viatical settlement provider or related entity as a
36 stockholder, director, officer, employee, or otherwise or

1 receives a benefit, directly or indirectly, other than
2 required union scale wages, that fact must be disclosed
3 prominently in the advertisement.

4 An advertisement may not state or imply that a viatical
5 settlement contract, benefit, or service has been approved
6 or endorsed by a group of individuals, society,
7 association, or other organization, unless that is the fact
8 and unless any relationship between an organization and the
9 licensee is disclosed. If the entity making the endorsement
10 or testimonial is owned, controlled, or managed by the
11 licensee or receives payment or other consideration from
12 the licensee for making an endorsement or testimonial, that
13 fact must be disclosed in the advertisement.

14 If an endorsement refers to benefits received under a
15 viatical settlement contract, all pertinent information
16 must be retained for a period of 5 years after its use.

17 (f) An advertisement may not contain statistical
18 information unless it accurately reflects recent and relevant
19 facts. The source of all statistics used in an advertisement
20 must be identified.

21 (g) An advertisement may not disparage insurers, viatical
22 settlement providers, insurance producers, policies, services,
23 or methods of marketing.

24 (h) The name of the viatical settlement licensee must be
25 identified clearly in all advertisements about the licensee or
26 its viatical settlement contract, products, or services, and if
27 any specific viatical settlement contract is advertised, the
28 viatical settlement contract must be identified either by form
29 number or some other appropriate description. If an application
30 is part of the advertisement, the name of the viatical
31 settlement provider must be shown on the application.

32 (i) An advertisement shall not use a trade name, group
33 designation, name of the parent company of a licensee, name of
34 a particular division of the licensee, service mark, slogan,
35 symbol, or other device or reference without disclosing the
36 name of the licensee if the advertisement has the capacity or

1 tendency to mislead or deceive as to the true identity of the
2 licensee or to create the impression that a company other than
3 the licensee has any responsibility for the financial
4 obligation under a viatical settlement contract.

5 (j) An advertisement shall not use any combination of
6 words, symbols, or physical materials that by their content,
7 phraseology, shape, color, or other characteristics are so
8 similar to a combination of words, symbols, or physical
9 materials used by a government program or agency or otherwise
10 appear to be of such a nature that they tend to mislead
11 prospective viators into believing that the solicitation is in
12 some manner connected with a government program or agency.

13 (k) An advertisement may state that a licensee is licensed
14 in the state where the advertisement appears, provided it does
15 not exaggerate that fact or suggest or imply that the competing
16 licensee may not be so licensed. The advertisement may ask the
17 audience to consult the licensee's web site or contact that
18 state's department of insurance to find out if that state
19 requires licensing and, if so, whether the licensee or any
20 other company is licensed.

21 (l) An advertisement may not create the impression that the
22 viatical settlement provider, its financial condition or
23 status, the payment of its claims, or the merits, desirability,
24 or advisability of its viatical settlement contracts are
25 recommended or endorsed by any government entity.

26 (m) The name of the actual licensee must be stated in all
27 of its advertisements. An advertisement may not use a trade
28 name, any group designation, name of any affiliate or
29 controlling entity of the licensee, service mark, slogan,
30 symbol, or other device in a manner that has the capacity or
31 tendency to mislead or deceive as to the true identity of the
32 actual licensee or create the false impression that an
33 affiliate or controlling entity has any responsibility for the
34 financial obligation of the licensee.

35 (n) An advertisement may not, directly or indirectly,
36 create the impression that any division or agency of the State

1 or of the United States government endorses, approves, or
2 favors:

3 (1) a licensee or its business practices or methods of
4 operation;

5 (2) the merits, desirability, or advisability of a
6 viatical settlement contract;

7 (3) any viatical settlement contract; or

8 (4) any policy or life insurance company.

9 (o) If the advertiser emphasizes the speed with which the
10 viatical settlement contract occurs, the advertising must
11 disclose the average time frame from completed application to
12 the date of offer and from acceptance of the offer to receipt
13 of the funds by the viator.

14 (p) If the advertising emphasizes the dollar amounts
15 available to viators, the advertising shall disclose the
16 average purchase price as a percent of face value obtained by
17 viators contracting with the licensee during the past 6 months.

