

1 AN ACT concerning insurance.

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

4 Section 1. Short title. This Act may be cited as the
5 Viatical Settlements Act of 2009.

6 Section 5. Definitions.

7 "Accredited investor" means an accredited investor as
8 defined in Rule 501(a) promulgated under the Securities Act of
9 1933 (15 U.S.C. 77 et seq.), as amended.

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

20 "Alien licensee" means a licensee incorporated or
21 organized under the laws of any country other than the United
22 States.

23 "Business of viatical settlements" means any activity

1 involved in, but not limited to, the offering, soliciting,
2 negotiating, procuring, effectuating, purchasing, investing,
3 financing, monitoring, tracking, underwriting, selling,
4 transferring, assigning, pledging, or hypothecating or in any
5 other manner acquiring an interest in a life insurance policy
6 by means of a viatical settlement contract or other agreement.

7 "Chronically ill" means having been certified within the
8 preceding 12-month period by a licensed health professional as:

9 (1) being unable to perform, without substantial
10 assistance from another individual and for at least 90 days
11 due to a loss of functional capacity, at least 2 activities
12 of daily living, including, but not limited to, eating,
13 toileting, transferring, bathing, dressing, or continence;

14 (2) requiring substantial supervision to protect the
15 individual from threats to health and safety due to severe
16 cognitive impairment; or

17 (3) having a level of disability similar to that
18 described in paragraph (1) as determined by the Secretary
19 of Health and Human Services.

20 "Controlling person" means any person, firm, association,
21 or corporation that directly or indirectly has the power to
22 direct or cause to be directed the management, control, or
23 activities of the viatical settlement provider.

24 "Director" means the Director of the Division of Insurance
25 of the Department of Financial and Professional Regulation.

26 "Division" means the Division of Insurance of the

1 Department of Financial and Professional Regulation.

2 "Escrow agent" means an independent third-party person
3 who, pursuant to a written agreement signed by the viatical
4 settlement provider and viator, provides escrow services
5 related to the acquisition of a life insurance policy pursuant
6 to a viatical settlement contract. "Escrow agent" does not
7 include any person associated or affiliated with or under the
8 control of a licensee.

9 "Financial institution" means a financial institution as
10 defined by the Financial Institutions Insurance Sales Law in
11 Article XLIV of the Illinois Insurance Code.

12 "Financing entity" means an underwriter, placement agent,
13 lender, purchaser of securities, purchaser of a policy or
14 certificate from a viatical settlement provider, credit
15 enhancer, or an entity that has a direct ownership in a policy
16 that is the subject of a viatical settlement contract, and to
17 which both of the following apply:

18 (1) its principal activity related to the transaction
19 is providing funds to effect the viatical settlement or
20 purchase of one or more viaticated policies; and

21 (2) it has an agreement in writing with one or more
22 licensed viatical settlement providers to finance the
23 acquisition of viatical settlement contracts.

24 "Financing entity" does not include an investor that is not an
25 accredited investor.

26 "Financing transaction" means a transaction in which a

1 viatical settlement provider obtains financing from a
2 financing entity, including, without limitation, any secured
3 or unsecured financing, securitization transaction, or
4 securities offering that either is registered or exempt from
5 registration under federal and State securities law.

6 "Foreign licensee" means any viatical settlement provider
7 incorporated or organized under the laws of any state of the
8 United States other than this State.

9 "Insurance producer" means an insurance producer as
10 defined by Section 10 of Article XXXI of the Illinois Insurance
11 Code.

12 "Licensee" means a viatical settlement provider or
13 viatical settlement broker.

14 "Life expectancy provider" means a person who determines or
15 holds himself or herself out as determining life expectancies
16 or mortality ratings used to determine life expectancies on
17 behalf of or in connection with any of the following:

18 (1) A viatical settlement provider, viatical
19 settlement broker, or person engaged in the business of
20 viatical settlements.

21 (2) A viatical investment as defined by Section 2.33 of
22 the Illinois Securities Law of 1953 or a viatical
23 settlement contract.

24 "NAIC" means the National Association of Insurance
25 Commissioners.

26 "Person" means an individual or a legal entity, including,

1 without limitation, a partnership, limited liability company,
2 limited liability partnership, association, trust, business
3 trust, or corporation.

4 "Policy" means an individual or group policy, group
5 certificate, contract, or arrangement of insurance of the class
6 defined by subsection (a) of Section 4 of the Illinois
7 Insurance Code owned by a resident of this State, regardless of
8 whether delivered or issued for delivery in this State.

9 "Qualified institutional buyer" means a qualified
10 institutional buyer as defined in Rule 144 promulgated under
11 the Securities Act of 1933, as amended.

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 Director as if those records and
23 files were maintained directly by the licensed viatical
24 settlement provider.

25 "Special purpose entity" means a corporation, partnership,
26 trust, limited liability company, or other similar entity

1 formed only to provide, directly or indirectly, access to
2 institutional capital markets (i) for a financing entity or
3 licensed viatical settlement provider; or (ii) in connection
4 with a transaction in which the securities in the special
5 purposes entity are acquired by the viator or by qualified
6 institutional buyers or the securities pay a fixed rate of
7 return commensurate with established asset-backed
8 institutional capital markets.

9 "Stranger-originated life insurance" or "STOLI" means an
10 act, practice, or arrangement to initiate a life insurance
11 policy for the benefit of a third-party investor who, at the
12 time of policy origination, has no insurable interest in the
13 insured. STOLI practices include, but are not limited to, cases
14 in which life insurance is purchased with resources or
15 guarantees from or through a person or entity who, at the time
16 of policy inception, could not lawfully initiate the policy
17 himself or itself and where, at the time of policy inception,
18 there is an arrangement or agreement, whether verbal or
19 written, to directly or indirectly transfer the ownership of
20 the policy or policy benefits to a third party. Trusts created
21 to give the appearance of an insurable interest and used to
22 initiate policies for investors violate insurance interest
23 laws and the prohibition against wagering on life. STOLI
24 arrangements do not include lawful viatical settlement
25 contracts as permitted by this Act.

26 "Terminally ill" means certified by a physician as having

1 an illness or physical condition that reasonably is expected to
2 result in death in 24 months or less.

3 "Viatical settlement broker" means a licensed insurance
4 producer who has been issued a license pursuant to Section
5 500-35(a) (1) or 500-35(a) (2) of the Insurance Code who, working
6 exclusively on behalf of a viator and for a fee, commission, or
7 other valuable consideration, offers, solicits, promotes, or
8 attempts to negotiate viatical settlement contracts between a
9 viator and one or more viatical settlement providers or one or
10 more viatical settlement brokers. "Viatical settlement broker"
11 does not include an attorney, certified public accountant, or a
12 financial planner accredited by a nationally recognized
13 accreditation agency, who is retained to represent the viator
14 and whose compensation is not paid directly or indirectly by
15 the viatical settlement provider or purchaser.

16 "Viatical settlement contract" means any of the following:

17 (1) A written agreement between a viator and a viatical
18 settlement provider establishing the terms under which
19 compensation or anything of value is or will be paid, which
20 compensation or value is less than the expected death
21 benefits of the policy, in return for the viator's present
22 or future assignment, transfer, sale, devise, or bequest of
23 the death benefit or ownership of any portion of the
24 insurance policy.

25 (2) A written agreement for a loan or other lending
26 transaction, secured primarily by an individual life

1 insurance policy or an individual certificate of a group
2 life insurance policy.

3 (3) The transfer for compensation or value of ownership
4 of a beneficial interest in a trust or other entity that
5 owns such policy, if the trust or other entity was formed
6 or availed of for the principal purpose of acquiring one or
7 more life insurance contracts and the life insurance
8 contract insures the life of a person residing in this
9 State.

10 (4) A premium finance loan made for a life insurance
11 policy by a lender to a viator on, before, or after the
12 date of issuance of the policy in either of the following
13 situations:

14 (A) The viator or the insured receives a guarantee
15 of the viatical settlement value of the policy.

16 (B) The viator or the insured agrees to sell the
17 policy or any portion of the policy's death benefit on
18 any date before or after issuance of the policy.

19 "Viatical settlement contract" does not include any of the
20 following acts, practices, or arrangements listed below in
21 subparagraphs (a) through (i) of this definition of "viatical
22 settlement contract", unless part of a plan, scheme, device, or
23 artifice to avoid application of this Act; provided, however,
24 that the list of excluded items contained in subparagraphs (a)
25 through (i) is not intended to be an exhaustive list and that
26 an act, practice, or arrangement that is not described below in

1 subparagraphs (a) through (i) does not necessarily constitute a
2 viatical settlement contract:

3 (a) A policy loan or accelerated death benefit made by
4 the insurer pursuant to the policy's terms;

5 (b) Loan proceeds that are used solely to pay: (i)
6 premiums for the policy and (ii) the costs of the loan,
7 including, without limitation, interest, arrangement fees,
8 utilization fees and similar fees, closing costs, legal
9 fees and expenses, trustee fees and expenses, and third
10 party collateral provider fees and expenses, including
11 fees payable to letter of credit issuers;

12 (c) A loan made by a bank or other financial
13 institution in which the lender takes an interest in a life
14 insurance policy solely to secure repayment of a loan or,
15 if there is a default on the loan and the policy is
16 transferred, the transfer of such a policy by the lender,
17 provided that neither the default itself nor the transfer
18 of the policy in connection with the default is pursuant to
19 an agreement or understanding with any other person for the
20 purpose of evading regulation under this Act;

21 (d) A loan made by a lender that does not violate
22 Article XXXIIa of the Illinois Insurance Code, provided
23 that the premium finance loan is not described in this Act;

24 (e) An agreement in which all the parties (i) are
25 closely related to the insured by blood or law or (ii) have
26 a lawful substantial economic interest in the continued

1 life, health, and bodily safety of the person insured, or
2 trusts established primarily for the benefit of such
3 parties;

4 (f) Any designation, consent, or agreement by an
5 insured who is an employee of an employer in connection
6 with the purchase by the employer, or trust established by
7 the employer, of life insurance on the life of the
8 employee;

9 (g) A bona fide business succession planning
10 arrangement: (i) between one or more shareholders in a
11 corporation or between a corporation and one or more of its
12 shareholders or one or more trusts established by its
13 shareholders; (ii) between one or more partners in a
14 partnership or between a partnership and one or more of its
15 partners or one or more trusts established by its partners;
16 or (iii) between one or more members in a limited liability
17 company or between a limited liability company and one or
18 more of its members or one or more trusts established by
19 its members;

20 (h) An agreement entered into by a service recipient,
21 or a trust established by the service recipient, and a
22 service provider, or a trust established by the service
23 provider, who performs significant services for the
24 service recipient's trade or business; or

25 (i) Any other contract, transaction, or arrangement
26 exempted from the definition of viatical settlement

1 contract by the Director based on the Director's
2 determination that the contract, transaction, or
3 arrangement is not of the type intended to be regulated by
4 this Act.

5 "Viatical settlement investment agent" means a person who
6 is an appointed or contracted agent of a licensed viatical
7 settlement provider who solicits or arranges the funding for
8 the purchase of a viatical settlement by a viatical settlement
9 purchaser and who is acting on behalf of a viatical settlement
10 provider. A viatical settlement investment agent is deemed to
11 represent the viatical settlement provider of whom the viatical
12 settlement investment agent is an appointed or contracted
13 agent.

14 "Viatical settlement provider" means a person, other than a
15 viator, who enters into or effectuates a viatical settlement
16 contract with a viator. "Viatical settlement provider" does not
17 include:

18 (1) a bank, savings bank, savings and loan association,
19 credit union, or other financial institution that takes an
20 assignment of a policy as collateral for a loan;

21 (2) a financial institution or premium finance company
22 making premium finance loans and exempted by the Director
23 from the licensing requirement under the premium finance
24 laws where the institution or company takes an assignment
25 of a life insurance policy solely as collateral for a
26 premium finance loan;

- 1 (3) the issuer of the life insurance policy;
- 2 (4) an authorized or eligible insurer that provides
3 stop loss coverage or financial guaranty insurance to a
4 viatical settlement provider, purchaser, financing entity,
5 special purpose entity, or related provider trust;
- 6 (5) An individual person who enters into or effectuates
7 no more than one viatical settlement contract in a calendar
8 year for the transfer of policies for any value less than
9 the expected death benefit;
- 10 (6) a financing entity;
- 11 (7) a special purpose entity;
- 12 (8) a related provider trust;
- 13 (9) a viatical settlement purchaser; or
- 14 (10) any other person that the Director determines is
15 consistent with the definition of viatical settlement
16 provider.
- 17 "Viatical settlement purchaser" means a person who
18 provides a sum of money as consideration for a life insurance
19 policy or an interest in the death benefits of a life insurance
20 policy, or a person who owns or acquires or is entitled to a
21 beneficial interest in a trust that owns a viatical settlement
22 contract or is the beneficiary of a life insurance policy, in
23 each case where such policy has been or will be the subject of
24 a viatical settlement contract, for the purpose of deriving an
25 economic benefit. "Viatical settlement purchaser" does not
26 include: (i) a licensee under this Act; (ii) an accredited

1 investor or qualified institutional buyer; (iii) a financing
2 entity; (iv) a special purpose entity; or (v) a related
3 provider trust.

