



Sen. William R. Haine

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09600SB2091sam001

LRB096 11456 RPM 23859 a

1 AMENDMENT TO SENATE BILL 2091

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2091 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the  
5 Viatical 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

1 in or inducing a person to sell, assign, devise, bequest, or  
2 transfer the death benefit or ownership of a policy pursuant to  
3 a viatical settlement contract.

4 "Alien licensee" means a licensee incorporated or  
5 organized under the laws of any country other than the United  
6 States.

7 "Business of viatical settlements" means any activity  
8 involved in, but not limited to, the offering, soliciting,  
9 negotiating, procuring, effectuating, purchasing, investing,  
10 financing, monitoring, tracking, underwriting, selling,  
11 transferring, assigning, pledging, or hypothecating or in any  
12 other manner acquiring an interest in a life insurance policy  
13 by means of a viatical settlement contract or other agreement.

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

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

21 (2) requiring substantial supervision to protect the  
22 individual from threats to health and safety due to severe  
23 cognitive impairment; or

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

1 "Controlling person" means any person, firm, association,  
2 or corporation that directly or indirectly has the power to  
3 direct or cause to be directed the management, control, or  
4 activities of the viatical settlement provider.

5 "Director" means the Director of the Division of Insurance  
6 of the Department of Financial and Professional Regulation.

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

9 "Escrow agent" means an independent third-party person  
10 who, pursuant to a written agreement signed by the viatical  
11 settlement provider and viator, provides escrow services  
12 related to the acquisition of a life insurance policy pursuant  
13 to a viatical settlement contract. "Escrow agent" does not  
14 include any person associated or affiliated with or under the  
15 control of a licensee.

16 "Financial institution" means a financial institution as  
17 defined by the Financial Institutions Insurance Sales Law in  
18 Article XLIV of the Illinois Insurance Code.

19 "Financing entity" means an underwriter, placement agent,  
20 lender, purchaser of securities, purchaser of a policy or  
21 certificate from a viatical settlement provider, credit  
22 enhancer, or an entity that has a direct ownership in a policy  
23 that is the subject of a viatical settlement contract, and to  
24 which both of the following apply:

- 25 (1) its principal activity related to the transaction  
26 is providing funds to effect the viatical settlement or

1 purchase of one or more viaticated policies; and

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

5 "Financing entity" does not include an investor that is not an  
6 accredited investor.

7 "Financing transaction" means a transaction in which a  
8 viatical settlement provider obtains financing from a  
9 financing entity, including, without limitation, any secured  
10 or unsecured financing, securitization transaction, or  
11 securities offering that either is registered or exempt from  
12 registration under federal and State securities law.

13 "Foreign licensee" means any viatical settlement provider  
14 incorporated or organized under the laws of any state of the  
15 United States other than this State.

16 "Insurance producer" means an insurance producer as  
17 defined by Section 10 of Article XXXI of the Illinois Insurance  
18 Code.

19 "Licensee" means a viatical settlement provider or  
20 viatical settlement broker.

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

25 (1) A viatical settlement provider, viatical  
26 settlement broker, or person engaged in the business of

1 viatical settlements.

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

5 "NAIC" means the National Association of Insurance  
6 Commissioners.

7 "Person" means an individual or a legal entity, including,  
8 without limitation, a partnership, limited liability company,  
9 limited liability partnership, association, trust, business  
10 trust, or corporation.

11 "Policy" means an individual or group policy, group  
12 certificate, contract, or arrangement of insurance of the class  
13 defined by subsection (a) of Section 4 of the Illinois  
14 Insurance Code owned by or for the benefit of a resident of  
15 this State, regardless of whether delivered or issued for  
16 delivery in this State.

17 "Qualified institutional buyer" means a qualified  
18 institutional buyer as defined in Rule 144 promulgated under  
19 the Securities Act of 1933, as amended.

20 "Related provider trust" means a titling trust or other  
21 trust established by a licensed viatical settlement provider or  
22 a financing entity for the sole purpose of holding the  
23 ownership or beneficial interest in purchased policies in  
24 connection with a financing transaction. The trust shall have a  
25 written agreement with the licensed viatical settlement  
26 provider under which the licensed viatical settlement provider

1 is responsible for ensuring compliance with all statutory and  
2 regulatory requirements and under which the trust agrees to  
3 make all records and files related to viatical settlement  
4 transactions available to the Director as if those records and  
5 files were maintained directly by the licensed viatical  
6 settlement provider.

7 "Special purpose entity" means a corporation, partnership,  
8 trust, limited liability company, or other similar entity  
9 formed only to provide, directly or indirectly, access to  
10 institutional capital markets (i) for a financing entity or  
11 licensed viatical settlement provider; or (ii) in connection  
12 with a transaction in which the securities in the special  
13 purposes entity are acquired by the viator or by qualified  
14 institutional buyers or the securities pay a fixed rate of  
15 return commensurate with established asset-backed  
16 institutional capital markets.

17 "Stranger-originated life insurance" or "STOLI" means an  
18 act, practice, or arrangement to initiate a life insurance  
19 policy for the benefit of a third-party investor who, at the  
20 time of policy origination, has no insurable interest in the  
21 insured. STOLI practices include, but are not limited to, cases  
22 in which life insurance is purchased with resources or  
23 guarantees from or through a person or entity who, at the time  
24 of policy inception, could not lawfully initiate the policy  
25 himself or itself and where, at the time of policy inception,  
26 there is an arrangement or agreement, whether verbal or

1 written, to directly or indirectly transfer the ownership of  
2 the policy of policy benefits to a third party. Trusts created  
3 to give the appearance of an insurable interest and used to  
4 initiate policies for investors violate insurance interest  
5 laws and the prohibition against wagering on life. STOLI  
6 arrangements do not include lawful viatical settlement  
7 contracts as permitted by this Act.

8 "Terminally ill" means certified by a physician as having  
9 an illness or physical condition that reasonably is expected to  
10 result in death in 24 months or less.

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

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

25 (1) A written agreement between a viator and a viatical  
26 settlement provider or any affiliate of the viatical

1 settlement provider establishing the terms under which  
2 compensation or anything of value is or will be paid, which  
3 compensation or value is less than the expected death  
4 benefits of the policy, in return for the viator's present  
5 or future assignment, transfer, sale, devise, or bequest of  
6 the death benefit or ownership of any portion of the  
7 insurance policy.

8 (2) A written agreement for a loan or other lending  
9 transaction, secured primarily by an individual life  
10 insurance policy or an individual certificate of a group  
11 life insurance policy.

12 (3) The transfer for compensation or value of ownership  
13 of a beneficial interest in a trust or other entity that  
14 owns such policy, if the trust or other entity was formed  
15 or availed of for the principal purpose of acquiring one or  
16 more life insurance contracts and the life insurance  
17 contract insures the life of a person residing in this  
18 State.

19 (4) A premium finance loan made for a life insurance  
20 policy by a lender to a viator on, before, or after the  
21 date of issuance of the policy in either of the following  
22 situations:

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

25 (B) The viator or the insured agrees to sell the  
26 policy or any portion of the policy's death benefit on



1           any date before or after issuance of the policy.

2           "Viatical settlement contract" does not include any of the  
3 following unless part of a plan, scheme, device, or artifice to  
4 avoid application of this Act:

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

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

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

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

26           (e) An agreement in which all the parties (i) are

1       closely related to the insured by blood or law or (ii) have  
2       a lawful substantial economic interest in the continued  
3       life, health, and bodily safety of the person insured, or  
4       trusts established primarily for the benefit of such  
5       parties;

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

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

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

1           (i) Any other contract, transaction, or arrangement  
2           exempted from the definition of viatical settlement  
3           contract by the Director based on the Director's  
4           determination that the contract, transaction, or  
5           arrangement is not of the type intended to be regulated by  
6           this Act.

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

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

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

23               (2) a financial institution or premium finance company  
24               making premium finance loans and exempted by the Director  
25               from the licensing requirement under the premium finance  
26               laws where the institution or company takes an assignment

1 of a life insurance policy solely as collateral for a  
2 premium finance loan;

3 (3) the issuer of the life insurance policy;

4 (4) an authorized or eligible insurer that provides  
5 stop loss coverage or financial guaranty insurance to a  
6 viatical settlement provider, purchaser, financing entity,  
7 special purpose entity, or related provider trust;

8 (5) An individual person who enters into or effectuates  
9 no more than one viatical settlement contract in a calendar  
10 year for the transfer of policies for any value less than  
11 the expected death benefit;

12 (6) a financing entity;

13 (7) a special purpose entity;

14 (8) a related provider trust;

15 (9) a viatical settlement purchaser; or

16 (10) any other person that the Director determines is  
17 consistent with the definition of viatical settlement  
18 provider.