18 (q) Certain viatical settlement advertisements are deemed
19 false and misleading on their face and are prohibited. False
20 and misleading viatical settlement advertisements include, but
21 are not limited to, the following representations:

22 (1) "guaranteed", "fully secured", "100 percent
23 secured", "fully insured", "secure", "safe", "backed by
24 rated insurance companies", "backed by federal law",
25 "backed by state law", "state guaranty funds", or similar
26 representations;

27 (2) "no risk", "minimal risk", "low risk", "no
28 speculation", "no fluctuation", or similar
29 representations;

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

35 (4) use of the word "guaranteed" to describe the fixed
36 return, annual return, principal, earnings, profits,

1 investment, or similar representations;

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

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

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

13 Section 65. Fraudulent viatical settlement acts.

14 (a) A person may not commit a fraudulent viatical
15 settlement act.

16 (b) A person, knowingly or intentionally, may not interfere
17 with the enforcement of the provisions of this Act or
18 investigations of suspected or actual violations of this
19 chapter.

20 (c) A person in the business of viatical settlements may
21 not knowingly or intentionally permit a person convicted of a
22 felony involving dishonesty or breach of trust to participate
23 in the business of viatical settlements.

24 (d) A viatical settlement contract and an application for a
25 viatical settlement contract, regardless of the form of
26 transmission, must contain the following statement or a
27 substantially similar statement: "Any person who knowingly
28 presents false information in an application for insurance or
29 viatical settlement contract is guilty of a crime and, upon
30 conviction, may be subject to fines or confinement in prison or
31 both."

32 The lack of a statement as provided for in this subsection
33 (d) does not constitute a defense in any prosecution for a
34 fraudulent viatical settlement act.

35 (e) A person engaged in the business of viatical

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

6 Another person having knowledge or a reasonable belief that
7 a fraudulent viatical settlement act is being, will be, or has
8 been committed may provide to the Secretary the information
9 required by the Secretary in a manner prescribed by the
10 Secretary.

11 (f) Civil liability may not be imposed on and a cause of
12 action may not arise from a person's furnishing information
13 concerning suspected, anticipated, or completed fraudulent
14 viatical settlement acts, or suspected or completed fraudulent
15 insurance acts, if the information is provided to or received
16 from:

17 (A) the Secretary or the Secretary's employees,
18 agents, or representatives;

19 (B) federal, state, or local law enforcement or
20 regulatory officials or their employees, agents, or
21 representatives;

22 (C) a person involved in the prevention and
23 detection of fraudulent viatical settlement acts or
24 that person's agents, employees, or representatives;

25 (D) the National Association of Insurance
26 Commissioners (NAIC), National Association of
27 Securities Dealers (NASD), the North American
28 Securities Administrators Association (NASAA), or
29 their employees, agents, or representatives, or other
30 regulatory body overseeing life insurance or viatical
31 settlement contracts; or

32 (E) the insurer that issued the policy covering the
33 life of the insured.

34 This subsection (f) does not apply to a statement made with
35 actual malice. In an action brought against a person for filing
36 a report or furnishing other information concerning a

1 fraudulent viatical settlement act or a fraudulent insurance
2 act, the party bringing the action shall plead specifically any
3 allegation that this subsection (f) does not apply because the
4 person filing the report or furnishing the information did so
5 with actual malice.

6 A person identified in this subsection (f) is entitled to
7 an award of attorney's fees and costs if he or she is the
8 prevailing party in a civil cause of action for libel, slander,
9 or another relevant tort arising out of activities in carrying
10 out the provisions of this Act and the party bringing the
11 action was not substantially justified in doing so. For
12 purposes of this Section, a proceeding is "substantially
13 justified" if it had a reasonable basis in law or fact at the
14 time that it was initiated.

15 This Section does not abrogate or modify common law or
16 statutory privileges or immunities enjoyed by a person
17 described in this subsection (f).

18 This subsection (f) does not apply to a person's furnishing
19 information concerning his own suspected, anticipated, or
20 completed fraudulent viatical settlement acts or suspected,
21 anticipated, or completed fraudulent insurance acts.

22 (g) The documents and evidence provided pursuant to
23 subsection (f) of this Section or obtained by the Secretary in
24 an investigation of suspected or actual fraudulent viatical
25 settlement acts are privileged and confidential and are not a
26 public record and are not subject to discovery or subpoena in a
27 civil or criminal action.

28 The provisions of this subsection (g) do not prohibit
29 release by the Secretary of documents and evidence obtained in
30 an investigation of suspected or actual fraudulent viatical
31 settlement acts:

32 (1) in administrative or judicial proceedings to
33 enforce laws administered by the Secretary;

34 (2) to federal, state, or local law enforcement or
35 regulatory agencies, to an organization established for
36 the purpose of detecting and preventing fraudulent

1 viatical settlement acts, or to the NAIC; or

2 (3) at the discretion of the Secretary, to a person in
3 the business of viatical settlements that is aggrieved by a
4 fraudulent viatical settlement act.

