



**Filed: 2/23/2005**

09400SB0505sam001

LRB094 10764 LJB 41488 a

1 AMENDMENT TO SENATE BILL 505

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 505 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the  
5 Viatical and Life Settlements Act of 2005.

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, or pledging of viatical settlement contracts.

22 "Chronically ill" means:

23 (1) having a level of disability as determined by the  
24 Secretary of Health and Human Services or being unable to

1 perform at least 2 activities of daily living, including,  
2 but not limited to, eating, toileting, transferring,  
3 bathing, dressing, or continence; or

4 (2) requiring substantial supervision to protect the  
5 individual from threats to health and safety due to severe  
6 cognitive impairment.

7 "Department" means the Department of Financial and  
8 Professional Regulation.

9 "Financing entity" means an underwriter, placement agent,  
10 lender, purchaser of securities, purchaser of a policy or  
11 certificate from a viatical settlement provider, credit  
12 enhancer, or an entity that has a direct ownership in a policy  
13 that is the subject of a viatical settlement contract and:

14 (1) whose principal activity related to the  
15 transaction is providing funds to effect the viatical  
16 settlement or purchase of one or more purchased policies;  
17 and

18 (2) who has an agreement in writing with one or more  
19 licensed viatical settlement providers to finance the  
20 acquisition of viatical settlement contracts or to provide  
21 stop loss insurance.

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

23 "Fraudulent viatical settlement act" includes:

24 (1) Acts or omissions committed by a person who,  
25 knowingly or with intent to defraud for the purpose of  
26 depriving another of property or for pecuniary gain,  
27 commits or permits its employees or its agents to engage in  
28 acts including:

29 (A) presenting, causing to be presented, or  
30 preparing with knowledge or belief that it will be  
31 presented to or by a viatical settlement provider,  
32 financing entity, insurer, insurance producer, or  
33 another person, false material information or  
34 concealing material information as part of, in support

1 of, or concerning a fact material to one or more of the  
2 following:

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

5 (ii) the underwriting of a viatical settlement  
6 contract or policy;

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

9 (iv) premiums paid on a policy;

10 (v) payments and changes in ownership or  
11 beneficiary made in accordance with the terms of a  
12 viatical settlement contract or policy;

13 (vi) the reinstatement or conversion of a  
14 policy;

15 (vii) in the solicitation, offer,  
16 effectuation, or sale of a viatical settlement  
17 contract or policy;

18 (viii) the issuance of written evidence of  
19 viatical settlement contract or insurance; or

20 (ix) a financing transaction;

21 (B) employing any device, scheme, or artifice to  
22 defraud related to purchased policies.

23 (2) In the furtherance of a fraud or to prevent the  
24 detection of a fraud a person commits or permits its  
25 employees or its agents to:

26 (A) remove, conceal, alter, destroy, or sequester  
27 from the Secretary the assets or records of a licensee  
28 or other person engaged in the business of viatical  
29 settlements;

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

33 (C) transact the business of viatical settlements  
34 in violation of laws requiring a license, certificate

1 of authority, or other legal authority for the  
2 transaction of the business of viatical settlements;  
3 or

4 (D) file with the Secretary or the chief insurance  
5 regulatory official of another jurisdiction a document  
6 containing false information or otherwise conceals  
7 information about a material fact from the Secretary.

8 (3) Embezzlement, theft, misappropriation, or  
9 conversion of monies, funds, premiums, credits, or other  
10 property of a viatical settlement provider, life insurance  
11 producer, insurer, insured, viator, policyowner, or  
12 another person engaged in the business of viatical  
13 settlements or insurance.

14 (4) Recklessly entering into, negotiating, or  
15 otherwise dealing in a viatical settlement contract, the  
16 subject of which is a policy that was obtained by  
17 presenting false information concerning a fact material to  
18 the policy, or by concealing, for the purpose of misleading  
19 another, information concerning a fact material to the  
20 policy, where the viator or the viator's agent intended to  
21 defraud the insurance company that issued the policy.  
22 "Recklessly" means engaging in the conduct in conscious and  
23 clearly unjustifiable disregard of a substantial  
24 likelihood of the existence of the relevant facts or risks,  
25 this disregard involving a gross deviation from acceptable  
26 standards of conduct.

27 (5) Attempting to commit, assist, aid, or abet in the  
28 commission of or conspiracy to commit the acts or omissions  
29 specified in this definition.

30 "Licensee" means any viatical settlement provider or  
31 viatical settlement broker licensed in this State.

32 "Life insurance producer" means a person licensed as a  
33 resident or nonresident insurance producer pursuant to Article  
34 XXXI of the Illinois Insurance Code who has received

1 qualification for life insurance coverage or a life line of  
2 coverage pursuant to Section 500-35 of the Illinois Insurance  
3 Code.

4 "Person" means any natural or artificial entity including,  
5 but not limited to, individuals, partnerships, limited  
6 liability company, associations, trusts, or corporations.

7 "Policy" means an individual or group policy, group  
8 certificate, contract, or arrangement of life insurance  
9 affecting the rights of a resident of this State or bearing a  
10 reasonable relation to this State, regardless of whether  
11 delivered or issued for delivery in this State.

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

25 "Secretary" means the Secretary of Financial and  
26 Professional Regulation.

27 "Special purpose entity" means a corporation, partnership,  
28 trust, limited liability company, or other similar entity  
29 formed only to provide, directly or indirectly, access to  
30 institutional capital markets for a financing entity or  
31 licensed viatical settlement provider.

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

34 "Viatical settlement contract" means a written agreement

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

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 pursuant to 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;

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

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

9 viatical settlement provider, directly or indirectly, that has

10 been acquired by a viatical settlement provider pursuant to a

11 viatical settlement contract.

12           "Viator" means a person who is a resident of this State,

13 who enters or seeks to enter into a viatical settlement

14 contract. For the purposes of this Act, a viator is not limited

15 to an owner of a policy insuring the life of an individual with

16 a terminal or chronic illness or condition except where

17 specifically addressed. If there is more than one owner on a

18 single policy and the owners are residents of different states,

19 the transaction shall be governed by the law of the state in

20 which the owner having the largest percentage ownership resides

21 or, if the owners hold equal ownership, the state of residence

22 of one owner agreed upon in writing by all owners. Viator does

23 not include:

- 24           (1) a licensee as provided by this Act, including a
- 25 life insurance producer;
- 26           (2) an accredited investor or qualified institutional
- 27 buyer as defined, respectively, in Regulation D, Rule 501
- 28 or Rule 144A of the Federal Securities Act of 1933, as
- 29 amended;
- 30           (3) a financing entity;
- 31           (4) a special purpose entity; or
- 32           (5) a related provider trust.

