



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

**HB4941**

by Rep. Frank J. Mautino

#### SYNOPSIS AS INTRODUCED:

See Index

Creates the Viatical Settlements Act of 2008. Provides for the regulation of viatical settlement providers, brokers, and life insurance producers acting as brokers who enter into viatical settlements. Provides license requirements and establishes grounds for the suspension, denial, nonrenewal, or revocation of a license. Requires viatical settlement contracts and disclosure statements to be approved by the Director of Insurance. Requires certain documents to be kept by licensees for examination by the Director and sets guidelines for examination by the Director. Provides a period of time for rescission after certain disclosures are made. Requires certain disclosures to be made in connection with viatical settlements. Sets forth prohibited practices and exceptions. Grants the Director the authority to adopt rules. Sets forth violations and penalties for violations. Provides standards for advertisement of viatical settlement services and contracts. Amends the Freedom of Information Act to exempt from disclosure certain documents required under the Viatical Settlements Act of 2008. Provides that violations of the Act constitute unfair trade practices subject to penalty under the Illinois Insurance Code and amends the Illinois Insurance Code to include the violations. Amends the Illinois Security Law of 1953 to include viatical investments in a definition of "security" and to add a definition of "viatical investment". Repeals the Viatical Settlements Act. Provides that the provisions of the Act are severable. Effective July 1, 2009.

LRB095 18852 KBJ 44982 b

CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning regulation.

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

4 Section 1. Short title. This Act may be cited as the  
5 Viatical Settlements Act of 2008.

6 Section 5. Definitions.

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

17 "Business of viatical settlements" means any activity  
18 involved in, but not limited to, the offering, solicitation,  
19 negotiation, procurement, effectuation, purchasing, investing,  
20 financing, monitoring, tracking, underwriting, selling,  
21 transferring, assigning, pledging, or hypothecating or in any  
22 other manner acquiring an interest in a life insurance policy  
23 by means of a viatical settlement contract or other agreement.

1 "Chronically ill" means:

2 (1) being unable to perform at least 2 activities of  
3 daily living, such as eating, toileting, transferring,  
4 bathing, dressing, or continence;

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

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

11 "Director" means the Director of the Division of Insurance  
12 of the Department of Financial and Professional Regulation.

13 "Division" means the Division of Insurance of the  
14 Department of Financial and Professional Regulation.

15 "Financing entity" means an underwriter, placement agent,  
16 lender, purchaser of securities, purchaser of a policy or  
17 certificate from a viatical settlement provider, credit  
18 enhancer, or an entity that has a direct ownership in a policy  
19 that is the subject of a viatical settlement contract, but:

20 (1) whose principal activity related to the  
21 transaction is providing funds to effect the viatical  
22 settlement or purchase of one or more viaticated policies;  
23 and

24 (2) who has an agreement in writing with one or more  
25 licensed viatical settlement providers to finance the  
26 acquisition of viatical settlement contracts.

1 "Financing entity" does not include an investor that is not an  
2 accredited investor as defined by Rule 501(a) of the federal  
3 Securities Act of 1933, as amended, or a viatical settlement  
4 purchaser.

5 "Insurance producer" means an insurance producer as  
6 defined by Section 10 of Article XXXI of the Illinois Insurance  
7 Code.

8 "Licensee" means a viatical settlement provider or  
9 viatical settlement broker.

10 "Life expectancy provider" means a person who determines or  
11 holds himself or herself out as determining life expectancies  
12 or mortality ratings used to determine life expectancies.

13 "Person" means an individual or a legal entity, including,  
14 without limitation, a partnership, limited liability company,  
15 association, trust, or corporation. For purposes of  
16 subsection(f) Section 70 of this Act, "person" means (i) an  
17 individual, (ii) a corporation, (iii) an officer, agent, or  
18 employee of a corporation, (iv) a member, agent, or employee of  
19 a partnership, or (v) a member, manager, employee, officer,  
20 director, or agent of a limited liability company who in such  
21 capacity commits an offense specified in this Act.

22 "Policy" means an individual or group policy, group  
23 certificate, contract, or arrangement of life insurance owned  
24 by or for the benefit of a resident of this State, regardless  
25 of whether delivered or issued for delivery in this State.

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

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

13 "Special purpose entity" means a corporation, partnership,  
14 trust, limited liability company, or other similar entity  
15 formed only to provide, directly or indirectly, access to  
16 institutional capital markets (i) for a financing entity or  
17 licensed viatical settlement provider; or (ii) in connection  
18 with a transaction in which the securities in the special  
19 purposes entity are acquired by the viator or by qualified  
20 institutional buyers, as defined in Rule 144 promulgated under  
21 the federal Securities Act of 1933, as amended, or the  
22 securities pay a fixed rate of return commensurate with  
23 established asset-backed institutional capital markets.

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

26 "Viatical settlement broker" means a licensed insurance

1 producer with a life line of authority, who, working  
2 exclusively on behalf of a viator and for a fee, commission, or  
3 other valuable consideration, offers or attempts to negotiate  
4 viatical settlement contracts between a viator and one or more  
5 viatical settlement providers or one or more viatical  
6 settlement brokers. Notwithstanding the manner in which the  
7 viatical settlement broker is compensated, a viatical  
8 settlement broker is deemed to represent only the viator and  
9 not the insurer or viatical settlement provider and owes a  
10 fiduciary duty to the viator to act according to the viator's  
11 instructions and in the best interests of the viator. "Viatical  
12 settlement broker" does not include an attorney, certified  
13 public accountant, or a financial planner accredited by a  
14 nationally recognized accreditation agency, who is retained to  
15 represent the viator and whose compensation is not paid  
16 directly or indirectly by the viatical settlement provider or  
17 purchaser.

