

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 and Life 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 life insurance producer acting as a viatical

1 settlement broker or another person engaged in the business
2 of viatical settlements or insurance.

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

16 (5) Facilitating the change of state of residency of a
17 policy or a viator to avoid the provisions of this Act.

18 (6) Attempting to commit, assist, aid, or abet in the
19 commission of or conspiracy to commit the acts or omissions
20 specified in this definition.

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

23 "Life insurance producer" means a person licensed as a
24 resident or nonresident insurance producer pursuant to Article
25 XXXI of the Illinois Insurance Code with a life line of
26 authority pursuant to Section 500-35 of the Illinois Insurance
27 Code.

28 "Person" means any natural or artificial entity including,
29 but not limited to, individuals, partnerships, limited
30 liability company, associations, trusts, or corporations.

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

36 "Related provider trust" means a titling trust or other

1 trust established by a licensed viatical settlement provider or
2 a financing entity for the sole purpose of holding the
3 ownership or beneficial interest in purchased policies in
4 connection with a financing transaction. The trust shall have a
5 written agreement with the licensed viatical settlement
6 provider under which the licensed viatical settlement provider
7 is responsible for ensuring compliance with all statutory and
8 regulatory requirements and under which the trust agrees to
9 make all records and files related to viatical settlement
10 transactions available to the Secretary as if those records and
11 files were maintained directly by the licensed viatical
12 settlement provider.

13 "Secretary" means the Secretary of Financial and
14 Professional Regulation.

15 "Special purpose entity" means a corporation, partnership,
16 trust, limited liability company, or other similar entity
17 formed only to provide, directly or indirectly, access to
18 institutional capital markets for a financing entity or
19 licensed viatical settlement provider.

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

22 "Viatical settlement broker" means a person who, on behalf
23 of a viator and for a fee, commission, or other valuable
24 consideration, offers or attempts to negotiate viatical
25 settlement contracts between a viator and one or more viatical
26 settlement providers. Irrespective of the manner in which the
27 viatical settlement broker is compensated, a viatical
28 settlement broker is deemed to represent only the viator and
29 not the insurer or viatical settlement provider and owes a duty
30 to the viator to act according to the viator's instructions and
31 in the best interests of the viator.

32 "Viatical settlement contract" means a written agreement
33 that establishes the terms under which compensation or anything
34 of value is paid, which compensation or anything of value is
35 less than the expected death benefits of the policy, in return
36 for the viator's assignment, transfer, sale, devise, or bequest

1 of the death benefit or ownership of any portion of the policy.
2 "Viatical settlement contract" includes any agreement under
3 which the insured, viator, or policyholder or the designee of
4 the insured, viator, or policyholder receives or is to receive
5 consideration in exchange for the designation of or consent to
6 assignment or transfer for the ownership or beneficiary
7 interest in a policy regardless of the date that the
8 consideration is provided to the person or the transfer or
9 assignment occurs. "Viatical settlement contract" also
10 includes any premium financing transaction or agreement
11 collateral thereto that provides a guarantee of a policy's
12 viatical settlement value. "Viatical settlement contract" does
13 not include a policy loan by an insurer pursuant to the policy
14 terms or a loan by a licensed lending institution that takes a
15 collateral assignment of a policy solely as security for a loan
16 and not as part of or in connection with an agreement
17 guaranteeing a viatical settlement value.

18 "Viatical settlement provider" means a person, other than a
19 viator, who enters into or effectuates a viatical settlement
20 contract. "Viatical settlement provider" does not include:

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

24 (2) the issuer of a policy providing accelerated
25 benefits under the policy;

26 (3) an authorized or eligible insurer that provides
27 stop loss coverage to a viatical settlement provider,
28 financing entity, special purpose entity, or related
29 provider trust;

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

34 (5) a financing entity;

35 (6) a special purpose entity;

36 (7) a related provider trust; or

1 (8) an accredited investor or qualified institutional
2 buyer as defined, respectively, in Regulation D, Rule 501
3 or Rule 144A of the Federal Securities Act of 1933, as
4 amended, and who purchases a purchased policy from a
5 viatical settlement provider.

6 "Viaticated policy" means a life insurance policy that has
7 been acquired by a viatical settlement provider pursuant to a
8 viatical settlement contract.

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

22 (1) a licensee under this Act, including a life
23 insurance producer acting as a viatical settlement broker;

24 (2) an accredited investor or qualified institutional
25 buyer as defined, respectively, in Regulation D, Rule 501
26 or Rule 144A of the Federal Securities Act of 1933, as
27 amended;

28 (3) a financing entity;

29 (4) a special purpose entity; or

30 (5) a related provider trust.

31 Section 10. License Requirements.

32 (a) A person shall not operate as a viatical settlement
33 broker unless the person is a life insurance producer and
34 satisfies the requirements of subsection (b) of this Section.

35 (b) A life insurance producer, as defined in this Act, who

1 has been licensed for at least one year, shall be permitted to
2 act as a viatical settlement broker and negotiate viatical
3 settlement contracts between a viator and one or more viatical
4 settlement providers. For purposes of this Section, the one
5 year requirement is deemed to be satisfied if the person has
6 been licensed as a resident life insurance producer in his or
7 her home state for at least one year. Not later than 30 days
8 from the first day of negotiating a viatical settlement
9 contract on behalf of a viator, the life insurance producer
10 shall notify the Secretary of the activity on a form prescribed
11 by the Secretary, and shall pay any applicable fees as
12 determined by the Secretary. Notification must include an
13 acknowledgment by the producer that he or she will operate in
14 accordance with this Act.

15 Irrespective of the manner in which the viatical settlement
16 broker is compensated, a viatical settlement broker is deemed
17 to represent only the viator and not the insurer or viatical
18 settlement provider and owes a duty to the viator to act
19 according to the viator's instructions and in the best
20 interests of the viator. The insurer that issued the policy
21 being viaticated shall not be responsible for any act or
22 omission of a viatical settlement broker or viatical settlement
23 provider arising out of or in connection with the viatical
24 settlement transaction, unless the insurer receives
25 compensation from the viatical settlement provider or viatical
26 settlement broker for the viatical settlement contract.

27 (c) Notwithstanding any other provision of this Section, a
28 person licensed as an attorney, certified public accountant, or
29 financial planner accredited by a nationally recognized
30 accreditation agency who is retained to represent the viator
31 and whose compensation is not paid directly or indirectly by
32 the viatical settlement provider may negotiate viatical
33 settlement contracts without having to obtain a license as a
34 life insurance producer.

35 (d) A person shall not operate as a viatical settlement
36 provider from within this State or for persons residing in this

1 State without first having obtained a viatical settlement
2 provider license from the Secretary.

3 (e) Application for a viatical settlement provider license
4 shall be made to the Secretary by the applicant on a form
5 prescribed by the Secretary. The application shall be
6 accompanied by a fee of \$1,500, which shall be deposited into
7 the Insurance Producer Administration Fund.

8 Viatical settlement providers' licenses may be renewed
9 from year to year on the anniversary date of the license upon
10 (i) submission of renewal forms prescribed by the Secretary and
11 (ii) payment of the annual renewal fee of \$750, which shall be
12 deposited into the Insurance Producer Administration Fund.
13 Failure to pay the fee within the terms prescribed by the
14 Secretary shall result in the expiration of the license.

15 (f) Applicants for a viatical settlement provider's
16 license shall provide information prescribed by the Secretary
17 on forms prescribed by the Secretary. The Secretary shall have
18 authority, at any time, to require the applicant to fully
19 disclose the identity of all stockholders, partners, officers,
20 members, and employees, except stockholders owning fewer than
21 5% of the shares of an applicant whose shares are publicly
22 traded. The Secretary may, in the exercise of discretion,
23 refuse to issue a license in the name of a legal entity, if not
24 satisfied that an officer, employee, stockholder, member, or
25 partner thereof who may materially influence the applicant's
26 conduct meets the standards of this Act.

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

32 (h) Upon the filing of an application for a viatical
33 settlement provider's license and the payment of the license
34 fee, the Secretary may request information from the applicant
35 relating to the applicant's qualifications to be licensed as a
36 viatical settlement provider and shall issue a license if the

1 Secretary finds that the applicant:

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

3 (2) is competent and trustworthy and intends to act in
4 good faith in the capacity authorized by the license
5 applied for;

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

9 (4) provides a certificate of good standing from the
10 state of its domicile if the applicant is a legal entity;
11 and

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

14 The Secretary may not issue a license to a nonresident
15 applicant unless a written designation of an agent for service
16 of process is filed and maintained with the Secretary or the
17 applicant has filed with the Secretary the applicant's written
18 irrevocable consent that any action against the applicant may
19 be commenced against the applicant by service of process on the
20 Secretary.

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

25 Section 15. License suspension, denial, nonrenewal, and
26 revocation.

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

30 (1) there was material misrepresentation in the
31 application for the license;

32 (2) the licensee or any officer, partner, member, or
33 key management personnel has been convicted of fraudulent
34 or dishonest practices, is subject to a final
35 administrative action, or is otherwise shown to be

1 untrustworthy or incompetent;

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

4 (4) the licensee or any officer, partner, member, or
5 key management personnel has been found guilty of, or
6 pleaded guilty or nolo contendere to, any felony or
7 misdemeanor involving fraud or moral turpitude, regardless
8 of whether a judgment or conviction has been entered by the
9 court;

10 (5) the licensee has entered into any viatical
11 settlement contract that has not been approved pursuant to
12 this Act;

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

15 (7) the licensee no longer meets the requirements for
16 initial licensure;

17 (8) the licensee has assigned, transferred, or pledged
18 a purchased policy to a person other than a viatical
19 settlement provider licensed in this State, an accredited
20 investor or qualified institutional buyer as defined,
21 respectively, in Regulation D, Rule 501 or Rule 144A of the
22 Federal Securities Act of 1933, as amended, a financing
23 entity, a special purpose entity, or a related provider
24 trust; or

25 (9) the licensee or any officer, partner, member, or
26 key management personnel has violated any of the provisions
27 of this Act.