33           Section 10. License Requirements.

1 (a) A person shall not negotiate viatical settlement  
2 contracts between a viator and one or more viatical settlement  
3 providers or otherwise act on behalf of a viator unless the  
4 person is a life insurance producer.

5 (b) A life insurance producer, as defined in this Act, who  
6 has been licensed for at least one year, shall be permitted to  
7 negotiate, as defined in Section 500-10 of the Illinois  
8 Insurance Code, viatical settlement contracts between a viator  
9 and one or more viatical settlement providers. For purposes of  
10 this Section, the one year requirement is deemed to be  
11 satisfied if the person has been licensed as a resident life  
12 insurance producer in his or her home state for at least one  
13 year. Not later than 30 days from the first day of negotiating  
14 a viatical settlement contract on behalf of a viator, the life  
15 insurance producer shall notify the Secretary of the activity  
16 on a form prescribed by the Secretary, and shall pay any  
17 applicable fees as determined by the Secretary. Notification  
18 must include an acknowledgment by the producer that he or she  
19 will operate in accordance with this Act.

20 Irrespective of the manner in which the life insurance  
21 producer is compensated, a life insurance producer is deemed to  
22 represent only the viator and owes a fiduciary duty to the  
23 viator to act according to the viator's instructions and in the  
24 best interests of the viator.

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

33 (d) A person shall not operate as a viatical settlement  
34 provider in this State without first having obtained a viatical



1 settlement provider license from the Secretary.

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

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

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

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

31 (h) Upon the filing of an application for a viatical  
32 settlement provider's license and the payment of the license  
33 fee, the Secretary shall make an investigation of the applicant  
34 for license as a viatical settlement provider and may issue a

1 license if the 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 revocation.

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

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

31 (2) the licensee or any officer, partner, member, or  
32 key management personnel has been convicted of fraudulent  
33 or dishonest practices, is subject to a final

1 administrative action, or is otherwise shown to be  
2 untrustworthy or incompetent;

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

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

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

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

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

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

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

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

33 (c) Before the Secretary denies a license application or  
34 suspends, revokes, or refuses to renew the license of a

1 viatical settlement provider or life insurance producer the  
2 Secretary shall conduct a hearing in accordance with the  
3 Illinois Administrative Procedure Act.

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

16 Section 25. Reporting requirements.

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

25 (b) Except as otherwise allowed or required by law, a  
26 viatical settlement provider, life insurance producer,  
27 information bureau, rating agency or company, or another person  
28 with actual knowledge of a viator or insured's identity may not  
29 disclose the identity or the viator's or insured's financial or  
30 medical information to another person unless the disclosure is:

31 (1) necessary to effect a viatical settlement contract  
32 between the viator and a viatical settlement provider and

1 the viator or insured or both, as may be required, have  
2 provided prior written consent to the disclosure;

3 (2) provided in response to an investigation or  
4 examination by the Secretary or another governmental  
5 officer or agency;

6 (3) a term of or condition to the transfer of a policy  
7 by one viatical settlement provider to another viatical  
8 settlement provider;

9 (4) necessary to permit a financing entity, related  
10 provider trust, or special purpose entity to finance the  
11 purchase of policies by a viatical settlement provider and  
12 the viator and insured have provided prior written consent  
13 to the disclosure;

14 (5) necessary to allow the viatical settlement  
15 provider or their authorized representatives to make  
16 contacts for the purpose of determining health status; or

17 (6) required to purchase stop loss coverage.

18 Section 30. Examination of applicants and licensees.

19 (a) The Secretary may conduct an examination of a licensee  
20 as often as the Secretary in his or her sole discretion deems  
21 appropriate.

22 For purposes of completing an examination of a licensee  
23 under this Act, the Secretary may examine or investigate any  
24 person, or the business of any person, insofar as the  
25 examination or investigation is, in the sole discretion of the  
26 Secretary, necessary or material to the examination of the  
27 licensee.

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

33 (b) A person required to be licensed by this Act shall for

1 5 years retain copies of:

2 (1) proposed, offered, or executed contracts,  
3 underwriting documents, policy forms, and applications  
4 from the date of the proposal, offer, or execution of the  
5 contract, which ever is later;

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

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

11 This subsection (b) does not relieve a person of the  
12 obligation to produce these documents to the Secretary after  
13 the retention period has expired if the person has retained the  
14 documents.

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

20 (c) Upon determining that an examination should be  
21 conducted, the Secretary shall issue an examination warrant  
22 appointing one or more examiners to perform the examination and  
23 instructing them as to the scope of the examination. In  
24 conducting the examination, the examiner shall observe those  
25 guidelines and procedures set forth in the Examiners' Handbook  
26 adopted by the National Association of Insurance Commissioners  
27 (NAIC). The Secretary may also employ other guidelines or  
28 procedures as the Secretary may deem appropriate.

29 Every licensee or person from whom information is sought  
30 and its officers, directors, and agents shall provide to the  
31 examiners timely, convenient, and free access at all reasonable  
32 hours at its offices to all books, records, accounts, papers,  
33 documents, assets, and computer or other recordings relating to  
34 the property, assets, business, and affairs of the licensee

1 being examined. The officers, directors, employees, and agents  
2 of the licensee or person shall facilitate the examination and  
3 aid in the examination so far as it is in their power to do so.  
4 The refusal of a licensee by its officers, directors,  
5 employees, or agents, to submit to examination or to comply  
6 with any reasonable written request of the Secretary shall be  
7 grounds for suspension or refusal to renew of any license or  
8 authority held by the licensee to engage in the viatical  
9 settlement business or other business subject to the  
10 Secretary's jurisdiction. Any proceedings for suspension,  
11 revocation, or refusal of any license or authority shall be  
12 conducted pursuant to 401.1 of the Illinois Insurance Code.