19 "Viatical settlement purchaser" means a person who  
20 provides a sum of money as consideration for a life insurance  
21 policy or an interest in the death benefits of a life insurance  
22 policy, or a person who owns or acquires or is entitled to a  
23 beneficial interest in a trust that owns a viatical settlement  
24 contract or is the beneficiary of a life insurance policy, in  
25 each case where such policy has been or will be the subject of  
26 a viatical settlement contract, for the purpose of deriving an

1 economic benefit. "Viatical settlement purchaser" does not  
2 include: (i) a licensee under this Act; (ii) an accredited  
3 investor or qualified institutional buyer; (iii) a financing  
4 entity; (iv) a special purpose entity; or (v) a related  
5 provider trust.

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

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

16 "Viator" does not include:

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

22 Section 10. License and bond requirements.

23 (a) A person shall not operate as a viatical settlement  
24 provider or viatical settlement broker without first obtaining  
25 a license from the chief insurance regulatory official of the

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

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

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

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

1           If a business entity with an insurance producer license  
2 registers as a viatical settlement broker, then that  
3 registration authorizes all partners, officers, members, and  
4 designated employees to act as viatical settlement brokers. All  
5 persons acting as viatical settlement brokers pursuant to such  
6 a registration shall be named in the application and any  
7 supplements to the application.

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

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

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

26           (h) Application for a viatical settlement provider license

1 shall be made to the Director by the applicant on a form  
2 prescribed by the Director. The applications shall be  
3 accompanied by a \$3,000 fee, which shall be deposited into the  
4 Insurance Producer Administration Fund.

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

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

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

25 (k) Upon the filing of a viatical settlement provider  
26 license application and the payment of the license fee, the



1 Director shall make an investigation of each applicant and  
2 issue a license if the Director finds that the applicant:

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

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

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

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

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

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

1           (D) notwithstanding any other provision of this  
2           Section to the contrary, the Director shall accept, as  
3           evidence of financial responsibility, proof that  
4           financial instruments in accordance with the  
5           requirements in this subsection (k) have been filed  
6           with one or more states where the applicant is licensed  
7           as a viatical settlement provider;

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

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

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

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

1 materially influence the applicant's conduct meets the  
2 standards set forth in this Act. The Director may also require  
3 the applicant to disclose the method the applicant will use to  
4 determine and receive life expectancies, the applicant's  
5 intended use of life expectancies, and a written plan  
6 containing policies and procedures to use when determining life  
7 expectancies.

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

12 (o) Viatical settlement providers licensed under the  
13 Viatical Settlements Act shall be subject to the license  
14 requirements of this Act upon renewal and after the effective  
15 date of this Act.

16 Section 11. Viatical settlement broker training  
17 requirements.

18 (a) Viatical settlement broker training shall be required  
19 as follows:

20 (1) An individual may not sell, solicit, or negotiate  
21 viatical settlement contracts unless the individual is  
22 licensed as a life insurance producer or viatical  
23 settlement broker and has completed a one-time training  
24 course. The training shall meet the requirements set forth  
25 in subsection (b) of this Section.

1           (2) An individual already licensed and selling,  
2           soliciting, or negotiating viatical settlement contracts  
3           on the effective date of this Act may not continue to sell,  
4           solicit, or negotiate viatical settlement contracts unless  
5           the individual has completed a one-time training course, as  
6           set forth in subsection (b) of this Section, within one  
7           year after the effective date of this Act.

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

13          (4) The training requirements of subsection (b) of this  
14          Section may be approved as continuing education courses  
15          under Section 500-35(b)(1) of the Illinois Insurance Code.

16          (b) Minimum education and training shall be required as  
17          follows:

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

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

25                       (A) State and federal laws and regulations  
26                       regarding viatical settlement transactions;

1 (B) potential tax implications for participants in  
2 viatical settlement contracts;

3 (C) potential impact on public benefits payments  
4 to viatical settlement participants;

5 (D) alternatives to viatical settlement contracts;  
6 and

7 (E) consumer suitability standards and guidelines.

8 (3) The training required by this Section shall not  
9 include training that is specific to or that includes any  
10 sales or marketing information, materials, or training of  
11 any company, other than those required by State or federal  
12 law.

13 (c) Viatical settlement providers shall provide verification  
14 of training as follows:

15 (1) Viatical settlement providers subject to this Act  
16 shall obtain verification that a producer receives  
17 training required by subsection (a) of this Section before  
18 a producer is permitted to sell, solicit, or negotiate  
19 viatical settlement contracts. Viatical settlement  
20 providers shall maintain records for verification subject  
21 to the State's record retention requirements and make the  
22 verification available to the Director upon request.

23 (2) Viatical settlement providers subject to this Act  
24 shall maintain records with respect to the training of  
25 their producers concerning viatical settlements. These  
26 records shall be maintained in accordance with the State's

1 record retention requirements and shall be made available  
2 to the Director upon request.

3 (d) The satisfaction of these training requirements in any  
4 state shall be deemed to satisfy the training requirements in  
5 this State.

6 Section 15. License revocation for viatical settlement  
7 providers.

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

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

13 (2) the viatical settlement provider or any officer,  
14 partner, member, or controlling person uses fraudulent or  
15 dishonest practices or is otherwise shown to be  
16 untrustworthy, incompetent, or financially irresponsible  
17 in this State or elsewhere;

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

20 (4) the viatical settlement provider or any officer,  
21 partner, member, or controlling person has violated any  
22 insurance laws or any rule, subpoena, or order of the  
23 Director or of another state's chief insurance regulatory  
24 official or is subject to a final administrative action  
25 brought by the Director or by the Illinois Secretary of

1 State or by another state's chief insurance regulatory  
2 official or chief securities regulatory official;

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

6 (6) the viatical settlement provider has failed to  
7 honor contractual obligations set out in a viatical  
8 settlement contract;

9 (7) the viatical settlement provider no longer meets  
10 the requirements for initial licensure;

11 (8) the viatical settlement provider has assigned,  
12 transferred, or pledged a purchased policy to a person  
13 other than a viatical settlement provider licensed in this  
14 State, a viatical settlement purchaser, a financing  
15 entity, a special purpose entity, or a related provider  
16 trust; or

17 (9) the viatical settlement provider or any officer,  
18 partner, member, or controlling person of the viatical  
19 settlement provider has violated any of the provisions of  
20 this Act.

21 (b) If the Director denies a viatical settlement provider  
22 license application or suspends, revokes, or refuses to renew  
23 the license of a viatical settlement provider, the Director  
24 shall notify the applicant or viatical settlement provider and  
25 advise, in writing, the applicant or viatical settlement  
26 provider of the reason for the suspension, revocation, denial,

1 or nonrenewal of the applicant's or licensee's license. The  
2 applicant or viatical settlement provider may make a written  
3 demand upon the Director within 30 days after the date of  
4 mailing for a hearing before the Director to determine the  
5 reasonableness of the Director's action. The hearing must be  
6 held within not fewer than 20 days nor more than 30 days after  
7 the mailing of the notice of hearing and shall be held in  
8 accordance with the Illinois Administrative Procedure Act and  
9 Section 2402 of Chapter 50 of the Illinois Administrative Code.

10 Section 17. License revocation and denial for viatical  
11 settlement brokers. Insurance producers operating as viatical  
12 settlement brokers shall be subject to the license denial,  
13 nonrenewal, and revocation provisions established by Section  
14 500-70 of the Illinois Insurance Code.

15 Section 20. Approval of viatical settlement contracts and  
16 disclosure statements. A person shall not use a viatical  
17 settlement contract form or provide to a viator a disclosure  
18 statement form in this State unless first filed with and  
19 approved by the Director. The Director shall disapprove a  
20 viatical settlement contract form or disclosure statement form  
21 if, in the Director's opinion, the contract or provisions  
22 contained therein fail to meet the requirements of this Act or  
23 are unreasonable, contrary to the interests of the public, or  
24 otherwise misleading or unfair to the viator. At the Director's



1 discretion, the Director may require the submission of  
2 advertising material. If the Director disapproves a viatical  
3 settlement contract form or disclosure statement form, then the  
4 Director shall notify the viatical settlement provider and  
5 advise the viatical settlement provider, in writing, of the  
6 reason for the disapproval. The viatical settlement provider  
7 may make written demand upon the Director within 30 days after  
8 the date of mailing for a hearing before the Director to  
9 determine the reasonableness of the Director's action. The  
10 hearing must be held within not fewer than 20 days nor more  
11 than 30 days after the mailing of the notice of hearing and  
12 shall be held in accordance with the Illinois Administrative  
13 Procedure Act and 50 Ill. Admin. Code 2402.