5 Release of documents and evidence provided by this
6 subsection (g) does not abrogate or modify the privilege
7 granted in this subsection (g).

8 (h) This Act does not:

9 (1) preempt the authority or relieve the duty of other
10 law enforcement or regulatory agencies to investigate,
11 examine, and prosecute suspected violations of law;

12 (2) prevent or prohibit a person from disclosing
13 voluntarily information concerning fraudulent viatical
14 settlement acts to a law enforcement or regulatory agency
15 other than the Department of Financial and Professional
16 Regulation; or

17 (3) limit the powers granted elsewhere by the laws of
18 this State to the Secretary or an insurance fraud unit to
19 investigate and examine possible violations of law and to
20 take appropriate action against wrongdoers.

21 (i) A viatical settlement provider shall adopt anti-fraud
22 initiatives reasonably calculated to detect, assist in the
23 prosecution of, and prevent fraudulent viatical settlement
24 acts. The Secretary may order or, if a licensee requests, may
25 grant these modifications of the following required
26 initiatives as necessary to ensure an effective anti-fraud
27 program. The modifications may be more or less restrictive than
28 the required initiatives so long as the modifications
29 reasonably may be expected to accomplish the purpose of this
30 Section. Anti-fraud initiatives include, but are not limited
31 to:

32 (1) Fraud investigators, who may be a viatical
33 settlement provider or employees or independent
34 contractors of those viatical settlement providers.

35 (2) An anti-fraud plan that shall always be available
36 to the Secretary. The anti-fraud plan must include, but is

1 not limited to:

2 (A) a description of the procedures for detecting
3 and investigating possible fraudulent viatical
4 settlement acts and procedures for resolving material
5 inconsistencies between medical records and insurance
6 applications;

7 (B) a description of the procedures for reporting
8 possible fraudulent viatical settlement acts to the
9 Secretary;

10 (C) a description of the plan for anti-fraud
11 education and training of underwriters and other
12 personnel; and

13 (D) a chart outlining the organizational
14 arrangement of the anti-fraud personnel who are
15 responsible for the investigation and reporting of
16 possible fraudulent viatical settlement acts and
17 investigating unresolved material inconsistencies
18 between medical records and insurance applications.

19 Anti-fraud plans submitted to the Secretary are privileged
20 and confidential and are not a public record pursuant to the
21 provisions of the Freedom of Information Act and are not
22 subject to discovery or subpoena in a civil or criminal action.

23 Section 70. Additional penalties.

24 (a) In addition to the penalties and other enforcement
25 provisions of this Act, if a person violates the provisions of
26 this Act or any rule implementing this Act, the Secretary may
27 seek an injunction in a court of competent jurisdiction and may
28 apply for temporary and permanent orders as the Secretary
29 determines are necessary to restrain the person from committing
30 the violation.

31 (b) A person damaged by the acts of a person in violation
32 of this Act may bring a civil action against the person
33 committing the violation in a court of competent jurisdiction.

34 (c) The Secretary may issue a cease and desist order upon a
35 person that violates any provision of this Act, any rule or

1 order adopted by the Secretary, or any written agreement
2 entered into with the Secretary.

3 (d) When the Secretary finds that an activity in violation
4 of this Act presents an immediate danger to the public that
5 requires an immediate final order, the Secretary may issue an
6 emergency cease and desist order reciting with particularity
7 the facts underlying the findings. The emergency cease and
8 desist order is effective immediately upon service of a copy of
9 the order on the respondent and remains effective for 90 days.
10 If the Secretary begins nonemergency cease and desist
11 proceedings, the emergency cease and desist order remains
12 effective absent an order by a court of competent jurisdiction.

13 (e) In addition to the penalties and other enforcement
14 provisions of this Act, a person who violates this Act is
15 subject to civil penalties of up to \$10,000 for each violation.
16 Imposition of civil penalties is pursuant to an order of the
17 Secretary. The Secretary's order may require a person found to
18 be in violation of this Act to make restitution to a person
19 aggrieved by violations of this Act.

20 (f) A person who violates a provision of this Act, upon
21 conviction, must be ordered to pay restitution to a person
22 aggrieved by the violation of this Act. Restitution must be
23 ordered in addition to a fine or imprisonment and not instead
24 of a fine or imprisonment.