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

1 settlement contract" includes a premium finance loan made for a  
2 life insurance policy by a lender to the viator on, before, or  
3 after the date of issuance of the policy where:

4 (a) The viator or the insured receives, on the date of  
5 the premium finance loan, a guarantee of a future viatical  
6 settlement value of the policy; or

7 (b) The viator or the insured agrees on the date of the  
8 premium finance loan to sell the policy or any portion of  
9 its death benefit on any date following the issuance of the  
10 policy.

11 "Viatical settlement contract" does not include:

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

14 (b) Loan proceeds that are used solely to pay: (i)  
15 premiums for the policy and (ii) the costs of the loan,  
16 including, without limitation interest, arrangement fees,  
17 utilization fees and similar fees, closing costs, legal  
18 fees and expenses, trustee fees and expenses, and third  
19 party collateral provider fees and expenses, including  
20 fees payable to letter of credit issuers;

21 (c) A loan made by a bank or other licensed financial  
22 institution in which the lender takes an interest in a life  
23 insurance policy solely to secure repayment of a loan or,  
24 if there is a default on the loan and the policy is  
25 transferred, the transfer of such a policy by the lender,  
26 provided that the default itself is not pursuant to an

1 agreement or understanding with any other person for the  
2 purpose of evading regulation under this Act;

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

6 (e) An agreement where all the parties (i) are closely  
7 related to the insured by blood or law or (ii) have a  
8 lawful substantial economic interest in the continued  
9 life, health, and bodily safety of the person insured, or  
10 are trusts established primarily for the benefit of such  
11 parties;

12 (f) Any designation, consent, or agreement by an  
13 insured who is an employee of an employer in connection  
14 with the purchase by the employer, or trust established by  
15 the employer, of life insurance on the life of the  
16 employee;

17 (g) A bona fide business succession planning  
18 arrangement: (i) between one or more shareholders in a  
19 corporation or between a corporation and one or more of its  
20 shareholders or one or more trust established by its  
21 shareholders; (ii) between one or more partners in a  
22 partnership or between a partnership and one or more of its  
23 partners or one or more trust established by its partners;  
24 or (iii) between one or more members in a limited liability  
25 company or between a limited liability company and one or  
26 more of its members or one or more trust established by its



1 members;

2 (h) An agreement entered into by a service recipient,  
3 or a trust established by the service recipient, and a  
4 service provider, or a trust established by the service  
5 provider, who performs significant services for the  
6 service recipient's trade or business; or

7 (i) Any other contract, transaction, or arrangement  
8 exempted from the definition of viatical settlement  
9 contract by the Director based on a determination that the  
10 contract, transaction, or arrangement is not of the type  
11 intended to be regulated by this Act.

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

21 "Viatical settlement provider" means a person, other than a  
22 viator, that solicits, enters into, or effectuates a viatical  
23 settlement contract with a viator. "Viatical settlement  
24 provider" does not include:

25 (1) a bank, savings bank, savings and loan association,  
26 credit union, or other licensed lending institution that

- 1 takes an assignment of a policy as collateral for a loan;
- 2 (2) a licensed lending institution or premium finance  
3 company making premium finance loans and exempted by the  
4 Director from the licensing requirement under the premium  
5 finance laws where an institution or company takes an  
6 assignment of a life insurance policy solely as collateral  
7 for a loan;
- 8 (3) the issuer of the life insurance policy;
- 9 (4) an authorized or eligible insurer that provides  
10 stop loss coverage or financial guaranty insurance to a  
11 viatical settlement provider, purchaser, financing entity,  
12 special purpose entity, or related provider trust;
- 13 (5) a natural person who enters into or effectuates no  
14 more than one agreement in a calendar year for the transfer  
15 of policies for any value less than the expected death  
16 benefit;
- 17 (6) a financing entity;
- 18 (7) a special purpose entity;
- 19 (8) a related provider trust;
- 20 (9) a viatical settlement purchaser; or
- 21 (10) any other person that the Director determines is  
22 not the type of person intended to be covered by the  
23 definition of viatical settlement provider.
- 24 "Viatical settlement purchase agreement" means a contract  
25 or agreement, entered into by a viatical settlement purchaser,  
26 to which the viator is not a party, to purchase a life

1 insurance policy or an interest in a life insurance policy,  
2 that is entered into for the purpose of deriving an economic  
3 benefit.

4 "Viatical settlement purchaser" means a person who  
5 provides a sum of money as consideration for a life insurance  
6 policy or an interest in the death benefits of a life insurance  
7 policy, or a person who owns or acquires or is entitled to a  
8 beneficial interest in a trust that owns a viatical settlement  
9 contract or is the beneficiary of a life insurance policy that  
10 has been or will be the subject of a viatical settlement  
11 contract, for the purpose of deriving an economic benefit.

12 "Viatical settlement purchaser" does not include: (i) a  
13 licensee under this Act; (ii) an accredited investor or  
14 qualified institutional buyer as defined, respectively, in  
15 Rule 501(a) or Rule 144A promulgated under the federal  
16 Securities Act of 1933, as amended; (iii) a financing entity;  
17 (iv) a special purpose entity; or (v) a related provider trust.

18 "Viaticated policy" means a life insurance policy or  
19 certificate that has been acquired by a viatical settlement  
20 provider pursuant to a viatical settlement contract.

21 "Viator" means the owner of a life insurance policy or a  
22 certificate holder under a group policy who resides in this  
23 State and enters or seeks to enter into a viatical settlement  
24 contract. For the purposes of this Act, a viator is not limited  
25 to an owner of a life insurance policy or a certificate holder  
26 under a group policy insuring the life of an individual with a

1 terminal or chronic illness or condition, except where  
2 specifically addressed. If there is more than one viator on a  
3 single policy and the viators are residents of different  
4 states, the transaction shall be governed by the law of the  
5 state in which the viator having the largest percentage  
6 ownership resides or, if the viators hold equal ownership, the  
7 state of residence of one viator agreed upon in writing by all  
8 the viators. "Viator" does not include:

9 (1) a licensed viatical settlement provider or a  
10 viatical settlement broker;

11 (2) a qualified institutional buyer as defined in Rule  
12 144A promulgated under the federal Securities Act of 1933,  
13 as amended;

14 (3) a financing entity;

15 (4) a special purpose entity; or

16 (5) a related provider trust.