28 (b) The Secretary may suspend, revoke, or refuse to renew
29 the license of a life insurance producer acting as a viatical
30 settlement broker if the Secretary finds that the life
31 insurance producer acting as a viatical settlement broker has
32 violated the provisions of this Act.

33 (c) Before the Secretary denies a license application or
34 suspends, revokes, or refuses to renew the license of a
35 viatical settlement provider or a life insurance producer
36 acting as a viatical settlement broker the Secretary shall

1 conduct a hearing in accordance with the Illinois
2 Administrative Procedure Act.

3 Section 20. Approval of viatical settlement contracts. No
4 viatical settlement provider or viatical settlement broker may
5 use a viatical settlement contract or provide to a viator a
6 disclosure statement form in this State unless it has been
7 filed with and approved by the Secretary. A viatical settlement
8 contract form filed with the Secretary shall be deemed approved
9 if it has not been disapproved within 60 days of the filing.
10 The Secretary shall disapprove a viatical settlement contract
11 form or a disclosure statement form if, in the Secretary's
12 opinion, the contract or provisions contained therein are
13 unreasonable, contrary to the interests of the public, or
14 otherwise misleading or unfair to the viator. At the
15 Secretary's discretion, the Secretary may require the viatical
16 settlement provider or viatical settlement broker to submit
17 copies of its advertising material.

18 Section 25. Reporting requirements.

19 (a) Each viatical settlement provider shall file with the
20 Secretary on or before March 1 of each year an annual statement
21 containing information that the Secretary may prescribe by
22 rule. This information shall not include individual
23 transaction data regarding the business of viatical
24 settlements or data that compromises the privacy of personal,
25 financial, and health information of the viator or insured.

26 (b) Any information relating to the identity of an insured
27 individual or an insured individual's financial or medical
28 information collected, received, or maintained by any entity
29 directly or indirectly involved with a viatical settlement
30 transaction, including a viatical settlement provider, life
31 insurance producer acting as a viatical settlement broker,
32 information bureau, rating agency or company, or any other
33 person with actual knowledge of a viator's or insured's
34 identity, shall be subject to the requirements of Article XL of

1 the Illinois Insurance Code, except as provided below or
2 otherwise allowed or required by law. The information may not
3 be disclosed unless the disclosure is:

4 (1) necessary to effect a viatical settlement contract
5 between the viator and a viatical settlement provider and
6 the viator or insured or both, as may be required, have
7 provided prior written consent to the disclosure;

8 (2) provided in response to an investigation or
9 examination by the Secretary or another governmental
10 officer or agency;

11 (3) a term of or condition to the transfer of a policy
12 by one viatical settlement provider to another viatical
13 settlement provider;

14 (4) necessary to permit a financing entity, related
15 provider trust, or special purpose entity to finance the
16 purchase of policies by a viatical settlement provider and
17 the viator and insured have provided prior written consent
18 to the disclosure;

19 (5) necessary to allow the viatical settlement
20 provider or their authorized representatives to make
21 contacts for the purpose of determining health status; or

22 (6) required to purchase stop loss coverage.

23 Section 30. Examination of applicants and licensees.

24 (a) The Secretary may conduct an examination of a licensee
25 as often as the Secretary in his or her sole discretion deems
26 appropriate. The Secretary has the authority to order a
27 licensee or applicant to produce any records, books, files, or
28 other information reasonably necessary to ascertain whether or
29 not the licensee or applicant is acting or has acted in
30 violation of the law or otherwise contrary to the interests of
31 the public.

32 For purposes of completing an examination of a licensee
33 under this Act, the Secretary may examine or investigate any
34 person, or the business of any person, insofar as the
35 examination or investigation is, in the sole discretion of the

1 Secretary, necessary or material to the examination of the
2 licensee.

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

8 (b) A person required to be licensed by this Act shall for
9 5 years retain copies of:

10 (1) proposed, offered, or executed contracts,
11 underwriting documents, policy forms, and applications
12 from the date of the proposal, offer, or execution of the
13 contract, whichever is later;

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

17 (3) all complaints received against the licensee and
18 those viatical settlement agents representing the
19 licensee; and

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

22 This subsection (b) does not relieve a person of the
23 obligation to produce these documents to the Secretary after
24 the retention period has expired if the person has retained the
25 documents.

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

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

33 (c) Upon determining that an examination should be
34 conducted, the Secretary shall issue an examination warrant
35 appointing one or more examiners to perform the examination and
36 instructing them as to the scope of the examination. In

1 conducting the examination, the examiner may employ guidelines
2 or procedures that the Secretary may deem appropriate.

3 Every licensee, its officers, directors, and agents, and
4 any other person from whom information is sought shall provide
5 to the examiners timely, convenient, and free access at all
6 reasonable hours at its offices to all books, records,
7 accounts, papers, documents, assets, and computer or other
8 recordings relating to the property, assets, business, and
9 affairs of the licensee being examined. The officers,
10 directors, employees, and agents of the licensee or person
11 shall facilitate the examination and aid in the examination so
12 far as it is in their power to do so. The refusal of a licensee
13 by its officers, directors, employees, or agents, to submit to
14 examination or to comply with any reasonable written request of
15 the Secretary shall be grounds for suspension or refusal to
16 renew of any license or authority held by the licensee to
17 engage in the viatical settlement business or other business
18 subject to the Secretary's jurisdiction. Any proceedings for
19 suspension, revocation, or refusal of any license or authority
20 shall be conducted pursuant to the Illinois Administrative
21 Procedures Act.

22 The Secretary or any of his or her examiners shall have the
23 power to issue subpoenas, to administer oaths, and to examine
24 under oath any person as to any matter pertinent to the
25 examination. Upon the failure or refusal of a person to obey a
26 subpoena, the Secretary may petition a court of competent
27 jurisdiction, and upon proper showing, the court may enter an
28 order compelling the witness to appear and testify or produce
29 documentary evidence. Failure to obey the court order shall be
30 punishable as contempt of court.

31 When making an examination under this Act, the Secretary
32 may retain attorneys, appraisers, independent actuaries,
33 independent certified public accountants, or other
34 professionals and specialists as examiners, the reasonable
35 cost of which shall be borne by the licensee that is the
36 subject of the examination.

1 (d) Nothing contained in this Act shall be construed to
2 limit the Secretary's authority to terminate or suspend an
3 examination in order to pursue other legal or regulatory action
4 pursuant to the insurance laws of this State. Findings of fact
5 and conclusions made pursuant to any examination shall be prima
6 facie evidence in any legal or regulatory action.

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

10 (f) The Secretary may charge the expenses incurred in any
11 examination authorized by this Section to the person being
12 examined. The charge shall be reasonably related to the cost of
13 the examination, including, but not limited to, a per diem
14 charge of \$300 per examiner, electronic data processing costs,
15 costs related to the supervision and preparation of an
16 examination report, and lodging and travel expenses. All
17 lodging and travel expenses shall be in accordance with the
18 applicable travel rules published by the Department of Central
19 Management Services and approved by the Governor's Travel
20 Control Board, except that out-of-state lodging and travel
21 expenses shall be in accordance with travel rates prescribed
22 under 41 C.F.R. 301-7.2 for reimbursement of subsistence
23 expenses incurred during official travel. All lodging and
24 travel expenses may be reimbursed directly upon authorization
25 by the Secretary. All electronic data processing costs incurred
26 by the Department in the performance of any examination shall
27 be billed directly to the person being examined for payment to
28 the Statistical Services Revolving Fund. With the exception of
29 the direct reimbursements authorized by the Secretary, all
30 other examination charges collected by the Department shall be
31 paid to the Insurance Producers Administration Fund.

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

35 Any fee or charge assessed pursuant to this Part for which
36 a payment due date has not been established must be paid within

1 30 days after the date of the Department's invoice.

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

10 If a licensee fails to pay the full amount of any fee of
11 \$200 or more due under this subsection (f), there shall be
12 added to the amount due, as a penalty, the greater of \$100 or
13 an amount equal to 10% of the deficiency for each month or part
14 of a month that the deficiency remains unpaid.

15 If a licensee fails to timely pay the full amount of any
16 fee or charge of \$100 or more due under this subsection (f),
17 there may be added to the amount due, as a penalty, the greater
18 of \$50 or an amount equal to 5% of the deficiency for each
19 month or part of a month that the deficiency remains unpaid. In
20 addition to the fee or charge, interest on the deficiency shall
21 be assessed at the rate of 12% per annum or at higher adjusted
22 rates as are or may be established under subsection (b) of
23 Section 6621 of the Internal Revenue Code, from the date that
24 payment of the fee or charge was due to the date of payment of
25 the amount.

26 Any person or company required to pay a fee or charge
27 pursuant to this Section may request a hearing to be held for
28 the purposes of determining if the assessed fee or charge is
29 appropriate. The hearing request shall be made pursuant to 50
30 Ill. Admin. Code 2500.50 and shall be based only on (i) the
31 grounds set forth in Section 412 of the Illinois Insurance
32 Code, (ii) a mistake of fact, (iii) an error in calculation, or
33 (iv) an erroneous interpretation of a statute of this or any
34 other state.

35 (g) Examination reports shall be comprised only of facts
36 appearing upon the books, records, or other documents of the

1 licensee, its agents, or other persons examined, or as
2 ascertained from the testimony of its officers or agents or
3 other persons examined concerning its affairs and the
4 conclusions and recommendations that the examiners find
5 reasonably warranted from the facts.