25 (g) A person who violates a provision of this Act, upon
26 conviction, must be sentenced based on the greater of the value
27 of property, services, or other benefits wrongfully obtained or
28 attempted to be obtained, or the aggregate economic loss
29 suffered by any person as a result of the violation. A person
30 convicted of theft of property through a viatical settlement
31 transaction in which the value of viatical settlement contract:

32 (1) exceeds \$500,000 is guilty of a Class 1
33 non-probationable felony;

34 (2) exceeds \$100,000 but does not exceed \$500,000 is
35 guilty of a Class 1 felony;

36 (3) exceeds \$10,000 but does not exceed \$100,000 is

1 guilty of a Class 2 felony; or

2 (4) exceeds \$300 but does not exceed \$10,000 is guilty
3 of a Class 3 felony.

4 (h) A person convicted of a fraudulent viatical settlement
5 act must be ordered to pay restitution to a person aggrieved by
6 the fraudulent viatical settlement act. Restitution must be
7 ordered in addition to a fine or imprisonment but not instead
8 of a fine or imprisonment.

9 (i) In a prosecution provided under subsection (h) of this
10 Section, the value of a viatical settlement contract within a
11 6-month period may be aggregated and the defendant charged
12 accordingly in applying the provisions of subsection (g) of
13 this Section. If 2 or more offenses are committed by the same
14 person in 2 or more counties, the accused may be prosecuted in
15 a county in which one of the offenses was committed for all of
16 the offenses aggregated as provided by this Section. The
17 statute of limitations does not begin to run until the
18 insurance company or law enforcement agency is aware of the
19 fraud, but the prosecution may not be commenced later than 7
20 years after the act has occurred.

21 Section 75. Unfair methods of competition and unfair and
22 deceptive acts and practices. A violation of this Act is
23 considered an unfair method of competition or unfair and
24 deceptive act or practice pursuant to the provisions of Article
25 XXVI of the Illinois Insurance Code and subject to the
26 penalties contained in that Article.

27 Section 80. Illinois Securities Law of 1953. Nothing in
28 this Act preempts or otherwise limits the provisions of the
29 Illinois Securities Law of 1953, as amended, or any
30 regulations, orders, policy statements, notices, bulletins, or
31 other interpretations issued by or through the Secretary of
32 State or his or her designee acting pursuant to the Illinois
33 Securities Law of 1953, as amended. Compliance with the
34 provisions of this Act does not constitute compliance with any

1 applicable provision of the Illinois Securities Law of 1953, as
2 amended, and any amendments thereto or any regulations, orders,
3 policy statements, notices, bulletins, or other
4 interpretations issued by or through the Secretary of State or
5 his or her designee acting pursuant to the Illinois Securities
6 Law of 1953, as amended.

7 (215 ILCS 158/Act rep.)

8 Section 900. The Viatical Settlements Act is repealed.

9 Section 905. The Freedom of Information Act is amended by
10 changing Section 7 as follows:

11 (5 ILCS 140/7) (from Ch. 116, par. 207)

12 Sec. 7. Exemptions.

13 (1) The following shall be exempt from inspection and
14 copying:

15 (a) Information specifically prohibited from
16 disclosure by federal or State law or rules and regulations
17 adopted under federal or State law.

18 (b) Information that, if disclosed, would constitute a
19 clearly unwarranted invasion of personal privacy, unless
20 the disclosure is consented to in writing by the individual
21 subjects of the information. The disclosure of information
22 that bears on the public duties of public employees and
23 officials shall not be considered an invasion of personal
24 privacy. Information exempted under this subsection (b)
25 shall include but is not limited to:

26 (i) files and personal information maintained with
27 respect to clients, patients, residents, students or
28 other individuals receiving social, medical,
29 educational, vocational, financial, supervisory or
30 custodial care or services directly or indirectly from
31 federal agencies or public bodies;

32 (ii) personnel files and personal information
33 maintained with respect to employees, appointees or

1 elected officials of any public body or applicants for
2 those positions;

3 (iii) files and personal information maintained
4 with respect to any applicant, registrant or licensee
5 by any public body cooperating with or engaged in
6 professional or occupational registration, licensure
7 or discipline;

8 (iv) information required of any taxpayer in
9 connection with the assessment or collection of any tax
10 unless disclosure is otherwise required by State
11 statute;

12 (v) information revealing the identity of persons
13 who file complaints with or provide information to
14 administrative, investigative, law enforcement or
15 penal agencies; provided, however, that identification
16 of witnesses to traffic accidents, traffic accident
17 reports, and rescue reports may be provided by agencies
18 of local government, except in a case for which a
19 criminal investigation is ongoing, without
20 constituting a clearly unwarranted per se invasion of
21 personal privacy under this subsection; and

22 (vi) the names, addresses, or other personal
23 information of participants and registrants in park
24 district, forest preserve district, and conservation
25 district programs.