17 Section 10. License and bond requirements.

18 (a) A person shall not operate as a viatical settlement  
19 provider or viatical settlement broker without first obtaining  
20 a license from the chief insurance regulatory official of the  
21 state of residence of the viator.

22 (b) A person shall not operate as a viatical settlement  
23 broker without first obtaining an insurance producer license  
24 from the Director. The Director may require proof of  
25 understanding of viatical settlement requirements as

1 established by this Act through questions asked on the  
2 licensing exam for life insurance producers as established by  
3 the Application for Examination contained in Article XXXI of  
4 the Illinois Insurance Code. The Director may by rule require  
5 training or education for viatical settlement brokers in  
6 addition to any continuing education requirements provided by  
7 Article XXXI of the Illinois Insurance Code.

8 (c) An insurance producer shall not operate as a viatical  
9 settlement broker unless the producer has been duly licensed as  
10 resident insurance producer with a life line of authority in  
11 this state or his or her home state for at least one year.

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

20 The insurer that issued the policy being viaticated shall  
21 not be responsible for any act or omission of a viatical  
22 settlement broker or viatical settlement provider arising out  
23 of or in connection with the viatical settlement transaction,  
24 unless 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 (e) A person licensed as an attorney, certified public  
3 accountant, or financial planner accredited by a nationally  
4 recognized accreditation agency, who is retained to represent  
5 the viator, whose compensation is not paid directly or  
6 indirectly by the viatical settlement provider, may negotiate  
7 viatical settlement contracts on behalf of the viator without  
8 having to obtain a license as a viatical settlement broker.

9 (f) Application for a viatical settlement provider license  
10 shall be made to the Director by the applicant on a form  
11 prescribed by the Director, and these applications shall be  
12 accompanied by a \$3,000 fee for a provider license, which shall  
13 be deposited into the Insurance Producer Administration Fund.

14 (g) Viatical settlement provider licenses may be renewed  
15 from year to year on the anniversary date upon payment of the  
16 annual renewal fee of \$1,500. Failure to pay the fees by the  
17 renewal date results in expiration of the license.

18 (h) The applicant for a viatical settlement provider  
19 license shall provide information on forms required by the  
20 Director. The Director shall have authority, at any time, to  
21 require the applicant to fully disclose the identity of all  
22 stockholders, partners, officers, members, and employees, and  
23 the Director may, in the exercise of the Secretary's  
24 discretion, refuse to issue a license in the name of a legal  
25 entity if not satisfied that any officer, employee,  
26 stockholder, partner, or member thereof who may materially

1 influence the applicant's conduct meets the standards of this  
2 Act.

3 A viatical settlement provider license issued to a legal  
4 entity authorizes all partners, officers, members, and  
5 designated employees to act as viatical settlement providers,  
6 as applicable, under the license, and all those persons shall  
7 be named in the application and any supplements to the  
8 application.

9 (i) Upon the filing of a viatical settlement provider  
10 license application and the payment of the license fee, the  
11 Director shall make an investigation of each applicant and  
12 issue a license if the Director finds that the applicant:

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

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

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

20 (4) (A) has demonstrated evidence of financial  
21 responsibility in a format prescribed by the Director  
22 through either a surety bond executed and issued by an  
23 insurer authorized to issue surety bonds in this State or a  
24 deposit of cash, certificates of deposit or securities or  
25 any combination thereof in the amount of \$250,000;

26 (B) the Director may ask for evidence of financial

1 responsibility at any time the Director deems  
2 necessary;

3 (C) any surety bond issued pursuant to this  
4 subsection (h) shall be in the favor of this State and  
5 shall specifically authorize recovery by the Director  
6 on behalf of any person in this State who sustained  
7 damages as the result of erroneous acts, failure to  
8 act, conviction of fraud or conviction of unfair  
9 practices by the viatical settlement provider or  
10 viatical settlement broker;

11 (D) notwithstanding any other provision of this  
12 Section to the contrary, the Director shall accept, as  
13 evidence of financial responsibility, proof that  
14 financial instruments in accordance with the  
15 requirements in this subsection (h) have been filed  
16 with one or more states where the applicant is licensed  
17 as a viatical settlement provider or viatical  
18 settlement broker;

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

21 (6) if a viatical settlement provider or viatical  
22 settlement broker, has provided an anti-fraud plan that  
23 meets the requirements of Section 65 of this Act.

24 (j) The Director shall not issue a viatical settlement  
25 provider license to a nonresident applicant, unless a written  
26 designation of an agent for service of process is filed and



1 maintained with the Director or the applicant has filed with  
2 the Director, the applicant's written irrevocable consent that  
3 any action against the applicant may be commenced against the  
4 applicant by service of process on the Director.

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

9 (l) Viatical settlement providers licensed under this Act  
10 shall be subject to the license requirements of this Act upon  
11 renewal and after the effective date of this Act.

12 Section 15. License revocation for viatical settlement  
13 providers.

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

17 (1) there was any material misrepresentation in the  
18 application for the license;

19 (2) the viatical settlement provider or any officer,  
20 partner, member, or key management personnel has been  
21 convicted of fraudulent or dishonest practices, is subject  
22 to a final administrative action, or is otherwise shown to  
23 be untrustworthy or incompetent;

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

1           (4) the viatical settlement provider or any officer,  
2 partner, member, or key management personnel has been found  
3 guilty of, or pleaded guilty or nolo contendere to, any  
4 felony or to a misdemeanor involving fraud or moral  
5 turpitude, regardless of whether a judgment or conviction  
6 has been entered by the court;

7           (5) the viatical settlement provider has entered into  
8 any viatical settlement contract that has not been approved  
9 pursuant to this Act;

10          (6) the viatical settlement provider has failed to  
11 honor contractual obligations set out in a viatical  
12 settlement contract;

13          (7) the viatical settlement provider no longer meets  
14 the requirements for initial licensure;

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

24          (9) the viatical settlement provider or any officer,  
25 partner, member, or key management personnel has violated  
26 any of the provisions of this Act.