6 (h) No later than 60 days following completion of the
7 examination, the examiner in charge shall file with the
8 Secretary a verified written report of examination under oath.
9 Upon receipt of the verified report, the Secretary shall
10 transmit the report to the licensee examined, together with a
11 notice that shall afford the licensee examined a reasonable
12 opportunity of not more than 30 days to make a written
13 submission or rebuttal with respect to any matters contained in
14 the examination report.

15 Within 30 days after the end of the period allowed for the
16 receipt of written submissions or rebuttals the Secretary shall
17 fully consider and review the report, together with any written
18 submissions or rebuttals and any relevant portions of the
19 examiner's workpapers and enter an order doing one of the
20 following:

21 (1) Adopting the examination report as filed or with
22 modification or corrections. If the examination report
23 reveals that the company is operating in violation of any
24 law, rule, or prior order of the Secretary, the Secretary
25 may order the company to take any action the Secretary
26 considers necessary and appropriate to cure the violation.

27 (2) Rejecting the examination report with directions
28 to the examiners to reopen the examination for purposes of
29 obtaining additional data, documentation, or information
30 and refiling.

31 (3) Calling for an investigatory hearing with no less
32 than 20 days notice to the company for purposes of
33 obtaining additional documentation, data, information, and
34 testimony.

35 All orders entered pursuant to this subsection (h) shall be
36 accompanied by findings and conclusions resulting from the

1 Secretary's consideration and review of the examination
2 report, relevant examiner workpapers, and any written
3 submissions or rebuttals. Any order issued pursuant to this
4 subsection (h) shall be considered a final administrative
5 decision and may be appealed pursuant to the Administrative
6 Review Law and shall be served upon the company by certified
7 mail, together with a copy of the adopted examination report.
8 Within 30 days of the issuance of the adopted report the
9 company shall file affidavits executed by each of its directors
10 stating under oath that they have received a copy of the
11 adopted report and related orders.

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

14 (1) Any hearing conducted pursuant to this Section by
15 the Secretary or the Secretary's authorized representative
16 shall be conducted as a nonadversarial confidential
17 investigatory proceeding as necessary for the resolution
18 of any inconsistencies, discrepancies, or disputed issues
19 apparent upon the face of the filed examination report or
20 raised by or as a result of the Secretary's review of
21 relevant workpapers or by the written submission or
22 rebuttal of the company. Within 20 days of the conclusion
23 of any hearing, the Secretary shall enter an order pursuant
24 to paragraph (1) of subsection (h) of this Section.

25 (2) The Secretary may appoint an authorized
26 representative to conduct the hearing, except that the
27 authorized representative may not be an examiner. The
28 hearing shall proceed expeditiously with discovery by the
29 company limited to the examiner's workpapers that tend to
30 substantiate any assertions set forth in any written
31 submission or rebuttal. The Secretary or the Secretary's
32 representative may issue subpoenas for the attendance of
33 any witnesses or the production of any documents considered
34 relevant to the investigation whether under the control of
35 the Secretary, the company, or other persons. The documents
36 produced shall be included in the record and testimony

1 taken by the Secretary or the Secretary's representative
2 shall be under oath and preserved for the record. Nothing
3 contained in this Section shall require the Secretary to
4 disclose any information or records that would indicate or
5 show the existence or content of any investigation or
6 activity of a criminal justice agency.

7 (3) The hearing shall proceed with the Secretary or the
8 Secretary's representative posing questions to the persons
9 subpoenaed. Thereafter, the company and the Secretary may
10 present testimony relevant to the investigation.
11 Cross-examination may be conducted only by the Secretary or
12 the Secretary's representative. The company and the
13 Secretary shall be permitted to make closing statements and
14 may be represented by the counsel of their choice.

15 (j) In the event the Secretary determines that regulatory
16 action is appropriate as a result of an examination, the
17 Secretary may initiate any proceedings or actions provided by
18 law.

19 (k) Names and individual identification data for all
20 viators shall be considered private and confidential
21 information and shall not be disclosed by the Secretary unless
22 required by law.

23 Except as otherwise provided in this Act, all examination
24 reports, working papers, recorded information, documents and
25 copies thereof produced by, obtained by or disclosed to the
26 Secretary or any other person in the course of an examination
27 made under this Act or the law of another state or jurisdiction
28 that is substantially similar to this Act, or in the course of
29 analysis or investigation by the Secretary of the financial
30 condition or market conduct of a licensee are (i) confidential
31 by law and privileged, (ii) not subject to the Freedom of
32 Information Act, (iii) not subject to subpoena, and (iv) not
33 subject to discovery or admissible in evidence in any private
34 civil action.

35 The Secretary is authorized to use the documents,
36 materials, or other information in the furtherance of any

1 regulatory or legal action brought as part of the Secretary's
2 official duties.

3 Documents, materials, or other information, including, but
4 not limited to, all working papers and copies thereof, in the
5 possession or control of the NAIC and its affiliates and
6 subsidiaries are:

7 (1) confidential by law and privileged;

8 (2) not subject to subpoena; and

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

11 (A) created, produced or obtained by or disclosed
12 to the NAIC and its affiliates and subsidiaries in the
13 course of assisting an examination made under this Act
14 or assisting the Secretary in the analysis or
15 investigation of the financial condition or market
16 conduct of a licensee; or

17 (B) disclosed to the NAIC and its affiliates and
18 subsidiaries under this subsection (k) by the
19 Secretary.

20 The Secretary or any person that received the documents,
21 material, or other information while acting under the authority
22 of the Secretary, including, but not limited to, the NAIC and
23 its affiliates and subsidiaries, is permitted to testify in any
24 private civil action concerning any confidential documents,
25 materials, or information subject to this subsection (k).

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

28 (1) share documents, materials, or other information,
29 including the confidential and privileged documents,
30 materials, or information subject to subsection (k) of this
31 Section, with other state, federal, and international
32 regulatory agencies, with the NAIC and its affiliates and
33 subsidiaries, and with state, federal, and international
34 law enforcement authorities, provided that the recipient
35 agrees to maintain the confidentiality and privileged
36 status of the document, material, communication, or other

1 information;

2 (2) receive documents, materials, communications, or
3 information, including otherwise confidential and
4 privileged documents, materials, or information, from the
5 NAIC and its affiliates and subsidiaries and from
6 regulatory and law enforcement officials of other foreign
7 or domestic jurisdictions, and shall maintain as
8 confidential or privileged any document, material, or
9 information received with notice or the understanding that
10 it is confidential or privileged under the laws of the
11 jurisdiction that is the source of the document, material,
12 or information; and

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

15 (m) No waiver of any applicable privilege or claim of
16 confidentiality in the documents, materials, or information
17 shall occur as a result of disclosure to the Secretary under
18 this Section or as a result of sharing as authorized in
19 subsection (l) of this Section.

20 (n) A privilege established under the law of any state or
21 jurisdiction that is substantially similar to the privilege
22 established under this Section shall be available and enforced
23 in any proceeding in any court of this State.

24 (o) Nothing contained in this Act shall prevent or be
25 construed as prohibiting the Secretary from disclosing the
26 content of an examination report, preliminary examination
27 report or results, or any matter relating thereto, to the chief
28 insurance regulatory official of any other state or country, or
29 to law enforcement officials of this or any other state or
30 agency of the federal government at any time or to the NAIC, so
31 long as the agency or office receiving the report or matters
32 relating thereto agrees in writing to hold it confidential and
33 in a manner consistent with this Act.

34 (p) An examiner may not be appointed by the Secretary if
35 the examiner, either directly or indirectly, has a conflict of
36 interest or is affiliated with the management of or owns a

1 pecuniary interest in any person subject to examination under
2 this Act. This Section shall not be construed to automatically
3 preclude an examiner from being:

4 (1) a viator;

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

6 (3) a beneficiary in an insurance policy that is
7 proposed to be the subject of a viatical settlement
8 contract.

9 Notwithstanding the requirements of this subsection (p),
10 the Secretary may retain from time to time, on an individual
11 basis, qualified actuaries, certified public accountants, or
12 other similar individuals who are independently practicing
13 their professions, even though these persons may from time to
14 time be similarly employed or retained by persons subject to
15 examination under provisions of this Act.

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

18 (r) No cause of action shall arise nor shall any liability
19 be imposed against the Secretary, the Secretary's authorized
20 representatives, or any examiner appointed by the Secretary for
21 any statements made or conduct performed in good faith while
22 carrying out the provisions of this Section.

23 No cause of action shall arise, nor shall any liability be
24 imposed against any person for the act of communicating or
25 delivering information or data to the Secretary or the
26 Secretary's authorized representative or examiner pursuant to
27 an examination made under this Section, if the act of
28 communication or delivery was performed in good faith and
29 without fraudulent intent or the intent to deceive. This
30 subsection (r) does not abrogate or modify in any way any
31 common law or statutory privilege or immunity heretofore
32 enjoyed by any person identified in this subsection (r).

33 A person identified in this subsection (r) shall be
34 entitled to an award of attorney's fees and costs if he or she
35 is the prevailing party in a civil cause of action for libel,
36 slander, or any other relevant tort arising out of activities

1 in carrying out the provisions of this Section and the party
2 bringing the action was not substantially justified in doing
3 so. For purposes of this Section, a proceeding is
4 "substantially justified" if it had a reasonable basis in law
5 or fact at the time that it was initiated.

6 (s) The Secretary may investigate suspected fraudulent
7 viatical settlement acts and persons engaged in the business of
8 viatical settlements.

9 Section 35. Disclosure.

10 (a) With each application for a viatical settlement
11 contract, a viatical settlement provider or viatical
12 settlement broker shall provide the viator with at least the
13 following disclosures no later than the time the viatical
14 settlement contract is signed by all parties. The disclosures
15 must be provided in a separate document that is signed by the
16 viator and the viatical settlement provider or viatical
17 settlement broker, and shall provide the following
18 information:

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

23 (2) That a life insurance producer acting as a viatical
24 settlement broker negotiating a viatical settlement
25 contract represents only the viator and not the insurer or
26 the viatical settlement provider and owes a duty to the
27 viator to act according to the viator's instructions.