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

7 "Viator" means the owner of a life insurance policy or a
8 certificate holder under a group policy who enters or seeks to
9 enter into a viatical settlement contract. For the purposes of
10 this Act, a viator is not limited to an owner of a life
11 insurance policy or a certificate holder under a group policy
12 insuring the life of an individual with a terminal or chronic
13 illness or condition, except where specifically addressed.

14 "Viator" does not include:

- 15 (1) a licensee;
- 16 (2) a qualified institutional buyer;
- 17 (3) a financing entity;
- 18 (4) a special purpose entity; or
- 19 (5) a related provider trust.

20 Section 10. License and bond requirements.

21 (a) A person shall not operate as a viatical settlement
22 provider or viatical settlement broker without first obtaining
23 a license from the chief insurance regulatory official of the
24 state of residence of the viator. A viatical settlement
25 provider transacting business in this State shall provide

1 written notice to the Director that it is engaged in such
2 business not less than 30 days prior to the effective date of
3 this Act. Viatical settlement providers shall apply for
4 licensing annually thereafter in a form and manner as
5 prescribed by this Act.

6 (b) A person shall not operate as a viatical settlement
7 broker without first obtaining an insurance producer license
8 from the Director and completing the viatical settlement broker
9 training requirements as provided by Section 11 of this Act.

10 (c) An insurance producer shall not operate as a viatical
11 settlement broker unless the producer has been duly licensed as
12 a resident insurance producer with a life line of authority in
13 this State or the insurance producer's home state for at least
14 one year.

15 (d) Before operating as a viatical settlement broker, the
16 insurance producer, including a business entity licensed in
17 this State as an insurance producer, shall notify the Director
18 that the insurance producer is acting as a viatical settlement
19 broker on a form prescribed by the Director, and shall pay a
20 \$500 registration fee which shall be deposited into the
21 Insurance Producer Administration Fund. Notification shall
22 include an acknowledgement by the insurance producer that he or
23 she will operate as a viatical settlement broker in accordance
24 with this Act.

25 If a business entity with an insurance producer license
26 registers as a viatical settlement broker, then that

1 registration authorizes all partners, officers, members, and
2 designated employees to act as viatical settlement brokers. All
3 persons acting as viatical settlement brokers pursuant to such
4 a registration shall be named in the application and any
5 supplements to the application.

6 (e) A duly licensed resident insurance producer with a life
7 product line or authority in this State or the insurance
8 producer's home state for at least one year, lawfully
9 transacting business as a viatical settlement broker prior to
10 the effective date of this Act may continue to do so, pending
11 receipt by the Director of the notice required by subsection
12 (d) of this Section, provided that the notice is received by
13 the Director no later than 30 days after the effective date of
14 this Act.

15 (f) A person licensed as an attorney, certified public
16 accountant, or financial planner accredited by a nationally
17 recognized accreditation agency, who is retained to represent
18 the viator, whose compensation is not paid directly or
19 indirectly by the viatical settlement provider, may negotiate
20 viatical settlement contracts on behalf of the viator without
21 having to obtain a license as a viatical settlement broker.

22 (g) A person shall not operate as a viatical settlement
23 provider without first obtaining a license from the Director.

24 (h) Application for a viatical settlement provider license
25 shall be made to the Director by the applicant on a form
26 prescribed by the Director. The applications shall be

1 accompanied by a \$3,000 fee, which shall be deposited into the
2 Insurance Producer Administration Fund.

3 (i) Viatical settlement provider licenses may be renewed
4 from year to year on the anniversary date upon payment of the
5 annual renewal fee of \$1,500. Failure to pay the fees by the
6 renewal date results in expiration of the license.

7 (j) The applicant for a viatical settlement provider
8 license shall provide information on forms required by the
9 Director. The Director shall have authority, at any time, to
10 require the applicant to fully disclose the identity of all
11 stockholders, partners, officers, members, and employees, and
12 the Director may, in the exercise of the Director's discretion,
13 refuse to issue a license in the name of a legal entity if not
14 satisfied that any officer, employee, stockholder, partner, or
15 member thereof who may materially influence the applicant's
16 conduct meets the standards of this Act.

17 A viatical settlement provider license issued to a legal
18 entity authorizes all partners, officers, members, and
19 designated employees to act as viatical settlement providers,
20 as applicable, under the license, and all those persons shall
21 be named in the application and any supplements to the
22 application.

23 (k) Upon the filing of a viatical settlement provider
24 license application and the payment of the license fee, the
25 Director shall make an investigation of each applicant and
26 issue a license if the Director finds that the applicant:

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

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

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

8 (4) (A) has demonstrated evidence of financial
9 responsibility in a format prescribed by the Director
10 through either a surety bond executed and issued by an
11 insurer authorized to issue surety bonds in this State or a
12 deposit of cash, certificates of deposit or securities or
13 any combination thereof, or irrevocable letter of credit in
14 the amount of \$125,000;

15 (B) the Director may ask for evidence of financial
16 responsibility at any time the Director deems
17 necessary;

18 (C) any surety bond issued pursuant to this
19 subsection (k) shall be in the favor of this State and
20 shall specifically authorize recovery by the Director
21 on behalf of any person in this State who sustained
22 damages as the result of erroneous acts, failure to
23 act, conviction of fraud or conviction of unfair
24 practices by the viatical settlement provider;

25 (D) notwithstanding any other provision of this
26 Section to the contrary, the Director shall accept, as

1 evidence of financial responsibility, proof that
2 financial instruments in accordance with the
3 requirements in this subsection (k) have been filed
4 with one or more states where the applicant is licensed
5 as a viatical settlement provider;

6 (5) if a legal entity, provides a certificate of good
7 standing from the state of its domicile; and

8 (6) has provided an anti-fraud plan that meets the
9 requirements of Section 65 of this Act.

10 (1) The Director shall not issue a viatical settlement
11 provider license to a nonresident applicant unless a written
12 designation of an agent for service of process is filed and
13 maintained with the Director or the applicant has filed with
14 the Director the applicant's written irrevocable consent that
15 any action against the applicant may be commenced against the
16 applicant by service of process on the Director.

17 (m) An applicant for a viatical settlement provider license
18 shall provide all information requested by the Director. The
19 Director may, at any time, require the applicant to fully
20 disclose the identity of all stockholders, partners, officers,
21 members, and employees of the viatical settlement provider, and
22 the Director may refuse to issue a license to an applicant that
23 is not an individual if the Director is not satisfied that each
24 stockholder, partner, officer, member, and employee who may
25 materially influence the applicant's conduct meets the
26 standards set forth in this Act. The Director may also require

1 the applicant to disclose the method the applicant will use to
2 determine and receive life expectancies, the applicant's
3 intended use of life expectancies, and a written plan
4 containing policies and procedures to use when determining life
5 expectancies.

6 (n) A viatical settlement provider shall provide to the
7 Director new or revised information about officers, 10% or more
8 stockholders, partners, directors, members, or designated
9 employees within 30 days after the change.

10 (o) Viatical settlement providers licensed under the
11 Viatical Settlements Act as of the effective date of this
12 amendatory Act of the 96th General Assembly shall be deemed
13 licensed under this Act. All such providers are required to
14 maintain or come into compliance with all of the license
15 requirements of this Act and to provide evidence to the
16 Director that they are in compliance with item (4) of
17 subsection (k) of this Section, concerning financial
18 responsibility; item (6) of subsection (k) of this Section,
19 concerning an anti-fraud plan; and subsection (m) of this
20 Section, concerning life expectancies no later than the
21 effective date of this Act. Such providers shall not be exempt
22 from the requirements for viatical settlement provider license
23 renewal set forth in subsection (i) of this Section. The first
24 anniversary date for the purpose of license renewal under
25 subsection (i) shall be one year from the effective date of
26 this amendatory Act of the 96th General Assembly.

1 Section 11. Viatical settlement broker training
2 requirements.

3 (a) Viatical settlement broker training shall be required
4 as follows:

5 (1) An individual may not sell, solicit, or negotiate
6 viatical settlement contracts unless the individual is
7 licensed as a life insurance producer or viatical
8 settlement broker and has completed a one-time training
9 course. The training shall meet the requirements set forth
10 in subsection (b) of this Section.

11 (2) An individual already licensed and selling,
12 soliciting, or negotiating viatical settlement contracts
13 on the effective date of this Act may not continue to sell,
14 solicit, or negotiate viatical settlement contracts unless
15 the individual has completed a one-time training course, as
16 set forth in subsection (b) of this Section, within 6
17 months after the effective date of this Act or within 6
18 months after availability of the training course,
19 whichever is later.

20 (3) In addition to the one-time training course
21 required under items (1) and (2) of this subsection (a), an
22 individual who sells, solicits, or negotiates viatical
23 settlement contracts shall complete ongoing training as
24 set forth in subsection (b) of this Section.

25 (4) The training requirements of subsection (b) of this

1 Section may be approved as continuing education courses
2 under Section 500-35(b)(1) of the Illinois Insurance Code.

3 (b) Minimum education and training shall be required as
4 follows:

5 (1) The one-time training required by this Section
6 shall be no less than 4 hours and the ongoing training
7 required by this Section shall be no less than 4 hours over
8 a 24-month period.

9 (2) The training required under item (1) of this
10 subsection (b) shall consist of topics related to viatical
11 settlement contracts, including, but not limited to:

12 (A) State and federal laws and regulations
13 regarding viatical settlement transactions;

14 (B) potential tax implications for participants in
15 viatical settlement contracts;

16 (C) potential impact on public benefits payments
17 to viatical settlement participants;

18 (D) alternatives to viatical settlement contracts;

19 and

20 (E) consumer suitability standards and guidelines.

21 (3) The training required by this Section shall not
22 include training that is specific to or that includes any
23 sales or marketing information, materials, or training of
24 any company, other than those required by State or federal
25 law.

26 (c) Viatical settlement providers shall provide

1 verification of training as follows:

2 (1) Viatical settlement providers subject to this Act
3 shall obtain verification that a producer receives
4 training required by subsection (a) of this Section before
5 a producer is permitted to sell, solicit, or negotiate
6 viatical settlement contracts. Viatical settlement
7 providers shall maintain records for verification subject
8 to the State's record retention requirements and make the
9 verification available to the Director upon request.

10 (2) Viatical settlement providers subject to this Act
11 shall maintain records with respect to the training of
12 viatical settlement brokers with whom the provider
13 contracts or otherwise engages in viatical settlement
14 transactions. These records shall be maintained in
15 accordance with the State's record retention requirements
16 and shall be made available to the Director upon request.

17 (d) The satisfaction of these training requirements in any
18 state shall be deemed to satisfy the training requirements in
19 this State.

20 Section 15. License revocation for viatical settlement
21 providers.

22 (a) The Director may refuse to issue or renew or may
23 suspend or revoke the license of any viatical settlement
24 provider if the Director finds any of the following:

25 (1) there was any material misrepresentation in the

1 application for the license;

2 (2) the viatical settlement provider or any officer,
3 partner, member, or controlling person uses fraudulent or
4 dishonest practices or is otherwise shown to be
5 untrustworthy, incompetent, or financially irresponsible
6 in this State or elsewhere;

7 (3) the viatical settlement provider demonstrates a
8 pattern of unreasonable payments to viators;

9 (4) the viatical settlement provider or any officer,
10 partner, member, or controlling person has violated any
11 insurance laws or any rule, subpoena, or order of the
12 Director or of another state's chief insurance regulatory
13 official or is subject to a final administrative action
14 brought by the Director or by the Illinois Secretary of
15 State or by another state's chief insurance regulatory
16 official or chief securities regulatory official;

17 (5) the viatical settlement provider has used a
18 viatical settlement contract that has not been approved
19 pursuant to this Act;

20 (6) the viatical settlement provider has failed to
21 honor contractual obligations set out in a viatical
22 settlement contract;

23 (7) the viatical settlement provider no longer meets
24 the requirements for initial licensure;

25 (8) the viatical settlement provider has assigned,
26 transferred, or pledged a purchased policy to a person

1 other than a viatical settlement provider licensed in this
2 State, a viatical settlement purchaser, a financing
3 entity, a special purpose entity, or a related provider
4 trust; or

5 (9) the viatical settlement provider or any officer,
6 partner, member, or controlling person of the viatical
7 settlement provider has violated any of the provisions of
8 this Act.

9 (b) If the Director denies a viatical settlement provider
10 license application or suspends, revokes, or refuses to renew
11 the license of a viatical settlement provider, the Director
12 shall notify the applicant or viatical settlement provider and
13 advise, in writing, the applicant or viatical settlement
14 provider of the reason for the suspension, revocation, denial,
15 or nonrenewal of the applicant's or licensee's license. The
16 applicant or viatical settlement provider may make a written
17 demand upon the Director within 30 days after the date of
18 mailing for a hearing before the Director to determine the
19 reasonableness of the Director's action. The hearing must be
20 held within not fewer than 20 days nor more than 30 days after
21 the mailing of the notice of hearing and shall be held in
22 accordance with the Illinois Administrative Procedure Act and
23 Section 2402 of Chapter 50 of the Illinois Administrative Code.

24 Section 17. License revocation and denial for viatical
25 settlement brokers. Insurance producers operating as viatical

1 settlement brokers shall be subject to the license denial,
2 nonrenewal, and revocation provisions established by Section
3 500-70 of the Illinois Insurance Code, in addition to any
4 monetary or criminal penalties as may be appropriate.