1 (b) If the Director denies a license application or  
2 suspends, revokes, or refuses to renew the license of a  
3 viatical settlement provider, the Director shall notify the  
4 applicant or viatical settlement provider and advise, in  
5 writing, the applicant or viatical settlement provider of the  
6 reason for the suspension, revocation, denial, or nonrenewal of  
7 the applicant's or licensee's license. The applicant or  
8 viatical settlement provider may make a written demand upon the  
9 Director within days after the date of mailing for a hearing  
10 before the Director to determine the reasonableness of the  
11 Director's action. The hearing must be held within not fewer  
12 than 20 days nor more than 30 days after the mailing of the  
13 notice of hearing and shall be held pursuant to Section 2402 of  
14 Chapter 50 of the Illinois Administrative 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 unreasonably contrary to the interests of the public, or  
24 otherwise misleading or unfair to the viator. At the Director's  
25 discretion, the Director may require the submission of

1 advertising material.

2 Section 25. Reporting requirements.

3 (a) Each viatical settlement provider shall file with the  
4 Director on or before March 1 of each year 2 copies of its  
5 annual statement for the immediately preceding year ending  
6 December 31 on forms prescribed by the Director. Individual  
7 transaction data regarding the business of viatical  
8 settlements or data that could compromise the privacy of  
9 personal, financial, and health information of the viator or  
10 insured shall be filed with the Director on a confidential  
11 basis.

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

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

23 (2) provided in response to an investigation or  
24 examination by the Director or another governmental  
25 officer or agency or pursuant to the requirements of

1 Section 65 of this Act;

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

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

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

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

16 (c) A viatical settlement investment agent shall not have  
17 any contact directly or indirectly with the viator or the  
18 insured or have knowledge of the indentivity of the viator or the  
19 insured.

20 Section 30. Examination or investigation.

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

24 In scheduling and determining the nature, scope, and  
25 frequency of the examinations, the Director shall consider such

1 matters as consumer complaints, results of financial statement  
2 analyses and ratios, changes in management or ownership,  
3 actuarial opinions, report of independent certified public  
4 accountants, and other relevant criteria as determined by the  
5 Director.

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

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

16 (d) As far as practical, the examination of a foreign or  
17 alien insurer shall be made in cooperation with the insurance  
18 supervisory officials of other states in which the insurer  
19 transacts business.

20 (e) A person required to be licensed by this Act shall for  
21 5 years retain copies of:

22 (1) proposed, offered, or executed contracts, purchase  
23 agreements, underwriting documents, policy forms, and  
24 applications from the date of the proposal, offer, or  
25 execution of the contract or purchase agreement, whichever  
26 is later;

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

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

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

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

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

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

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



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

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

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

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

1 opportunity of not more than 30 days to make a written  
2 submission or rebuttal with respect to any matters contained in  
3 the examination report.

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

11 (k) The licensee may request a hearing within 10 days after  
12 receipt of the examination report by giving the Director  
13 written notice of that request, together with a statement of  
14 its objections. The Director then must conduct a hearing in  
15 conjunction with Sections 402 and 403 of the Illinois Insurance  
16 Code. The Director must issue a written order based upon the  
17 examination report and upon the hearing within 90 days after  
18 the report is filed or within 90 days after the hearing.

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 shall be considered private and confidential  
24 information and shall not be disclosed by the Director unless  
25 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 in the analysis or

1 investigation of the financial condition or market  
2 conduct of a licensee; or

3 (B) disclosed to the NAIC and its affiliates and  
4 subsidiaries under this subsection (m) by the chief  
5 insurance regulatory official of a state.

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

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

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

25 (2) receive documents, materials, communications, or  
26 information, including otherwise confidential and

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

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

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

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

21 (q) Nothing contained in this Act shall prevent or be  
22 construed as prohibiting the Director from disclosing the  
23 content of an examination report, preliminary examination  
24 report or results, or any matter relating thereto, to the chief  
25 insurance regulatory official of any other state or country, or  
26 to law enforcement officials of this or any other state or

1 agency of the federal government at any time or to the NAIC, so  
2 long as the agency or office receiving the report or matters  
3 relating thereto agrees in writing to hold it confidential and  
4 in a manner consistent with this Act.

5 (r) An examiner may not be appointed by the Director if the  
6 examiner, either directly or indirectly, has a conflict of  
7 interest or is affiliated with the management of or owns a  
8 pecuniary interest in any person subject to examination under  
9 this Act. This Section shall not be construed to automatically  
10 preclude an examiner from being:

11 (1) a viator;

12 (2) an insured in a viaticated insurance policy; or

13 (3) a beneficiary in an insurance policy that is  
14 proposed to be viaticated.

15 Notwithstanding the requirements of this subsection (r),  
16 the Director may retain from time to time, on an individual  
17 basis, qualified actuaries, certified public accountants, or  
18 other similar individuals who are independently practicing  
19 their professions, even though these persons may from time to  
20 time be similarly employed or retained by persons subject to  
21 examination under provisions of this Act. The expenses incurred  
22 in conducting an examination shall be paid by the licensee.

23 (s) No cause of action shall arise nor shall any liability  
24 be imposed against the Director, the Director's authorized  
25 representatives, or any examiner appointed by the Director for  
26 any statements made or conduct performed in good faith while

1 carrying out the provisions of this Section.