28 (3) That some or all of the proceeds of the viatical
29 settlement contract may be taxable under federal income tax
30 and state franchise and income taxes, and assistance may be
31 sought from a professional tax advisor.

32 (4) That proceeds of the viatical settlement contract
33 may be subject to the claims of creditors.

34 (5) That receipt of the proceeds of a viatical
35 settlement contract may adversely affect the viator's

1 eligibility for Medicaid or other government benefits or
2 entitlements, and advice may be obtained from the
3 appropriate government agencies.

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

19 (7) That funds must be sent to the viator within 3
20 business days after the viatical settlement provider has
21 received the insurer or group administrator's
22 acknowledgment that ownership of the purchased policy has
23 been transferred and the beneficiary has been designated.

24 (8) That entering into a viatical settlement contract
25 may cause other rights or benefits, including conversion
26 rights and waiver of premium benefits that may exist under
27 the policy, to be forfeited by the viator. Assistance may
28 be sought from a financial adviser.

29 (9) That the disclosure to a viator must include
30 distribution of a brochure, approved by the Secretary,
31 describing the process of viatical settlements.

32 (10) That the disclosure document must contain the
33 following language: "All medical, financial, or personal
34 information solicited or obtained by a viatical settlement
35 provider or a life insurance producer about an insured,
36 including the insured's identity or the identity of family

1 members, a spouse, or a significant other may be disclosed
2 as necessary to effect the viatical settlement contract
3 between the viator and the viatical settlement provider. If
4 you are asked to provide this information, you will be
5 asked to consent to the disclosure. The information may be
6 provided to someone who buys the policy or provides funds
7 for the purchase. You may be asked to renew your permission
8 to share information every 2 years.".

9 (11) That the insured may be contacted by either the
10 viatical settlement provider or its authorized
11 representative for the purpose of determining the
12 insured's health status. This contact is limited to once
13 every 3 months if the insured has a life expectancy of more
14 than one year, and no more than once each month if the
15 insured has a life expectancy of one year or less.

16 (b) A viatical settlement provider shall provide the viator
17 with at least the following disclosures no later than the date
18 the viatical settlement contract is signed by all parties. The
19 disclosures must be displayed conspicuously in the viatical
20 settlement contract or in a separate document signed by the
21 viator and the viatical settlement provider, and provide the
22 following information:

23 (1) The affiliation, if any, between the viatical
24 settlement provider and the issuer of the insurance policy
25 to be acquired pursuant to a viatical settlement contract.

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

28 (3) If a policy to be acquired pursuant to a viatical
29 settlement contract has been issued as a joint policy or
30 involves family riders or any coverage of a life other than
31 the insured under the policy to be acquired pursuant to a
32 viatical settlement contract, the viator must be informed
33 of the possible loss of coverage on the other lives under
34 the policy and must be advised to consult with his or her
35 insurance producer or the insurer issuing the policy for
36 advice on the proposed viatical settlement contract.

1 (4) The dollar amount of the current death benefit
2 payable to the viatical settlement provider under the
3 policy. If known, the viatical settlement provider also
4 shall disclose the availability of additional guaranteed
5 insurance benefits, the dollar amount of accidental death
6 and dismemberment benefits under the policy or
7 certificate, and the viatical settlement provider's
8 interest in those benefits.

9 (5) The name, business address, and telephone number of
10 the independent third party escrow agent, and the fact that
11 the viator may inspect or receive copies of the relevant
12 escrow or trust agreements or documents.

13 (c) If the viatical settlement provider transfers
14 ownership or changes the beneficiary of the policy, the
15 viatical settlement provider shall communicate the change in
16 ownership or beneficiary to the insured within 20 days after
17 the change.

18 Section 40. General rules.

19 (a) A viatical settlement provider entering into a viatical
20 settlement contract shall first obtain:

21 (1) if the viator is the insured, a written statement
22 from a licensed attending physician that the viator is of
23 sound mind and under no constraint or undue influence to
24 enter into a viatical settlement contract; and

25 (2) a document in which the insured consents to the
26 release of his or her medical records to a viatical
27 settlement provider or viatical settlement broker and, if
28 the policy was issued less than 3 years from the date of
29 application for a viatical settlement contract, to the
30 insurance company that issued the policy.

31 (b) The insurer shall respond to a request for verification
32 of coverage submitted by a viatical settlement provider or
33 viatical settlement broker not later than 30 calendar days
34 after the date the request is received. The request for
35 verification of coverage must be made on a form approved by the

1 Secretary and signed by the policyowner or certificate holder.
2 The insurer shall complete and issue the verification of
3 coverage or indicate in which respects it is unable to respond.
4 In its response, the insurer shall indicate whether, based on
5 the medical evidence and documents provided, the insurer
6 intends to pursue an investigation at that time regarding the
7 validity of the insurance contract or possible fraud.

8 (c) Before or at the time of execution of the viatical
9 settlement contract, the viatical settlement provider shall
10 obtain a witnessed document in which the viator consents to the
11 viatical settlement contract, represents that the viator has a
12 full and complete understanding of the viatical settlement
13 contract and the benefits of the policy, acknowledges that the
14 viator is entering into the viatical settlement contract freely
15 and voluntarily, and, for persons with a terminal or chronic
16 illness or condition, acknowledges that the insured has a
17 terminal or chronic illness or condition and that the terminal
18 or chronic illness or condition was diagnosed after the policy
19 was issued.

20 (d) If a viatical settlement broker performs any of these
21 activities required of the viatical settlement provider, the
22 viatical settlement provider is deemed to have fulfilled the
23 requirements of this Section.

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

27 (f) A viatical settlement contract entered into in this
28 State shall provide the viator with an unconditional right to
29 rescind the contract before the earlier of 30 calendar days
30 after the date the viatical settlement contract is executed by
31 all parties or 15 calendar days from the receipt of the
32 viatical settlement proceeds by the viator. Rescission, if
33 exercised by the viator, is effective only if both notice of
34 the rescission is given and repayment of all proceeds and any
35 premiums, loans, and loan interest to the viatical settlement
36 provider is made within the rescission period. If the insured

1 dies during the rescission period, the viatical settlement
2 contract shall be deemed to have been rescinded, subject to
3 repayment being made to the viatical settlement provider of all
4 viatical settlement proceeds and any premiums, loans, and loan
5 interest within 90 days after the death of the insured.

6 (g) The viatical settlement provider shall instruct the
7 viator to send the executed documents required to effect the
8 change in ownership, assignment, or change in beneficiary
9 directly to the independent escrow agent. Within 3 business
10 days after the date the escrow agent receives the documents, or
11 within 3 days after the date the viatical settlement provider
12 receives the documents if the viator erroneously provides the
13 documents directly to the viatical settlement provider, the
14 viatical settlement provider shall pay or transfer the proceeds
15 of the viatical settlement contract into an escrow or trust
16 account maintained in a State or federally chartered financial
17 institution whose deposits are insured by the Federal Reserve
18 System. Upon payment of the viatical settlement proceeds into
19 the escrow account, the escrow agent shall deliver the original
20 change in ownership, assignment, or change in beneficiary forms
21 to the viatical settlement provider or related provider trust.
22 Upon the escrow agent's receipt of the acknowledgment of the
23 properly completed transfer of ownership, assignment, or
24 designation of beneficiary from the insurance company, the
25 escrow agent shall pay the viatical settlement proceeds to the
26 viator.

27 (h) Failure to tender consideration to the viator for the
28 viatical settlement by contract within the time disclosed
29 pursuant to this Code renders the viatical settlement contract
30 voidable by the viator for lack of consideration until the time
31 consideration is tendered to and accepted by the viator.

32 (i) Contact with the insured, for the purpose of
33 determining the health status of the insured by the viatical
34 settlement provider after the viatical settlement contract has
35 been executed, may only be made by the licensed viatical
36 settlement provider or its authorized representatives and is

1 limited to once every 3 months for insureds with a life
2 expectancy of more than one year, and not more than once each
3 month for insureds with a life expectancy of one year or less.
4 The viatical settlement provider shall explain the procedure
5 for these contacts at the time the viatical settlement contract
6 is entered into. The limitations provided for in this
7 subsection (i) do not apply to a contact with an insured for
8 reasons other than determining the insured's health status. A
9 viatical settlement provider is responsible for the actions of
10 its authorized representatives.

11 Section 45. Authority to adopt rules.

12 (a) The Secretary shall have the authority to do all the
13 following:

14 (1) Issue rules implementing this Act.

15 (2) Establish standards for evaluating reasonableness
16 of payments under a viatical settlement contract for a
17 person who is terminally or chronically ill. This authority
18 includes, but is not limited to, regulation of discount
19 rates used to determine the amount paid in exchange for
20 assignment, transfer, sale, devise, or bequest of a benefit
21 under a policy. A viatical settlement provider, where the
22 insured is not terminally or chronically ill, shall pay an
23 amount greater than the cash surrender value or accelerated
24 death benefit then available.

25 (3) Establish appropriate licensing requirements,
26 fees, and standards for continued licensure for a viatical
27 settlement provider and a fee for life insurance producers
28 acting as viatical settlement brokers.

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

31 (5) Adopt rules governing the relationship and
32 responsibilities of an insurer and a viatical settlement
33 provider, viatical settlement broker, and others in the
34 business of viatical settlements during the period of
35 consideration or effectuation of a viatical settlement

1 contract.

2 (b) Any rules adopted pursuant to the authority granted in
3 the Viatical Settlements Act shall remain in effect until
4 repealed or modified by rules adopted by the Secretary pursuant
5 to this Act.