14 Section 25. Reporting requirements and privacy.

15 (a) Each viatical settlement provider shall file with the  
16 Director on or before March 1 of each year a copy of its  
17 audited annual statement for the immediately preceding year  
18 ending December 31. The Director may require newly licensed  
19 entities to file annual statements for additional years. The  
20 annual statement must be verified by 2 officers of the licensed  
21 entity on forms prescribed by the Director. The forms  
22 prescribed by the Director shall contain all information  
23 required by this Act and shall conform substantially to the  
24 Viatical Settlement Provider Reports adopted by the NAIC  
25 Viatical Settlements Model Regulation, as amended. The

1 approved annual statement for a viatical settlement provider  
2 shall include all of the following information:

3 (1) A list of each life insurance policy, including  
4 policy number, date of issue, unique internal identifier  
5 maintained by the viatical settlement provider and  
6 available upon examination, insurance company issuing the  
7 policy, date the viatical settlement contract is signed by  
8 viator, viatical settlement broker receiving compensation,  
9 and any premium finance companies, if known.

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

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

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

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

24 (c) A viatical settlement provider that willfully fails to  
25 file the annual statements required by this Section, or  
26 willfully fails to reply within 30 calendar days to a written

1 inquiry from the Director or Director's designee, shall, in  
2 addition to other penalties provided by this Act, be subject to  
3 a penalty of up to \$250 per day, not to exceed \$25,000 in the  
4 aggregate for each such failure.

5 (d) The Director shall keep confidential and not a matter  
6 of public record all individual transaction data regarding the  
7 business of viatical settlements and data that could compromise  
8 the privacy of personal, financial, and health information of  
9 the viator or the insured. All proprietary information received  
10 by the Director from a viatical settlement provider pursuant to  
11 this Section must be given confidential treatment, is not  
12 subject to subpoena, and may not be made public by the Director  
13 or any other persons.

14 (e) Except as otherwise allowed or required by law, a  
15 viatical settlement provider, viatical settlement broker,  
16 insurance company, insurance producer, information bureau,  
17 rating agency or company, or any other person with actual  
18 knowledge of the identity of an insured under a viatical  
19 settlement contract shall not disclose the identity of the  
20 insured or the insured's financial or medical information to  
21 any other person unless the disclosure is:

22 (1) necessary to effect a viatical settlement contract  
23 between the viator and a viatical settlement provider and  
24 the viator or insured have provided prior written consent  
25 to the disclosure;

26 (2) provided in response to an investigation or

1 examination by the Director or another governmental  
2 officer or agency or pursuant to the requirements of  
3 Section 65 of this Act;

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

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

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

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

18 (f) A viatical settlement investment agent shall not have  
19 any contact directly or indirectly with the viator or the  
20 insured or have knowledge of the identity of the viator or the  
21 insured.

22 Section 30. Examination or investigation.

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

1           In scheduling and determining the nature, scope, and  
2 frequency of the examinations, the Director shall consider such  
3 matters as consumer complaints, results of financial statement  
4 analyses and ratios, changes in management or ownership,  
5 actuarial opinions, report of independent certified public  
6 accountants, and other relevant criteria as determined by the  
7 Director.

8           (b) For purposes of completing an examination of a licensee  
9 under this Act, the Director may examine or investigate any  
10 person, or the business of any person, in so far as the  
11 examination or investigation is, in the sole discretion of the  
12 Director, necessary or material to the examination.

13           (c) In lieu of an examination under this Act of any foreign  
14 licensee or alien licensee licensed in this State, the Director  
15 may, at the Director's discretion, accept an examination report  
16 on the licensee as prepared by the chief insurance regulatory  
17 official for the licensee's state of domicile or port-of-entry  
18 state.

19           (d) As far as practical, the examination of a foreign  
20 licensee or alien licensee shall be made in cooperation with  
21 the insurance supervisory officials of other states in which  
22 the licensee transacts business.

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

24           (1) all proposed, offered, or executed contracts,  
25 purchase agreements, underwriting documents, policy forms,  
26 and applications from the date of the proposal, offer, or

1 execution of the contract or purchase agreement, whichever  
2 is later;

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

6 (3) all other records and documents in any format  
7 related to the requirements of this Act, including a record  
8 of complaints received against the licensee and agents  
9 representing the licensee and a list of all life expectancy  
10 providers that have provider services to the licensee.

11 This subsection (e) does not relieve a person of the  
12 obligation to produce records required by this subsection to  
13 the Director after the retention period has expired if the  
14 person has retained the documents.

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

20 (f) Upon determining that an examination should be  
21 conducted, the Director shall appoint one or more examiners to  
22 perform the examination and instruct them as to the scope of  
23 the examination. The Director may employ any guidelines or  
24 procedures for purposes of this subsection (f) that the  
25 Director deems appropriate.

26 Every licensee or person, including all officers,

1 partners, members, directors, employees, controlling persons,  
2 and agents of any licensee or person, from whom information is  
3 sought shall provide to the examiners timely, convenient, and  
4 free access at all reasonable hours at the licensee's or  
5 person's offices to all books, records, accounts, papers,  
6 documents, assets, and computer or other recordings relating to  
7 the property, assets, business, and affairs of the licensee  
8 being examined. The officers, directors, employees, and agents  
9 of the licensee or person shall facilitate the examination and  
10 aid in the examination so far as it is in their power to do so.  
11 The refusal of a licensee by its officers, directors,  
12 employees, or agents to submit to examination or to comply with  
13 any reasonable written request of the Director shall be grounds  
14 for revocation, denial of issuance, or non-renewal of any  
15 license or authority held by the licensee to engage in the  
16 viatical settlement business or other business subject to the  
17 Director's jurisdiction.

18 The Director shall have the power to issue subpoenas, to  
19 administer oaths, and to examine under oath any person as to  
20 any matter pertinent to the examination. Upon the failure or  
21 refusal of a person to obey a subpoena, the Director may  
22 petition a court of competent jurisdiction, and upon proper  
23 showing, the court may enter an order compelling the witness to  
24 appear and testify or produce documentary evidence. Failure to  
25 obey the court order shall be punishable as contempt of court.  
26 Subpoenas may be enforced pursuant to Section 403 of the

1 Illinois Insurance Code.

2 When making an examination under this Act, the Director may  
3 retain attorneys, appraisers, independent actuaries,  
4 independent certified public accountants, or other  
5 professionals and specialists as examiners, the reasonable  
6 cost of which shall be borne by the licensee that is the  
7 subject of the examination.

8 (g) Nothing contained in this Act limits the Director's  
9 authority to terminate or suspend an examination in order to  
10 pursue other legal or regulatory action pursuant to the  
11 insurance laws of this State. Findings of fact and conclusions  
12 made pursuant to any examination shall be prima facie evidence  
13 in any legal or regulatory action.

14 (h) Nothing contained in this Act shall be construed to  
15 limit the Director's authority to use and, if appropriate, to  
16 make public any final or preliminary examination report, any  
17 examiner or licensee workpapers or other documents, or any  
18 other information discovered or developed during the course of  
19 any examination in the furtherance of any legal or regulatory  
20 action that the Director may, in the Director's discretion,  
21 deem appropriate.

22 (i) No later than 60 days following completion of the  
23 examination, the examiner in charge shall file with the  
24 Director a verified written report of examination under oath.  
25 Upon receipt of the verified report, the Director shall  
26 transmit the report to the licensee examined.



1           (j) Examination reports shall be comprised only of facts  
2 appearing upon the books, records, or other documents of the  
3 licensee, its agents, or other persons examined, or as  
4 ascertained from the testimony of its officers or agents or  
5 other persons examined concerning its affairs and the  
6 conclusions and recommendations that the examiners find  
7 reasonably warranted from the facts.

8           (k) The licensee may request a hearing within 10 days after  
9 receipt of the examination report by giving the Director  
10 written notice of that request, together with a statement of  
11 its objections. The Director then must conduct a hearing in  
12 conjunction with Sections 402 and 403 of the Illinois Insurance  
13 Code. The Director must issue a written order based upon the  
14 examination report and upon the hearing within 90 days after  
15 the report is filed or within 90 days after the hearing. After  
16 the hearing, the Director may make such order or orders as may  
17 be reasonably necessary to correct, eliminate, or remedy  
18 unlawful conduct.

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

22           (m) Names and individual identification data for all  
23 viators in the possession and control of the Director shall be  
24 considered private and confidential and shall not be disclosed  
25 by the Director unless required by law.