5 Section 20. Approval of viatical settlement contracts and
6 disclosure statements. A person shall not use a viatical
7 settlement contract form or provide to a viator a disclosure
8 statement form in this State unless first filed with and
9 approved by the Director. The Director shall disapprove a
10 viatical settlement contract form or disclosure statement form
11 if, in the Director's opinion, the contract or provisions
12 contained therein fail to meet the requirements of this Act or
13 are unreasonable, contrary to the interests of the public, or
14 otherwise misleading or unfair to the viator. At the Director's
15 discretion, the Director may require the submission of
16 advertising material. If the Director disapproves a viatical
17 settlement contract form or disclosure statement form, then the
18 Director shall notify the viatical settlement provider and
19 advise the viatical settlement provider, in writing, of the
20 reason for the disapproval. The viatical settlement provider
21 may make written demand upon the Director within 30 days after
22 the date of mailing for a hearing before the Director to
23 determine the reasonableness of the Director's action. The
24 hearing must be held within not fewer than 20 days nor more
25 than 30 days after the mailing of the notice of hearing and

1 shall be held in accordance with the Illinois Administrative
2 Procedure Act and 50 Ill. Admin. Code 2402.

3 Section 25. Reporting requirements and privacy.

4 (a) Each viatical settlement provider shall file with the
5 Director on or before March 1 of each year a copy of its
6 audited annual statement for the immediately preceding year
7 ending December 31. The Director may require newly licensed
8 entities to file annual statements for additional years. The
9 annual statement must be verified by 2 officers of the licensed
10 entity on forms prescribed by the Director. The forms
11 prescribed by the Director shall contain all information
12 required by this Act and shall conform substantially to the
13 Viatical Settlement Provider Reports adopted by the NAIC
14 Viatical Settlements Model Regulation, as amended. The
15 approved annual statement for a viatical settlement provider
16 shall include all of the following information:

17 (1) A list of each life insurance policy, including
18 policy number, date of issue, unique internal identifier
19 maintained by the viatical settlement provider and
20 available upon examination, insurance company issuing the
21 policy, date the viatical settlement contract is signed by
22 viator, viatical settlement broker receiving compensation,
23 and any premium finance companies, if known.

24 (2) Addresses and contact information for those
25 persons listed in item (1) of this subsection (a).

1 (3) A list of all life expectancy providers who have
2 directly or indirectly provided life expectancies to the
3 viatical settlement provider for use in connection with a
4 viatical settlement contract.

5 (4) Any other information required by the Director.

6 (b) The audited annual financial statement required by
7 subsection (a) of this Section shall be completed by an
8 independent certified public accountant along with a letter
9 stating whether any significant deficiencies or material
10 weaknesses were detected during the audit pursuant to the
11 Auditing Standard Board's Statement on Auditing Standards
12 Number 112, as amended or superseded.

13 (c) A viatical settlement provider that willfully fails to
14 file the annual statements required by this Section, or
15 willfully fails to reply within 30 calendar days to a written
16 inquiry from the Director or Director's designee, shall, in
17 addition to other penalties provided by this Act, be subject to
18 a penalty of up to \$250 per day, not to exceed \$25,000 in the
19 aggregate for each such failure.

20 (d) The Director shall keep confidential and not a matter
21 of public record all individual transaction data regarding the
22 business of viatical settlements and data that could compromise
23 the privacy of personal, financial, and health information of
24 the viator or the insured. All proprietary information received
25 by the Director from a viatical settlement provider pursuant to
26 this Section must be given confidential treatment, is not

1 subject to subpoena, and may not be made public by the Director
2 or any other persons.

3 (e) Except as otherwise allowed or required by law, a
4 viatical settlement provider, viatical settlement broker,
5 insurance company, insurance producer, information bureau,
6 rating agency or company, or any other person with actual
7 knowledge of the identity of an insured under a viatical
8 settlement contract shall not disclose the identity of the
9 insured or the insured's financial or medical information to
10 any other person unless the disclosure is:

11 (1) necessary to effect a viatical settlement contract
12 between the viator and a viatical settlement provider and
13 the viator or insured have provided prior written consent
14 to the disclosure;

15 (2) provided in response to an investigation or
16 examination by the Director or another governmental
17 officer or agency or pursuant to the requirements of
18 Section 65 of this Act;

19 (3) a term of or condition to the transfer of a policy
20 by one viatical settlement provider to another viatical
21 settlement provider;

22 (4) necessary to permit a financing entity, related
23 provider trust, or special purpose entity to finance the
24 purchase of policies by a viatical settlement provider and
25 the viator and insured have provided prior written consent
26 to the disclosure;

1 (5) necessary to allow the viatical settlement
2 provider or the viatical settlement provider's authorized
3 representatives to make contacts for the purpose of
4 determining health status; or

5 (6) required to purchase stop loss coverage or
6 financial guaranty insurance.

7 (f) A viatical settlement investment agent shall not have
8 any contact directly or indirectly with the viator or the
9 insured or have knowledge of the identity of the viator or the
10 insured.

11 Section 30. Examination or investigation.

12 (a) The Director may when and as often as the Director
13 deems it reasonably necessary to protect the interests of the
14 public, examine the business affairs of any licensee.

15 In scheduling and determining the nature, scope, and
16 frequency of the examinations, the Director shall consider such
17 matters as consumer complaints, results of financial statement
18 analyses and ratios, changes in management or ownership,
19 actuarial opinions, report of independent certified public
20 accountants, and other relevant criteria as determined by the
21 Director.

22 (b) For purposes of completing an examination of a licensee
23 under this Act, the Director may examine or investigate any
24 person, or the business of any person, in so far as the
25 examination or investigation is, in the sole discretion of the

1 Director, necessary or material to the examination.

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

8 (d) As far as practical, the examination of a foreign
9 licensee or alien licensee shall be made in cooperation with
10 the insurance supervisory officials of other states in which
11 the licensee transacts business.

12 (e) Licensees shall for 5 years retain copies of:

13 (1) all proposed, offered, or executed contracts,
14 purchase agreements, underwriting documents, policy forms,
15 and applications from the date of the proposal, offer, or
16 execution of the contract or purchase agreement, whichever
17 is later;

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

21 (3) all other records and documents in any format
22 related to the requirements of this Act, including a record
23 of complaints received against the licensee and agents
24 representing the licensee and a list of all life expectancy
25 providers that have provider services to the licensee.

26 This subsection (e) does not relieve a person of the

1 obligation to produce records required by this subsection to
2 the Director after the retention period has expired if the
3 person has retained the documents.

4 Records required to be retained by this subsection (e) must
5 be legible and complete and may be retained in paper,
6 photograph, microprocessor, magnetic, mechanical, or
7 electronic media, or by any process that accurately reproduces
8 or forms a durable medium for the reproduction of a record.

9 (f) Upon determining that an examination should be
10 conducted, the Director shall appoint one or more examiners to
11 perform the examination and instruct them as to the scope of
12 the examination. The Director may employ any guidelines or
13 procedures for purposes of this subsection (f) that the
14 Director deems appropriate.

15 Every licensee or person, including all officers,
16 partners, members, directors, employees, controlling persons,
17 and agents of any licensee or person, from whom information is
18 sought shall provide to the examiners timely, convenient, and
19 free access at all reasonable hours at the licensee's or
20 person's offices to all books, records, accounts, papers,
21 documents, assets, and computer or other recordings relating to
22 the property, assets, business, and affairs of the licensee
23 being examined. The officers, directors, employees, and agents
24 of the licensee or person shall facilitate the examination and
25 aid in the examination so far as it is in their power to do so.
26 The refusal of a licensee by its officers, directors,

1 employees, or agents to submit to examination or to comply with
2 any reasonable written request of the Director shall be grounds
3 for revocation, denial of issuance, or non-renewal of any
4 license or authority held by the licensee to engage in the
5 viatical settlement business or other business subject to the
6 Director's jurisdiction.

7 The Director shall have the power to issue subpoenas, to
8 administer oaths, and to examine under oath any person as to
9 any matter pertinent to the examination. Upon the failure or
10 refusal of a person to obey a subpoena, the Director may
11 petition a court of competent jurisdiction, and upon proper
12 showing, the court may enter an order compelling the witness to
13 appear and testify or produce documentary evidence. Failure to
14 obey the court order shall be punishable as contempt of court.
15 Subpoenas may be enforced pursuant to Section 403 of the
16 Illinois Insurance Code.

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

23 (g) Nothing contained in this Act limits the Director's
24 authority to terminate or suspend an examination in order to
25 pursue other legal or regulatory action pursuant to the
26 insurance laws of this State. Findings of fact and conclusions

1 made pursuant to any examination shall be prima facie evidence
2 in any legal or regulatory action.

3 (h) Nothing contained in this Act shall be construed to
4 limit the Director's authority to use and, if appropriate, to
5 make public any final or preliminary examination report, any
6 examiner or licensee workpapers or other documents, or any
7 other information discovered or developed during the course of
8 any examination in the furtherance of any legal or regulatory
9 action that the Director may, in the Director's discretion,
10 deem appropriate.

11 (i) No later than 60 days following completion of the
12 examination, the examiner in charge shall file with the
13 Director a verified written report of examination under oath.
14 Upon receipt of the verified report, the Director shall
15 transmit the report to the licensee examined.

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

23 (k) The licensee may request a hearing within 10 days after
24 receipt of the examination report by giving the Director
25 written notice of that request, together with a statement of
26 its objections. The Director then must conduct a hearing in

1 conjunction with Sections 402 and 403 of the Illinois Insurance
2 Code. The Director must issue a written order based upon the
3 examination report and upon the hearing within 90 days after
4 the report is filed or within 90 days after the hearing. After
5 the hearing, the Director may make such order or orders as may
6 be reasonably necessary to correct, eliminate, or remedy
7 unlawful conduct.

8 (l) If the Director determines that regulatory action is
9 appropriate as a result of an examination, the Director may
10 initiate any proceedings or actions provided by law.

11 (m) Names and individual identification data for all
12 viators in the possession and control of the Director shall be
13 considered private and confidential and shall not be disclosed
14 by the Director unless required by law.

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

1 The Director is authorized to use the documents, materials,
2 or other information in the furtherance of any regulatory or
3 legal action brought as part of the Director's official duties.

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

8 (1) confidential by law and privileged;

9 (2) not subject to subpoena; and

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

12 (A) created, produced or obtained by, or disclosed
13 to the NAIC and its affiliates and subsidiaries in the
14 course of assisting an examination made under this Act
15 or assisting the Director or the chief insurance
16 regulatory official in another state in the analysis or
17 investigation of the financial condition or market
18 conduct of a licensee; or

19 (B) disclosed under this subsection (m) by the
20 Director or disclosed under a comparable provision in
21 law of another state by that state's chief insurance
22 regulatory official to the NAIC and its affiliates and
23 subsidiaries.

24 Neither the Director nor any person that received the
25 documents, material, or other information while acting under
26 the authority of the Director, including the NAIC and its

1 affiliates and subsidiaries, shall be permitted to testify in
2 any private civil action concerning any confidential
3 documents, materials, or information subject to this
4 subsection (m).

5 (n) In order to assist in the performance of the Director's
6 duties, the Director may:

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

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

1 or information; and

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

4 (o) No waiver of any applicable privilege or claim of
5 confidentiality in the documents, materials, or information
6 shall occur as a result of disclosure to the Director under
7 this Section or as a result of sharing as authorized in
8 subsection (n) of this Section.

9 (p) A privilege established under the law of any state or
10 jurisdiction that is substantially similar to the privilege
11 established under this Section shall be available and enforced
12 in any proceeding in, and in any court of, this State.

13 (q) Nothing contained in this Act prevents or prohibits the
14 Director from disclosing the content of an examination report,
15 preliminary examination report or results, or any matter
16 relating to those reports or results, to the chief insurance
17 regulatory official of any other state or country, or to law
18 enforcement officials of this or any other state or agency of
19 the federal government at any time or to the NAIC, if the
20 agency or office receiving the report or matters relating to it
21 agrees in writing to hold it confidential and in a manner
22 consistent with this Act.

23 (r) The expenses incurred in conducting an examination
24 shall be paid by the licensee.

25 (s) No cause of action shall arise nor shall any liability
26 be imposed against the Director, the Director's authorized

1 representatives, or any examiner appointed by the Director for
2 any statements made or conduct performed in good faith while
3 carrying out the provisions of this Act.

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

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

23 (t) The Director may investigate suspected viatical
24 settlement fraud and persons engaged in the business of
25 viatical settlements.

1 Section 35. Disclosure to viator.

2 (a) With each application for a viatical settlement
3 contract, a viatical settlement provider or viatical
4 settlement broker shall provide the viator with at least the
5 following disclosures no later than the time the viatical
6 settlement contract is signed by all parties. The disclosures
7 shall include distribution of a brochure describing the process
8 of viatical settlements. The NAIC form for the brochure shall
9 be used unless another form is developed or approved by the
10 Director. Other disclosures required by this subsection (a)
11 shall be provided in a separate document that is signed by the
12 viator and the viatical settlement provider or viatical
13 settlement broker and shall provide the following information:

14 (1) If a viator enters into a viatical settlement
15 contract, then the beneficiaries of the life insurance
16 policy lose the life insurance policy's benefits, equity,
17 and protection. In addition, by entering into this viatical
18 settlement contract, the insured may not qualify for
19 another life insurance policy or may be required to pay
20 substantially higher premiums.