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

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

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

24 Section 35. Disclosure to viator.

25 (a) With each application for a viatical settlement

1 contract, a viatical settlement provider or viatical  
2 settlement broker shall provide the viator with at least the  
3 following disclosures no later than the time the viatical  
4 settlement contract is signed by all parties. The disclosures  
5 must be provided in a separate document that is signed by the  
6 viator and the viatical settlement provider or viatical  
7 settlement broker, and shall provide the following  
8 information:

9 (1) If the viator sells the policy, the viator and the  
10 viator's beneficiaries lose the policy's life insurance  
11 protection. The viator may not be able to buy another life  
12 insurance policy.

13 (2) That there are possible alternatives to viatical  
14 settlement contracts including any accelerated death  
15 benefits or policy loans offered under the viator's life  
16 insurance policy.

17 (3) That a viatical settlement broker represents only  
18 the viator and not the insurer or the viatical settlement  
19 provider and owes a fiduciary duty to the viator, including  
20 a duty to act according to the viator's instructions and in  
21 the best interest of the viator.

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

26 (5) That proceeds of the viatical settlement contract



1           may be subject to the claims of creditors.

2           (6) That receipt of the proceeds of a viatical  
3 settlement may adversely affect the viator's eligibility  
4 for Medicaid or other government benefits or entitlements  
5 and advice may be obtained from the appropriate government  
6 agencies.

7           (7) That the viator has the right to rescind a viatical  
8 settlement contract before the earlier of 60 calendar days  
9 after the date upon which the viatical settlement contract  
10 is executed by all parties or 30 calendar days after the  
11 viatical settlement proceeds have been paid to the viator.  
12 Rescission, if exercised by the viator, is effective only  
13 if both notice of the rescission is given and the viator  
14 repays all proceeds and any premiums, loans, and loan  
15 interest paid on the account of the viatical settlement  
16 within the rescission period. If the insured dies during  
17 the rescission period, the viatical settlement contract is  
18 deemed to have been rescinded, subject to repayment by the  
19 viator or the viator's estate of all viatical settlement  
20 proceeds and any premiums, loans, and loan interest paid on  
21 the account of the viatical settlement within 60 days after  
22 the insured's death.

23           (8) That funds must be sent to the viator within 3  
24 business days after the viatical settlement provider has  
25 received the insurer or group administrator's written  
26 acknowledgment that ownership of the policy has been

1 transferred and the beneficiary has been designated.

2 (9) That entering into a viatical settlement contract  
3 may cause other rights or benefits, including conversion  
4 rights and waiver of premium benefits that may exist under  
5 the policy, to be forfeited by the viator. Assistance may  
6 be sought from a financial adviser.

7 (10) That the disclosure to a viator must include  
8 distribution of a brochure describing the process of  
9 viatical settlements. The NAIC's form for the brochure  
10 shall be used unless another form is developed or approved  
11 by the Director.

12 (11) That the disclosure document must contain the  
13 following language: "A viatical settlement provider or  
14 viatical settlement broker may ask you for your medical,  
15 financial, and personal information. All medical,  
16 financial, or personal information solicited or obtained  
17 by a viatical settlement provider or viatical settlement  
18 broker about you, including the your identity or the  
19 identity of your family members, your spouse, or a  
20 significant other, may be disclosed as necessary to effect  
21 the viatical settlement between the viator and the viatical  
22 settlement provider. If you are asked to provide this  
23 information, you will be asked to consent to the  
24 disclosure. The information may be provided to someone who  
25 buys the policy or provides funds for the purchase. You may  
26 be asked to renew your permission to share information

1 every 2 years.".

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

15 (13) If the policy to be viaticated is group coverage,  
16 the insured is advised to check with the manager of the  
17 group about whether permission is required to sell the  
18 policy or other conditions.

19 (14) Entering into a viatical settlement contract will  
20 result in investors having a financial interest in the  
21 insured's death.

22 (b) With each application for a viatical settlement, a  
23 viatical settlement provider or viatical settlement broker  
24 shall provide the prospective viator with a document titled  
25 "Important Consumer Notices". The document must be provided to  
26 the prospective viator and contain, in conspicuous type size

1 and format, the following:

2 "By entering into a viatical settlement contract:

3 (a) You are making a complex financial decision that  
4 may or may not be in your or your family's financial best  
5 interest. Seek independent advice from financial planning  
6 experts and responsible government agencies.

7 (b) You may not be able to purchase another life  
8 insurance policy.

9 (c) You could lose Medicaid and other valuable  
10 government benefits.

11 (d) You will receive proceeds that may be subject  
12 federal and state taxes and to the claims of creditors. (e)  
13 You have sold your life insurance policy to investors who  
14 profit if you die before your policy term expires.

15 (f) You or your residence may be contacted on a regular  
16 basis to determine if you have died or if your health  
17 status has deteriorated."

18 The disclosure document required by this subsection (b)  
19 shall be the cover page of the viatical settlement contract and  
20 shall be signed by the viator and the viatical settlement  
21 provider or viatical settlement broker. The viator and viatical  
22 settlement provider or viatical settlement broker shall sign  
23 the disclosure prior to signing the viatical settlement  
24 contract. A copy of the signed document must be provided to the  
25 viator.

26 (c) A viatical settlement provider shall provide the viator

1 with at least the following disclosures no later than the date  
2 the viatical settlement contract is signed by all parties. The  
3 disclosures must be displayed conspicuously in the viatical  
4 settlement contract or in a separate document signed by the  
5 viator and the viatical settlement provider, and provide the  
6 following information:

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

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

12 (3) Any affiliations or contractual arrangements  
13 between the viatical settlement provider and the viatical  
14 settlement purchaser.