26           Except as otherwise provided in this Act, all examination

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

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

15 Documents, materials, or other information, including, but  
16 not limited to, all working papers and copies thereof, in the  
17 possession or control of the NAIC and its affiliates and  
18 subsidiaries are:

19 (1) confidential by law and privileged;

20 (2) not subject to subpoena; and

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

23 (A) created, produced or obtained by, or disclosed  
24 to the NAIC and its affiliates and subsidiaries in the  
25 course of assisting an examination made under this Act  
26 or assisting the Director or the chief insurance

1 regulatory official in another state in the analysis or  
2 investigation of the financial condition or market  
3 conduct of a licensee; or

4 (B) disclosed under this subsection (m) by the  
5 Director or disclosed under a comparable provision in  
6 law of another state by that state's chief insurance  
7 regulatory official to the NAIC and its affiliates and  
8 subsidiaries.

9 Neither the Director nor any person that received the  
10 documents, material, or other information while acting under  
11 the authority of the Director, including the NAIC and its  
12 affiliates and subsidiaries, shall be permitted to testify in  
13 any private civil action concerning any confidential  
14 documents, materials, or information subject to this  
15 subsection (m).

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

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

1 information;

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

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

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

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

24 (q) Nothing contained in this Act prevents or prohibits the  
25 Director from disclosing the content of an examination report,  
26 preliminary examination report or results, or any matter

1 relating to those reports or results, to the chief insurance  
2 regulatory official of any other state or country, or to law  
3 enforcement officials of this or any other state or agency of  
4 the federal government at any time or to the NAIC, if the  
5 agency or office receiving the report or matters relating to it  
6 agrees in writing to hold it confidential and in a manner  
7 consistent with this Act.

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

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

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

25 A person identified in this subsection (s) shall be  
26 entitled to an award of attorney's fees and costs if he or she

1 is the prevailing party in a civil cause of action for libel,  
2 slander, or any other relevant tort arising out of activities  
3 in carrying out the provisions of this Section and the party  
4 bringing the action was not substantially justified in doing  
5 so. For purposes of this Section, a proceeding is  
6 "substantially justified" if it had a reasonable basis in law  
7 or fact at the time that it was initiated.

8 (t) The Director may investigate suspected viatical  
9 settlement fraud and persons engaged in the business of  
10 viatical settlements.

11 Section 35. Disclosure to viator.

12 (a) With each application for a viatical settlement  
13 contract, a viatical settlement provider or viatical  
14 settlement broker shall provide the viator with at least the  
15 following disclosures no later than the time the viatical  
16 settlement contract is signed by all parties. The disclosures  
17 shall include distribution of a brochure describing the process  
18 of viatical settlements. The NAIC form for the brochure shall  
19 be used unless another form is developed or approved by the  
20 Director. Other disclosures required by this subsection (a)  
21 shall be provided in a separate document that is signed by the  
22 viator and the viatical settlement provider or viatical  
23 settlement broker and shall provide the following information:

24 (1) If a viator enters into a viatical settlement  
25 contract, then the beneficiaries of the life insurance

1 policy lose the life insurance policy's benefits, equity,  
2 and protection. In addition, by entering into this viatical  
3 settlement contract, the insured may not qualify for  
4 another life insurance policy or may be required to pay  
5 substantially higher premiums.

6 (2) That there are possible alternatives to viatical  
7 settlement contracts including any accelerated death  
8 benefits or policy loans offered under the viator's life  
9 insurance policy.

10 (3) That a viatical settlement broker represents only  
11 the viator and not the insurer or the viatical settlement  
12 provider and owes a fiduciary duty to the viator, including  
13 a duty to act according to the viator's instructions and in  
14 the best interest of the viator.

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

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

21 (6) That receipt of the proceeds of a viatical  
22 settlement may adversely affect the viator's eligibility  
23 for Medicaid or other government benefits or entitlements  
24 and advice should be obtained from the appropriate  
25 government agencies.

26 (7) That the viator has the right to rescind a viatical

1 settlement contract before the earlier of 30 calendar days  
2 after the date upon which the viatical settlement contract  
3 is executed by all parties or 15 calendar days after the  
4 viatical settlement proceeds have been paid to the viator.  
5 Rescission, if exercised by the viator, is effective only  
6 if both notice of the rescission is given and the viator  
7 repays all proceeds and any premiums, loans, and loan  
8 interest paid on the account of the viatical settlement  
9 within the rescission period. If the insured dies during  
10 the rescission period, the viatical settlement contract is  
11 deemed to have been rescinded, subject to repayment by the  
12 viator or the viator's estate to the viatical settlement  
13 provider of all viatical settlement proceeds and any  
14 premiums, loans, and loan interest paid on the account of  
15 the viatical settlement within 60 days after the insured's  
16 death.

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

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



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

17           (11) That, following execution of a viatical  
18 settlement contract, the insured may be contacted for the  
19 purpose of determining the insured's health status and to  
20 confirm the insured's residential or business street  
21 address and telephone number, or for other purposes  
22 permitted by law. This contact is limited to once every 3  
23 months if the insured has a life expectancy of more than  
24 one year, and no more than once each month if the insured  
25 has a life expectancy of one year or less. All such  
26 contracts shall be made only by a viatical settlement

1 provider licensed in the state in which the viator resided  
2 at the time of the viatical settlement, or by the  
3 authorized representative of a duly licensed viatical  
4 settlement provider.

5 (12) If the policy to be viaticated is group coverage,  
6 the insured is advised to check with the manager of the  
7 group about whether permission is required to sell the  
8 policy or other conditions.

9 (13) Entering into a viatical settlement contract will  
10 result in investors having a financial interest in the  
11 insured's death.

12 (b) With each application for a viatical settlement, a  
13 viatical settlement provider or viatical settlement broker  
14 shall provide the prospective viator with a document titled  
15 "Important Consumer Notices". The document must be provided to  
16 the prospective viator and contain, in conspicuous type size  
17 and format, the following:

18 "By entering into a viatical settlement contract:

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

23 (2) You may not be able to purchase another life  
24 insurance policy.

25 (3) You could lose Medicaid and other valuable  
26 government benefits.

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

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

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

9           The disclosure document required by this subsection (b)  
10 shall be the cover page of the viatical settlement contract and  
11 shall be signed by the viator and the viatical settlement  
12 provider or viatical settlement broker. The viator and viatical  
13 settlement provider or viatical settlement broker shall sign  
14 the disclosure prior to signing the viatical settlement  
15 contract. A copy of the signed document must be provided to the  
16 viator.

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

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

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

3           (3) Whether any affiliations or contractual  
4 arrangements exist between the viatical settlement  
5 provider and the viatical settlement purchaser.

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

15           (5) The dollar amount of the current death benefit  
16 payable to the viatical settlement provider under the  
17 policy. If known, the viatical settlement provider also  
18 shall disclose the availability of additional guaranteed  
19 insurance benefits, the dollar amount of accidental death  
20 and dismemberment benefits under the policy or  
21 certificate, and the extent to which the viator's interest  
22 in those benefits will be transferred as a result of the  
23 viator's settlement contract.

24           (6) The name, business address, and telephone number of  
25 the escrow agent, and that the viator may inspect or  
26 receive copies of the relevant escrow or trust agreements

1 or documents. Also, that an escrow agent shall provide  
2 escrow services to the parties pursuant to a written  
3 agreement signed by the viatical settlement provider, the  
4 viatical settlement broker, and the viator. At the close of  
5 escrow, the escrow agent must distribute the proceeds of  
6 the sale to the viator, minus any compensation to be paid  
7 to any other persons who provided services and to whom the  
8 viator has agreed to compensate out of the gross amount  
9 offered by the viatical settlement purchaser. All persons  
10 receiving any form of compensation under the escrow  
11 agreement shall be clearly identified, including name,  
12 business address, telephone number, and tax identification  
13 number.

14 (7) The amount of compensation received by the escrow  
15 agent.

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

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

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

1           (3) any affiliations or contractual arrangements  
2 between the viatical settlement broker and any person  
3 making an offer in connection with the proposed viatical  
4 settlement contracts;

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

9           (5) if any portion of the viatical settlement broker's  
10 compensation, as defined in paragraph (3) of this  
11 subsection (c), is taken from a proposed viatical  
12 settlement offer, the broker shall disclose the total  
13 amount of the viatical settlement offer and the percentage  
14 of the viatical settlement offer comprised by the viatical  
15 settlement broker's compensation; and

16           (6) the name of the legal owner and beneficiary of the  
17 insurance policy after the policy is sold pursuant to the  
18 viatical settlement contract and whether legal ownership  
19 of the policy and the beneficiary's right to collect  
20 benefits upon the viator's death can be sold.

21           (d) If the viatical settlement provider transfers  
22 ownership or changes the beneficiary of the insurance policy,  
23 then the provider shall communicate in writing the change in  
24 ownership or beneficiary to the insured within 20 days after  
25 the change.