21 (2) That there are possible alternatives to viatical
22 settlement contracts including any accelerated death
23 benefits or policy loans offered under the viator's life
24 insurance policy.

25 (3) That a viatical settlement broker represents only
26 the viator and not the insurer or the viatical settlement

1 provider and owes a fiduciary duty to the viator, including
2 a duty to act according to the viator's instructions and in
3 the best interest of the viator.

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

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

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

15 (7) That the viator has the right to rescind a viatical
16 settlement contract before the earlier of 30 calendar days
17 after the date upon which the viatical settlement contract
18 is executed by all parties or 15 calendar days after the
19 viatical settlement proceeds have been paid to the viator.
20 Rescission, if exercised by the viator, is effective only
21 if both notice of the rescission is given and the viator
22 repays all proceeds and any premiums, loans, and loan
23 interest paid on the account of the viatical settlement
24 within the rescission period. If the insured dies during
25 the rescission period, the viatical settlement contract is
26 deemed to have been rescinded, subject to repayment by the

1 viator or the viator's estate to the viatical settlement
2 provider of all viatical settlement proceeds and any
3 premiums, loans, and loan interest paid on the account of
4 the viatical settlement within 60 days after the insured's
5 death.

6 (8) That funds must be sent to the viator within 3
7 business days after the viatical settlement provider has
8 received the insurer or group administrator's written
9 acknowledgment that ownership of the policy has been
10 transferred and the beneficiary has been designated.

11 (9) That entering into a viatical settlement contract
12 may cause other rights or benefits, including conversion
13 rights and waiver of premium benefits that may exist under
14 the policy, to be forfeited by the viator. Assistance
15 should be sought from a financial adviser.

16 (10) That the disclosure document must contain the
17 following language: "A viatical settlement provider or
18 viatical settlement broker may ask the insured for medical,
19 financial, and personal information. All medical,
20 financial, or personal information solicited or obtained
21 by a viatical settlement provider or viatical settlement
22 broker about an insured, including the insured's identity
23 or the identity of the insured's family members, the
24 insured's spouse or the insured's significant other, may be
25 disclosed as necessary to effect the viatical settlement
26 between the viator and the viatical settlement provider. If

1 you are asked to provide this information, you will be
2 asked to consent to the disclosure. The information may be
3 provided to someone who buys the policy or provides funds
4 for the purchase. You may be asked to renew your permission
5 to share information every 2 years."

6 (11) That, following execution of a viatical
7 settlement contract, the insured may be contacted for the
8 purpose of determining the insured's health status and to
9 confirm the insured's residential or business street
10 address and telephone number, or for other purposes
11 permitted by law. This contact is limited to once every 3
12 months if the insured has a life expectancy of more than
13 one year, and no more than once each month if the insured
14 has a life expectancy of one year or less. All such
15 contacts shall be made only by a viatical settlement
16 provider licensed in the state in which the viator resided
17 at the time of the viatical settlement, or by the
18 authorized representative of a duly licensed viatical
19 settlement provider.

20 (12) If the policy to be viaticated is group coverage,
21 the insured is advised to check with the manager of the
22 group about whether permission is required to sell the
23 policy or other conditions.

24 (13) Entering into a viatical settlement contract will
25 result in investors having a financial interest in the
26 insured's death.

1 (b) With each application for a viatical settlement, a
2 viatical settlement provider or viatical settlement broker
3 shall provide the prospective viator with a document titled
4 "Important Consumer Notices". The document must be provided to
5 the prospective viator and contain, in conspicuous type size
6 and format, the following:

7 "By entering into a viatical settlement contract:

8 (1) You are making a complex financial decision that
9 may or may not be in your or your family's financial best
10 interest. Seek independent advice from financial planning
11 experts and responsible government agencies.

12 (2) You may not be able to purchase another life
13 insurance policy.

14 (3) You could lose Medicaid and other valuable
15 government benefits.

16 (4) You will receive proceeds that may be subject
17 federal and state taxes and to the claims of creditors.

18 (5) You have sold your life insurance policy to
19 strangers who have a financial interest in the life and
20 death of the person whose life is insured by the policy.

21 (6) You or your residence may be contacted on a regular
22 basis to determine if you have died or if your health
23 status has deteriorated."

24 The disclosure document required by this subsection (b)
25 shall be the cover page of the viatical settlement contract and
26 shall be signed by the viator and the viatical settlement

1 provider or viatical settlement broker. The viator and viatical
2 settlement provider or viatical settlement broker shall sign
3 the disclosure prior to signing the viatical settlement
4 contract. A copy of the signed document must be provided to the
5 viator.

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

13 (1) The affiliation, if any, between the viatical
14 settlement provider and the issuer of the policy to be
15 acquired pursuant to a viatical settlement contract.

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

18 (3) Whether any affiliations or contractual
19 arrangements exist between the viatical settlement
20 provider and the viatical settlement purchaser.

21 (4) If a policy to be acquired pursuant to a viatical
22 settlement contract has been issued as a joint policy or
23 involves family riders or any coverage of a life other than
24 the insured under the policy to be acquired pursuant to a
25 viatical settlement contract, the viator must be informed
26 of the possible loss of coverage on the other lives under

1 the policy and must be advised to consult with the viator's
2 insurance producer or the company issuing the policy for
3 advice on the proposed viatical settlement contract.

4 (5) The dollar amount of the current death benefit
5 payable to the viatical settlement provider under the
6 policy. If known, the viatical settlement provider also
7 shall disclose the availability of additional guaranteed
8 insurance benefits, the dollar amount of accidental death
9 and dismemberment benefits under the policy or
10 certificate, and the extent to which the viator's interest
11 in those benefits will be transferred as a result of the
12 viator's settlement contract.

13 (6) The name, business address, and telephone number of
14 the escrow agent, and that the viator may inspect or
15 receive copies of the relevant escrow or trust agreements
16 or documents. Also, that an escrow agent shall provide
17 escrow services to the parties pursuant to a written
18 agreement signed by the viatical settlement provider, the
19 escrow agent, and the viator. At the close of escrow, the
20 escrow agent must distribute the proceeds of the sale to
21 the viator, minus any compensation to be paid to any other
22 persons who provided services and to whom the viator has
23 agreed to compensate out of the gross amount offered by the
24 viatical settlement purchaser. All persons receiving any
25 form of compensation under the escrow agreement shall be
26 clearly identified, including name, business address,

1 telephone number, and tax identification number.

2 (d) A viatical settlement broker shall provide the viator
3 with at least the following disclosures no later than the date
4 the viatical settlement contract is signed by all parties. The
5 disclosures shall be conspicuously displayed in the viatical
6 settlement contract or in a separate document signed by the
7 viator and provide the following information:

8 (1) the name, business address, and telephone number of
9 the viatical settlement broker;

10 (2) a full, complete, and accurate description of all
11 offers, counteroffers, acceptances, and rejections
12 relating to the proposed viatical settlement contract;

13 (3) any affiliations or contractual arrangements
14 between the viatical settlement broker and any person
15 making an offer in connection with the proposed viatical
16 settlement contracts;

17 (4) the amount and method of calculating the broker's
18 compensation, which term "compensation" includes anything
19 of value paid or given to a proposed settlement broker in
20 connection with the proposed viatical settlement contract;

21 (5) if any portion of the viatical settlement broker's
22 compensation, as defined in paragraph (3) of this
23 subsection (c), is taken from a proposed viatical
24 settlement offer, the broker shall disclose the total
25 amount of the viatical settlement offer and the percentage
26 of the viatical settlement offer comprised by the viatical

1 settlement broker's compensation; and

2 (6) the name of the legal owner and beneficiary of the
3 insurance policy after the policy is sold pursuant to the
4 viatical settlement contract and whether legal ownership
5 of the policy and the beneficiary's right to collect
6 benefits upon the viator's death can be sold.

7 (e) If the viatical settlement provider transfers
8 ownership or changes the beneficiary of the insurance policy,
9 then the provider shall communicate in writing the change in
10 ownership or beneficiary to the insured within 20 days after
11 the change.

12 Section 40. Disclosure to insurer. Prior to the initiation
13 of a plan, transaction, or series of transactions a viatical
14 settlement broker or viatical settlement provider shall fully
15 disclose to an insurer a plan, transaction, or series of
16 transactions to which the viatical settlement broker or
17 viatical settlement provider is a party to originate, renew,
18 continue, or finance a life insurance policy with the insurer
19 for the purpose of engaging in the business of viatical
20 settlements at any time prior to or during the first 2 years
21 after issuance of the policy. The viatical settlement provider,
22 viatical settlement broker, viator, or applicant for a policy
23 shall, when requested, disclose that the prospective insured
24 has undergone a life expectancy evaluation in connection with
25 the issuance of a policy by a person or entity other than the

1 insurer or its authorized representative. Any disclosure
2 required under this Section must be made in writing.

3 Section 45. General rules.

4 (a) A viatical settlement provider entering into a viatical
5 settlement contract shall first obtain:

6 (1) if the viator is the insured, a written statement
7 from a licensed attending physician that the viator is of
8 sound mind and under no constraint or undue influence to
9 enter into a viatical settlement contract; as used in this
10 item (1), "physician" means a person licensed under the
11 Medical Practice Act of 1987 to practice medicine and
12 surgery or osteopathic medicine and surgery in all its
13 branches; and

14 (2) a document in which the insured consents in writing
15 to the release of his or her medical records to a licensed
16 viatical settlement provider, viatical settlement broker,
17 and the insurance company that issued the life insurance
18 policy covering the life of the insured.

19 (b) Within 20 days after a viator executes documents
20 necessary to transfer any rights under an insurance policy or
21 within 20 days after entering any agreement, option, promise,
22 or any other form of understanding, expressed or implied, to
23 viaticate the policy, the viatical settlement provider shall
24 give written notice to the insurer that issued that insurance
25 policy that the policy has or will become a viaticated policy.

1 The notice shall be accompanied by the documents required by
2 subsection (c) of this Section.

3 (c) The viatical provider shall deliver a copy of the
4 medical release required under paragraph (2) of subsection (a)
5 of this Section, a copy of the viator's application for the
6 viatical settlement contract, the notice required under
7 subsection (b) of this Section and a request for verification
8 of coverage to the insurer that issued the life insurance
9 policy that is the subject of the viatical settlement
10 transaction. The viatical settlement provider shall use the
11 NAIC's form for verification of coverage unless another form is
12 developed and approved by the Director.

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

26 (e) If a viatical settlement broker performs any of the

1 activities required of a viatical settlement provider as
2 described by subsection (a) through (d) of this Section, then
3 the viatical settlement provider is deemed to have fulfilled
4 that requirement.

5 (f) The insurer shall respond to a request for verification
6 of coverage submitted on an approved form by a viatical
7 settlement provider or viatical settlement broker within 30
8 calendar days after the date the request is received and shall
9 indicate whether, based on the medical evidence and documents
10 provided, the insurer intends to pursue an investigation at
11 this time regarding the validity of the insurance contract or
12 possible fraud. The insurer shall accept a request for
13 verification of coverage made on an NAIC form or any other form
14 approved by the Director. The insurer shall accept an original
15 or facsimile or electronic copy of such request and any
16 accompanying authorization signed by the viator. Failure by the
17 insurer to meet its obligations under this subsection shall be
18 a violation of subsection (b) of Section 50 and Section 75 of
19 this Act.

20 (g) All medical information solicited or obtained by any
21 licensee shall be subject to the applicable provisions of state
22 law relating to confidentiality of medical information.

23 (h) All viatical settlement contracts entered into in this
24 State shall provide the viator with an absolute right to
25 rescind the contract before the earlier of 30 calendar days
26 after the date upon which the viatical settlement contract is

1 executed by all parties or 15 calendar days after the viatical
2 settlement proceeds have been sent to the viator as provided in
3 Section 45. Rescission by the viator may be conditioned upon
4 the viator both giving notice and repaying to the viatical
5 settlement provider within the rescission period all proceeds
6 of the settlement and any premiums, loans and loan interest
7 paid by or on behalf of the viatical settlement provider in
8 connection with or as a consequence of the viatical settlement.
9 If the insured dies during the rescission period, the viatical
10 settlement contract shall be deemed to have been rescinded,
11 subject to repayment to the viatical settlement provider or
12 purchaser of all viatical settlement proceeds, and any
13 premiums, loans, and loan interest that have been paid by the
14 viatical settlement provider or viatical settlement purchaser,
15 which shall be paid within 60 calendar days of the death of the
16 insured. In the event of any rescission, if the viatical
17 settlement provider has paid commissions or other compensation
18 to a viatical settlement broker in connection with the
19 rescinded transaction, the viatical settlement broker shall
20 refund all such commissions and compensation to the viatical
21 settlement provider within 5 business days following receipt of
22 written demand from the viatical settlement provider, which
23 demand shall be accompanied by either the viator's notice of
24 rescission if rescinded at the election of the viator, or
25 notice of the death of the insured if rescinded by reason of
26 the death of the insured within the applicable rescission

1 period.

2 (i) If a viatical settlement contract is rescinded by the
3 viator pursuant to this Section, then ownership of the
4 insurance policy reverts to the viator or to the viator's
5 estate.