13 The Secretary or any of his or her examiners shall have the  
14 power to issue subpoenas, to administer oaths, and to examine  
15 under oath any person as to any matter pertinent to the  
16 examination. Subpoenas may be enforced under the provisions of  
17 Section 403 of the Illinois Insurance Code.

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

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

30 (e) Nothing contained in this Act shall be construed to  
31 limit the Secretary's authority to use and, if appropriate, to  
32 make public any final or preliminary examination report, any  
33 examiner or licensee workpapers or other documents, or any  
34 other information discovered or developed during the course of

1 any examination in the furtherance of any legal or regulatory  
2 action that the Secretary may, in his or her sole discretion,  
3 deem appropriate.

4 (f) The licensee shall pay the charges incurred in the  
5 examination, including the expenses of the Secretary or his  
6 designee and the expenses and compensation of the Secretary's  
7 examiners and assistants. If a licensee believes the fees  
8 assessed are unreasonable in relation to the examination  
9 performed, the licensee may appeal the assessments pursuant to  
10 the Illinois Administrative Procedure Act. If no hearing is  
11 requested, or if after a hearing and appeal process the  
12 licensee refuses or fails to pay, the Secretary or his or her  
13 designee shall promptly institute a civil action to recover the  
14 expenses of examination against a licensee. Examination fees  
15 must be retained by the Department and shall be considered  
16 "other funds".

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

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

33 Within 30 days after the end of the period allowed for the  
34 receipt of written submissions or rebuttals the Secretary shall



1 fully consider and review the report, together with any written  
2 submissions or rebuttals and any relevant portions of the  
3 examiner's workpapers and enter an order doing one of the  
4 following:

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

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

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

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

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

34 (1) Any hearing conducted pursuant to this Section by

1 the Secretary or the Secretary's authorized representative  
2 shall be conducted as a nonadversarial confidential  
3 investigatory proceeding as necessary for the resolution  
4 of any inconsistencies, discrepancies, or disputed issues  
5 apparent upon the face of the filed examination report or  
6 raised by or as a result of the Secretary's review of  
7 relevant workpapers or by the written submission or  
8 rebuttal of the company. Within 20 days of the conclusion  
9 of any hearing, the Secretary shall enter an order pursuant  
10 to paragraph (1) of subsection (h) of this Section.

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

29 (3) The hearing shall proceed with the Secretary or the  
30 Secretary's representative posing questions to the persons  
31 subpoenaed. Thereafter, the company and the Secretary may  
32 present testimony relevant to the investigation.  
33 Cross-examination may be conducted only by the Secretary or  
34 the Secretary's representative. The company and the

1 Secretary shall be permitted to make closing statements and  
2 may be represented by the counsel of their choice.

3 (j) In the event the Secretary determines that regulatory  
4 action is appropriate as a result of an examination, the  
5 Secretary may initiate any proceedings or actions provided by  
6 law.

7 (k) Names and individual identification data for all  
8 viators shall be considered private and confidential  
9 information and shall not be disclosed by the Secretary unless  
10 required by law.

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

23 The Secretary is authorized to use the documents,  
24 materials, or other information in the furtherance of any  
25 regulatory or legal action brought as part of the Secretary's  
26 official duties.

27 Documents, materials, or other information, including, but  
28 not limited to, all working papers and copies thereof, in the  
29 possession or control of the NAIC and its affiliates and  
30 subsidiaries are:

31 (1) confidential by law and privileged;

32 (2) not subject to subpoena; and

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

1 (A) created, produced or obtained by or disclosed  
2 to the NAIC and its affiliates and subsidiaries in the  
3 course of assisting an examination made under this Act  
4 or assisting the Secretary in the analysis or  
5 investigation of the financial condition or market  
6 conduct of a licensee; or

7 (B) disclosed to the NAIC and its affiliates and  
8 subsidiaries under this subsection (k) by the  
9 Secretary.

10 The Secretary or any person that received the documents,  
11 material, or other information while acting under the authority  
12 of the Secretary, including, but not limited to, the NAIC and  
13 its affiliates and subsidiaries, is permitted to testify in any  
14 private civil action concerning any confidential documents,  
15 materials, or information subject to this subsection (k).

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

18 (1) share documents, materials, or other information,  
19 including the confidential and privileged documents,  
20 materials, or information subject to subsection (k) of this  
21 Section, with other state, federal, and international  
22 regulatory agencies, with the NAIC and its affiliates and  
23 subsidiaries, and with state, federal, and international  
24 law enforcement authorities, provided that the recipient  
25 agrees to maintain the confidentiality and privileged  
26 status of the document, material, communication, or other  
27 information;

28 (2) receive documents, materials, communications, or  
29 information, including otherwise confidential and  
30 privileged documents, materials, or information, from the  
31 NAIC and its affiliates and subsidiaries and from  
32 regulatory and law enforcement officials of other foreign  
33 or domestic jurisdictions, and shall maintain as  
34 confidential or privileged any document, material, or

1 information received with notice or the understanding that  
2 it is confidential or privileged under the laws of the  
3 jurisdiction that is the source of the document, material,  
4 or information; and

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

7 (m) No waiver of any applicable privilege or claim of  
8 confidentiality in the documents, materials, or information  
9 shall occur as a result of disclosure to the Secretary under  
10 this Section or as a result of sharing as authorized in  
11 subsection (l) of this Section.

12 (n) A privilege established under the law of any state or  
13 jurisdiction that is substantially similar to the privilege  
14 established under this Section shall be available and enforced  
15 in any proceeding in and in any court of this State.

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

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

32 (1) a viator;

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

34 (3) a beneficiary in an insurance policy that is

1 proposed to be the subject of a viatical settlement  
2 contract.

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

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

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

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

27 A person identified in this subsection (r) shall be  
28 entitled to an award of attorney's fees and costs if he or she  
29 is the prevailing party in a civil cause of action for libel,  
30 slander, or any other relevant tort arising out of activities  
31 in carrying out the provisions of this Section and the party  
32 bringing the action was not substantially justified in doing  
33 so. For purposes of this Section, a proceeding is  
34 "substantially justified" if it had a reasonable basis in law

1 or fact at the time that it was initiated.