1           Section 40. Disclosure to insurer. Prior to the initiation  
2 of a plan, transaction, or series of transactions a viatical  
3 settlement broker or viatical settlement provider shall fully  
4 disclose to an insurer a plan, transaction, or series of  
5 transactions to which the viatical settlement broker or  
6 viatical settlement provider is a party to originate, renew,  
7 continue, or finance a life insurance policy with the insurer  
8 for the purpose of engaging in the business of viatical  
9 settlements at anytime prior to or during the first 2 years  
10 after issuance of the policy. The viatical settlement provider  
11 shall, when requested, disclose that the prospective insured  
12 has undergone a life expectancy evaluation in connection with  
13 the issuance of a policy by a person or entity other than the  
14 insurer or its authorized representative. Any disclosure  
15 required under this Section must be made in writing.

16           Section 45. General rules.

17           (a) A viatical settlement provider entering into a viatical  
18 settlement contract shall first obtain:

19           (1) if the viator is the insured, a written statement  
20 from a licensed attending physician that the viator is of  
21 sound mind and under no constraint or undue influence to  
22 enter into a viatical settlement contract; as used in this  
23 item (1), "physician" means a person licensed under the  
24 Medical Practice Act of 1987 to practice medicine and  
25 surgery or osteopathic medicine and surgery in all its

1 branches; and

2 (2) a document in which the insured consents in writing  
3 to the release of his or her medical records to a licensed  
4 viatical settlement provider, viatical settlement broker,  
5 and the insurance company that issued the life insurance  
6 policy covering the life of the insured.

7 (b) Within 20 days after a viator executes documents  
8 necessary to transfer any rights under an insurance policy or  
9 within 20 days after entering any agreement, option, promise,  
10 or any other form of understanding, expressed or implied, to  
11 viaticate the policy, the viatical settlement provider shall  
12 give written notice to the insurer that issued that insurance  
13 policy that the policy has or will become a viaticated policy.  
14 The notice shall be accompanied by the documents required by  
15 subsection (c) of this Section.

16 (c) The viatical provider shall deliver a copy of the  
17 medical release required under paragraph (2) of subsection (a)  
18 of this Section, a copy of the viator's application for the  
19 viatical settlement contract, the notice required under  
20 subsection (b) of this Section and a request for verification  
21 of coverage to the insurer that issued the life insurance  
22 policy that is the subject of the viatical settlement  
23 transaction. The viatical settlement provider shall use the  
24 NAIC's form for verification of coverage unless another form is  
25 developed and approved by the Director.

26 (d) Prior to or at the time of execution of the viatical



1 settlement contract, the viatical settlement provider shall  
2 obtain a witnessed document in which the viator consents to the  
3 viatical settlement contract, represents that the viator has a  
4 full and complete understanding of the viatical settlement  
5 contract, that he or she has a full and complete understanding  
6 of the benefits of the life insurance policy, acknowledges that  
7 he or she is entering into the viatical settlement contract  
8 freely and voluntarily and, for persons with a terminal or  
9 chronic illness or condition, acknowledges that the insured has  
10 a terminal or chronic illness and that the terminal or chronic  
11 illness or condition was diagnosed after the life insurance  
12 policy was issued.

13 (e) If a viatical settlement broker performs any of the  
14 activities required of a viatical settlement provider as  
15 described by subsection (a) through (d) of this Section, then  
16 the viatical settlement provider is deemed to have fulfilled  
17 that requirement.

18 (f) The insurer shall respond to a request for verification  
19 of coverage submitted on an approved form by a viatical  
20 settlement provider or viatical settlement broker within 30  
21 calendar days after the date the request is received and shall  
22 indicate whether, based on the medical evidence and documents  
23 provided, the insurer intends to pursue an investigation at  
24 this time regarding the validity of the insurance contract or  
25 possible fraud. The insurer shall accept a request for  
26 verification of coverage made on an NAIC form or any other form

1 approved by the Director. The insurer shall accept an original  
2 or facsimile or electronic copy of such request and any  
3 accompanying authorization signed by the viator. Failure by the  
4 insurer to meet its obligations under this subsection shall be  
5 a violation of subsection (c) of Section 50 and Section 75 of  
6 this Act.

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

10 (h) All viatical settlement contracts entered into in this  
11 State shall provide the viator with an absolute right to  
12 rescind the contract before the earlier of 30 calendar days  
13 after the date upon which the viatical settlement contract is  
14 executed by all parties or 15 calendar days after the viatical  
15 settlement proceeds have been sent to the viator as provided in  
16 Section 45. Rescission by the viator may be conditioned upon  
17 the viator both giving notice and repaying to the viatical  
18 settlement provider within the rescission period all proceeds  
19 of the settlement and any premiums, loans and loan interest  
20 paid by or on behalf of the viatical settlement provider in  
21 connection with or as a consequence of the viatical settlement.  
22 If the insured dies during the rescission period, the viatical  
23 settlement contract shall be deemed to have been rescinded,  
24 subject to repayment to the viatical settlement provider or  
25 purchaser of all viatical settlement proceeds, and any  
26 premiums, loans, and loan interest that have been paid by the

1 viatical settlement provider or viatical settlement purchaser,  
2 which shall be paid within 60 calendar days of the death of the  
3 insured. In the event of any rescission, if the viatical  
4 settlement provider has paid commissions or other compensation  
5 to a viatical settlement broker in connection with the  
6 rescinded transaction, the viatical settlement broker shall  
7 refund all such commissions and compensation to the viatical  
8 settlement provider within 5 business days following receipt of  
9 written demand from the viatical settlement provider, which  
10 demand shall be accompanied by either the viator's notice of  
11 rescission if rescinded at the election of the viator, or  
12 notice of the death of the insured if rescinded by reason of  
13 the death of the insured within the applicable rescission  
14 period.

15 (i) If a viatical settlement contract is rescinded by the  
16 viator pursuant to this Section, then ownership of the  
17 insurance policy reverts to the viator or to the viator's  
18 estate.

19 (j) The viatical settlement provider shall instruct the  
20 viator to send the executed documents required to effect the  
21 change in ownership, assignment, or change in beneficiary  
22 directly to the escrow agent. Within 3 business days after the  
23 date the escrow agent receives the document (or from the date  
24 the viatical settlement provider receives the documents, if the  
25 viator erroneously provides the documents directly to the  
26 viatical settlement provider), the viatical settlement

1 provider shall pay or transfer the gross amount paid by the  
2 viatical settlement purchaser to the escrow agent for deposit  
3 in a trust account and set up for that purpose by the escrow  
4 agent in a state or federally-chartered financial institution  
5 whose deposits are insured by the Federal Deposit Insurance  
6 Corporation (FDIC). Upon payment of the settlement proceeds  
7 into the escrow or trust account, the escrow agent or trustee  
8 shall deliver the original change in ownership, assignment, or  
9 change in beneficiary forms to the viatical settlement  
10 provider, a representative of the viatical settlement  
11 provider, or related provider trust. Upon the escrow agent's  
12 receipt of the acknowledgment of the properly completed  
13 transfer of ownership, assignment, or designation of  
14 beneficiary from the insurance company, the escrow agent shall  
15 pay the settlement proceeds to the viator. Funds shall be  
16 deemed sent by a viatical settlement provider to a viator as of  
17 the date that the escrow agent either releases the funds for  
18 wire transfer to the viator or places a check for delivery to  
19 the viator via United States Postal Service or other nationally  
20 recognized delivery service.

21 (k) Failure to transfer the proceeds to the viator for the  
22 viatical settlement contract within the time set forth in the  
23 disclosure pursuant to item (7) of subsection (a) of Section 35  
24 of this Act renders the viatical settlement contract voidable  
25 by the viator for lack of consideration until the time  
26 consideration is tendered to and accepted by the viator. If a

1 viatical settlement contract is voided by the viator pursuant  
2 to this subsection (k), then ownership of the policy reverts to  
3 the viator or to the viator's estate.

4 (l) After the viatical settlement contract has been  
5 effected, contacts with the insured for the purpose of  
6 determining the health status of the insured shall be made only  
7 by the viatical settlement provider or the authorized  
8 representative of the viatical settlement provider. The  
9 viatical settlement provider or authorized representative  
10 shall not contact the insured with the purpose of determining  
11 the insured's health status more than once every 3 months if  
12 the insured has a life expectancy of more than one year or more  
13 than once per month if the insured has a life expectancy of one  
14 year or less. The viatical settlement provider shall explain  
15 the procedure for making these contacts at the time the  
16 viatical settlement contract is entered into. For purposes of  
17 this Section, viatical settlement providers are responsible  
18 for the actions of their authorized representatives.