6 (j) The viatical settlement provider shall instruct the
7 viator to send the executed documents required to effect the
8 change in ownership, assignment, or change in beneficiary
9 directly to the escrow agent. Within 3 business days after the
10 date the escrow agent receives the document (or from the date
11 the viatical settlement provider receives the documents, if the
12 viator erroneously provides the documents directly to the
13 viatical settlement provider), the viatical settlement
14 provider shall pay or transfer the gross amount paid by the
15 viatical settlement purchaser to the escrow agent for deposit
16 in a trust account and set up for that purpose by the escrow
17 agent in a state or federally chartered financial institution
18 whose deposits are insured by the Federal Deposit Insurance
19 Corporation (FDIC). Upon payment of the settlement proceeds
20 into the escrow or trust account, the escrow agent or trustee
21 shall deliver the original change in ownership, assignment, or
22 change in beneficiary forms to the viatical settlement
23 provider, a representative of the viatical settlement
24 provider, or related provider trust. Upon the escrow agent's
25 receipt of the acknowledgment of the properly completed
26 transfer of ownership, assignment, or designation of

1 beneficiary from the insurance company, the escrow agent shall
2 pay the settlement proceeds to the viator. Funds shall be
3 deemed sent by a viatical settlement provider to a viator as of
4 the date that the escrow agent either releases the funds for
5 wire transfer to the viator or places a check for delivery to
6 the viator via United States Postal Service or other nationally
7 recognized delivery service.

8 (k) Failure to transfer the proceeds to the viator for the
9 viatical settlement contract within the time set forth in the
10 disclosure pursuant to item (7) of subsection (a) of Section 35
11 of this Act renders the viatical settlement contract voidable
12 by the viator for lack of consideration until the time
13 consideration is tendered to and accepted by the viator. If a
14 viatical settlement contract is voided by the viator pursuant
15 to this subsection (k), then ownership of the policy reverts to
16 the viator or to the viator's estate.

17 (l) After the viatical settlement contract has been
18 effected, contacts with the insured for the purpose of
19 determining the health status of the insured shall be made only
20 by the viatical settlement provider or the authorized
21 representative of the viatical settlement provider. The
22 viatical settlement provider or authorized representative
23 shall not contact the insured with the purpose of determining
24 the insured's health status more than once every 3 months if
25 the insured has a life expectancy of more than one year or more
26 than once per month if the insured has a life expectancy of one

1 year or less. The viatical settlement provider shall explain
2 the procedure for making these contacts at the time the
3 viatical settlement contract is entered into. For purposes of
4 this Section, viatical settlement providers are responsible
5 for the actions of their authorized representatives.

6 (m) The insurer that issued the policy being settled
7 pursuant to a viatical settlement contract shall not be
8 responsible for any act or omission of a viatical settlement
9 broker or viatical settlement provider arising out of or in
10 connection with the viatical settlement transaction, unless
11 the insurer receives compensation for the placement of a
12 viatical settlement contract from the viatical settlement
13 provider or viatical settlement broker in connection with the
14 viatical settlement contract.

15 (n) If there is more than one viator on a single policy and
16 the viators are residents of different states, then the
17 transaction shall be governed by the law of the state in which
18 the viator having the largest percentage ownership resides or,
19 if the viators hold equal ownership, the state of residence of
20 one viator agreed upon in writing by all the viators.

21 Subject to the provisions of this subsection (n), if the
22 viator is a resident of this State, then all agreements to be
23 signed by the viator shall provide exclusive jurisdiction to
24 courts of this State and the laws of this State shall govern
25 the agreements. Nothing in the agreements shall abrogate the
26 viator's right to a trial by jury.

1 (o) Notwithstanding the manner in which the viatical
2 settlement broker is compensated, a viatical settlement broker
3 is deemed to represent only the viator and not the insurer or
4 the viatical settlement provider and owes a fiduciary duty to
5 the viator to act according to the viator's instructions and in
6 the best interest of the viator.

7 Section 50. Prohibited practices.

8 (a) It is a violation of this Act for any person to enter
9 into a viatical settlement contract prior to the application of
10 or issuance of a policy that is the subject of the viatical
11 settlement contract. It is a violation of this Act for any
12 person to enter into stranger-originated life insurance or
13 STOLI as defined by this Act.

14 (b) It is a violation of this Act for any person to enter
15 into a viatical settlement contract within a 2-year period
16 commencing with the date of issuance of the insurance policy
17 unless the viator certifies to the viatical settlement provider
18 that one or more of the following conditions have been met
19 within the 2-year period:

20 (1) The policy was issued upon the viator's exercise of
21 conversion rights arising out of a group or individual
22 policy, provided the total of the time covered under the
23 conversion policy plus the time covered under the prior
24 policy is at least 24 months. The time covered under a
25 group policy shall be calculated without regard to any

1 change in insurance carriers, provided the coverage has
2 been continuous and under the same group sponsorship.

3 (2) The viator certifies and submits independent
4 evidence to the viatical settlement provider that one or
5 more of the following conditions have been met within the
6 2-year period:

7 (A) the viator or insured is terminally or
8 chronically ill;

9 (B) the viator's spouse dies;

10 (C) the viator divorces his or her spouse;

11 (D) the viator retires from full-time employment;

12 (E) the viator becomes physically or mentally
13 disabled and a physician determines that the
14 disability prevents the viator from maintaining
15 full-time employment;

16 (F) a court of competent jurisdiction enters a
17 final order, judgment, or decree on the application of
18 a creditor of the viator, adjudicating the viator
19 bankrupt or insolvent, or approving a petition seeking
20 reorganization of the viator or appointing a receiver,
21 trustee, or liquidator to all or a substantial part of
22 the viator's assets;

23 (G) the sole beneficiary of the policy is a family
24 member of the viator and the beneficiary dies; or

25 (H) any other condition that the Director may
26 determine by regulation to be an extraordinary

1 circumstance for the viator or the insured.

2 (c) Copies of the independent evidence described in
3 paragraph (2) of subsection (b) of this Section and documents
4 required by Section 45 shall be submitted to the insurer when
5 the viatical settlement provider or any other party entering
6 into a viatical settlement contract with a viator submits a
7 request to the insurer for verification of coverage. The copies
8 shall be accompanied by a letter of attestation from the
9 viatical settlement provider that the copies are true and
10 correct copies of the documents received by the viatical
11 settlement provider.

12 (d) If the viatical settlement provider submits to the
13 insurer a copy of the owner or insured's certification
14 described in and the independent evidence required by paragraph
15 (2) of subsection (b) of this Section when the viatical
16 settlement provider submits a request to the insurer to effect
17 the transfer of the policy to the viatical settlement provider,
18 then the copy shall be deemed to conclusively establish that
19 the viatical settlement contract satisfies the requirements of
20 this Section, and the insurer shall timely respond to the
21 request.

22 (e) No insurer may, as a condition of responding to a
23 request for verification of coverage or effecting the transfer
24 of a policy pursuant to a viatical settlement contract, require
25 that the viator, insured, viatical settlement provider, or
26 viatical settlement broker sign any forms, disclosures,

1 consent, or waiver form that has not been expressly approved by
2 the Director for use in connection with viatical settlement
3 contracts in this State.

4 (f) Upon receipt of a properly completed request for change
5 of ownership or beneficiary of a policy, the insurer shall
6 respond in writing within 30 calendar days to confirm that the
7 change has been effected or specifying the reasons why the
8 requested change cannot be processed. No insurer shall
9 unreasonably delay effecting change of ownership or
10 beneficiary or seek to interfere with any viatical settlement
11 contract lawfully entered into in this State.

12 Section 55. Prohibited practices and conflicts of
13 interest.

14 (a) With respect to any viatical settlement contract or
15 insurance policy, no viatical settlement broker knowingly
16 shall solicit an offer from, effectuate a viatical settlement
17 with, or make a sale to any viatical settlement provider,
18 viatical settlement purchaser, financing entity, or related
19 provider that is controlling, controlled by, or under common
20 control with such viatical settlement broker, unless such
21 relationship is fully disclosed to the viator.

22 (b) With respect to any viatical settlement contract or
23 insurance policy, no viatical settlement provider knowingly
24 may enter into a viatical settlement contract with a viator,
25 if, in connection with such viatical settlement contract,

1 anything of value will be paid to a viatical settlement broker
2 that is controlling, controlled by, or under common control
3 with such viatical settlement provider or the viatical
4 settlement purchaser, financing entity, or related provider
5 trust that is involved in such viatical settlement contract,
6 unless such relationship is fully disclosed to the viator.

7 (c) Any disclosure provided pursuant to subsections (a) and
8 (b) of this Section must be provided along with the disclosures
9 required by subsection (a) of Section 35 and contain the
10 following language: "The financial relationship between your
11 viatical settlement broker and the provider of the viatical
12 settlement creates a potential conflict of interest between
13 your financial interests and the financial interests of the
14 viatical settlement broker and viatical settlement provider.
15 The individual brokering this viatical transaction owes you a
16 fiduciary duty or a duty of loyalty. Your viatical settlement
17 broker must advise you based exclusively upon your best
18 interests, not the best interests of the viatical settlement
19 broker or the viatical settlement provider."

20 (d) A violation of subsection (a), subsection (b), or
21 subsection (c) shall be deemed viatical settlement fraud.

22 (e) No person shall issue, solicit, or market the purchase
23 of an insurance policy for the purpose of settling the policy.
24 Nothing in this subsection (e) shall prohibit persons from
25 using and discussing the written materials that the Director
26 shall approve prior to the effective date of this Act and that

1 inform consumers of their rights with respect to a life
2 insurance policy, including the option of entering into a
3 lawful viatical settlement contract. Nothing in this
4 subsection (e) limits or otherwise impairs the terms of a
5 contract between an insurer and its producers.

6 (f) A viatical settlement provider shall retain all copies
7 of a viatical settlement promotional, advertising, and
8 marketing materials and shall make these material available to
9 the Director on request. In no event shall any marketing
10 materials expressly reference that the insurance is "free" for
11 any period of time. The inclusion of any reference in the
12 marketing materials that would cause a viator to reasonably
13 believe that the insurance is free for any period of time shall
14 be considered a violation of this Act.

15 (g) No insurance producer, insurance company, viatical
16 settlement broker, or viatical settlement provider shall make
17 any statement or representation to a potential or actual
18 insured or potential or actual viator in connection with the
19 sale or financing of a life insurance policy to the effect that
20 the insurance is free or without cost to the policyholder for
21 any period of time unless provided in the policy.

22 Section 60. Advertising for viatical settlements.

23 (a) The purpose of this Section is to provide prospective
24 viators with clear and unambiguous statements in the
25 advertisement of viatical settlements and to assure the clear,

1 truthful, and adequate disclosure of the benefits, risks,
2 limitations, and exclusions of any viatical settlement
3 contract. All product descriptions must be presented in a
4 manner that prevents unfair, deceptive, or misleading
5 advertising and conducive to accurate presentation and
6 description of viatical settlements through the advertising
7 media and material used by licensees.

8 (b) This Section applies to any advertising of viatical
9 settlement contracts or related products or services
10 circulated or placed directly before the public, including
11 Internet advertising. Where disclosure requirements are
12 established pursuant to federal regulation, this Section shall
13 be interpreted so as to minimize or eliminate conflict with
14 federal regulation wherever possible.

15 (c) Every licensee shall establish and at all times
16 maintain a system of control over the content, form, and method
17 of dissemination of all advertisements of its contracts,
18 products, and services. All advertisements, regardless of by
19 whom written, created, designed, or presented, shall be the
20 responsibility of the licensee, as well as the individual who
21 created or presented the advertisement. A system of control
22 shall include regular routine notification, at least once a
23 year, to agents and others authorized by the licensee who
24 disseminate advertisements of the requirements and procedures
25 for approval prior to the use of any advertisements not
26 furnished by the licensee.

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

12 (e) The information required to be disclosed under this
13 Section shall not be minimized, rendered obscure, or presented
14 in an ambiguous fashion or intermingled with the text of the
15 advertisement so as to be confusing or misleading.

16 An advertisement shall not omit material information or use
17 words, phrases, statements, references, or illustrations if
18 the omission or use has the capacity, tendency, or effect of
19 misleading or deceiving viators as to the nature or extent of
20 any benefit, loss covered, premium payable, or state or federal
21 tax consequence. The fact that the viatical settlement contract
22 offered is made available for inspection prior to consummation
23 of the sale, or an offer is made to refund the payment if the
24 viator is not satisfied or that the viatical settlement
25 contract includes a "free look" period that satisfies or
26 exceeds legal requirements, does not remedy misleading

1 statements.

2 An advertisement shall not use the name or title of an
3 insurance company or an insurance policy unless the
4 advertisement has been approved by the insurer.

5 An advertisement shall not state or imply that interest
6 charged on an accelerated death benefit or a policy loan is
7 unfair, inequitable, or in any manner an incorrect or improper
8 practice.

9 The words "free", "no cost", "without cost", "no additional
10 cost", "at no extra cost", or words of similar import shall not
11 be used with respect to any life insurance policy or to any
12 benefit or service unless true. An advertisement may specify
13 the charge for a benefit or a service or may state that a
14 charge is included in the payment or use other appropriate
15 language.