2 (s) The Secretary may investigate suspected fraudulent  
3 viatical settlement acts and persons engaged in the business of  
4 viatical settlements.

5 Section 35. Disclosure.

6 (a) With each application for a viatical settlement  
7 contract, a viatical settlement provider or life insurance  
8 producer shall provide the viator with at least the following  
9 disclosures no later than the time the viatical settlement  
10 contract is signed by all parties. The disclosures must be  
11 provided in a separate document that is signed by the viator  
12 and the viatical settlement provider or life insurance  
13 producer, and shall provide the following information:

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

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

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

24 (4) That receipt of the proceeds of a viatical  
25 settlement contract may adversely affect the viator's  
26 eligibility for Medicaid or other government benefits or  
27 entitlements, and advice may be obtained from the  
28 appropriate government agencies.

29 (5) That the viator has the right to rescind a viatical  
30 settlement contract before the earlier of 30 calendar days  
31 after the date the viatical settlement contract is executed  
32 by all parties or for 15 calendar days after the receipt of  
33 the viatical settlement proceeds by the viator.

1       Rescission, if exercised by the viator, is effective only  
2       if both notice of the rescission is given and repayment of  
3       all proceeds and any premiums, loans, and loan interest to  
4       the viatical settlement provider is made within the  
5       rescission period. If the insured dies during the  
6       rescission period, the viatical settlement contract is  
7       deemed to have been rescinded, subject to repayment being  
8       made to the viatical settlement provider within the  
9       rescission period of all viatical settlement proceeds and  
10      any premiums, loans, and loan interest.

11       (6) That funds must be sent to the viator within 3  
12      business days after the viatical settlement provider has  
13      received the insurer or group administrator's  
14      acknowledgment that ownership of the purchased policy has  
15      been transferred and the beneficiary has been designated.

16       (7) That entering into a viatical settlement contract  
17      may cause other rights or benefits, including conversion  
18      rights and waiver of premium benefits that may exist under  
19      the policy, to be forfeited by the viator. Assistance may  
20      be sought from a financial adviser.

21       (8) That the disclosure to a viator must include  
22      distribution of a brochure, approved by the Secretary,  
23      describing the process of viatical settlements.

24       (9) That the disclosure document must contain the  
25      following language: "All medical, financial, or personal  
26      information solicited or obtained by a viatical settlement  
27      provider or a life insurance producer about an insured,  
28      including the insured's identity or the identity of family  
29      members, a spouse, or a significant other may be disclosed  
30      as necessary to effect the viatical settlement contract  
31      between the viator and the viatical settlement provider. If  
32      you are asked to provide this information, you will be  
33      asked to consent to the disclosure. The information may be  
34      provided to someone who buys the policy or provides funds



1 for the purchase. You may be asked to renew your permission  
2 to share information every 2 years.".

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

10 (b) A viatical settlement provider shall provide the viator  
11 with at least the following disclosures no later than the date  
12 the viatical settlement contract is signed by all parties. The  
13 disclosures must be displayed conspicuously in the viatical  
14 settlement contract or in a separate document signed by the  
15 viator and the viatical settlement provider, and provide the  
16 following information:

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

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

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

31 (4) The dollar amount of the current death benefit  
32 payable to the viatical settlement provider under the  
33 policy. If known, the viatical settlement provider also  
34 shall disclose the availability of additional guaranteed

1 insurance benefits, the dollar amount of accidental death  
2 and dismemberment benefits under the policy or  
3 certificate, and the viatical settlement provider's  
4 interest in those benefits.

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

9 (c) If the viatical settlement provider transfers  
10 ownership or changes the beneficiary of the policy, the  
11 viatical settlement provider shall communicate the change in  
12 ownership or beneficiary to the insured within 20 days after  
13 the change.

14 (d) With respect to each policy issued by an insurance  
15 company, the insurance company shall send written notice to the  
16 owner of a policy, where the insured person under such policy  
17 is age 60 or older or is known to be terminally ill or  
18 chronically ill, that a viatical settlement contract is an  
19 available alternative transaction to the owner at the time of  
20 each of the following:

21 (1) when an insurance company receives from the owner a  
22 request to surrender, in whole or in part, a policy;

23 (2) when an insurance company receives from the owner a  
24 request to receive an accelerated death benefit under a  
25 policy;

26 (3) when an insurance company receives from the owner a  
27 request collaterally to assign a policy as security for a  
28 loan;

29 (4) when an insurance company sends to the owner a  
30 notice of lapse of a policy; or

31 (5) at any other time that the Secretary may require by  
32 rule.

33 Section 40. General rules.

1 (a) A viatical settlement provider entering into a viatical  
2 settlement contract shall first obtain:

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

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

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

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

1 terminal or chronic illness or condition and that the terminal  
2 or chronic illness or condition was diagnosed after the policy  
3 was issued.

4 (d) If a life insurance producer performs any of these  
5 activities required of the viatical settlement provider, the  
6 viatical settlement provider is deemed to have fulfilled the  
7 requirements of this Section.

8 (e) Medical information solicited or obtained by a licensee  
9 is subject to the applicable provisions of State law relating  
10 to confidentiality of medical or protected health information.

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

26 (g) The viatical settlement provider shall instruct the  
27 viator to send the executed documents required to effect the  
28 change in ownership, assignment, or change in beneficiary  
29 directly to the independent escrow agent. Within 3 business  
30 days after the date the escrow agent receives the documents, or  
31 within 3 days after the date the viatical settlement provider  
32 receives the documents if the viator erroneously provides the  
33 documents directly to the viatical settlement provider, the  
34 viatical settlement provider shall pay or transfer the proceeds

1 of the viatical settlement contract into an escrow or trust  
2 account maintained in a State or federally chartered financial  
3 institution whose deposits are insured by the Federal Reserve  
4 System. Upon payment of the viatical settlement proceeds into  
5 the escrow account, the escrow agent shall deliver the original  
6 change in ownership, assignment, or change in beneficiary forms  
7 to the viatical settlement provider or related provider trust.  
8 Upon the escrow agent's receipt of the acknowledgment of the  
9 properly completed transfer of ownership, assignment, or  
10 designation of beneficiary from the insurance company, the  
11 escrow agent shall pay the viatical settlement proceeds to the  
12 viator.