6 Section 50. Application.

7 (a) A viatical settlement provider lawfully transacting
8 business in this State may continue to do so pending approval
9 or disapproval of the viatical settlement provider's
10 application for a license under this Act as long as the
11 application is filed with the Secretary not later than 30 days
12 after the effective date of this Act.

13 (b) A viatical settlement provider licensed in this State
14 on or before the effective date of this Act may continue to
15 transact business under that license, but must revise any
16 licensing information at the time of the license renewal, if
17 applicable. All viatical settlement contract forms and
18 disclosure statement forms of the provider shall be deemed to
19 be in continued force and effect, provided, however, that the
20 forms shall be modified by the licensed viatical settlement
21 provider to conform with the provisions of Section 35 of this
22 Act within 90 days after the effective date of this Act.

23 (c) A person who has lawfully negotiated viatical
24 settlement contracts between a viator and one or more viatical
25 settlement providers in this State for at least one year
26 immediately prior to the effective date of this Act may
27 continue to negotiate viatical settlements in this State for a
28 period of 60 days after the effective date of this Act, at
29 which time the person must either become a licensed life
30 insurance producer permitted to act as a viatical settlement
31 broker or cease negotiating viatical settlement contracts.

32 Section 55. Violations. It is a violation of this Act for a
33 person to enter into a viatical settlement contract at any time
34 prior to the application for or issuance of a policy which is

1 the subject of a viatical settlement contract or for a 2-year
2 period commencing with the date of issuance of the policy
3 unless the viator certifies to the viatical settlement provider
4 that one or more of the following conditions have been met
5 within the 2-year period:

6 (1) The policy was issued upon the viator's exercise of
7 conversion rights arising out of a group or individual
8 policy, provided the total of the time covered under the
9 conversion policy plus the time covered under the prior
10 policy is at least 24 months. The time covered under a
11 group policy must be calculated without regard to a change
12 in insurance carriers, provided the coverage has been
13 continuous and under the same group sponsorship.

14 (2) The viator submits independent evidence to the
15 viatical settlement provider that one or more of the
16 following conditions have been met within the 2-year
17 period:

18 (A) the viator or insured is terminally or
19 chronically ill; or

20 (B) the viator or insured disposes of his ownership
21 interests in a closely held corporation, pursuant to
22 the terms of a buyout or other similar agreement in
23 effect at the time the insurance policy was initially
24 issued.

25 Copies of the independent evidence described in paragraph
26 (2) of this Section and documents required by this Act must be
27 submitted to the insurer when the viatical settlement provider
28 submits a request to the insurer for verification of coverage.
29 The copies must be accompanied by a letter of attestation from
30 the viatical settlement provider that the copies are true and
31 correct copies of the documents received by the viatical
32 settlement provider.

33 If the viatical settlement provider submits to the insurer
34 a copy of independent evidence provided for in paragraph (2) of
35 this Section when the viatical settlement provider submits a
36 request to the insurer to effect the transfer of the policy to

1 the viatical settlement provider, the copy is deemed to
2 conclusively establish that the viatical settlement contract
3 satisfies the requirements of this Section and the insurer
4 shall respond timely to the request.

5 Section 60. Advertisements.

6 (a) The purpose of this Section is to provide a prospective
7 viator with clear and unambiguous statements in the
8 advertisement of a viatical settlement contract and to assure
9 the clear, truthful, and adequate disclosure of the benefits,
10 risks, limitations, and exclusions of a viatical settlement
11 contract. This purpose is to be accomplished by the
12 establishment of guidelines and standards of permissible and
13 impermissible conduct in the advertising of a viatical
14 settlement contract to assure that a product description is
15 presented in a manner that prevents unfair, deceptive, or
16 misleading advertising and is conducive to accurate
17 presentation and description of a viatical settlement contract
18 through the advertising media and material used by a licensee.

19 (b) This Section applies to an advertising of a viatical
20 settlement contract or a related product or service intended
21 for dissemination in this State, including Internet
22 advertising viewed by a person located in this State. Where
23 disclosure requirements are established pursuant to federal
24 regulation, this Section must be interpreted so as to minimize
25 or eliminate conflict with federal regulation wherever
26 possible.

27 (c) Each viatical settlement licensee shall establish and
28 at all times maintain a system of control over the content,
29 form, and method of dissemination of an advertisement of its
30 contracts, products, and services. An advertisement,
31 regardless of who wrote, created, designed, or presented, is
32 the responsibility of the licensee, as well as the individual
33 who created or presented the advertisement. A system of control
34 by the licensee must include regular routine notification at
35 least once a year to agents and others authorized to

1 disseminate advertisements of the requirements and procedures
2 for approval before the use of an advertisement not furnished
3 by the licensee.

4 (d) An advertisement must be truthful and not misleading in
5 fact or by implication. The form and content of an
6 advertisement of a viatical settlement contract must be
7 sufficiently complete and clear so as to avoid deception. It
8 shall not have the capacity or tendency to mislead or deceive.
9 Whether an advertisement has the capacity or tendency to
10 mislead or deceive shall be determined by the Secretary from
11 the overall impression that the advertisement may be reasonably
12 expected to create upon a person of average education or
13 intelligence within the segment of the public to which it is
14 directed.

15 (e) The information required to be disclosed pursuant to
16 the provisions of this Section may not be minimized, rendered
17 obscure, or presented in an ambiguous fashion or intermingled
18 with the text of the advertisement so as to be confusing or
19 misleading.

20 (1) An advertisement may not omit material information
21 or use words, phrases, statements, references, or
22 illustrations if the omission or use has the capacity,
23 tendency, or effect of misleading or deceiving the public
24 as to the nature or extent of any benefit, loss covered, or
25 State or federal tax consequence. The fact that the
26 viatical settlement contract offered is made available for
27 inspection before consummation of the sale, or an offer is
28 made to refund the payment if the viator is not satisfied,
29 or that the viatical settlement contract includes a "free
30 look" period that satisfies or exceeds legal requirements
31 does not remedy misleading statements.

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

35 (3) An advertisement may not state or imply that
36 interest charged on an accelerated death benefit or a

1 policy loan is unfair, inequitable, or in any manner an
2 incorrect or improper practice.

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

9 (5) Any testimonial, appraisal, or analysis used in an
10 advertisement must:

11 (A) be genuine;

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

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

15 (D) be accurately reproduced with sufficient
16 completeness to avoid misleading or deceiving
17 prospective viators as to the nature or scope of any
18 testimonial, appraisal, analysis, or endorsement.

19 In using any testimonial, appraisal, or analysis, the
20 viatical settlement licensee makes as its own all the
21 statements contained in them, and the statements are
22 subject to all the provisions of this Section.

23 If the individual making a testimonial, appraisal,
24 analysis, or an endorsement has a financial interest in the
25 viatical settlement provider or related entity as a
26 stockholder, director, officer, employee, or otherwise or
27 receives a benefit, directly or indirectly, other than
28 required union scale wages, that fact must be disclosed
29 prominently in the advertisement.

30 An advertisement may not state or imply that a viatical
31 settlement contract, benefit, or service has been approved
32 or endorsed by a group of individuals, society,
33 association, or other organization, unless that is the fact
34 and unless any relationship between an organization and the
35 licensee is disclosed. If the entity making the endorsement
36 or testimonial is owned, controlled, or managed by the

1 licensee or receives payment or other consideration from
2 the licensee for making an endorsement or testimonial, that
3 fact must be disclosed in the advertisement.

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

7 (f) An advertisement may not contain statistical
8 information unless it accurately reflects recent and relevant
9 facts. The source of all statistics used in an advertisement
10 must be identified.

11 (g) An advertisement may not disparage insurers, viatical
12 settlement providers, insurance producers, policies, services,
13 or methods of marketing.

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

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

31 (j) An advertisement shall not use any combination of
32 words, symbols, or physical materials that by their content,
33 phraseology, shape, color, or other characteristics are so
34 similar to a combination of words, symbols, or physical
35 materials used by a government program or agency or otherwise
36 appear to be of such a nature that they tend to mislead

1 prospective viators into believing that the solicitation is in
2 some manner connected with a government program or agency.

3 (k) An advertisement may state that a licensee is licensed
4 in the state where the advertisement appears, provided it does
5 not exaggerate that fact or suggest or imply that the competing
6 licensee may not be so licensed. The advertisement may ask the
7 audience to consult the licensee's web site or contact that
8 state's department of insurance to find out if that state
9 requires licensing and, if so, whether the licensee or any
10 other company is licensed.

11 (l) An advertisement may not create the impression that the
12 viatical settlement provider, its financial condition or
13 status, the payment of its claims, or the merits, desirability,
14 or advisability of its viatical settlement contracts are
15 recommended or endorsed by any government entity.

16 (m) The name of the actual licensee must be stated in all
17 of its advertisements. An advertisement may not use a trade
18 name, any group designation, name of any affiliate or
19 controlling entity of the licensee, service mark, slogan,
20 symbol, or other device in a manner that has the capacity or
21 tendency to mislead or deceive as to the true identity of the
22 actual licensee or create the false impression that an
23 affiliate or controlling entity has any responsibility for the
24 financial obligation of the licensee.

25 (n) An advertisement may not, directly or indirectly,
26 create the impression that any division or agency of the State
27 or of the United States government endorses, approves, or
28 favors:

29 (1) a licensee or its business practices or methods of
30 operation;

31 (2) the merits, desirability, or advisability of a
32 viatical settlement contract;

33 (3) any viatical settlement contract; or

34 (4) any policy or life insurance company.

35 (o) If the advertiser emphasizes the speed with which the
36 viatical settlement contract occurs, the advertising must

1 disclose the average time frame from completed application to
2 the date of offer and from acceptance of the offer to receipt
3 of the funds by the viator.