19 (m) The insurer that issued the policy being settled  
20 pursuant to a viatical settlement contract shall not be  
21 responsible for any act or omission of a viatical settlement  
22 broker or viatical settlement provider arising out of or in  
23 connection with the viatical settlement transaction, unless  
24 the insurer receives compensation for the placement of a  
25 viatical settlement contract from the viatical settlement  
26 provider or viatical settlement broker in connection with the

1 viatical settlement contract.

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

8 Subject to the provisions of this subsection (n), if the  
9 viator is a resident of this State, then all agreements to be  
10 signed by the viator shall provide exclusive jurisdiction to  
11 courts of this State and the laws of this State shall govern  
12 the agreements. Nothing in the agreements shall abrogate the  
13 viator's right to a trial by jury.

14 (o) Notwithstanding the manner in which the viatical  
15 settlement broker is compensated, a viatical settlement broker  
16 is deemed to represent only the viator and not the insurer or  
17 the viatical settlement provider and owes a fiduciary duty to  
18 the viator to act according to the viator's instructions and in  
19 the best interest of the viator.

20 Section 50. Prohibited practices.

21 (a) It is a violation of this Act for any person to enter  
22 into a viatical settlement contract prior to the application of  
23 or issuance of a policy that is the subject of the viatical  
24 settlement contract. It is a violation of this Act for any  
25 person to enter into stranger-originated life insurance or

1 STOLI as defined by this Act.

2 (b) It is a violation of this Act for any person to issue,  
3 solicit, market, or otherwise promote the purchase of a life  
4 insurance policy for the purpose of or with emphasis on selling  
5 the policy.

6 (c) It is a violation of this Act for any person to enter  
7 into a viatical settlement contract within a 2-year period  
8 commencing with the date of issuance of the insurance policy  
9 unless the viator certifies to the viatical settlement provider  
10 that one or more of the following conditions have been met  
11 within the 2-year period:

12 (1) The policy was issued upon the viator's exercise of  
13 conversion rights arising out of a group or individual  
14 policy, provided the total of the time covered under the  
15 conversion policy plus the time covered under the prior  
16 policy is at least 60 months. The time covered under a  
17 group policy shall be calculated without regard to any  
18 change in insurance carriers, provided the coverage has  
19 been continuous and under the same group sponsorship.

20 (2) The viator certifies and submits independent  
21 evidence to the viatical settlement provider that one or  
22 more of the following conditions have been met within the  
23 5-year period:

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

26 (B) the viator's spouse dies;

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

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

3 (E) the viator becomes physically or mentally  
4 disabled and a physician determines that the  
5 disability prevents the viator from maintaining  
6 full-time employment;

7 (F) a court of competent jurisdiction enters a  
8 final order, judgment, or decree on the application of  
9 a creditor of the viator, adjudicating the viator  
10 bankrupt or insolvent, or approving a petition seeking  
11 reorganization of the viator or appointing a receiver,  
12 trustee, or liquidator to all or a substantial part of  
13 the viator's assets;

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

16 (H) any other condition that the Director may  
17 determine by regulation to be an extraordinary  
18 circumstance for the viator or the insured.

19 (3) The viator enters into a viatical settlement  
20 contract more than 2 years after the date of issuance of a  
21 policy and, with respect to the policy, at all times prior  
22 to the date that is 2 years after policy issuance, the  
23 following conditions are met:

24 (A) policy premiums have been funded exclusively  
25 with unencumbered assets, including an interest in the  
26 life insurance policy being financed only to the extent



1 of its net cash surrender value, provided by, or fully  
2 recourse liability incurred by the insured or person  
3 described in subsection (e) of the definition of  
4 "viatical settlement contract" found in Section 5 of  
5 this Act; and

6 (B) there is no agreement or understanding with any  
7 other person to guarantee any such liability or to  
8 purchase or stand ready to purchase the policy,  
9 including, through an assumption or forgiveness of the  
10 loan.

11 (d) Copies of the independent evidence described in  
12 paragraph (2) of subsection (c) of this Section and documents  
13 required by Section 45 shall be submitted to the insurer when  
14 the viatical settlement provider or any other party entering  
15 into a viatical settlement contract with a viator submits a  
16 request to the insurer for verification of coverage. The copies  
17 shall be accompanied by a letter of attestation from the  
18 viatical settlement provider that the copies are true and  
19 correct copies of the documents received by the viatical  
20 settlement provider.

21 (e) If the viatical settlement provider submits to the  
22 insurer a copy of the owner or insured's certification  
23 described in and the independent evidence required by paragraph  
24 (2) of subsection (c) of this Section when the viatical  
25 settlement provider submits a request to the insurer to effect  
26 the transfer of the policy to the viatical settlement provider,

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

5 (f) No insurer may, as a condition of responding to a  
6 request for verification of coverage or effecting the transfer  
7 of a policy pursuant to a viatical settlement contract, require  
8 that the viator, insured, viatical settlement provider, or  
9 viatical settlement broker sign any forms, disclosures,  
10 consent, or waiver form that has not been expressly approved by  
11 the Director for use in connection with viatical settlement  
12 contracts in this State.

13 (g) Upon receipt of a properly completed request for change  
14 of ownership or beneficiary of a policy, the insurer shall  
15 respond in writing within 30 calendar days to confirm that the  
16 change has been effected or specifying the reasons why the  
17 requested change cannot be processed. No insurer shall  
18 unreasonably delay effecting change of ownership or  
19 beneficiary or seek to interfere with any viatical settlement  
20 contract lawfully entered into in this State.

21 Section 55. Prohibited practices and conflicts of  
22 interest.

23 (a) With respect to any viatical settlement contract or  
24 insurance policy, no viatical settlement broker knowingly  
25 shall solicit an offer from, effectuate a viatical settlement

1 with, or make a sale to any viatical settlement provider,  
2 viatical settlement purchaser, financing entity, or related  
3 provider that is controlling, controlled by, or under common  
4 control with such viatical settlement broker, unless such  
5 relationship is fully disclosed to the viator.

6 (b) With respect to any viatical settlement contract or  
7 insurance policy, no viatical settlement provider knowingly  
8 may enter into a viatical settlement contract with a viator,  
9 if, in connection with such viatical settlement contract,  
10 anything of value will be paid to a viatical settlement broker  
11 that is controlling, controlled by, or under common control  
12 with such viatical settlement provider or the viatical  
13 settlement purchaser, financing entity, or related provider  
14 trust that is involved in such viatical settlement contract,  
15 unless such relationship is fully disclosed to the viator.

16 (c) Any disclosure provided pursuant to subsections (a) and  
17 (b) of this Section must be provided along with the disclosures  
18 required by subsection (a) of Section 35 and contain the  
19 following language: "The financial relationship between your  
20 viatical settlement broker and the provider of the viatical  
21 settlement creates a potential conflict of interest between  
22 your financial interests and the financial interests of the  
23 viatical settlement broker and viatical settlement provider.  
24 The individual brokering this viatical transaction owes you a  
25 fiduciary duty or a duty of loyalty. Your viatical settlement  
26 broker must advise you based exclusively upon your best

1 interests, not the best interests of the viatical settlement  
2 broker or the viatical settlement provider.".

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

5 (e) No person shall issue, solicit, or market the purchase  
6 of an insurance policy for the purpose of settling the policy.  
7 Nothing in this subsection (e) shall prohibit persons from  
8 using and discussing the written materials that the Director  
9 shall approve prior to the effective date of this Act and that  
10 inform consumers of their rights with respect to a life  
11 insurance policy, including the option of entering into a  
12 lawful viatical settlement contract. Nothing in this  
13 subsection (e) limits or otherwise impairs the terms of a  
14 contract between an insurer and its producers.

15 (f) No person shall enter into a premium finance agreement  
16 with any other person or agency or any person affiliated with  
17 such person or agency pursuant to which such person shall  
18 receive any proceeds, fees, or other consideration, directly or  
19 indirectly, from the policy or owner of the policy or any other  
20 person with respect to the premium finance agreement or any  
21 viatical settlement contract or other transaction related to  
22 such policy that are in addition to the amounts required to pay  
23 the principal, interest, and service charges related to policy  
24 premiums pursuant to the premium finance agreement or  
25 subsequent sale of such agreement; provided, further, that any  
26 payments, charges, fees, or other amounts in addition to the

1 amounts required to pay the principal, interest, and service  
2 charges related to policy premiums paid under the premium  
3 finance agreement shall be remitted to the original owner of  
4 the policy or to his or her estate if he or she is not living at  
5 the time of the determination of overpayment.

6 (g) A viatical settlement provider shall return 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 (h) 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 licensees, 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 statements made with actual malice. In an  
21 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 because the  
25 person filing the report or furnishing the information did so  
26 with actual malice.