15 (4) If a policy to be acquired pursuant to a viatical  
16 settlement contract has been issued as a joint policy or  
17 involves family riders or any coverage of a life other than  
18 the insured under the policy to be acquired pursuant to a  
19 viatical settlement contract, the viator must be informed  
20 of the possible loss of coverage on the other lives under  
21 the policy and must be advised to consult with his or her  
22 insurance producer or the insurer issuing the policy for  
23 advice on the proposed viatical settlement contract.

24 (5) The dollar amount of the current death benefit  
25 payable to the viatical settlement provider under the  
26 policy. If known, the viatical settlement provider also

1 shall disclose the availability of additional guaranteed  
2 insurance benefits, the dollar amount of accidental death  
3 and dismemberment benefits under the policy or  
4 certificate, and the extent to which the viator's interest  
5 in those benefits will be transferred as a result of the  
6 viator's settlement contract.

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

11 (7) The following details of any compensation paid to  
12 viatical settlement brokers:

13 (A) The name of each viatical settlement broker who  
14 has received or will receive compensation and the  
15 amount of compensation received by each. For the  
16 purposes of this Section, compensation means anything  
17 of value paid or given by or at the direction of a  
18 viatical settlement provider or person acquiring an  
19 interest in the life insurance policy to the viatical  
20 settlement broker in connection with the viatical  
21 settlement contract;

22 (B) A complete reconciliation of the gross offer or  
23 bid by the viatical settlement provider to the net  
24 amount of proceeds or value to be received by the  
25 viator. For the purposes of this Section, gross offer  
26 or bid shall mean the total amount or value offered by

1 the viatical settlement provider for the purchase of  
2 one or more life insurance policies, inclusive of  
3 commissions, compensation, fees or other expenditures  
4 related to the transaction.

5 (C) If a viatical settlement contract has been  
6 entered into and the contract is subsequently amended  
7 or if there is any change in the viatical settlement  
8 provider's gross offer or bid amount or change in the  
9 information provided in the disclosure statement to  
10 the viator, the viatical settlement provider shall  
11 provide an amended disclosure statement to the viator,  
12 containing the information in subparagraphs (A) and  
13 (B) of this paragraph (7). The amended disclosure  
14 statement shall be signed and dated by the viator.

15 (D) The viatical settlement provider shall, on the  
16 disclosure document and for the compensation  
17 disclosures required by this paragraph (7), obtain the  
18 signature of each viatical settlement broker receiving  
19 compensation.

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

26 (1) the name, business address, and telephone number of

1 the viatical settlement broker;

2 (2) a full, complete, and accurate description of all  
3 offers, counter-offers, acceptances, and rejections  
4 relating to the proposed viatical settlement contract;

5 (3) a written disclosure of any affiliations or  
6 contractual arrangements between the viatical settlement  
7 broker and any person making an offer in connection with  
8 the proposed viatical settlement contracts;

9 (4) the amount and method of calculating the broker's  
10 compensation, which term "compensation" includes anything  
11 of value paid or given to a viatical settlement broker in  
12 connection with the viatical settlement contract;

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

20 (6) the name of the legal owner of the policy after it  
21 is viaticated and whether the insurance policy can be sold.

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



1           Section 40. Disclosure to insurer. Prior to the initiation  
2 of a viatical settlement plan, transaction, or series of  
3 viatical settlement transactions, a viatical settlement broker  
4 or viatical settlement provider shall fully disclose to an  
5 insurer all non-proprietary information regarding a plan,  
6 transaction, or series of transactions to which the viatical  
7 settlement broker or viatical settlement provider is a party to  
8 originate, renew, continue, or finance a life insurance policy  
9 with the insurer for the purpose of engaging in the business of  
10 viatical settlements at anytime prior to or during the first 5  
11 years after issuance of the policy. Any disclosure required  
12 under this Section must be made in writing.

13           Section 45. General rules.

14           (a) A viatical settlement provider entering into a viatical  
15 settlement contract shall first obtain:

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

20                   (2) a document in which the insured consents to the  
21 release of his or her medical records to a licensed  
22 viatical settlement provider, viatical settlement broker,  
23 and the insurance company that issued the life insurance  
24 policy covering the life of the insured.

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

10           (c) The viatical provider shall deliver a copy of the  
11 medical release required under paragraph (2) of subsection (a)  
12 of this Section, a copy of the viator's application for the  
13 viatical settlement contract, the notice required under  
14 subsection (b) of this Section and a request for verification  
15 of coverage to the insurer that issued the life policy that is  
16 the subject of the viatical transaction. The NAIC's form for  
17 verification of coverage shall be used unless another form is  
18 developed or approved by the Director.

19           (d) Prior to or at the time of execution of the viatical  
20 settlement contract, the viatical settlement provider shall  
21 obtain a witnessed document in which the viator consents to the  
22 viatical settlement contract, represents that the viator has a  
23 full and complete understanding of the viatical settlement  
24 contract, that he or she has a full and complete understanding  
25 of the benefits of the life insurance policy, acknowledges that  
26 he or she is entering into the viatical settlement contract

1 freely and voluntarily and, for persons with a terminal or  
2 chronic illness or condition, acknowledges that the insured has  
3 a terminal or chronic illness and that the terminal or chronic  
4 illness or condition was diagnosed after the life insurance  
5 policy was issued.

6 (e) If a viatical settlement broker performs any of these  
7 activities required of the viatical settlement provider, the  
8 provider is deemed to have fulfilled the requirements of this  
9 Section.

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

25 (g) All medical information solicited or obtained by any  
26 licensee shall be subject to the applicable provisions of state

1 law relating to confidentiality of medical information.