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

8 (q) Certain viatical settlement advertisements are deemed
9 false and misleading on their face and are prohibited. False
10 and misleading viatical settlement advertisements include, but
11 are not limited to, the following representations:

12 (1) "guaranteed", "fully secured", "100 percent
13 secured", "fully insured", "secure", "safe", "backed by
14 rated insurance companies", "backed by federal law",
15 "backed by state law", "state guaranty funds", or similar
16 representations;

17 (2) "no risk", "minimal risk", "low risk", "no
18 speculation", "no fluctuation", or similar
19 representations;

20 (3) "qualified or approved for individual retirement
21 accounts (IRAs), Roth IRAs, 401(k) plans, simplified
22 employee pensions (SEP), 403(b), Keogh plans, TSA, and
23 other retirement account rollovers", "tax deferred", or
24 similar representations;

25 (4) use of the word "guaranteed" to describe the fixed
26 return, annual return, principal, earnings, profits,
27 investment, or similar representations;

28 (5) "no sales charges or fees" or similar
29 representations;

30 (6) "high yield", "superior return", "excellent
31 return", "high return", "quick profit", or similar
32 representations; and

33 (7) purported favorable representations or
34 testimonials about the benefits of viatical settlement
35 contracts or viatical settlement purchase agreements as an
36 investment taken out of context from newspapers, trade

1 papers, journals, radio and television programs, and all
2 other forms of print and electronic media.

3 Section 65. Fraudulent viatical settlement acts.

4 (a) A person may not commit a fraudulent viatical
5 settlement act.

6 (b) A person, knowingly or intentionally, may not interfere
7 with the enforcement of the provisions of this Act or
8 investigations of suspected or actual violations of this Act.

9 (c) A person in the business of viatical settlements may
10 not knowingly or intentionally permit a person convicted of a
11 felony involving dishonesty or breach of trust to participate
12 in the business of viatical settlements.

13 (d) A viatical settlement contract and an application for a
14 viatical settlement contract, regardless of the form of
15 transmission, must contain the following statement or a
16 substantially similar statement: "Any person who knowingly
17 presents false information in an application for insurance or
18 viatical settlement contract is guilty of a crime and, upon
19 conviction, may be subject to fines or confinement in prison or
20 both."

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

24 (e) A person engaged in the business of viatical
25 settlements having knowledge or a reasonable belief that a
26 fraudulent viatical settlement act is being, will be, or has
27 been committed shall provide to the Secretary the information
28 required by the Secretary in a manner prescribed by the
29 Secretary.

30 Another person having knowledge or a reasonable belief that
31 a fraudulent viatical settlement act is being, will be, or has
32 been committed may provide to the Secretary the information
33 required by the Secretary in a manner prescribed by the
34 Secretary.

35 (f) Civil liability may not be imposed on and a cause of

1 action may not arise from a person's furnishing information
2 concerning suspected, anticipated, or completed fraudulent
3 viatical settlement acts, or suspected or completed fraudulent
4 insurance acts, if the information is provided to or received
5 from:

6 (A) the Secretary or the Secretary's employees,
7 agents, or representatives;

8 (B) federal, state, or local law enforcement or
9 regulatory officials or their employees, agents, or
10 representatives;

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

14 (D) the National Association of Insurance
15 Commissioners (NAIC), National Association of
16 Securities Dealers (NASD), the North American
17 Securities Administrators Association (NASAA), or
18 their employees, agents, or representatives, or other
19 regulatory body overseeing life insurance or viatical
20 settlement contracts; or

21 (E) the insurer that issued the policy covering the
22 life of the insured.

23 This subsection (f) does not apply to a statement made with
24 actual malice. In an action brought against a person for filing
25 a report or furnishing other information concerning a
26 fraudulent viatical settlement act or a fraudulent insurance
27 act, the party bringing the action shall plead specifically any
28 allegation that this subsection (f) does not apply because the
29 person filing the report or furnishing the information did so
30 with actual malice.

31 A person identified in this subsection (f) is entitled to
32 an award of attorney's fees and costs if he or she is the
33 prevailing party in a civil cause of action for libel, slander,
34 or another relevant tort arising out of activities in carrying
35 out the provisions of this Act and the party bringing the
36 action was not substantially justified in doing so. For

1 purposes of this Section, a proceeding is "substantially
2 justified" if it had a reasonable basis in law or fact at the
3 time that it was initiated.

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

7 This subsection (f) does not apply to a person's furnishing
8 information concerning his own suspected, anticipated, or
9 completed fraudulent viatical settlement acts or suspected,
10 anticipated, or completed fraudulent insurance acts.

11 (g) The documents and evidence provided pursuant to
12 subsection (f) of this Section or obtained by the Secretary in
13 an investigation of suspected or actual fraudulent viatical
14 settlement acts are privileged and confidential and are not a
15 public record and are not subject to discovery or subpoena in a
16 civil or criminal action.

17 The provisions of this subsection (g) do not prohibit
18 release by the Secretary of documents and evidence obtained in
19 an investigation of suspected or actual fraudulent viatical
20 settlement acts:

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

23 (2) to federal, state, or local law enforcement or
24 regulatory agencies, to an organization established for
25 the purpose of detecting and preventing fraudulent
26 viatical settlement acts, or to the NAIC; or

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

30 Release of documents and evidence as provided by this
31 subsection (g) does not abrogate or modify the privilege
32 granted in this subsection (g).

33 (h) This Act does not:

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

1 (2) prevent or prohibit a person from disclosing
2 voluntarily information concerning fraudulent viatical
3 settlement acts to a law enforcement or regulatory agency
4 other than the Department of Financial and Professional
5 Regulation; or

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

10 (i) A viatical settlement provider shall adopt anti-fraud
11 initiatives reasonably calculated to detect, assist in the
12 prosecution of, and prevent fraudulent viatical settlement
13 acts. The Secretary may order or, if a licensee requests, may
14 grant these modifications of the following required
15 initiatives as necessary to ensure an effective anti-fraud
16 program. The modifications may be more or less restrictive than
17 the required initiatives so long as the modifications
18 reasonably may be expected to accomplish the purpose of this
19 Section. Anti-fraud initiatives include, but are not limited
20 to:

21 (1) Fraud investigators, who may be a viatical
22 settlement provider or employees or independent
23 contractors of those viatical settlement providers.

24 (2) An anti-fraud plan that shall always be available
25 to the Secretary. The anti-fraud plan must include, but is
26 not limited to:

27 (A) a description of the procedures for detecting
28 and investigating possible fraudulent viatical
29 settlement acts and procedures for resolving material
30 inconsistencies between medical records and insurance
31 applications;

32 (B) a description of the procedures for reporting
33 possible fraudulent viatical settlement acts to the
34 Secretary;

35 (C) a description of the plan for anti-fraud
36 education and training of underwriters and other

1 personnel; and

2 (D) a chart outlining the organizational
3 arrangement of the anti-fraud personnel who are
4 responsible for the investigation and reporting of
5 possible fraudulent viatical settlement acts and
6 investigating unresolved material inconsistencies
7 between medical records and insurance applications.

8 Anti-fraud plans submitted to the Secretary are privileged
9 and confidential and are not a public record pursuant to the
10 provisions of the Freedom of Information Act and are not
11 subject to discovery or subpoena in a civil or criminal action.

12 Section 70. Additional penalties.

13 (a) In addition to the penalties and other enforcement
14 provisions of this Act, if a person violates the provisions of
15 this Act or any rule implementing this Act, the Secretary may
16 seek an injunction in a court of competent jurisdiction and may
17 apply for temporary and permanent orders as the Secretary
18 determines are necessary to restrain the person from committing
19 the violation.

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

23 (c) The Secretary may issue a cease and desist order upon a
24 person that violates any provision of this Act, any rule or
25 order adopted by the Secretary, or any written agreement
26 entered into with the Secretary.

27 (d) When the Secretary finds that an activity in violation
28 of this Act presents an immediate danger to the public that
29 requires an immediate final order, the Secretary may issue an
30 emergency cease and desist order reciting with particularity
31 the facts underlying the findings. The emergency cease and
32 desist order is effective immediately upon service of a copy of
33 the order on the respondent and remains effective for 90 days.
34 If the Secretary begins nonemergency cease and desist
35 proceedings, the emergency cease and desist order remains

1 effective absent an order by a court of competent jurisdiction.

2 (e) In addition to the penalties and other enforcement
3 provisions of this Act, a person who violates this Act is
4 subject to civil penalties of up to \$10,000 for each violation.
5 Imposition of civil penalties is pursuant to an order of the
6 Secretary. The Secretary's order may require a person found to
7 be in violation of this Act to make restitution to a person
8 aggrieved by violations of this Act.

9 (f) A person who violates a provision of this Act, upon
10 conviction, must be ordered to pay restitution to a person
11 aggrieved by the violation of this Act. Restitution must be
12 ordered in addition to a fine or imprisonment and not instead
13 of a fine or imprisonment.

14 (g) A person who violates a provision of this Act, upon
15 conviction, must be sentenced based on the greater of the value
16 of property, services, or other benefits wrongfully obtained or
17 attempted to be obtained, or the aggregate economic loss
18 suffered by any person as a result of the violation. A person
19 convicted of theft of property through a viatical settlement
20 transaction in which the value of viatical settlement contract:

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

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

25 (3) exceeds \$10,000 but does not exceed \$100,000 is
26 guilty of a Class 2 felony; or

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

29 (h) A person convicted of a fraudulent viatical settlement
30 act must be ordered to pay restitution to a person aggrieved by
31 the fraudulent viatical settlement act. Restitution must be
32 ordered in addition to a fine or imprisonment but not instead
33 of a fine or imprisonment.