13 (h) Failure to tender consideration to the viator for the  
14 viatical settlement by contract within the time disclosed  
15 pursuant to this Code renders the viatical settlement contract  
16 voidable by the viator for lack of consideration until the time  
17 consideration is tendered to and accepted by the viator.

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

33 Section 45. Authority to adopt rules.

1 (a) The Secretary shall have the authority to do all the  
2 following:

3 (1) Issue rules implementing this Act.

4 (2) Establish standards for evaluating reasonableness  
5 of payments under a viatical settlement contract for a  
6 person who is terminally or chronically ill. This authority  
7 includes, but is not limited to, regulation of discount  
8 rates used to determine the amount paid in exchange for  
9 assignment, transfer, sale, devise, or bequest of a benefit  
10 under a policy. A viatical settlement provider, where the  
11 insured is not terminally or chronically ill, shall pay an  
12 amount greater than the cash surrender value or accelerated  
13 death benefit then available.

14 (3) Establish appropriate licensing requirements,  
15 fees, and standards for continued licensure for a viatical  
16 settlement provider and a fee for life insurance producers.

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

19 (5) Adopt rules governing the relationship and  
20 responsibilities of an insurer and a viatical settlement  
21 provider, life insurance producer, and others in the  
22 business of viatical settlements during the period of  
23 consideration or effectuation of a viatical settlement  
24 contract.

25 (b) Any rules adopted pursuant to the authority granted in  
26 the Viatical Settlements Act shall remain in effect until  
27 repealed or modified by rules adopted by the Secretary pursuant  
28 to this Act.

29 Section 50. Application.

30 (a) A viatical settlement provider lawfully transacting  
31 business in this State or licensed in this State on the  
32 effective date of this Act may continue to do so pending  
33 approval or disapproval of the viatical settlement provider's

1 application for a license under this Act as long as the  
2 application is filed with the Secretary not later than 30 days  
3 after notification to the viatical settlement provider by the  
4 Secretary of the publication of an application form for  
5 licensure.

6 (b) A person who has lawfully negotiated viatical  
7 settlement contracts between a viator and one or more viatical  
8 settlement providers in this State for at least one year  
9 immediately prior to the effective date of this Act may  
10 continue to negotiate viatical settlements in this State for a  
11 period of one year from the effective date of this Act,  
12 provided that the person registers with the Secretary on a form  
13 that may be prescribed by the Secretary. The registration form  
14 shall be published by the Secretary not later than 30 days from  
15 the effective date of this Act and shall require a person  
16 registering to evidence that he or she has lawfully negotiated  
17 viatical settlement contracts and include an acknowledgment by  
18 the person that he or she will operate in accordance with and  
19 comply with this Act.

20 Section 55. Violations. It is a violation of this Act  
21 for a person to enter into a viatical settlement contract  
22 within a 2-year period commencing with the date of issuance of  
23 the policy unless the viator certifies to the viatical  
24 settlement provider that one or more of the following  
25 conditions have been met within the 2-year period:

26 (1) The policy was issued upon the viator's exercise of  
27 conversion rights arising out of a group or individual  
28 policy, provided the total of the time covered under the  
29 conversion policy plus the time covered under the prior  
30 policy is at least 24 months. The time covered under a  
31 group policy must be calculated without regard to a change  
32 in insurance carriers, provided the coverage has been  
33 continuous and under the same group sponsorship.

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

5                 (A) the viator or insured is terminally or  
6                 chronically ill; or

7                 (B) the viator or insured disposes of his ownership  
8                 interests in a closely held corporation, pursuant to  
9                 the terms of a buyout or other similar agreement in  
10                effect at the time the insurance policy was initially  
11                issued.

12           Copies of the independent evidence described in paragraph  
13           (2) of this Section and documents required by this Act must be  
14           submitted to the insurer when the viatical settlement provider  
15           submits a request to the insurer for verification of coverage.  
16           The copies must be accompanied by a letter of attestation from  
17           the viatical settlement provider that the copies are true and  
18           correct copies of the documents received by the viatical  
19           settlement provider.

20           If the viatical settlement provider submits to the insurer  
21           a copy of independent evidence provided for in paragraph (2) of  
22           this Section when the viatical settlement provider submits a  
23           request to the insurer to effect the transfer of the policy to  
24           the viatical settlement provider, the copy is deemed to  
25           conclusively establish that the viatical settlement contract  
26           satisfies the requirements of this Section and the insurer  
27           shall respond timely to the request.

28           Section 60. Advertisements.

29           (a) The purpose of this Section is to provide a prospective  
30           viator with clear and unambiguous statements in the  
31           advertisement of a viatical settlement contract and to assure  
32           the clear, truthful, and adequate disclosure of the benefits,  
33           risks, limitations, and exclusions of a viatical settlement



1 contract. This purpose is to be accomplished by the  
2 establishment of guidelines and standards of permissible and  
3 impermissible conduct in the advertising of a viatical  
4 settlement contract to assure that a product description is  
5 presented in a manner that prevents unfair, deceptive, or  
6 misleading advertising and is conducive to accurate  
7 presentation and description of a viatical settlement contract  
8 through the advertising media and material used by a licensee.

9 (b) This Section applies to an advertising of a viatical  
10 settlement contract or a related product or service intended  
11 for dissemination in this State, including Internet  
12 advertising viewed by a person located in this State. Where  
13 disclosure requirements are established pursuant to federal  
14 regulation, this Section must be interpreted so as to minimize  
15 or eliminate conflict with federal regulation wherever  
16 possible.

17 (c) Each viatical settlement licensee shall establish and  
18 at all times maintain a system of control over the content,  
19 form, and method of dissemination of an advertisement of its  
20 contracts, products, and services. An advertisement,  
21 regardless of who wrote, created, designed, or presented, is  
22 the responsibility of the licensee, as well as the individual  
23 who created or presented the advertisement. A system of control  
24 by the licensee must include regular routine notification at  
25 least once a year to agents and others authorized to  
26 disseminate advertisements of the requirements and procedures  
27 for approval before the use of an advertisement not furnished  
28 by the licensee.