16 Testimonials, appraisals, or analysis used in
17 advertisements must be genuine; represent the current opinion
18 of the author; be applicable to the viatical settlement
19 contract, product, or service advertised, if any; and be
20 accurately reproduced with sufficient completeness to avoid
21 misleading or deceiving prospective viators as to the nature or
22 scope of the testimonials, appraisal, analysis, or
23 endorsement. In using testimonials, appraisals, or analyses, a
24 licensee under this Act makes as its own all the statements
25 contained therein, and the statements are subject to all the
26 provisions of this Section.

1 If the individual making a testimonial, appraisal,
2 analysis, or endorsement has a financial interest in the
3 subject of the testimonial, appraisal, analysis, or
4 endorsement, either directly or indirectly as a stockholder,
5 director, officer, employee, or otherwise, or receives any
6 benefit directly or indirectly other than required union scale
7 wages, that fact shall be prominently disclosed in the
8 advertisement.

9 An advertisement shall not state or imply that a viatical
10 settlement contract, benefit, or service has been approved or
11 endorsed by a group of individuals, society, association, or
12 other organization unless that is the fact and unless any
13 relationship between the group of individuals, society,
14 association, or organization and the licensee is disclosed. If
15 the entity making the endorsement or testimonial is owned,
16 controlled, or managed by the licensee, or receives any payment
17 or other consideration from the viatical settlement licensee
18 for making an endorsement or testimonial, that fact shall be
19 prominently disclosed in the advertisement.

20 When an endorsement refers to benefits received under a
21 viatical settlement contract all pertinent information shall
22 be retained for a period of 5 years after its use.

23 (f) An advertisement shall not contain statistical
24 information unless the information accurately reflects recent
25 and relevant facts. The source of all statistics used in an
26 advertisement shall be identified.

1 (g) An advertisement shall not disparage insurers,
2 viatical settlement providers, viatical settlement brokers,
3 insurance producers, policies, services, or methods of
4 marketing.

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

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

23 (j) An advertisement shall not use any combination of
24 words, symbols, or physical materials that by their content,
25 phraseology, shape, color, or other characteristics are so
26 similar to a combination of words, symbols, or physical

1 materials used by a government program or agency or otherwise
2 appear to be of such a nature that they tend to mislead
3 prospective viators into believing that the solicitation is in
4 some manner connected with a government program or agency.

5 (k) An advertisement may state that a licensee is licensed
6 in the state where the advertisement appears, provided it does
7 not exaggerate that fact or suggest or imply that competing
8 licensees may not be so licensed. The advertisement may ask the
9 audience to consult the licensee's Internet website or contact
10 the Division to find out if the state requires licensing and,
11 if so, whether the viatical settlement provider, or viatical
12 settlement broker, is licensed.

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

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

1 (n) An advertisement shall not directly or indirectly
2 create the impression that any division or agency of the State
3 or of the U. S. government endorses, approves, or favors:

4 (1) any licensee or its business practices or methods
5 of operation;

6 (2) any viatical settlement contract; or

7 (3) any life insurance policy or life insurance
8 company.

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

14 (p) If the advertising emphasizes the dollar amounts
15 available to viators, the advertising shall disclose, using the
16 same type and font size as the dollar amount available to the
17 viator, the average purchase price as a percent of face value
18 obtained by viators contracting with the licensee during the
19 past 6 months.

20 Section 65. Fraud prevention and control.

21 (a) A person shall not commit the offense of viatical
22 settlement fraud.

23 A person shall not knowingly or intentionally interfere
24 with the enforcement of the provisions of this Act or
25 investigations of suspected or actual violations of this Act.

1 A person in the business of viatical settlements shall not
2 knowingly or intentionally permit any person convicted of a
3 felony involving dishonesty or breach of trust to participate
4 in the business of viatical settlements.

5 (b) Viatical settlements contracts and applications for
6 viatical settlements, regardless of the form of transmission,
7 shall contain the following statement: "Any person who
8 knowingly presents false information in an application for
9 insurance or a viatical settlement contract is guilty of a
10 crime and may be subject to fines and confinement in prison."

11 The lack of a statement as required in this subsection (b)
12 does not constitute a defense in any prosecution for the
13 offense of viatical settlement fraud.

14 (c) Any person engaged in the business of viatical
15 settlements having knowledge or a reasonable suspicion that a
16 viatical settlement fraud is being, will be, or has been
17 committed shall provide to the Director such information as
18 required by, and in a manner prescribed by, the Director.

19 Any other person having knowledge or a reasonable belief
20 that viatical settlement fraud is being, will be, or has been
21 committed may provide to the Director the information required
22 by, and in a manner prescribed by, the Director.

23 (d) No civil liability shall be imposed on and no cause of
24 action shall arise from a person's furnishing information
25 concerning suspected, anticipated, or completed viatical
26 settlement fraud or suspected or completed fraudulent

1 insurance acts, if the information is provided to or received
2 from:

3 (1) the Director or the Director's employees, agents,
4 or representatives;

5 (2) federal, State, or local law enforcement or
6 regulatory officials or their employees, agents, or
7 representatives;

8 (3) a person involved in the prevention and detection
9 of viatical settlement fraud or that person's agents,
10 employees, or representatives;

11 (4) the NAIC, the National Association of Securities
12 Dealers (NASD), the North American Securities
13 Administrators Association (NASAA), or their employees,
14 agents, or representatives, or other regulatory body
15 overseeing life insurance, viatical settlements,
16 securities, or investment fraud; or

17 (5) the life insurer that issued the life insurance
18 policy covering the life of the insured.

19 (e) The immunity provided by subsection (d) of this Section
20 shall not apply to false statements made willfully or wantonly.
21 In an action brought against a person for filing a report or
22 furnishing other information concerning viatical settlement
23 fraud, the party bringing the action shall plead specifically
24 any allegation that subsection (d) does not apply.

25 (f) A person furnishing information as identified in
26 subsection (d) of this Section shall be entitled to an award of

1 attorney's fees and costs if the person is the prevailing party
2 in a civil cause of action for libel, slander, or any other
3 relevant tort arising out of activities in carrying out the
4 provisions of this Act and the party bringing the action was
5 not substantially justified in doing so. For purposes of this
6 Section a proceeding is substantially justified if it had a
7 reasonable basis in law or fact at the time that it was
8 initiated. However, such an award does not apply to any person
9 furnishing information concerning the person's own fraudulent
10 viatical settlement acts.

11 (g) This Section does not abrogate or modify common law or
12 statutory privileges or immunities enjoyed by a person
13 described in subsection (d) of this Section.

14 Subsection (d) of this Section does not apply to a person
15 furnishing information concerning that person's own suspected,
16 anticipated, or completed viatical settlement fraud or
17 suspected, anticipated, or completed fraudulent insurance
18 acts.

19 (h) The documents and evidence provided pursuant to
20 subsection (d) of this Section or obtained by the Director in
21 an investigation of suspected or actual viatical settlement
22 fraud shall be privileged and confidential and shall not be a
23 public record and shall not be subject to discovery or subpoena
24 in a civil or criminal action. This subsection (h) does not
25 prohibit release by the Director of documents and evidence
26 obtained in an investigation of suspected or actual viatical

1 settlement fraud: (1) in administrative or judicial
2 proceedings to enforce laws administered by the Director; (2)
3 to federal, State, or local law enforcement or regulatory
4 agencies, to an organization established for the purpose of
5 detecting and preventing viatical settlement fraud or to the
6 NAIC; or (3) at the discretion of the Director, to a person in
7 the business of viatical settlements that is aggrieved by a
8 viatical settlement fraud. Release of documents and evidence
9 under this subsection (h) does not abrogate or modify the
10 privilege granted in this subsection.

11 (i) This Act shall not do any of the following:

12 (1) Preempt the authority or relieve the duty of other
13 law enforcement or regulatory agencies to investigate,
14 examine and prosecute suspected violations of law.

15 (2) Prevent or prohibit a person from disclosing
16 voluntarily information concerning viatical settlement
17 fraud to a law enforcement or regulatory agency other than
18 the Division.

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

23 (j) Viatical settlement providers and viatical settlement
24 brokers shall have in place antifraud initiatives reasonably
25 calculated to detect, prosecute, and prevent viatical
26 settlement fraud. At the discretion of the Director, the

1 Director may order, or a licensee may request and the Director
2 may grant, such modifications of the following required
3 initiatives as necessary to ensure an effective antifraud
4 program. The modifications may be more or less restrictive than
5 the required initiatives so long as the modifications may
6 reasonably be expected to accomplish the purpose of this
7 Section.

8 Antifraud initiatives shall include the following:

9 (1) fraud investigators, who may be viatical
10 settlement providers or viatical settlement broker
11 employees or independent contractors; and

12 (2) an antifraud plan, which shall be submitted to the
13 Director. The antifraud plan shall include, but not be
14 limited to:

15 (A) a description of the procedures for detecting
16 and investigating possible viatical settlement fraud
17 and procedures for resolving material inconsistencies
18 between medical records and insurance applications;

19 (B) a description of the procedures for reporting
20 possible viatical settlement fraud to the Director;

21 (C) a description of the plan for antifraud
22 education and training of underwriters and other
23 personnel;

24 (D) a description or chart outlining the
25 organizational arrangement of the antifraud personnel
26 who are responsible for the investigation and

1 reporting of possible viatical settlement fraud and
2 investigating unresolved material inconsistencies
3 between medical records and insurance applications;
4 and

5 (E) a description of the procedures used to perform
6 initial and continuing review of the accuracy of life
7 expectancies used in connection with a viatical
8 settlement contract.

9 Antifraud plans submitted to the Director shall be
10 privileged and confidential and are not public record and are
11 not subject to discovery or subpoena in a civil or criminal
12 action.

13 Section 70. Injunctions; civil remedies; cease and desist.

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

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

24 (c) The Director may issue, in accordance with Section
25 401.1 of the Illinois Insurance Code and the Illinois

1 Administrative Procedure Act, a cease and desist order upon a
2 person that violates any provision of this Act, any regulation
3 or order adopted by the Director, or any written agreement
4 entered into with the Director.

5 (d) In addition to the penalties and other enforcement
6 provisions of this Act, any person who violates this Act is
7 subject to civil penalties of up to \$50,000 per violation. Each
8 separate violation of this Act shall be a separate offense. If
9 a person is subject to an order of the Director for violations
10 of this Act and continually fails to obey or neglects to obey
11 the order, then each day of such failure or neglect shall be
12 deemed a separate offense. Imposition of civil penalties shall
13 be pursuant to an order of the Director. The Director's order
14 may require a person found to be in violation of this Act to
15 make restitution to persons aggrieved by violations of this
16 Act.

17 Section 72. Crimes and offenses.

18 (a) A person acting in this State as a viatical settlement
19 provider without having been licensed pursuant to Section 10 of
20 this Act who willfully violates any provision of this Act or
21 any rule adopted or order issued under this Act is guilty of a
22 Class A misdemeanor and may be subject to a fine of not more
23 than \$3,000. When such violation results in a loss of more than
24 \$10,000, the person shall be guilty of a Class 3 felony and may
25 be subject to a fine of not more than \$10,000.

1 (b) A person acting in this State as a viatical settlement
2 broker without having met the licensure and notification
3 requirements established by Section 10 of this Act who
4 willfully violates any provision of this Act or any rule
5 adopted or order issued under this Act is guilty of a Class A
6 misdemeanor and may be subject to a fine of not more than
7 \$3,000. When such violation results in a loss of more than
8 \$10,000, the person shall be guilty of a Class 3 felony and may
9 be subject to a fine of not more than \$10,000.

10 (c) The Director may refer such evidence as is available
11 concerning violations of this Act or any rule adopted or order
12 issued under this Act or of the failure of a person to comply
13 with the licensing requirements of this Act to the Attorney
14 General or the proper county attorney who may, with or without
15 such reference, institute the appropriate criminal proceedings
16 under this Act.

17 (d) A person commits the offense of viatical settlement
18 fraud when:

19 (1) For the purpose of depriving another of property or
20 for pecuniary gain any person knowingly:

21 (A) presents, causes to be presented, or prepares
22 with knowledge or belief that it will be presented to
23 or by a viatical settlement provider, viatical
24 settlement broker, life expectancy provider, viatical
25 settlement purchaser, financing entity, insurer,
26 insurance producer, or any other person, false

1 material information, or conceals material
2 information, as part of, in support of or concerning a
3 fact material to one or more of the following:

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

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

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

11 (iv) premiums paid on an insurance policy;

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

15 (vi) the reinstatement or conversion of an
16 insurance policy;

17 (vii) in the solicitation, offer,
18 effectuation, or sale of a viatical settlement
19 contract or insurance policy;

20 (viii) the issuance of written evidence of a
21 viatical settlement contract or insurance; or

22 (ix) a financing transaction; or

23 (B) employs any plan, financial structure, device,
24 scheme, or artifice to defraud related to viaticated
25 policies; or

26 (C) enters into any act, practice, or arrangement

1 which involves stranger-originated life insurance.