26 (c) Records compiled by any public body for
27 administrative enforcement proceedings and any law
28 enforcement or correctional agency for law enforcement
29 purposes or for internal matters of a public body, but only
30 to the extent that disclosure would:

31 (i) interfere with pending or actually and
32 reasonably contemplated law enforcement proceedings
33 conducted by any law enforcement or correctional
34 agency;

35 (ii) interfere with pending administrative
36 enforcement proceedings conducted by any public body;

1 (iii) deprive a person of a fair trial or an
2 impartial hearing;

3 (iv) unavoidably disclose the identity of a
4 confidential source or confidential information
5 furnished only by the confidential source;

6 (v) disclose unique or specialized investigative
7 techniques other than those generally used and known or
8 disclose internal documents of correctional agencies
9 related to detection, observation or investigation of
10 incidents of crime or misconduct;

11 (vi) constitute an invasion of personal privacy
12 under subsection (b) of this Section;

13 (vii) endanger the life or physical safety of law
14 enforcement personnel or any other person; or

15 (viii) obstruct an ongoing criminal investigation.

16 (d) Criminal history record information maintained by
17 State or local criminal justice agencies, except the
18 following which shall be open for public inspection and
19 copying:

20 (i) chronologically maintained arrest information,
21 such as traditional arrest logs or blotters;

22 (ii) the name of a person in the custody of a law
23 enforcement agency and the charges for which that
24 person is being held;

25 (iii) court records that are public;

26 (iv) records that are otherwise available under
27 State or local law; or

28 (v) records in which the requesting party is the
29 individual identified, except as provided under part
30 (vii) of paragraph (c) of subsection (1) of this
31 Section.

32 "Criminal history record information" means data
33 identifiable to an individual and consisting of
34 descriptions or notations of arrests, detentions,
35 indictments, informations, pre-trial proceedings, trials,
36 or other formal events in the criminal justice system or

1 descriptions or notations of criminal charges (including
2 criminal violations of local municipal ordinances) and the
3 nature of any disposition arising therefrom, including
4 sentencing, court or correctional supervision,
5 rehabilitation and release. The term does not apply to
6 statistical records and reports in which individuals are
7 not identified and from which their identities are not
8 ascertainable, or to information that is for criminal
9 investigative or intelligence purposes.

10 (e) Records that relate to or affect the security of
11 correctional institutions and detention facilities.

12 (f) Preliminary drafts, notes, recommendations,
13 memoranda and other records in which opinions are
14 expressed, or policies or actions are formulated, except
15 that a specific record or relevant portion of a record
16 shall not be exempt when the record is publicly cited and
17 identified by the head of the public body. The exemption
18 provided in this paragraph (f) extends to all those records
19 of officers and agencies of the General Assembly that
20 pertain to the preparation of legislative documents.

21 (g) Trade secrets and commercial or financial
22 information obtained from a person or business where the
23 trade secrets or information are proprietary, privileged
24 or confidential, or where disclosure of the trade secrets
25 or information may cause competitive harm, including:

26 (i) All information determined to be confidential
27 under Section 4002 of the Technology Advancement and
28 Development Act.

29 (ii) All trade secrets and commercial or financial
30 information obtained by a public body, including a
31 public pension fund, from a private equity fund or a
32 privately held company within the investment portfolio
33 of a private equity fund as a result of either
34 investing or evaluating a potential investment of
35 public funds in a private equity fund. The exemption
36 contained in this item does not apply to the aggregate

1 financial performance information of a private equity
2 fund, nor to the identity of the fund's managers or
3 general partners. The exemption contained in this item
4 does not apply to the identity of a privately held
5 company within the investment portfolio of a private
6 equity fund, unless the disclosure of the identity of a
7 privately held company may cause competitive harm.

8 Nothing contained in this paragraph (g) shall be construed
9 to prevent a person or business from consenting to disclosure.

10 (h) Proposals and bids for any contract, grant, or
11 agreement, including information which if it were
12 disclosed would frustrate procurement or give an advantage
13 to any person proposing to enter into a contractor
14 agreement with the body, until an award or final selection
15 is made. Information prepared by or for the body in
16 preparation of a bid solicitation shall be exempt until an
17 award or final selection is made.