2 (h) All viatical settlement contracts entered into in this  
3 State shall provide the viator with an absolute right to  
4 rescind the contract before the earlier of 60 calendar days  
5 after the date upon which the viatical settlement contract is  
6 executed by all parties or 30 calendar days after the viatical  
7 settlement proceeds have been sent to the viator as provided in  
8 Section 45. Rescission by the viator may be conditioned upon  
9 the viator both giving notice and repaying to the viatical  
10 settlement provider within the rescission period all proceeds  
11 of the settlement and any premiums, loans and loan interest  
12 paid by or on behalf of the viatical settlement provider in  
13 connection with or as a consequence of the viatical settlement.  
14 If the insured dies during the rescission period, the viatical  
15 settlement contract shall be deemed to have been rescinded,  
16 subject to repayment to the viatical settlement provider or  
17 purchaser of all viatical settlement proceeds, and any  
18 premiums, loans, and loan interest that have been paid by the  
19 viatical settlement provider or purchaser, which shall be paid  
20 within 60 calendar days of the death of the insured. In the  
21 event of any rescission, if the viatical settlement provider  
22 has paid commissions or other compensation to a viatical  
23 settlement broker in connection with the rescinded  
24 transaction, the viatical settlement broker shall refund all  
25 such commissions and compensation to the viatical settlement  
26 provider within 5 business days following receipt of written

1 demand from the viatical settlement provider, which demand  
2 shall be accompanied by either the viator's notice of  
3 rescission if rescinded at the election of the viator, or  
4 notice of the death of the insured if rescinded by reason of  
5 the death of the insured within the applicable rescission  
6 period.

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

1 pay the settlement proceeds to the viator.

2 (j) Failure to tender consideration to the viator for the  
3 viatical settlement contract within the time set forth in the  
4 disclosure pursuant to item (7) of subsection (a) of Section 35  
5 of this Act renders the viatical settlement contract voidable  
6 by the viator for lack of consideration until the time  
7 consideration is tendered to and accepted by the viator. Funds  
8 shall be deemed sent by a viatical settlement provider to a  
9 viator as of the date that the escrow agent either releases  
10 funds for wire transfer to the viator or places a check for  
11 delivery to the viator via United States Postal Service or  
12 other nationally recognized delivery service.

13 (k) Contacts with the insured for the purpose of  
14 determining the health status of the insured by the viatical  
15 settlement provider or viatical settlement broker after the  
16 viatical settlement has occurred shall only be made by the  
17 viatical settlement provider or broker licensed in this State  
18 or its authorized representatives and shall be limited to once  
19 every 3 months for insureds with a life expectancy of more than  
20 one year, and to no more than once per month for insureds with  
21 a life expectancy of one year or less. The provider or broker  
22 shall explain the procedure for these contacts at the time the  
23 viatical settlement contract is entered into. The limitations  
24 set forth in this subsection (k) shall not apply to any  
25 contacts with an insured for reasons other than determining the  
26 insured's health status. Viatical settlement providers and

1 viatical settlement brokers shall be responsible for the  
2 actions of their authorized representatives.

3 Section 50. Prohibited practices.

4 (a) It is a violation of this Act for any person to enter  
5 into a viatical settlement contract at any time prior to the  
6 application or issuance of a policy which is the subject of a  
7 viatical settlement contract or within a 5-year period  
8 commencing with the date of issuance of the insurance policy or  
9 certificate unless the viator certifies to the viatical  
10 settlement provider that one or more of the following  
11 conditions have been met within the 5-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 submits independent evidence to the  
21 viatical settlement provider that one or more of the  
22 following conditions have been met within the 5-year  
23 period:

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

1 (B) the viator's spouse dies or there are no  
2 surviving beneficiaries;

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

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

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

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

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

21 (A) policy premiums have been funded exclusively  
22 with unencumbered assets, including an interest in the  
23 life insurance policy being financed only to the extent  
24 of its net cash surrender value, provided by, or fully  
25 recourse liability incurred by the insured;

26 (B) there is no agreement or understanding with any



1 other person to guarantee any such liability or to  
2 purchase or stand ready to purchase the policy,  
3 including, through an assumption or forgiveness of the  
4 loan; and

5 (C) neither the insured nor the policy has been  
6 evaluated for settlement in connection with the  
7 issuance of a policy.

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

17 (c) If the viatical settlement provider submits to the  
18 insurer a copy of the owner or insured's certification  
19 described in and the independent evidence required by paragraph  
20 (2) of subsection (a) of this Section when the provider submits  
21 a request to the insurer to effect the transfer of the policy  
22 or certificate to the viatical settlement provider, the copy  
23 shall be deemed to conclusively establish that the viatical  
24 settlement contract satisfies the requirements of this Section  
25 and the insurer shall timely respond to the request.

26 (d) No insurer may, as a condition of responding to a

1 request for verification of coverage or effecting the transfer  
2 of a policy pursuant to a viatical settlement contract, require  
3 that the viator, insured, viatical settlement provider, or  
4 viatical settlement broker sign any forms, disclosures,  
5 consent, or waiver form that has not been expressly approved by  
6 the Director for use in connection with viatical settlement  
7 contracts in this State.

8 (e) Upon receipt of a properly completed request for change  
9 of ownership or beneficiary of a policy, the insurer shall  
10 respond in writing within 30 calendar days with written  
11 acknowledgement confirming that the change has been effected or  
12 specifying the reasons why the requested change cannot be  
13 processed. The insurer shall not unreasonably delay effecting  
14 change of ownership or beneficiary and shall not otherwise seek  
15 to interfere with any viatical settlement contract lawfully  
16 entered into in this State.

17 Section 55. Prohibited practices and conflicts of  
18 interest.

19 (a) With respect to any viatical settlement contract or  
20 insurance policy, no viatical settlement broker knowingly  
21 shall solicit an offer from, effectuate a viatical settlement  
22 with, or make a sale to any viatical settlement provider,  
23 viatical settlement purchaser, viatical settlement investment  
24 agent, financing entity, or related provider that is  
25 controlling, controlled by, or under common control with such

1 viatical settlement broker.

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

12 (c) A violation of subsection (a) or subsection (b) shall  
13 be deemed a viatical settlement fraud.