34 (i) In a prosecution provided under subsection (h) of this
35 Section, the value of a viatical settlement contract within a
36 6-month period may be aggregated and the defendant charged

1 accordingly in applying the provisions of subsection (g) of
2 this Section. If 2 or more offenses are committed by the same
3 person in 2 or more counties, the accused may be prosecuted in
4 a county in which one of the offenses was committed for all of
5 the offenses aggregated as provided by this Section. The
6 statute of limitations does not begin to run until the
7 insurance company or law enforcement agency is aware of the
8 fraud, but the prosecution may not be commenced later than 7
9 years after the act has occurred.

10 Section 75. Unfair methods of competition or unfair and
11 deceptive acts or practices. A violation of this Act is
12 considered an unfair method of competition or unfair and
13 deceptive act or practice pursuant to the provisions of Article
14 XXVI of the Illinois Insurance Code and subject to the
15 penalties contained in that Article.

16 Section 80. Illinois Securities Law of 1953. Nothing in
17 this Act preempts or otherwise limits the provisions of the
18 Illinois Securities Law of 1953, as amended, or any
19 regulations, orders, policy statements, notices, bulletins, or
20 other interpretations issued by or through the Secretary of
21 State or his or her designee acting pursuant to the Illinois
22 Securities Law of 1953, as amended. Compliance with the
23 provisions of this Act does not constitute compliance with any
24 applicable provision of the Illinois Securities Law of 1953, as
25 amended, and any amendments thereto or any regulations, orders,
26 policy statements, notices, bulletins, or other
27 interpretations issued by or through the Secretary of State or
28 his or her designee acting pursuant to the Illinois Securities
29 Law of 1953, as amended.

30 (215 ILCS 158/Act rep.)

31 Section 900. The Viatical Settlements Act is repealed.

32 Section 905. The Freedom of Information Act is amended by

1 changing Section 7 as follows:

2 (5 ILCS 140/7) (from Ch. 116, par. 207)

3 Sec. 7. Exemptions.

4 (1) The following shall be exempt from inspection and
5 copying:

6 (a) Information specifically prohibited from
7 disclosure by federal or State law or rules and regulations
8 adopted under federal or State law.

9 (b) Information that, if disclosed, would constitute a
10 clearly unwarranted invasion of personal privacy, unless
11 the disclosure is consented to in writing by the individual
12 subjects of the information. The disclosure of information
13 that bears on the public duties of public employees and
14 officials shall not be considered an invasion of personal
15 privacy. Information exempted under this subsection (b)
16 shall include but is not limited to:

17 (i) files and personal information maintained with
18 respect to clients, patients, residents, students or
19 other individuals receiving social, medical,
20 educational, vocational, financial, supervisory or
21 custodial care or services directly or indirectly from
22 federal agencies or public bodies;

23 (ii) personnel files and personal information
24 maintained with respect to employees, appointees or
25 elected officials of any public body or applicants for
26 those positions;

27 (iii) files and personal information maintained
28 with respect to any applicant, registrant or licensee
29 by any public body cooperating with or engaged in
30 professional or occupational registration, licensure
31 or discipline;

32 (iv) information required of any taxpayer in
33 connection with the assessment or collection of any tax
34 unless disclosure is otherwise required by State
35 statute;

1 (v) information revealing the identity of persons
2 who file complaints with or provide information to
3 administrative, investigative, law enforcement or
4 penal agencies; provided, however, that identification
5 of witnesses to traffic accidents, traffic accident
6 reports, and rescue reports may be provided by agencies
7 of local government, except in a case for which a
8 criminal investigation is ongoing, without
9 constituting a clearly unwarranted per se invasion of
10 personal privacy under this subsection; and

11 (vi) the names, addresses, or other personal
12 information of participants and registrants in park
13 district, forest preserve district, and conservation
14 district programs.

15 (c) Records compiled by any public body for
16 administrative enforcement proceedings and any law
17 enforcement or correctional agency for law enforcement
18 purposes or for internal matters of a public body, but only
19 to the extent that disclosure would:

20 (i) interfere with pending or actually and
21 reasonably contemplated law enforcement proceedings
22 conducted by any law enforcement or correctional
23 agency;

24 (ii) interfere with pending administrative
25 enforcement proceedings conducted by any public body;

26 (iii) deprive a person of a fair trial or an
27 impartial hearing;

28 (iv) unavoidably disclose the identity of a
29 confidential source or confidential information
30 furnished only by the confidential source;

31 (v) disclose unique or specialized investigative
32 techniques other than those generally used and known or
33 disclose internal documents of correctional agencies
34 related to detection, observation or investigation of
35 incidents of crime or misconduct;

36 (vi) constitute an invasion of personal privacy

1 under subsection (b) of this Section;

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

4 (viii) obstruct an ongoing criminal investigation.

5 (d) Criminal history record information maintained by
6 State or local criminal justice agencies, except the
7 following which shall be open for public inspection and
8 copying:

9 (i) chronologically maintained arrest information,
10 such as traditional arrest logs or blotters;

11 (ii) the name of a person in the custody of a law
12 enforcement agency and the charges for which that
13 person is being held;

14 (iii) court records that are public;

15 (iv) records that are otherwise available under
16 State or local law; or

17 (v) records in which the requesting party is the
18 individual identified, except as provided under part
19 (vii) of paragraph (c) of subsection (1) of this
20 Section.

21 "Criminal history record information" means data
22 identifiable to an individual and consisting of
23 descriptions or notations of arrests, detentions,
24 indictments, informations, pre-trial proceedings, trials,
25 or other formal events in the criminal justice system or
26 descriptions or notations of criminal charges (including
27 criminal violations of local municipal ordinances) and the
28 nature of any disposition arising therefrom, including
29 sentencing, court or correctional supervision,
30 rehabilitation and release. The term does not apply to
31 statistical records and reports in which individuals are
32 not identified and from which their identities are not
33 ascertainable, or to information that is for criminal
34 investigative or intelligence purposes.

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

1 (f) Preliminary drafts, notes, recommendations,
2 memoranda and other records in which opinions are
3 expressed, or policies or actions are formulated, except
4 that a specific record or relevant portion of a record
5 shall not be exempt when the record is publicly cited and
6 identified by the head of the public body. The exemption
7 provided in this paragraph (f) extends to all those records
8 of officers and agencies of the General Assembly that
9 pertain to the preparation of legislative documents.

10 (g) Trade secrets and commercial or financial
11 information obtained from a person or business where the
12 trade secrets or information are proprietary, privileged
13 or confidential, or where disclosure of the trade secrets
14 or information may cause competitive harm, including:

15 (i) All information determined to be confidential
16 under Section 4002 of the Technology Advancement and
17 Development Act.

18 (ii) All trade secrets and commercial or financial
19 information obtained by a public body, including a
20 public pension fund, from a private equity fund or a
21 privately held company within the investment portfolio
22 of a private equity fund as a result of either
23 investing or evaluating a potential investment of
24 public funds in a private equity fund. The exemption
25 contained in this item does not apply to the aggregate
26 financial performance information of a private equity
27 fund, nor to the identity of the fund's managers or
28 general partners. The exemption contained in this item
29 does not apply to the identity of a privately held
30 company within the investment portfolio of a private
31 equity fund, unless the disclosure of the identity of a
32 privately held company may cause competitive harm.

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

35 (h) Proposals and bids for any contract, grant, or
36 agreement, including information which if it were

1 disclosed would frustrate procurement or give an advantage
2 to any person proposing to enter into a contractor
3 agreement with the body, until an award or final selection
4 is made. Information prepared by or for the body in
5 preparation of a bid solicitation shall be exempt until an
6 award or final selection is made.

7 (i) Valuable formulae, computer geographic systems,
8 designs, drawings and research data obtained or produced by
9 any public body when disclosure could reasonably be
10 expected to produce private gain or public loss. The
11 exemption for "computer geographic systems" provided in
12 this paragraph (i) does not extend to requests made by news
13 media as defined in Section 2 of this Act when the
14 requested information is not otherwise exempt and the only
15 purpose of the request is to access and disseminate
16 information regarding the health, safety, welfare, or
17 legal rights of the general public.

18 (j) Test questions, scoring keys and other examination
19 data used to administer an academic examination or
20 determined the qualifications of an applicant for a license
21 or employment.

22 (k) Architects' plans, engineers' technical
23 submissions, and other construction related technical
24 documents for projects not constructed or developed in
25 whole or in part with public funds and the same for
26 projects constructed or developed with public funds, but
27 only to the extent that disclosure would compromise
28 security, including but not limited to water treatment
29 facilities, airport facilities, sport stadiums, convention
30 centers, and all government owned, operated, or occupied
31 buildings.

32 (l) Library circulation and order records identifying
33 library users with specific materials.

34 (m) Minutes of meetings of public bodies closed to the
35 public as provided in the Open Meetings Act until the
36 public body makes the minutes available to the public under

1 Section 2.06 of the Open Meetings Act.

2 (n) Communications between a public body and an
3 attorney or auditor representing the public body that would
4 not be subject to discovery in litigation, and materials
5 prepared or compiled by or for a public body in
6 anticipation of a criminal, civil or administrative
7 proceeding upon the request of an attorney advising the
8 public body, and materials prepared or compiled with
9 respect to internal audits of public bodies.

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

13 (p) Administrative or technical information associated
14 with automated data processing operations, including but
15 not limited to software, operating protocols, computer
16 program abstracts, file layouts, source listings, object
17 modules, load modules, user guides, documentation
18 pertaining to all logical and physical design of
19 computerized systems, employee manuals, and any other
20 information that, if disclosed, would jeopardize the
21 security of the system or its data or the security of
22 materials exempt under this Section.

23 (q) Documents or materials relating to collective
24 negotiating matters between public bodies and their
25 employees or representatives, except that any final
26 contract or agreement shall be subject to inspection and
27 copying.