2 (2) In furtherance of a scheme to defraud, to further a
3 fraud, or to prevent or hinder the detection of a scheme to
4 defraud any person knowingly does or permits his employees
5 or agents to do any of the following:

6 (A) remove, conceal, alter, destroy, or sequester
7 from the Director the assets or records of a licensee
8 or other person engaged in the business of viatical
9 settlements;

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

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

18 (D) file with the Director or the equivalent chief
19 insurance regulatory official of another jurisdiction
20 a document containing false information or otherwise
21 conceals information about a material fact from the
22 Director;

23 (3) Any person knowingly steals, misappropriates, or
24 converts monies, funds, premiums, credits, or other
25 property of a viatical settlement provider, insurer,
26 insured, viator, insurance policyowner, or any other

1 person engaged in the business of viatical settlements or
2 insurance;

3 (4) Any person recklessly enters into, negotiates,
4 brokers, or otherwise deals in a viatical settlement
5 contract, the subject of which is a life insurance policy
6 that was obtained by presenting false information
7 concerning any fact material to the policy or by
8 concealing, for the purpose of misleading another,
9 information concerning any fact material to the policy,
10 where the person or the persons intended to defraud the
11 policy's issuer, the viatical settlement provider or the
12 viator; or

13 (5) Any person facilitates the change of state of
14 ownership of a policy or the state of residency of a viator
15 to a state or jurisdiction that does not have a law similar
16 to this Act for the express purposes of evading or avoiding
17 the provisions of this Act.

18 (c) For purposes of this Section, "person" means (i) an
19 individual, (ii) a corporation, (iii) an officer, agent, or
20 employee of a corporation, (iv) a member, agent, or employee of
21 a partnership, or (v) a member, manager, employee, officer,
22 director, or agent of a limited liability company who, in any
23 such capacity described by this subsection (c), commits
24 viatical settlement fraud.

25 Section 75. Unfair trade practices. A violation of this

1 Act, including the commission of viatical settlement fraud,
2 shall be considered an unfair trade practice under Article XXVI
3 of the Illinois Insurance Code.

4 Section 85. Additional powers. In addition to any other
5 hearing, examination, or investigation specifically provided
6 for by this Act, the Director may conduct such hearings,
7 examinations, and investigations as are provided for by
8 Sections 402 and 403 of the Illinois Insurance Code.

9 Section 90. Insurance Code Provisions. Insurance
10 producers operating as viatical settlement brokers shall be
11 subject to Article XXXI of the Illinois Insurance Code.

12 Section 95. Applicability of securities laws. Nothing in
13 this Act shall preempt or otherwise limit the provisions of the
14 Illinois Securities Law of 1953 or any regulations, bulletins,
15 or other interpretations issued by or through the Secretary of
16 State acting pursuant to the Illinois Securities Law of 1953.
17 Compliance with the provisions of this Act shall not constitute
18 compliance with any applicable provision of the Illinois
19 Securities Law of 1953 and any amendments thereto or any
20 regulations, notices, bulletins, or other interpretations
21 issued by or through the Secretary of State acting pursuant to
22 the Illinois Securities Law of 1953.

1 Section 100. Viatical settlement provider application. A
2 viatical settlement provider lawfully transacting business in
3 this State may continue to do so pending approval or
4 disapproval of the provider's application for a license as long
5 as the application is filed with the Director not later than 30
6 days after the effective date of this Act.

7 Section 105. Application of this Act. Notwithstanding any
8 other provisions of this Act, nothing in this Act shall apply
9 in the following instances:

10 (i) The purchase of the cash value of a life insurance
11 policy and rights impacting the cash value, including death
12 benefits, for an amount approximately equal to the cash
13 value, but only to the extent that such death benefits
14 include cash value or its monetary equivalent.

15 (ii) The collateral assignment of a life insurance
16 policy or an interest in a life insurance policy by an
17 owner of such a policy or an interest in such a policy if
18 such collateral assignment is effected for the sole purpose
19 of financing or refinancing the purchase described in item
20 (i).

21 To be eligible for regulatory treatment pursuant to this
22 Section 105, the individual or entity seeking such treatment
23 must first provide written notice to the Director that the
24 individual or entity engages in a business practice as
25 described in items (i) or (ii). Such notice shall be in a form

1 and manner and at a fee as prescribed by the Director and
2 renewed 2 years from the date on which the prior notice is
3 received by the Director. To the extent that an individual or
4 entity is exempted pursuant to this Section and is then later
5 determined to have been engaged in STOLI and to have
6 circumvented the application of this Act through this Section,
7 the Director shall take appropriate remedial action,
8 including, but not limited to, license revocation, appropriate
9 monetary penalties, or both, or other penalties as provided in
10 Section 72 of this Act and subsections (a) through (g) of
11 Section 500-70 of the Illinois Insurance Code.

12 Section 900. The Freedom of Information Act is amended by
13 changing Section 7 as follows:

14 (5 ILCS 140/7) (from Ch. 116, par. 207)

15 (Text of Section before amendment by P.A. 95-988)

16 Sec. 7. Exemptions.

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

19 (a) Information specifically prohibited from
20 disclosure by federal or State law or rules and regulations
21 adopted under federal or State law.

22 (b) Information that, if disclosed, would constitute a
23 clearly unwarranted invasion of personal privacy, unless
24 the disclosure is consented to in writing by the individual

1 subjects of the information. The disclosure of information
2 that bears on the public duties of public employees and
3 officials shall not be considered an invasion of personal
4 privacy. Information exempted under this subsection (b)
5 shall include but is not limited to:

6 (i) files and personal information maintained with
7 respect to clients, patients, residents, students or
8 other individuals receiving social, medical,
9 educational, vocational, financial, supervisory or
10 custodial care or services directly or indirectly from
11 federal agencies or public bodies;

12 (ii) personnel files and personal information
13 maintained with respect to employees, appointees or
14 elected officials of any public body or applicants for
15 those positions;

16 (iii) files and personal information maintained
17 with respect to any applicant, registrant or licensee
18 by any public body cooperating with or engaged in
19 professional or occupational registration, licensure
20 or discipline;

21 (iv) information required of any taxpayer in
22 connection with the assessment or collection of any tax
23 unless disclosure is otherwise required by State
24 statute;

25 (v) information revealing the identity of persons
26 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

1 confidential source or confidential information
2 furnished only by the confidential source;

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

8 (vi) constitute an invasion of personal privacy
9 under subsection (b) of this Section;

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

12 (viii) obstruct an ongoing criminal investigation.

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

17 (i) chronologically maintained arrest information,
18 such as traditional arrest logs or blotters;

19 (ii) the name of a person in the custody of a law
20 enforcement agency and the charges for which that
21 person is being held;

22 (iii) court records that are public;

23 (iv) records that are otherwise available under
24 State or local law; or

25 (v) records in which the requesting party is the
26 individual identified, except as provided under part

1 (vii) of paragraph (c) of subsection (1) of this
2 Section.

3 "Criminal history record information" means data
4 identifiable to an individual and consisting of
5 descriptions or notations of arrests, detentions,
6 indictments, informations, pre-trial proceedings, trials,
7 or other formal events in the criminal justice system or
8 descriptions or notations of criminal charges (including
9 criminal violations of local municipal ordinances) and the
10 nature of any disposition arising therefrom, including
11 sentencing, court or correctional supervision,
12 rehabilitation and release. The term does not apply to
13 statistical records and reports in which individuals are
14 not identified and from which their identities are not
15 ascertainable, or to information that is for criminal
16 investigative or intelligence purposes.

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

19 (f) Preliminary drafts, notes, recommendations,
20 memoranda and other records in which opinions are
21 expressed, or policies or actions are formulated, except
22 that a specific record or relevant portion of a record
23 shall not be exempt when the record is publicly cited and
24 identified by the head of the public body. The exemption
25 provided in this paragraph (f) extends to all those records
26 of officers and agencies of the General Assembly that

1 pertain to the preparation of legislative documents.

2 (g) Trade secrets and commercial or financial
3 information obtained from a person or business where the
4 trade secrets or information are proprietary, privileged
5 or confidential, or where disclosure of the trade secrets
6 or information may cause competitive harm, including:

7 (i) All information determined to be confidential
8 under Section 4002 of the Technology Advancement and
9 Development Act.

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

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

1 (h) Proposals and bids for any contract, grant, or
2 agreement, including information which if it were
3 disclosed would frustrate procurement or give an advantage
4 to any person proposing to enter into a contractor
5 agreement with the body, until an award or final selection
6 is made. Information prepared by or for the body in
7 preparation of a bid solicitation shall be exempt until an
8 award or final selection is made.

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

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

24 (k) Architects' plans, engineers' technical
25 submissions, and other construction related technical
26 documents for projects not constructed or developed in

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

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

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

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

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

25 (p) Administrative or technical information associated
26 with automated data processing operations, including but

1 not limited to software, operating protocols, computer
2 program abstracts, file layouts, source listings, object
3 modules, load modules, user guides, documentation
4 pertaining to all logical and physical design of
5 computerized systems, employee manuals, and any other
6 information that, if disclosed, would jeopardize the
7 security of the system or its data or the security of
8 materials exempt under this Section.

9 (q) Documents or materials relating to collective
10 negotiating matters between public bodies and their
11 employees or representatives, except that any final
12 contract or agreement shall be subject to inspection and
13 copying.

14 (r) Drafts, notes, recommendations and memoranda
15 pertaining to the financing and marketing transactions of
16 the public body. The records of ownership, registration,
17 transfer, and exchange of municipal debt obligations, and
18 of persons to whom payment with respect to these
19 obligations is made.

20 (s) The records, documents and information relating to
21 real estate purchase negotiations until those negotiations
22 have been completed or otherwise terminated. With regard to
23 a parcel involved in a pending or actually and reasonably
24 contemplated eminent domain proceeding under the Eminent
25 Domain Act, records, documents and information relating to
26 that parcel shall be exempt except as may be allowed under

1 discovery rules adopted by the Illinois Supreme Court. The
2 records, documents and information relating to a real
3 estate sale shall be exempt until a sale is consummated.

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

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

15 (v) Course materials or research materials used by
16 faculty members.

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

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

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

1 (z) Manuals or instruction to staff that relate to
2 establishment or collection of liability for any State tax
3 or that relate to investigations by a public body to
4 determine violation of any criminal law.

5 (aa) Applications, related documents, and medical
6 records received by the Experimental Organ Transplantation
7 Procedures Board and any and all documents or other records
8 prepared by the Experimental Organ Transplantation
9 Procedures Board or its staff relating to applications it
10 has received.

11 (bb) Insurance or self insurance (including any
12 intergovernmental risk management association or self
13 insurance pool) claims, loss or risk management
14 information, records, data, advice or communications.

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

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

23 (ee) Firm performance evaluations under Section 55 of
24 the Architectural, Engineering, and Land Surveying
25 Qualifications Based Selection Act.

26 (ff) Security portions of system safety program plans,

1 investigation reports, surveys, schedules, lists, data, or
2 information compiled, collected, or prepared by or for the
3 Regional Transportation Authority under Section 2.11 of
4 the Regional Transportation Authority Act or the St. Clair
5 County Transit District under the Bi-State Transit Safety
6 Act.

7 (gg) Information the disclosure of which is restricted
8 and exempted under Section 50 of the Illinois Prepaid
9 Tuition Act.

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

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

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

22 (kk) Information and data concerning the distribution
23 of surcharge moneys collected and remitted by wireless
24 carriers under the Wireless Emergency Telephone Safety
25 Act.

26 (ll) Vulnerability assessments, security measures, and

1 response policies or plans that are designed to identify,
2 prevent, or respond to potential attacks upon a community's
3 population or systems, facilities, or installations, the
4 destruction or contamination of which would constitute a
5 clear and present danger to the health or safety of the
6 community, but only to the extent that disclosure could
7 reasonably be expected to jeopardize the effectiveness of
8 the measures or the safety of the personnel who implement
9 them or the public. Information exempt under this item may
10 include such things as details pertaining to the
11 mobilization or deployment of personnel or equipment, to
12 the operation of communication systems or protocols, or to
13 tactical operations.

14 (mm) Maps and other records regarding the location or
15 security of generation, transmission, distribution,
16 storage, gathering, treatment, or switching facilities
17 owned by a utility or by the Illinois Power Agency.

18 (nn) Law enforcement officer identification
19 information or driver identification information compiled
20 by a law enforcement agency or the Department of
21 Transportation under Section 11-212 of the Illinois
22 Vehicle Code.

23 (oo) Records and information provided to a residential
24 health care facility resident sexual assault and death
25 review team or the Executive Council under the Abuse
26 Prevention Review Team Act.

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

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

12 (rr) Information contained in or related to proposals,
13 bids, or negotiations related to electric power
14 procurement under Section 1-75 of the Illinois Power Agency
15 Act and Section 16-111.5 of the Public Utilities Act that
16 is determined to be confidential and proprietary by the
17 Illinois Power Agency or by the Illinois Commerce
18 Commission.

19 (ss) Information that is prohibited from being
20 disclosed under Section 4 of the Illinois Health and
21 Hazardous Substances Registry Act.

22 (tt) Information the disclosure of which is exempted
23 under the Viatical Settlements Act of 2009.

24 (2) This Section does not authorize withholding of
25 information or limit the availability of records to the public,
26 except as stated in this Section or otherwise provided in this

1 Act.

2 (Source: P.A. 94-280, eff. 1-1-06; 94-508, eff. 1-1-06; 94-664,
3 eff. 1-1-06; 94-931, eff. 6-26-06; 94-953, eff. 6-27-06;
4 94-1055, eff. 1-1-07; 95-331, eff. 8-21-07; 95-481, eff.
5 8-28-07; 95-941, eff. 8-29-08.)

6 (Text of Section after amendment by P.A. 95-988)

7 Sec. 7. Exemptions.

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

10 (a) Information specifically prohibited from
11 disclosure by federal or State law or rules and regulations
12 adopted under federal or State law.