29 (d) An advertisement must be truthful and not misleading in  
30 fact or by implication. The form and content of an  
31 advertisement of a viatical settlement contract must be  
32 sufficiently complete and clear so as to avoid deception. It  
33 shall not have the capacity or tendency to mislead or deceive.  
34 Whether an advertisement has the capacity or tendency to

1 mislead or deceive shall be determined by the Secretary from  
2 the overall impression that the advertisement may be reasonably  
3 expected to create upon a person of average education or  
4 intelligence within the segment of the public to which it is  
5 directed.

6 (e) The information required to be disclosed pursuant to  
7 the provisions of this Section may not be minimized, rendered  
8 obscure, or presented in an ambiguous fashion or intermingled  
9 with the text of the advertisement so as to be confusing or  
10 misleading.

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

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

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

30 (4) The words "free", "no cost", "without cost", "no  
31 additional cost", "at no extra cost", or words of similar  
32 import may not be used with respect to a benefit or service  
33 unless true. An advertisement may specify the charge for a  
34 benefit or service or may state that a charge is included

1 in the payment or use other appropriate language.

2 (5) Any testimonial, appraisal, or analysis used in an  
3 advertisement must:

4 (A) be genuine;

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

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

8 (D) be accurately reproduced with sufficient  
9 completeness to avoid misleading or deceiving  
10 prospective viators as to the nature or scope of any  
11 testimonial, appraisal, analysis, or endorsement.

12 In using any testimonial, appraisal, or analysis, the  
13 viatical settlement licensee makes as its own all the  
14 statements contained in them, and the statements are  
15 subject to all the provisions of this Section.

16 If the individual making a testimonial, appraisal,  
17 analysis, or an endorsement has a financial interest in the  
18 viatical settlement provider or related entity as a  
19 stockholder, director, officer, employee, or otherwise or  
20 receives a benefit, directly or indirectly, other than  
21 required union scale wages, that fact must be disclosed  
22 prominently in the advertisement.

23 An advertisement may not state or imply that a viatical  
24 settlement contract, benefit, or service has been approved  
25 or endorsed by a group of individuals, society,  
26 association, or other organization, unless that is the fact  
27 and unless any relationship between an organization and the  
28 licensee is disclosed. If the entity making the endorsement  
29 or testimonial is owned, controlled, or managed by the  
30 licensee or receives payment or other consideration from  
31 the licensee for making an endorsement or testimonial, that  
32 fact must be disclosed in the advertisement.

33 If an endorsement refers to benefits received under a  
34 viatical settlement contract, all pertinent information

1 must be retained for a period of 5 years after its use.

2 (f) An advertisement may not contain statistical  
3 information unless it accurately reflects recent and relevant  
4 facts. The source of all statistics used in an advertisement  
5 must be identified.

6 (g) An advertisement may not disparage insurers, viatical  
7 settlement providers, insurance producers, policies, services,  
8 or methods of marketing.

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

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

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

34 (k) An advertisement may state that a licensee is licensed

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

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

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

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

26 (1) a licensee or its business practices or methods of  
27 operation;

28 (2) the merits, desirability, or advisability of a  
29 viatical settlement contract;

30 (3) any viatical settlement contract; or

31 (4) any policy or life insurance company.

32 (o) If the advertiser emphasizes the speed with which the  
33 viatical settlement contract occurs, the advertising must  
34 disclose the average time frame from completed application to

1 the date of offer and from acceptance of the offer to receipt  
2 of the funds by the viator.

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

7 Section 65. Fraudulent viatical settlement acts.

8 (a) A person may not commit a fraudulent viatical  
9 settlement act.

10 (b) A person, knowingly or intentionally, may not interfere  
11 with the enforcement of the provisions of this Act or  
12 investigations of suspected or actual violations of this  
13 chapter.

14 (c) A person in the business of viatical settlements may  
15 not knowingly or intentionally permit a person convicted of a  
16 felony involving dishonesty or breach of trust to participate  
17 in the business of viatical settlements.

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

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

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

1 Secretary.

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

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

13 (A) the Secretary or the Secretary's employees,  
14 agents, or representatives;

15 (B) federal, state, or local law enforcement or  
16 regulatory officials or their employees, agents, or  
17 representatives;

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

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

28 (E) the insurer that issued the policy covering the  
29 life of the insured.

30 This subsection (f) does not apply to a statement made with  
31 actual malice. In an action brought against a person for filing  
32 a report or furnishing other information concerning a  
33 fraudulent viatical settlement act or a fraudulent insurance  
34 act, the party bringing the action shall plead specifically any

1 allegation that this subsection (f) does not apply because the  
2 person filing the report or furnishing the information did so  
3 with actual malice.

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

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

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

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

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

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

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



1 viatical settlement acts, or to the NAIC; or

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

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

8 (h) This Act does not:

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

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

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

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

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

1           (2) An anti-fraud plan that is submitted to the  
2 Secretary. The anti-fraud plan must include, but not be  
3 limited to:

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

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

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

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

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

25           Section 70. Additional penalties.

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

33           (b) A person damaged by the acts of a person in violation

1 of this Act may bring a civil action against the person  
2 committing the violation in a court of competent jurisdiction.

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

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

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

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

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

1 transaction in which the value of viatical settlement contract:

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

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

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

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

10 (h) A person convicted of a fraudulent viatical settlement  
11 act must be ordered to pay restitution to a person aggrieved by  
12 the fraudulent viatical settlement act. Restitution must be  
13 ordered in addition to a fine or imprisonment but not instead  
14 of a fine or imprisonment.

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

27 Section 75. Unfair trade practice.

28 (a) It is unlawful for any person or entity licensed under  
29 this Act or any person or entity licensed under the Insurance  
30 Code to prohibit, restrict, limit, or impair a licensed life  
31 insurance producer from lawfully negotiating a viatical  
32 settlement on behalf of a viator, aiding and assisting a viator  
33 with a viatical settlement, or otherwise participating in a

1 viatical settlement transaction under this part or to engage in  
2 any transaction, act, practice, or course of business or  
3 dealing which restricts, limits, or impairs in any way the  
4 lawful transfer of ownership, change of beneficiary, or  
5 assignment of a policy to effectuate a viatical settlement  
6 contract.

7 (b) A violation of this Section is considered an unfair  
8 trade practice pursuant to the provisions of the Consumer Fraud  
9 and Deceptive Business Practices Act and subject to the  
10 penalties contained in that Act.