18 (i) Valuable formulae, computer geographic systems,
19 designs, drawings and research data obtained or produced by
20 any public body when disclosure could reasonably be
21 expected to produce private gain or public loss. The
22 exemption for "computer geographic systems" provided in
23 this paragraph (i) does not extend to requests made by news
24 media as defined in Section 2 of this Act when the
25 requested information is not otherwise exempt and the only
26 purpose of the request is to access and disseminate
27 information regarding the health, safety, welfare, or
28 legal rights of the general public.

29 (j) Test questions, scoring keys and other examination
30 data used to administer an academic examination or
31 determined the qualifications of an applicant for a license
32 or employment.

33 (k) Architects' plans, engineers' technical
34 submissions, and other construction related technical
35 documents for projects not constructed or developed in
36 whole or in part with public funds and the same for

1 projects constructed or developed with public funds, but
2 only to the extent that disclosure would compromise
3 security, including but not limited to water treatment
4 facilities, airport facilities, sport stadiums, convention
5 centers, and all government owned, operated, or occupied
6 buildings.

7 (l) Library circulation and order records identifying
8 library users with specific materials.

9 (m) Minutes of meetings of public bodies closed to the
10 public as provided in the Open Meetings Act until the
11 public body makes the minutes available to the public under
12 Section 2.06 of the Open Meetings Act.

13 (n) Communications between a public body and an
14 attorney or auditor representing the public body that would
15 not be subject to discovery in litigation, and materials
16 prepared or compiled by or for a public body in
17 anticipation of a criminal, civil or administrative
18 proceeding upon the request of an attorney advising the
19 public body, and materials prepared or compiled with
20 respect to internal audits of public bodies.

21 (o) Information received by a primary or secondary
22 school, college or university under its procedures for the
23 evaluation of faculty members by their academic peers.

24 (p) Administrative or technical information associated
25 with automated data processing operations, including but
26 not limited to software, operating protocols, computer
27 program abstracts, file layouts, source listings, object
28 modules, load modules, user guides, documentation
29 pertaining to all logical and physical design of
30 computerized systems, employee manuals, and any other
31 information that, if disclosed, would jeopardize the
32 security of the system or its data or the security of
33 materials exempt under this Section.

34 (q) Documents or materials relating to collective
35 negotiating matters between public bodies and their
36 employees or representatives, except that any final

1 contract or agreement shall be subject to inspection and
2 copying.

3 (r) Drafts, notes, recommendations and memoranda
4 pertaining to the financing and marketing transactions of
5 the public body. The records of ownership, registration,
6 transfer, and exchange of municipal debt obligations, and
7 of persons to whom payment with respect to these
8 obligations is made.

9 (s) The records, documents and information relating to
10 real estate purchase negotiations until those negotiations
11 have been completed or otherwise terminated. With regard to
12 a parcel involved in a pending or actually and reasonably
13 contemplated eminent domain proceeding under Article VII
14 of the Code of Civil Procedure, records, documents and
15 information relating to that parcel shall be exempt except
16 as may be allowed under discovery rules adopted by the
17 Illinois Supreme Court. The records, documents and
18 information relating to a real estate sale shall be exempt
19 until a sale is consummated.

20 (t) Any and all proprietary information and records
21 related to the operation of an intergovernmental risk
22 management association or self-insurance pool or jointly
23 self-administered health and accident cooperative or pool.

24 (u) Information concerning a university's adjudication
25 of student or employee grievance or disciplinary cases, to
26 the extent that disclosure would reveal the identity of the
27 student or employee and information concerning any public
28 body's adjudication of student or employee grievances or
29 disciplinary cases, except for the final outcome of the
30 cases.

31 (v) Course materials or research materials used by
32 faculty members.

33 (w) Information related solely to the internal
34 personnel rules and practices of a public body.

35 (x) Information contained in or related to
36 examination, operating, or condition reports prepared by,

1 on behalf of, or for the use of a public body responsible
2 for the regulation or supervision of financial
3 institutions or insurance companies, unless disclosure is
4 otherwise required by State law.

5 (y) Information the disclosure of which is restricted
6 under Section 5-108 of the Public Utilities Act.

7 (z) Manuals or instruction to staff that relate to
8 establishment or collection of liability for any State tax
9 or that relate to investigations by a public body to
10 determine violation of any criminal law.

11 (aa) Applications, related documents, and medical
12 records received by the Experimental Organ Transplantation
13 Procedures Board and any and all documents or other records
14 prepared by the Experimental Organ Transplantation
15 Procedures Board or its staff relating to applications it
16 has received.