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

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

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

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

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

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

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

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

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

25 (i) Viatical settlement providers and viatical settlement  
26 brokers shall have in place antifraud initiatives reasonably



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

10 Antifraud initiatives shall include the following:

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

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

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

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

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

26 (D) a description or chart outlining the

1 organizational arrangement of the antifraud personnel  
2 who are responsible for the investigation and  
3 reporting of possible viatical settlement fraud and  
4 investigating unresolved material inconsistencies  
5 between medical records and insurance applications;  
6 and

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

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

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

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

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

1           (c) The Director may issue, in accordance with Section  
2 401.1 of the Illinois Insurance Code and the Illinois  
3 Administrative Procedure Act, a cease and desist order upon a  
4 person that violates any provision of this Act, any regulation  
5 or order adopted by the Director, or any written agreement  
6 entered into with the Director.

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

19           Section 72. Crimes and offenses.

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

1 \$10,000, the person shall be guilty of a Class 3 felony and may  
2 be subject to a fine of not more than \$10,000.

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

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

19 (d) A person commits the offense of viatical settlement  
20 fraud when:

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

23 (A) presents, causes to be presented, or prepares  
24 with knowledge or belief that it will be presented to  
25 or by a viatical settlement provider, viatical  
26 settlement broker, life expectancy provider, viatical

1 settlement purchaser, financing entity, insurer,  
2 insurance producer, or any other person, false  
3 material information, or conceals material  
4 information, as part of, in support of or concerning a  
5 fact material to one or more of the following:

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

8 (ii) the underwriting of a viatical settlement  
9 contract or insurance policy;

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

13 (iv) premiums paid on an insurance policy;

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

17 (vi) the reinstatement or conversion of an  
18 insurance policy;

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

22 (viii) the issuance of written evidence of  
23 viatical settlement contract, or insurance; or

24 (ix) a financing transaction; or

25 (B) employs any plan, financial structure, device,  
26 scheme, or artifice to defraud related to viaticated

1 policies; or

2 (C) enters into any practice or plan which involves  
3 stranger-originated life insurance.

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

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

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

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

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

25 (3) Any person knowingly steals, misappropriates, or  
26 converts monies, funds, premiums, credits, or other

1 property of a viatical settlement provider, insurer,  
2 insured, viator, insurance policyowner, or any other  
3 person engaged in the business of viatical settlements or  
4 insurance;

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

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

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

1           Section 75. Unfair trade practices. A violation of this  
2 Act, including the commission of viatical settlement fraud,  
3 shall be considered an unfair trade practice under Article XXVI  
4 of the Illinois Insurance Code.

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

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

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



1 Illinois Securities Law of 1953.

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

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

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

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

22 To be eligible for regulatory treatment pursuant to this  
23 Section 105, the individual or entity seeking such treatment  
24 must first provide written notice to the Director that the

1 individual or entity engages in a business practice as  
2 described in items (i) or (ii). Such notice shall be in a form  
3 and manner and at a fee as prescribed by the Director and  
4 renewed 2 years from the date on which the prior notice is  
5 received by the Director.

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

8 (5 ILCS 140/7) (from Ch. 116, par. 207)

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

10 Sec. 7. Exemptions.

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

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

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

24 (i) files and personal information maintained with

1           respect to clients, patients, residents, students or  
2           other individuals receiving social, medical,  
3           educational, vocational, financial, supervisory or  
4           custodial care or services directly or indirectly from  
5           federal agencies or public bodies;

6           (ii) personnel files and personal information  
7           maintained with respect to employees, appointees or  
8           elected officials of any public body or applicants for  
9           those positions;

10          (iii) files and personal information maintained  
11          with respect to any applicant, registrant or licensee  
12          by any public body cooperating with or engaged in  
13          professional or occupational registration, licensure  
14          or discipline;

15          (iv) information required of any taxpayer in  
16          connection with the assessment or collection of any tax  
17          unless disclosure is otherwise required by State  
18          statute;

19          (v) information revealing the identity of persons  
20          who file complaints with or provide information to  
21          administrative, investigative, law enforcement or  
22          penal agencies; provided, however, that identification  
23          of witnesses to traffic accidents, traffic accident  
24          reports, and rescue reports may be provided by agencies  
25          of local government, except in a case for which a  
26          criminal investigation is ongoing, without

1           constituting a clearly unwarranted per se invasion of  
2           personal privacy under this subsection; and

3           (vi) the names, addresses, or other personal  
4           information of participants and registrants in park  
5           district, forest preserve district, and conservation  
6           district programs.

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

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

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

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

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

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

1 incidents of crime or misconduct;

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

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

6 (viii) obstruct an ongoing criminal investigation.

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

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

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

16 (iii) court records that are public;

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

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

23 "Criminal history record information" means data  
24 identifiable to an individual and consisting of  
25 descriptions or notations of arrests, detentions,  
26 indictments, informations, pre-trial proceedings, trials,

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

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

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

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

1           (i) All information determined to be confidential  
2           under Section 4002 of the Technology Advancement and  
3           Development Act.

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

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

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

1 preparation of a bid solicitation shall be exempt until an  
2 award or final selection is made.

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

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

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



1 buildings.

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

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

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

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

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

1 security of the system or its data or the security of  
2 materials exempt under this Section.

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

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

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

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

1 self-administered health and accident cooperative or pool.

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

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

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

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

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

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

25 (aa) Applications, related documents, and medical  
26 records received by the Experimental Organ Transplantation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (qq) Defense budgets and petitions for certification  
26 of compensation and expenses for court appointed trial

1 counsel as provided under Sections 10 and 15 of the Capital  
2 Crimes Litigation Act. This subsection (qq) shall apply  
3 until the conclusion of the trial of the case, even if the  
4 prosecution chooses not to pursue the death penalty prior  
5 to trial or sentencing.

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

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

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

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

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

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

2 Sec. 7. Exemptions.

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

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

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

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

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

26 (iii) files and personal information maintained



1 with respect to any applicant, registrant or licensee  
2 by any public body cooperating with or engaged in  
3 professional or occupational registration, licensure  
4 or discipline;

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

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

19 (vi) the names, addresses, or other personal  
20 information of participants and registrants in park  
21 district, forest preserve district, and conservation  
22 district programs; and

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

26 (c) Records compiled by any public body for

1 administrative enforcement proceedings and any law  
2 enforcement or correctional agency for law enforcement  
3 purposes or for internal matters of a public body, but only  
4 to the extent that disclosure would:

5 (i) interfere with pending or actually and  
6 reasonably contemplated law enforcement proceedings  
7 conducted by any law enforcement or correctional  
8 agency;

9 (ii) interfere with pending administrative  
10 enforcement proceedings conducted by any public body;

11 (iii) deprive a person of a fair trial or an  
12 impartial hearing;

13 (iv) unavoidably disclose the identity of a  
14 confidential source or confidential information  
15 furnished only by the confidential source;

16 (v) disclose unique or specialized investigative  
17 techniques other than those generally used and known or  
18 disclose internal documents of correctional agencies  
19 related to detection, observation or investigation of  
20 incidents of crime or misconduct;

21 (vi) constitute an invasion of personal privacy  
22 under subsection (b) of this Section;

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

25 (viii) obstruct an ongoing criminal investigation.

26 (d) Criminal history record information maintained by

1 State or local criminal justice agencies, except the  
2 following which shall be open for public inspection and  
3 copying:

4 (i) chronologically maintained arrest information,  
5 such as traditional arrest logs or blotters;

6 (ii) the name of a person in the custody of a law  
7 enforcement agency and the charges for which that  
8 person is being held;

9 (iii) court records that are public;

10 (iv) records that are otherwise available under  
11 State or local law; or

12 (v) records in which the requesting party is the  
13 individual identified, except as provided under part  
14 (vii) of paragraph (c) of subsection (1) of this  
15 Section.

16 "Criminal history record information" means data  
17 identifiable to an individual and consisting of  
18 descriptions or notations of arrests, detentions,  
19 indictments, informations, pre-trial proceedings, trials,  
20 or other formal events in the criminal justice system or  
21 descriptions or notations of criminal charges (including  
22 criminal violations of local municipal ordinances) and the  
23 nature of any disposition arising therefrom, including  
24 sentencing, court or correctional supervision,  
25 rehabilitation and release. The term does not apply to  
26 statistical records and reports in which individuals are

1 not identified and from which their identities are not  
2 ascertainable, or to information that is for criminal  
3 investigative or intelligence purposes.

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

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

15 (g) Trade secrets and commercial or financial  
16 information obtained from a person or business where the  
17 trade secrets or information are proprietary, privileged  
18 or confidential, or where disclosure of the trade secrets  
19 or information may cause competitive harm, including:

20 (i) All information determined to be confidential  
21 under Section 4002 of the Technology Advancement and  
22 Development Act.