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

25 (215 ILCS 158/Act rep.)

26 Section 900. The Viatical Settlements Act is repealed.

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

29 (5 ILCS 140/7) (from Ch. 116, par. 207)

30 Sec. 7. Exemptions.

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

3           (a) Information specifically prohibited from  
4 disclosure by federal or State law or rules and regulations  
5 adopted under federal or State law.

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

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

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

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

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

33           (v) information revealing the identity of persons  
34 who file complaints with or provide information to

1 administrative, investigative, law enforcement or  
2 penal agencies; provided, however, that identification  
3 of witnesses to traffic accidents, traffic accident  
4 reports, and rescue reports may be provided by agencies  
5 of local government, except in a case for which a  
6 criminal investigation is ongoing, without  
7 constituting a clearly unwarranted per se invasion of  
8 personal privacy under this subsection; and

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

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

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

22 (ii) interfere with pending administrative  
23 enforcement proceedings conducted by any public body;

24 (iii) deprive a person of a fair trial or an  
25 impartial hearing;

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

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

34 (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.



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

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

12          (g) Trade secrets and commercial or financial  
13          information obtained from a person or business where the  
14          trade secrets or information are proprietary, privileged  
15          or confidential, or where disclosure of the trade secrets  
16          or information may cause competitive harm, including all  
17          information determined to be confidential under Section  
18          4002 of the Technology Advancement and Development Act.  
19          Nothing contained in this paragraph (g) shall be construed  
20          to prevent a person or business from consenting to  
21          disclosure.

22          (h) Proposals and bids for any contract, grant, or  
23          agreement, including information which if it were  
24          disclosed would frustrate procurement or give an advantage  
25          to any person proposing to enter into a contractor  
26          agreement with the body, until an award or final selection  
27          is made. Information prepared by or for the body in  
28          preparation of a bid solicitation shall be exempt until an  
29          award or final selection is made.

30          (i) Valuable formulae, computer geographic systems,  
31          designs, drawings and research data obtained or produced by  
32          any public body when disclosure could reasonably be  
33          expected to produce private gain or public loss. The  
34          exemption for "computer geographic systems" provided in

1           this paragraph (i) does not extend to requests made by news  
2           media as defined in Section 2 of this Act when the  
3           requested information is not otherwise exempt and the only  
4           purpose of the request is to access and disseminate  
5           information regarding the health, safety, welfare, or  
6           legal rights of the general public.

7           (j) Test questions, scoring keys and other examination  
8           data used to administer an academic examination or  
9           determined the qualifications of an applicant for a license  
10          or employment.

11          (k) Architects' plans, engineers' technical  
12          submissions, and other construction related technical  
13          documents for projects not constructed or developed in  
14          whole or in part with public funds and the same for  
15          projects constructed or developed with public funds, but  
16          only to the extent that disclosure would compromise  
17          security, including but not limited to water treatment  
18          facilities, airport facilities, sport stadiums, convention  
19          centers, and all government owned, operated, or occupied  
20          buildings.

21          (l) Library circulation and order records identifying  
22          library users with specific materials.

23          (m) Minutes of meetings of public bodies closed to the  
24          public as provided in the Open Meetings Act until the  
25          public body makes the minutes available to the public under  
26          Section 2.06 of the Open Meetings Act.

27          (n) Communications between a public body and an  
28          attorney or auditor representing the public body that would  
29          not be subject to discovery in litigation, and materials  
30          prepared or compiled by or for a public body in  
31          anticipation of a criminal, civil or administrative  
32          proceeding upon the request of an attorney advising the  
33          public body, and materials prepared or compiled with  
34          respect to internal audits of public bodies.

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

4           (p) Administrative or technical information associated  
5 with automated data processing operations, including but  
6 not limited to software, operating protocols, computer  
7 program abstracts, file layouts, source listings, object  
8 modules, load modules, user guides, documentation  
9 pertaining to all logical and physical design of  
10 computerized systems, employee manuals, and any other  
11 information that, if disclosed, would jeopardize the  
12 security of the system or its data or the security of  
13 materials exempt under this Section.

14           (q) Documents or materials relating to collective  
15 negotiating matters between public bodies and their  
16 employees or representatives, except that any final  
17 contract or agreement shall be subject to inspection and  
18 copying.

19           (r) Drafts, notes, recommendations and memoranda  
20 pertaining to the financing and marketing transactions of  
21 the public body. The records of ownership, registration,  
22 transfer, and exchange of municipal debt obligations, and  
23 of persons to whom payment with respect to these  
24 obligations is made.

25           (s) The records, documents and information relating to  
26 real estate purchase negotiations until those negotiations  
27 have been completed or otherwise terminated. With regard to  
28 a parcel involved in a pending or actually and reasonably  
29 contemplated eminent domain proceeding under Article VII  
30 of the Code of Civil Procedure, records, documents and  
31 information relating to that parcel shall be exempt except  
32 as may be allowed under discovery rules adopted by the  
33 Illinois Supreme Court. The records, documents and  
34 information relating to a real estate sale shall be exempt

1 until a sale is consummated.

2 (t) Any and all proprietary information and records  
3 related to the operation of an intergovernmental risk  
4 management association or self-insurance pool or jointly  
5 self-administered health and accident cooperative or pool.

6 (u) Information concerning a university's adjudication  
7 of student or employee grievance or disciplinary cases, to  
8 the extent that disclosure would reveal the identity of the  
9 student or employee and information concerning any public  
10 body's adjudication of student or employee grievances or  
11 disciplinary cases, except for the final outcome of the  
12 cases.

13 (v) Course materials or research materials used by  
14 faculty members.

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

17 (x) Information contained in or related to  
18 examination, operating, or condition reports prepared by,  
19 on behalf of, or for the use of a public body responsible  
20 for the regulation or supervision of financial  
21 institutions or insurance companies, unless disclosure is  
22 otherwise required by State law.

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

25 (z) Manuals or instruction to staff that relate to  
26 establishment or collection of liability for any State tax  
27 or that relate to investigations by a public body to  
28 determine violation of any criminal law.

29 (aa) Applications, related documents, and medical  
30 records received by the Experimental Organ Transplantation  
31 Procedures Board and any and all documents or other records  
32 prepared by the Experimental Organ Transplantation  
33 Procedures Board or its staff relating to applications it  
34 has received.