17 (bb) Insurance or self insurance (including any
18 intergovernmental risk management association or self
19 insurance pool) claims, loss or risk management
20 information, records, data, advice or communications.

21 (cc) Information and records held by the Department of
22 Public Health and its authorized representatives relating
23 to known or suspected cases of sexually transmissible
24 disease or any information the disclosure of which is
25 restricted under the Illinois Sexually Transmissible
26 Disease Control Act.

27 (dd) Information the disclosure of which is exempted
28 under Section 30 of the Radon Industry Licensing Act.

29 (ee) Firm performance evaluations under Section 55 of
30 the Architectural, Engineering, and Land Surveying
31 Qualifications Based Selection Act.

32 (ff) Security portions of system safety program plans,
33 investigation reports, surveys, schedules, lists, data, or
34 information compiled, collected, or prepared by or for the
35 Regional Transportation Authority under Section 2.11 of
36 the Regional Transportation Authority Act or the St. Clair

1 County Transit District under the Bi-State Transit Safety
2 Act.

3 (gg) Information the disclosure of which is restricted
4 and exempted under Section 50 of the Illinois Prepaid
5 Tuition Act.

6 (hh) Information the disclosure of which is exempted
7 under the State Officials and Employees Ethics Act.

8 (ii) Beginning July 1, 1999, information that would
9 disclose or might lead to the disclosure of secret or
10 confidential information, codes, algorithms, programs, or
11 private keys intended to be used to create electronic or
12 digital signatures under the Electronic Commerce Security
13 Act.

14 (jj) Information contained in a local emergency energy
15 plan submitted to a municipality in accordance with a local
16 emergency energy plan ordinance that is adopted under
17 Section 11-21.5-5 of the Illinois Municipal Code.

18 (kk) Information and data concerning the distribution
19 of surcharge moneys collected and remitted by wireless
20 carriers under the Wireless Emergency Telephone Safety
21 Act.

22 (ll) Vulnerability assessments, security measures, and
23 response policies or plans that are designed to identify,
24 prevent, or respond to potential attacks upon a community's
25 population or systems, facilities, or installations, the
26 destruction or contamination of which would constitute a
27 clear and present danger to the health or safety of the
28 community, but only to the extent that disclosure could
29 reasonably be expected to jeopardize the effectiveness of
30 the measures or the safety of the personnel who implement
31 them or the public. Information exempt under this item may
32 include such things as details pertaining to the
33 mobilization or deployment of personnel or equipment, to
34 the operation of communication systems or protocols, or to
35 tactical operations.

36 (mm) Maps and other records regarding the location or

1 security of a utility's generation, transmission,
2 distribution, storage, gathering, treatment, or switching
3 facilities.

4 (nn) Law enforcement officer identification
5 information or driver identification information compiled
6 by a law enforcement agency or the Department of
7 Transportation under Section 11-212 of the Illinois
8 Vehicle Code.

9 (oo) Records and information provided to a residential
10 health care facility resident sexual assault and death
11 review team or the Residential Health Care Facility
12 Resident Sexual Assault and Death Review Teams Executive
13 Council under the Residential Health Care Facility
14 Resident Sexual Assault and Death Review Team Act.

15 (pp) Information provided to the predatory lending
16 database created pursuant to Article 3 of the Residential
17 Real Property Disclosure Act, except to the extent
18 authorized under that Article.

19 (qq) ~~(pp)~~ Defense budgets and petitions for
20 certification of compensation and expenses for court
21 appointed trial counsel as provided under Sections 10 and
22 15 of the Capital Crimes Litigation Act. This subsection
23 (qq) ~~(pp)~~ shall apply until the conclusion of the trial and
24 appeal of the case, even if the prosecution chooses not to
25 pursue the death penalty prior to trial or sentencing.

26 (rr) Information the disclosure of which is exempted
27 under the Viatical Settlements Act of 2006.

28 (2) This Section does not authorize withholding of
29 information or limit the availability of records to the public,
30 except as stated in this Section or otherwise provided in this
31 Act.

32 (Source: P.A. 93-43, eff. 7-1-03; 93-209, eff. 7-18-03; 93-237,
33 eff. 7-22-03; 93-325, eff. 7-23-03, 93-422, eff. 8-5-03;
34 93-577, eff. 8-21-03; 93-617, eff. 12-9-03; 94-280, eff.
35 1-1-06; 94-508, eff. 1-1-06; 94-664, eff. 1-1-06; revised
36 8-29-05.)