28 (r) Drafts, notes, recommendations and memoranda
29 pertaining to the financing and marketing transactions of
30 the public body. The records of ownership, registration,
31 transfer, and exchange of municipal debt obligations, and
32 of persons to whom payment with respect to these
33 obligations is made.

34 (s) The records, documents and information relating to
35 real estate purchase negotiations until those negotiations
36 have been completed or otherwise terminated. With regard to

1 a parcel involved in a pending or actually and reasonably
2 contemplated eminent domain proceeding under Article VII
3 of the Code of Civil Procedure, records, documents and
4 information relating to that parcel shall be exempt except
5 as may be allowed under discovery rules adopted by the
6 Illinois Supreme Court. The records, documents and
7 information relating to a real estate sale shall be exempt
8 until a sale is consummated.

9 (t) Any and all proprietary information and records
10 related to the operation of an intergovernmental risk
11 management association or self-insurance pool or jointly
12 self-administered health and accident cooperative or pool.

13 (u) Information concerning a university's adjudication
14 of student or employee grievance or disciplinary cases, to
15 the extent that disclosure would reveal the identity of the
16 student or employee and information concerning any public
17 body's adjudication of student or employee grievances or
18 disciplinary cases, except for the final outcome of the
19 cases.

20 (v) Course materials or research materials used by
21 faculty members.

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

24 (x) Information contained in or related to
25 examination, operating, or condition reports prepared by,
26 on behalf of, or for the use of a public body responsible
27 for the regulation or supervision of financial
28 institutions or insurance companies, unless disclosure is
29 otherwise required by State law.

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

32 (z) Manuals or instruction to staff that relate to
33 establishment or collection of liability for any State tax
34 or that relate to investigations by a public body to
35 determine violation of any criminal law.

36 (aa) Applications, related documents, and medical

1 records received by the Experimental Organ Transplantation
2 Procedures Board and any and all documents or other records
3 prepared by the Experimental Organ Transplantation
4 Procedures Board or its staff relating to applications it
5 has received.

6 (bb) Insurance or self insurance (including any
7 intergovernmental risk management association or self
8 insurance pool) claims, loss or risk management
9 information, records, data, advice or communications.

10 (cc) Information and records held by the Department of
11 Public Health and its authorized representatives relating
12 to known or suspected cases of sexually transmissible
13 disease or any information the disclosure of which is
14 restricted under the Illinois Sexually Transmissible
15 Disease Control Act.

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

18 (ee) Firm performance evaluations under Section 55 of
19 the Architectural, Engineering, and Land Surveying
20 Qualifications Based Selection Act.

21 (ff) Security portions of system safety program plans,
22 investigation reports, surveys, schedules, lists, data, or
23 information compiled, collected, or prepared by or for the
24 Regional Transportation Authority under Section 2.11 of
25 the Regional Transportation Authority Act or the St. Clair
26 County Transit District under the Bi-State Transit Safety
27 Act.

28 (gg) Information the disclosure of which is restricted
29 and exempted under Section 50 of the Illinois Prepaid
30 Tuition Act.

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

33 (ii) Beginning July 1, 1999, information that would
34 disclose or might lead to the disclosure of secret or
35 confidential information, codes, algorithms, programs, or
36 private keys intended to be used to create electronic or

1 digital signatures under the Electronic Commerce Security
2 Act.

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

7 (kk) Information and data concerning the distribution
8 of surcharge moneys collected and remitted by wireless
9 carriers under the Wireless Emergency Telephone Safety
10 Act.

11 (ll) Vulnerability assessments, security measures, and
12 response policies or plans that are designed to identify,
13 prevent, or respond to potential attacks upon a community's
14 population or systems, facilities, or installations, the
15 destruction or contamination of which would constitute a
16 clear and present danger to the health or safety of the
17 community, but only to the extent that disclosure could
18 reasonably be expected to jeopardize the effectiveness of
19 the measures or the safety of the personnel who implement
20 them or the public. Information exempt under this item may
21 include such things as details pertaining to the
22 mobilization or deployment of personnel or equipment, to
23 the operation of communication systems or protocols, or to
24 tactical operations.

25 (mm) Maps and other records regarding the location or
26 security of a utility's generation, transmission,
27 distribution, storage, gathering, treatment, or switching
28 facilities.

29 (nn) Law enforcement officer identification
30 information or driver identification information compiled
31 by a law enforcement agency or the Department of
32 Transportation under Section 11-212 of the Illinois
33 Vehicle Code.

34 (oo) Records and information provided to a residential
35 health care facility resident sexual assault and death
36 review team or the Residential Health Care Facility

1 Resident Sexual Assault and Death Review Teams Executive
2 Council under the Residential Health Care Facility
3 Resident Sexual Assault and Death Review Team Act.

4 (pp) Information provided to the predatory lending
5 database created pursuant to Article 3 of the Residential
6 Real Property Disclosure Act, except to the extent
7 authorized under that Article.

8 (qq) ~~(pp)~~ Defense budgets and petitions for
9 certification of compensation and expenses for court
10 appointed trial counsel as provided under Sections 10 and
11 15 of the Capital Crimes Litigation Act. This subsection
12 (qq) ~~(pp)~~ shall apply until the conclusion of the trial and
13 appeal of the case, even if the prosecution chooses not to
14 pursue the death penalty prior to trial or sentencing.

15 (rr) Information the disclosure of which is exempted
16 under the Viatical and Life Settlements Act of 2006.

17 (2) This Section does not authorize withholding of
18 information or limit the availability of records to the public,
19 except as stated in this Section or otherwise provided in this
20 Act.

21 (Source: P.A. 93-43, eff. 7-1-03; 93-209, eff. 7-18-03; 93-237,
22 eff. 7-22-03; 93-325, eff. 7-23-03, 93-422, eff. 8-5-03;
23 93-577, eff. 8-21-03; 93-617, eff. 12-9-03; 94-280, eff.
24 1-1-06; 94-508, eff. 1-1-06; 94-664, eff. 1-1-06; revised
25 8-29-05.)

26 Section 910. The Illinois Insurance Code is amended by
27 changing Section 424 as follows:

28 (215 ILCS 5/424) (from Ch. 73, par. 1031)

29 Sec. 424. Unfair methods of competition and unfair or
30 deceptive acts or practices defined. The following are hereby
31 defined as unfair methods of competition and unfair and
32 deceptive acts or practices in the business of insurance:

33 (1) The commission by any person of any one or more of the
34 acts defined or prohibited by Sections 134, 143.24c, 147, 148,

1 149, 151, 155.22, 155.22a, 236, 237, 364, and 469 of this Code.

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

6 (3) Making or permitting, in the case of insurance of the
7 types enumerated in Classes 1, 2, and 3 of Section 4, any
8 unfair discrimination between individuals or risks of the same
9 class or of essentially the same hazard and expense element
10 because of the race, color, religion, or national origin of
11 such insurance risks or applicants. The application of this
12 Article to the types of insurance enumerated in Class 1 of
13 Section 4 shall in no way limit, reduce, or impair the
14 protections and remedies already provided for by Sections 236
15 and 364 of this Code or any other provision of this Code.

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

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

22 (6) Engaging in any of the acts or practices prohibited by
23 the Viatical and Life Settlements Act of 2006.

24 (Source: P.A. 92-399, eff. 8-16-01; 92-651, eff. 7-11-02;
25 92-669, eff. 1-1-03.)

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

28 (815 ILCS 5/2.1) (from Ch. 121 1/2, par. 137.2-1)

29 Sec. 2.1. Security. "Security" means any note, stock,
30 treasury stock, bond, debenture, evidence of indebtedness,
31 certificate of interest or participation in any profit-sharing
32 agreement, collateral-trust certificate, preorganization
33 certificate or subscription, transferable share, investment
34 contract, viatical investment, investment fund share,

1 face-amount certificate, voting-trust certificate, certificate
2 of deposit for a security, fractional undivided interest in
3 oil, gas or other mineral lease, right or royalty, any put,
4 call, straddle, option, or privilege on any security,
5 certificate of deposit, or group or index of securities
6 (including any interest therein or based on the value thereof),
7 or any put, call, straddle, option, or privilege entered into,
8 relating to foreign currency, or, in general, any interest or
9 instrument commonly known as a "security", or any certificate
10 of interest or participation in, temporary or interim
11 certificate for, receipt for, guarantee of, or warrant or right
12 to subscribe to or purchase, any of the foregoing. "Security"
13 does not mean a mineral investment contract or a mineral
14 deferred delivery contract; provided, however, the Department
15 shall have the authority to regulate these contracts as
16 hereinafter provided.

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

18 (815 ILCS 5/2.33 new)

19 Sec. 2.33. Viatical investment. "Viatical investment"
20 means the contractual right to receive any portion of the death
21 benefit or ownership of a life insurance policy or certificate
22 for consideration that is less than the expected death benefit
23 of the life insurance policy or certificate. "Viatical
24 investment" does not include:

25 (1) any transaction between a viator and a viatical
26 settlement provider, as defined in the Viatical and Life
27 Settlements Act of 2006;

28 (2) any transfer of ownership or beneficial interest in
29 a life insurance policy from a viatical settlement provider
30 to another viatical settlement provider, as defined in the
31 Viatical and Life Settlements Act of 2006, or to any legal
32 entity formed solely for the purpose of holding ownership
33 or beneficial interest in a life insurance policy or
34 policies;

35 (3) the bona fide assignment of a life insurance policy

1 to a bank, savings bank, savings and loan association,
2 credit union, or other licensed lending institution as
3 collateral for a loan; or

4 (4) a policy loan by a life insurance company or the
5 exercise of accelerated benefits pursuant to the terms of a
6 life insurance policy issued in accordance with the
7 Illinois Insurance Code.

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

10 Section 999. Effective date. This Act takes effect upon
11 becoming law.