1 (bb) Insurance or self insurance (including any  
2 intergovernmental risk management association or self  
3 insurance pool) claims, loss or risk management  
4 information, records, data, advice or communications.

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

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

13 (ee) Firm performance evaluations under Section 55 of  
14 the Architectural, Engineering, and Land Surveying  
15 Qualifications Based Selection Act.

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

23 (gg) Information the disclosure of which is restricted  
24 and exempted under Section 50 of the Illinois Prepaid  
25 Tuition Act.

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

28 (ii) Beginning July 1, 1999, information that would  
29 disclose or might lead to the disclosure of secret or  
30 confidential information, codes, algorithms, programs, or  
31 private keys intended to be used to create electronic or  
32 digital signatures under the Electronic Commerce Security  
33 Act.

34 (jj) Information contained in a local emergency energy

1 plan submitted to a municipality in accordance with a local  
2 emergency energy plan ordinance that is adopted under  
3 Section 11-21.5-5 of the Illinois Municipal Code.

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

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

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

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

31 (oo) Records and information provided to a residential  
32 health care facility resident sexual assault and death  
33 review team or the Residential Health Care Facility  
34 Resident Sexual Assault and Death Review Teams Executive

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

3 (pp) Information the disclosure of which is exempted  
4 under the Viatical and Life Settlements Act of 2005.

5 (2) This Section does not authorize withholding of  
6 information or limit the availability of records to the public,  
7 except as stated in this Section or otherwise provided in this  
8 Act.

9 (Source: P.A. 92-16, eff. 6-28-01; 92-241, eff. 8-3-01; 92-281,  
10 eff. 8-7-01; 92-645, eff. 7-11-02; 92-651, eff. 7-11-02; 93-43,  
11 eff. 7-1-03; 93-209, eff. 7-18-03; 93-237, eff. 7-22-03;  
12 93-325, eff. 7-23-03, 93-422, eff. 8-5-03; 93-577, eff.  
13 8-21-03; 93-617, eff. 12-9-03.)

14 Section 910. The Illinois Securities Law of 1953 is amended  
15 by changing Section 2.1 and by adding Section 2.33 as follows:

16 (815 ILCS 5/2.1) (from Ch. 121 1/2, par. 137.2-1)

17 Sec. 2.1. Security. "Security" means any note, stock,  
18 treasury stock, bond, debenture, evidence of indebtedness,  
19 certificate of interest or participation in any profit-sharing  
20 agreement, collateral-trust certificate, preorganization  
21 certificate or subscription, transferable share, investment  
22 contract, viatical investment, investment fund share,  
23 face-amount certificate, voting-trust certificate, certificate  
24 of deposit for a security, fractional undivided interest in  
25 oil, gas or other mineral lease, right or royalty, any put,  
26 call, straddle, option, or privilege on any security,  
27 certificate of deposit, or group or index of securities  
28 (including any interest therein or based on the value thereof),  
29 or any put, call, straddle, option, or privilege entered into,  
30 relating to foreign currency, or, in general, any interest or  
31 instrument commonly known as a "security", or any certificate  
32 of interest or participation in, temporary or interim

1 certificate for, receipt for, guarantee of, or warrant or right  
2 to subscribe to or purchase, any of the foregoing. "Security"  
3 does not mean a mineral investment contract or a mineral  
4 deferred delivery contract; provided, however, the Department  
5 shall have the authority to regulate these contracts as  
6 hereinafter provided.

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

8 (815 ILCS 5/2.33 new)

9 Sec. 2.33. Viatical investment. "Viatical investment"  
10 means the contractual right to receive any portion of the death  
11 benefit or ownership of a life insurance policy or certificate  
12 for consideration that is less than the expected death benefit  
13 of the life insurance policy or certificate. "Viatical  
14 investment" does not include:

15 (1) any transaction between a viator and a viatical  
16 settlement provider as defined in the Viatical and Life  
17 Settlements Act of 2005;

18 (2) any transfer of ownership or beneficial interest in  
19 a life insurance policy from a viatical settlement provider  
20 to another viatical settlement provider as defined in the  
21 Viatical and Life Settlements Act of 2005 or to any legal  
22 entity formed solely for the purpose of holding ownership  
23 or beneficial interest in a life insurance policy or  
24 policies;

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

29 (4) the exercise of accelerated benefits pursuant to  
30 the terms of a life insurance policy issued in accordance  
31 with the Illinois Insurance Code.

32 Section 915. The Consumer Fraud and Deceptive Business



1 Practices Act is amended by changing Section 2Z as follows:

2 (815 ILCS 505/2Z) (from Ch. 121 1/2, par. 262Z)

3 Sec. 2Z. Violations of other Acts. Any person who knowingly  
4 violates the Automotive Repair Act, the Home Repair and  
5 Remodeling Act, the Dance Studio Act, the Physical Fitness  
6 Services Act, the Hearing Instrument Consumer Protection Act,  
7 the Illinois Union Label Act, the Job Referral and Job Listing  
8 Services Consumer Protection Act, the Travel Promotion  
9 Consumer Protection Act, the Credit Services Organizations  
10 Act, the Automatic Telephone Dialers Act, the Pay-Per-Call  
11 Services Consumer Protection Act, the Telephone Solicitations  
12 Act, the Illinois Funeral or Burial Funds Act, the Cemetery  
13 Care Act, the Safe and Hygienic Bed Act, the Pre-Need Cemetery  
14 Sales Act, the High Risk Home Loan Act, subsection (a) or (b)  
15 of Section 3-10 of the Cigarette Tax Act, subsection (a) or (b)  
16 of Section 3-10 of the Cigarette Use Tax Act, the Electronic  
17 Mail Act, paragraph (6) of subsection (k) of Section 6-305 of  
18 the Illinois Vehicle Code, the Viatical and Life Settlements  
19 Act of 2005, or the Automatic Contract Renewal Act commits an  
20 unlawful practice within the meaning of this Act.

21 (Source: P.A. 92-426, eff. 1-1-02; 93-561, eff. 1-1-04; 93-950,  
22 eff. 1-1-05.)

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

25 Section 999. Effective date. This Act takes effect upon  
26 becoming law."