1 Section 910. The Illinois Insurance Code is amended by
2 changing Section 424 as follows:

3 (215 ILCS 5/424) (from Ch. 73, par. 1031)

4 Sec. 424. Unfair methods of competition and unfair or
5 deceptive acts or practices defined. The following are hereby
6 defined as unfair methods of competition and unfair and
7 deceptive acts or practices in the business of insurance:

8 (1) The commission by any person of any one or more of the
9 acts defined or prohibited by Sections 134, 143.24c, 147, 148,
10 149, 151, 155.22, 155.22a, 236, 237, 364, and 469 of this Code.

11 (2) Entering into any agreement to commit, or by any
12 concerted action committing, any act of boycott, coercion or
13 intimidation resulting in or tending to result in unreasonable
14 restraint of, or monopoly in, the business of insurance.

15 (3) Making or permitting, in the case of insurance of the
16 types enumerated in Classes 1, 2, and 3 of Section 4, any
17 unfair discrimination between individuals or risks of the same
18 class or of essentially the same hazard and expense element
19 because of the race, color, religion, or national origin of
20 such insurance risks or applicants. The application of this
21 Article to the types of insurance enumerated in Class 1 of
22 Section 4 shall in no way limit, reduce, or impair the
23 protections and remedies already provided for by Sections 236
24 and 364 of this Code or any other provision of this Code.

25 (4) Engaging in any of the acts or practices defined in or
26 prohibited by Sections 154.5 through 154.8 of this Code.

27 (5) Making or charging any rate for insurance against
28 losses arising from the use or ownership of a motor vehicle
29 which requires a higher premium of any person by reason of his
30 physical handicap, race, color, religion, or national origin.

31 (6) Engaging in any of the acts or practices prohibited by
32 the Viatical Settlements Act of 2006.

33 (Source: P.A. 92-399, eff. 8-16-01; 92-651, eff. 7-11-02;
34 92-669, eff. 1-1-03.)

1 Section 915. The Illinois Securities Law of 1953 is amended
2 by changing Section 2.1 and by adding Section 2.33 as follows:

3 (815 ILCS 5/2.1) (from Ch. 121 1/2, par. 137.2-1)

4 Sec. 2.1. Security. "Security" means any note, stock,
5 treasury stock, bond, debenture, evidence of indebtedness,
6 certificate of interest or participation in any profit-sharing
7 agreement, collateral-trust certificate, preorganization
8 certificate or subscription, transferable share, investment
9 contract, viatical investment, investment fund share,
10 face-amount certificate, voting-trust certificate, certificate
11 of deposit for a security, fractional undivided interest in
12 oil, gas or other mineral lease, right or royalty, any put,
13 call, straddle, option, or privilege on any security,
14 certificate of deposit, or group or index of securities
15 (including any interest therein or based on the value thereof),
16 or any put, call, straddle, option, or privilege entered into,
17 relating to foreign currency, or, in general, any interest or
18 instrument commonly known as a "security", or any certificate
19 of interest or participation in, temporary or interim
20 certificate for, receipt for, guarantee of, or warrant or right
21 to subscribe to or purchase, any of the foregoing. "Security"
22 does not mean a mineral investment contract or a mineral
23 deferred delivery contract; provided, however, the Department
24 shall have the authority to regulate these contracts as
25 hereinafter provided.

26 (Source: P.A. 92-308, eff. 1-1-02; 93-927, eff. 8-12-04.)

27 (815 ILCS 5/2.33 new)

28 Sec. 2.33. Viatical investment. "Viatical investment"
29 means the contractual right to receive any portion of the death
30 benefit or ownership of a life insurance policy or certificate
31 for consideration that is less than the expected death benefit
32 of the life insurance policy or certificate. "Viatical
33 investment" does not include:

1 (1) any transaction between a viator and a viatical
2 settlement provider as defined in the Viatical Settlements
3 Act of 2006;

4 (2) any transfer of ownership or beneficial interest in
5 a life insurance policy from a viatical settlement provider
6 to another viatical settlement provider, as defined in the
7 Viatical Settlements Act of 2006, or to any legal entity
8 formed solely for the purpose of holding ownership or
9 beneficial interest in a life insurance policy or policies;

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

14 (4) a policy loan by a life insurance company or the
15 exercise of accelerated benefits pursuant to the terms of a
16 life insurance policy issued in accordance with the
17 Illinois Insurance Code.

18 Section 997. Severability. The provisions of this Act are
19 severable under Section 1.31 of the Statute on Statutes.

20 Section 999. Effective date. This Act takes effect upon
21 becoming law.