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

21 (i) files and personal information maintained with
22 respect to clients, patients, residents, students or
23 other individuals receiving social, medical,
24 educational, vocational, financial, supervisory or
25 custodial care or services directly or indirectly from

1 federal agencies or public bodies;

2 (ii) personnel files and personal information
3 maintained with respect to employees, appointees or
4 elected officials of any public body or applicants for
5 those positions;

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

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

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

25 (vi) the names, addresses, or other personal
26 information of participants and registrants in park

1 district, forest preserve district, and conservation
2 district programs; and

3 (vii) the Notarial Record or other medium
4 containing the thumbprint or fingerprint required by
5 Section 3-102(c)(6) of the Illinois Notary Public Act.

6 (c) Records compiled by any public body for
7 administrative enforcement proceedings and any law
8 enforcement or correctional agency for law enforcement
9 purposes or for internal matters of a public body, but only
10 to the extent that disclosure would:

11 (i) interfere with pending or actually and
12 reasonably contemplated law enforcement proceedings
13 conducted by any law enforcement or correctional
14 agency;

15 (ii) interfere with pending administrative
16 enforcement proceedings conducted by any public body;

17 (iii) deprive a person of a fair trial or an
18 impartial hearing;

19 (iv) unavoidably disclose the identity of a
20 confidential source or confidential information
21 furnished only by the confidential source;

22 (v) disclose unique or specialized investigative
23 techniques other than those generally used and known or
24 disclose internal documents of correctional agencies
25 related to detection, observation or investigation of
26 incidents of crime or misconduct;

1 (vi) constitute an invasion of personal privacy
2 under subsection (b) of this Section;

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

5 (viii) obstruct an ongoing criminal investigation.

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

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

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

15 (iii) court records that are public;

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

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

22 "Criminal history record information" means data
23 identifiable to an individual and consisting of
24 descriptions or notations of arrests, detentions,
25 indictments, informations, pre-trial proceedings, trials,
26 or other formal events in the criminal justice system or

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

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

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

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

26 (i) All information determined to be confidential

1 under Section 4002 of the Technology Advancement and
2 Development Act.

3 (ii) All trade secrets and commercial or financial
4 information obtained by a public body, including a
5 public pension fund, from a private equity fund or a
6 privately held company within the investment portfolio
7 of a private equity fund as a result of either
8 investing or evaluating a potential investment of
9 public funds in a private equity fund. The exemption
10 contained in this item does not apply to the aggregate
11 financial performance information of a private equity
12 fund, nor to the identity of the fund's managers or
13 general partners. The exemption contained in this item
14 does not apply to the identity of a privately held
15 company within the investment portfolio of a private
16 equity fund, unless the disclosure of the identity of a
17 privately held company may cause competitive harm.

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

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

1 award or final selection is made.

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

13 (j) Test questions, scoring keys and other examination
14 data used to administer an academic examination or
15 determined the qualifications of an applicant for a license
16 or employment.

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

1 (l) Library circulation and order records identifying
2 library users with specific materials.

3 (m) Minutes of meetings of public bodies closed to the
4 public as provided in the Open Meetings Act until the
5 public body makes the minutes available to the public under
6 Section 2.06 of the Open Meetings Act.

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

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

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

1 materials exempt under this Section.

2 (q) Documents or materials relating to collective
3 negotiating matters between public bodies and their
4 employees or representatives, except that any final
5 contract or agreement shall be subject to inspection and
6 copying.

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

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

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

1 (u) Information concerning a university's adjudication
2 of student or employee grievance or disciplinary cases, to
3 the extent that disclosure would reveal the identity of the
4 student or employee and information concerning any public
5 body's adjudication of student or employee grievances or
6 disciplinary cases, except for the final outcome of the
7 cases.

8 (v) Course materials or research materials used by
9 faculty members.

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

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

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

20 (z) Manuals or instruction to staff that relate to
21 establishment or collection of liability for any State tax
22 or that relate to investigations by a public body to
23 determine violation of any criminal law.

24 (aa) Applications, related documents, and medical
25 records received by the Experimental Organ Transplantation
26 Procedures Board and any and all documents or other records

1 prepared by the Experimental Organ Transplantation
2 Procedures Board or its staff relating to applications it
3 has received.

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

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

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

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

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

26 (gg) Information the disclosure of which is restricted

1 and exempted under Section 50 of the Illinois Prepaid
2 Tuition Act.

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

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

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

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

19 (ll) Vulnerability assessments, security measures, and
20 response policies or plans that are designed to identify,
21 prevent, or respond to potential attacks upon a community's
22 population or systems, facilities, or installations, the
23 destruction or contamination of which would constitute a
24 clear and present danger to the health or safety of the
25 community, but only to the extent that disclosure could
26 reasonably be expected to jeopardize the effectiveness of

1 the measures or the safety of the personnel who implement
2 them or the public. Information exempt under this item may
3 include such things as details pertaining to the
4 mobilization or deployment of personnel or equipment, to
5 the operation of communication systems or protocols, or to
6 tactical operations.

7 (mm) Maps and other records regarding the location or
8 security of generation, transmission, distribution,
9 storage, gathering, treatment, or switching facilities
10 owned by a utility or by the Illinois Power Agency.

11 (nn) Law enforcement officer identification
12 information or driver identification information compiled
13 by a law enforcement agency or the Department of
14 Transportation under Section 11-212 of the Illinois
15 Vehicle Code.

16 (oo) Records and information provided to a residential
17 health care facility resident sexual assault and death
18 review team or the Executive Council under the Abuse
19 Prevention Review Team Act.

20 (pp) Information provided to the predatory lending
21 database created pursuant to Article 3 of the Residential
22 Real Property Disclosure Act, except to the extent
23 authorized under that Article.

24 (qq) Defense budgets and petitions for certification
25 of compensation and expenses for court appointed trial
26 counsel as provided under Sections 10 and 15 of the Capital

1 Crimes Litigation Act. This subsection (qq) shall apply
2 until the conclusion of the trial of the case, even if the
3 prosecution chooses not to pursue the death penalty prior
4 to trial or sentencing.

5 (rr) Information contained in or related to proposals,
6 bids, or negotiations related to electric power
7 procurement under Section 1-75 of the Illinois Power Agency
8 Act and Section 16-111.5 of the Public Utilities Act that
9 is determined to be confidential and proprietary by the
10 Illinois Power Agency or by the Illinois Commerce
11 Commission.

12 (ss) Information that is prohibited from being
13 disclosed under Section 4 of the Illinois Health and
14 Hazardous Substances Registry Act.

15 (tt) Information the disclosure of which is exempted
16 under the Viatical Settlements Act of 2009.

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

21 (Source: P.A. 94-280, eff. 1-1-06; 94-508, eff. 1-1-06; 94-664,
22 eff. 1-1-06; 94-931, eff. 6-26-06; 94-953, eff. 6-27-06;
23 94-1055, eff. 1-1-07; 95-331, eff. 8-21-07; 95-481, eff.
24 8-28-07; 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; revised
25 10-20-08.)

1 Section 905. The Illinois Insurance Code is amended by
2 changing Section 500-70 as follows:

3 (215 ILCS 5/500-70)

4 (Section scheduled to be repealed on January 1, 2017)

5 Sec. 500-70. License denial, nonrenewal, or revocation.

6 (a) The Director may place on probation, suspend, revoke,
7 or refuse to issue or renew an insurance producer's license or
8 may levy a civil penalty in accordance with this Section or
9 take any combination of actions, for any one or more of the
10 following causes:

11 (1) providing incorrect, misleading, incomplete, or
12 materially untrue information in the license application;

13 (2) violating any insurance laws, or violating any
14 rule, subpoena, or order of the Director or of another
15 state's insurance commissioner;

16 (3) obtaining or attempting to obtain a license through
17 misrepresentation or fraud;

18 (4) improperly withholding, misappropriating or
19 converting any moneys or properties received in the course
20 of doing insurance business;

21 (5) intentionally misrepresenting the terms of an
22 actual or proposed insurance contract or application for
23 insurance;

24 (6) having been convicted of a felony;

25 (7) having admitted or been found to have committed any

1 insurance unfair trade practice or fraud;

2 (8) using fraudulent, coercive, or dishonest
3 practices, or demonstrating incompetence,
4 untrustworthiness or financial irresponsibility in the
5 conduct of business in this State or elsewhere;

6 (9) having an insurance producer license, or its
7 equivalent, denied, suspended, or revoked in any other
8 state, province, district or territory;

9 (10) forging a name to an application for insurance or
10 to a document related to an insurance transaction;

11 (11) improperly using notes or any other reference
12 material to complete an examination for an insurance
13 license;

14 (12) knowingly accepting insurance business from an
15 individual who is not licensed;

16 (13) failing to comply with an administrative or court
17 order imposing a child support obligation;

18 (14) failing to pay state income tax or penalty or
19 interest or comply with any administrative or court order
20 directing payment of state income tax or failed to file a
21 return or to pay any final assessment of any tax due to the
22 Department of Revenue; ~~or~~

23 (15) failing to make satisfactory repayment to the
24 Illinois Student Assistance Commission for a delinquent or
25 defaulted student loan; or.

26 (16) failing to comply with any provision of the

1 Viatical Settlements Act of 2009.

2 (b) If the action by the Director is to nonrenew, suspend,
3 or revoke a license or to deny an application for a license,
4 the Director shall notify the applicant or licensee and advise,
5 in writing, the applicant or licensee of the reason for the
6 suspension, revocation, denial or nonrenewal of the
7 applicant's or licensee's license. The applicant or licensee
8 may make written demand upon the Director within 30 days after
9 the date of mailing for a hearing before the Director to
10 determine the reasonableness of the Director's action. The
11 hearing must be held within not fewer than 20 days nor more
12 than 30 days after the mailing of the notice of hearing and
13 shall be held pursuant to 50 Ill. Adm. Code 2402.

14 (c) The license of a business entity may be suspended,
15 revoked, or refused if the Director finds, after hearing, that
16 an individual licensee's violation was known or should have
17 been known by one or more of the partners, officers, or
18 managers acting on behalf of the partnership, corporation,
19 limited liability company, or limited liability partnership
20 and the violation was neither reported to the Director nor
21 corrective action taken.

22 (d) In addition to or instead of any applicable denial,
23 suspension, or revocation of a license, a person may, after
24 hearing, be subject to a civil penalty of up to \$10,000 for
25 each cause for denial, suspension, or revocation, however, the
26 civil penalty may total no more than \$100,000.

1 (e) The Director has the authority to enforce the
2 provisions of and impose any penalty or remedy authorized by
3 this Article against any person who is under investigation for
4 or charged with a violation of this Code or rules even if the
5 person's license or registration has been surrendered or has
6 lapsed by operation of law.

7 (f) Upon the suspension, denial, or revocation of a
8 license, the licensee or other person having possession or
9 custody of the license shall promptly deliver it to the
10 Director in person or by mail. The Director shall publish all
11 suspensions, denials, or revocations after the suspensions,
12 denials, or revocations become final in a manner designed to
13 notify interested insurance companies and other persons.

14 (g) A person whose license is revoked or whose application
15 is denied pursuant to this Section is ineligible to apply for
16 any license for 3 years after the revocation or denial. A
17 person whose license as an insurance producer has been revoked,
18 suspended, or denied may not be employed, contracted, or
19 engaged in any insurance related capacity during the time the
20 revocation, suspension, or denial is in effect.

21 (Source: P.A. 92-386, eff. 1-1-02; 93-32, eff. 7-1-03.)

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

24 (815 ILCS 5/2.1) (from Ch. 121 1/2, par. 137.2-1)

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

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

24 (815 ILCS 5/2.33 new)

25 Sec. 2.33. Viatical investment. "Viatical investment"

1 means the contractual right to receive any portion of the death
2 benefit or ownership of a life insurance policy or certificate
3 for consideration that is less than the expected death benefit
4 of the life insurance policy or certificate. "Viatical
5 investment" does not include:

6 (1) any transaction between a viator and a viatical
7 settlement provider, as defined in the Viatical
8 Settlements Act of 2009;

9 (2) any transfer of ownership or beneficial interest in
10 a life insurance policy from a viatical settlement provider
11 to another viatical settlement provider, as defined in the
12 Viatical Settlements Act of 2009, or to any legal entity
13 formed solely for the purpose of holding ownership or
14 beneficial interest in a life insurance policy or policies;

15 (3) the bona fide assignment of a life insurance policy
16 to a bank, savings bank, savings and loan association,
17 credit union, or financial institution as collateral for a
18 loan; for the purposes of this item (3), "financial
19 institution" means financial institution as defined by the
20 Viatical Settlements Act of 2009; or

21 (4) a policy loan by a life insurance company or the
22 exercise of accelerated benefits pursuant to the terms of a
23 life insurance policy issued in accordance with the
24 Illinois Insurance Code.

25 (215 ILCS 158/Act rep.)

1 Section 950. The Viatical Settlements Act is repealed.

2 Section 995. No acceleration or delay. Where this Act makes
3 changes in a statute that is represented in this Act by text
4 that is not yet or no longer in effect (for example, a Section
5 represented by multiple versions), the use of that text does
6 not accelerate or delay the taking effect of (i) the changes
7 made by this Act or (ii) provisions derived from any other
8 Public Act.

9 Section 999. Effective date. This Act takes effect July 1,
10 2010.