23 (ii) All trade secrets and commercial or financial  
24 information obtained by a public body, including a  
25 public pension fund, from a private equity fund or a  
26 privately held company within the investment portfolio

1 of a private equity fund as a result of either  
2 investing or evaluating a potential investment of  
3 public funds in a private equity fund. The exemption  
4 contained in this item does not apply to the aggregate  
5 financial performance information of a private equity  
6 fund, nor to the identity of the fund's managers or  
7 general partners. The exemption contained in this item  
8 does not apply to the identity of a privately held  
9 company within the investment portfolio of a private  
10 equity fund, unless the disclosure of the identity of a  
11 privately held company may cause competitive harm.

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

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

22 (i) Valuable formulae, computer geographic systems,  
23 designs, drawings and research data obtained or produced by  
24 any public body when disclosure could reasonably be  
25 expected to produce private gain or public loss. The  
26 exemption for "computer geographic systems" provided in

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

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

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

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

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

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

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

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

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

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

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

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

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



1 cases.

2 (v) Course materials or research materials used by  
3 faculty members.

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

6 (x) Information contained in or related to  
7 examination, operating, or condition reports prepared by,  
8 on behalf of, or for the use of a public body responsible  
9 for the regulation or supervision of financial  
10 institutions or insurance companies, unless disclosure is  
11 otherwise required by State law.

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

14 (z) Manuals or instruction to staff that relate to  
15 establishment or collection of liability for any State tax  
16 or that relate to investigations by a public body to  
17 determine violation of any criminal law.

18 (aa) Applications, related documents, and medical  
19 records received by the Experimental Organ Transplantation  
20 Procedures Board and any and all documents or other records  
21 prepared by the Experimental Organ Transplantation  
22 Procedures Board or its staff relating to applications it  
23 has received.

24 (bb) Insurance or self insurance (including any  
25 intergovernmental risk management association or self  
26 insurance pool) claims, loss or risk management

1 information, records, data, advice or communications.

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

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

10 (ee) Firm performance evaluations under Section 55 of  
11 the Architectural, Engineering, and Land Surveying  
12 Qualifications Based Selection Act.

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

20 (gg) Information the disclosure of which is restricted  
21 and exempted under Section 50 of the Illinois Prepaid  
22 Tuition Act.

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

25 (ii) Beginning July 1, 1999, information that would  
26 disclose or might lead to the disclosure of secret or

1 confidential information, codes, algorithms, programs, or  
2 private keys intended to be used to create electronic or  
3 digital signatures under the Electronic Commerce Security  
4 Act.

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

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

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

1 (mm) Maps and other records regarding the location or  
2 security of generation, transmission, distribution,  
3 storage, gathering, treatment, or switching facilities  
4 owned by a utility or by the Illinois Power Agency.

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

10 (oo) Records and information provided to a residential  
11 health care facility resident sexual assault and death  
12 review team or the Executive Council under the Abuse  
13 Prevention Review Team Act.

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

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

25 (rr) Information contained in or related to proposals,  
26 bids, or negotiations related to electric power

1 procurement under Section 1-75 of the Illinois Power Agency  
2 Act and Section 16-111.5 of the Public Utilities Act that  
3 is determined to be confidential and proprietary by the  
4 Illinois Power Agency or by the Illinois Commerce  
5 Commission.

6 (ss) Information that is prohibited from being  
7 disclosed under Section 4 of the Illinois Health and  
8 Hazardous Substances Registry Act.

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

11 (2) This Section does not authorize withholding of  
12 information or limit the availability of records to the public,  
13 except as stated in this Section or otherwise provided in this  
14 Act.

15 (Source: P.A. 94-280, eff. 1-1-06; 94-508, eff. 1-1-06; 94-664,  
16 eff. 1-1-06; 94-931, eff. 6-26-06; 94-953, eff. 6-27-06;  
17 94-1055, eff. 1-1-07; 95-331, eff. 8-21-07; 95-481, eff.  
18 8-28-07; 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; revised  
19 10-20-08.)

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

22 (215 ILCS 5/500-70)

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

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

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

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

8           (2) violating any insurance laws, or violating any  
9 rule, subpoena, or order of the Director or of another  
10 state's insurance commissioner;

11           (3) obtaining or attempting to obtain a license through  
12 misrepresentation or fraud;

13           (4) improperly withholding, misappropriating or  
14 converting any moneys or properties received in the course  
15 of doing insurance business;

16           (5) intentionally misrepresenting the terms of an  
17 actual or proposed insurance contract or application for  
18 insurance;

19           (6) having been convicted of a felony;

20           (7) having admitted or been found to have committed any  
21 insurance unfair trade practice or fraud;

22           (8) using fraudulent, coercive, or dishonest  
23 practices, or demonstrating incompetence,  
24 untrustworthiness or financial irresponsibility in the  
25 conduct of business in this State or elsewhere;

26           (9) having an insurance producer license, or its

1 equivalent, denied, suspended, or revoked in any other  
2 state, province, district or territory;

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

5 (11) improperly using notes or any other reference  
6 material to complete an examination for an insurance  
7 license;

8 (12) knowingly accepting insurance business from an  
9 individual who is not licensed;

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

12 (14) failing to pay state income tax or penalty or  
13 interest or comply with any administrative or court order  
14 directing payment of state income tax or failed to file a  
15 return or to pay any final assessment of any tax due to the  
16 Department of Revenue; ~~or~~

17 (15) failing to make satisfactory repayment to the  
18 Illinois Student Assistance Commission for a delinquent or  
19 defaulted student loan; or.

20 (16) failing to comply with any provision of the  
21 Viatical Settlements Act of 2009.

22 (b) If the action by the Director is to nonrenew, suspend,  
23 or revoke a license or to deny an application for a license,  
24 the Director shall notify the applicant or licensee and advise,  
25 in writing, the applicant or licensee of the reason for the  
26 suspension, revocation, denial or nonrenewal of the

1 applicant's or licensee's license. The applicant or licensee  
2 may make written demand upon the Director within 30 days after  
3 the date of mailing for a hearing before the Director to  
4 determine the reasonableness of the Director's action. The  
5 hearing must be held within not fewer than 20 days nor more  
6 than 30 days after the mailing of the notice of hearing and  
7 shall be held pursuant to 50 Ill. Adm. Code 2402.

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

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

21 (e) The Director has the authority to enforce the  
22 provisions of and impose any penalty or remedy authorized by  
23 this Article against any person who is under investigation for  
24 or charged with a violation of this Code or rules even if the  
25 person's license or registration has been surrendered or has  
26 lapsed by operation of law.



1 (f) Upon the suspension, denial, or revocation of a  
2 license, the licensee or other person having possession or  
3 custody of the license shall promptly deliver it to the  
4 Director in person or by mail. The Director shall publish all  
5 suspensions, denials, or revocations after the suspensions,  
6 denials, or revocations become final in a manner designed to  
7 notify interested insurance companies and other persons.

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

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

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

18 (815 ILCS 5/2.1) (from Ch. 121 1/2, par. 137.2-1)

19 Sec. 2.1. Security. "Security" means any note, stock,  
20 treasury stock, bond, debenture, evidence of indebtedness,  
21 certificate of interest or participation in any profit-sharing  
22 agreement, collateral-trust certificate, preorganization  
23 certificate or subscription, transferable share, investment  
24 contract, viatical investment, investment fund share,

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

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

18 (815 ILCS 5/2.33 new)

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

25 (1) any transaction between a viator and a viatical

1 settlement provider, as defined in the Viatical  
2 Settlements Act of 2009;

3 (2) any transfer of ownership or beneficial interest in  
4 a life insurance policy from a viatical settlement provider  
5 to another viatical settlement provider, as defined in the  
6 Viatical Settlements Act of 2009, or to any legal entity  
7 formed solely for the purpose of holding ownership or  
8 beneficial interest in a life insurance policy or policies;

9 (3) the bona fide assignment of a life insurance policy  
10 to a bank, savings bank, savings and loan association,  
11 credit union, or financial institution as collateral for a  
12 loan; for the purposes of this item (3), "financial  
13 institution" means financial institution as defined by  
14 Viatical Settlements Act of 2009; or

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

19 Section 995. No acceleration or delay. Where this Act makes  
20 changes in a statute that is represented in this Act by text  
21 that is not yet or no longer in effect (for example, a Section  
22 represented by multiple versions), the use of that text does  
23 not accelerate or delay the taking effect of (i) the changes  
24 made by this Act or (ii) provisions derived from any other  
25 Public Act.

1           Section 999. Effective date. This Act takes effect July 1,  
2    2010.".