14 (d) A viatical settlement provider shall return all copies  
15 of a viatical settlement promotional, advertising, and  
16 marketing materials and shall make these material available to  
17 the Director on request. In no event shall any marketing  
18 materials expressly reference that the insurance is "free" for  
19 any period of time. The inclusion of any reference in the  
20 marketing materials that would cause a viator to reasonably  
21 believe that the insurance is free for any period of time shall  
22 be considered a violation of this Act.

23 (e) No insurance producer, insurance company, viatical  
24 settlement broker, or viatical settlement provider shall make  
25 any statement or representation to the applicant or  
26 policyholder in connection with the sale or financing of a life

1 insurance policy to the effect that the insurance is free or  
2 without cost to the policyholder for any period of time unless  
3 provided in the policy.

4 Section 60. Advertising for viatical settlements.

5 (a) The purpose of this Section is to provide prospective  
6 viators with clear and unambiguous statements in the  
7 advertisement of viatical settlements and to assure the clear,  
8 truthful, and adequate disclosure of the benefits, risks,  
9 limitations, and exclusions of any viatical settlement. All  
10 product descriptions must be presented in a manner that  
11 prevents unfair, deceptive, or misleading advertising and is  
12 conducive to accurate presentation and description of viatical  
13 settlements through the advertising media and material used by  
14 viatical settlement licensees.

15 (b) This Section applies to any advertising of viatical  
16 settlement contracts, viatical purchase agreements, or related  
17 products or services circulated or placed directly before the  
18 public, including Internet advertising viewed by persons  
19 located in this State. Where disclosure requirements are  
20 established pursuant to federal regulation, this Section shall  
21 be interpreted so as to minimize or eliminate conflict with  
22 federal regulation wherever possible.

23 (c) Every licensee shall establish and at all times  
24 maintain a system of control over the content, form, and method  
25 of dissemination of all advertisements of its contracts,

1 products, and services. All advertisements, regardless of by  
2 whom written, created, designed, or presented, shall be the  
3 responsibility of the viatical settlement licensees, as well as  
4 the individual who created or presented the advertisement. A  
5 system of control shall include regular routine notification,  
6 at least once a year, to agents and others authorized by the  
7 viatical settlement licensee who disseminate advertisements of  
8 the requirements and procedures for approval prior to the use  
9 of any advertisements not furnished by the viatical settlement  
10 licensee.

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

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

1           An advertisement shall not omit material information or use  
2 words, phrases, statements, references, or illustrations if  
3 the omission or use has the capacity, tendency, or effect of  
4 misleading or deceiving viators, purchasers, or prospective  
5 purchasers as to the nature or extent of any benefit, loss  
6 covered, premium payable, or state or federal tax consequence.  
7 The fact that the viatical settlement contract or viatical  
8 settlement purchase agreement offered is made available for  
9 inspection prior to consummation of the sale, or an offer is  
10 made to refund the payment if the viator is not satisfied or  
11 that the viatical settlement contract or viatical settlement  
12 purchase agreement includes a "free look" period that satisfies  
13 or exceeds legal requirements, does not remedy misleading  
14 statements.

15           An advertisement shall not use the name or title of a life  
16 insurance company or a life insurance policy unless the  
17 advertisement has been approved by the insurer.

18           An advertisement shall not state or imply that interest  
19 charged on an accelerated death benefit or a policy loan is  
20 unfair, inequitable, or in any manner an incorrect or improper  
21 practice.

22           The words "free", "no cost", without cost", "no additional  
23 cost", "at no extra cost", or words of similar import shall not  
24 be used with respect to any benefit or service unless true. An  
25 advertisement may specify the charge for a benefit or a service  
26 or may state that a charge is included in the payment or use

1 other appropriate language.

2 Testimonials, appraisals, or analysis used in  
3 advertisements must be genuine; represent the current opinion  
4 of the author; be applicable to the viatical settlement  
5 contract, product, or service advertised, if any; and be  
6 accurately reproduced with sufficient completeness to avoid  
7 misleading or deceiving prospective viators or purchasers as to  
8 the nature or scope of the testimonials, appraisal, analysis,  
9 or endorsement. In using testimonials, appraisals, or  
10 analyses, a licensee under this Act makes as its own all the  
11 statements contained therein, and the statements are subject to  
12 all the provisions of this Section.

13 If the individual making a testimonial, appraisal,  
14 analysis, or endorsement has a financial interest in the party  
15 making use of the testimonial, appraisal, analysis, or  
16 endorsement, either directly or through a related entity as a  
17 stockholder, director, officer, employee, or otherwise, or  
18 receives any benefit directly or indirectly other than required  
19 union scale wages, that fact shall be prominently disclosed in  
20 the advertisement.

21 An advertisement shall not state or imply that a viatical  
22 settlement contract, viatical settlement purchase agreement,  
23 benefit, or service has been approved or endorsed by a group of  
24 individuals, society, association, or other organization  
25 unless that is the fact and unless any relationship between an  
26 organization and the viatical settlement licensee is

1 disclosed. If the entity making the endorsement or testimonial  
2 is owned, controlled, or managed by the viatical settlement  
3 licensee, or receives any payment or other consideration from  
4 the viatical settlement licensee for making an endorsement or  
5 testimonial, that fact shall be prominently disclosed in the  
6 advertisement.

7 When an endorsement refers to benefits received under a  
8 viatical settlement contract or viatical settlement purchase  
9 agreement, all pertinent information shall be retained for a  
10 period of 5 years after its use.

11 (f) An advertisement shall not contain statistical  
12 information unless it accurately reflects recent and relevant  
13 facts. The source of all statistics used in an advertisement  
14 shall be identified.

15 (g) An advertisement shall not disparage insurers,  
16 viatical settlement providers, viatical settlement brokers,  
17 viatical settlement investment agents, insurance producers,  
18 policies, services, or methods of marketing.

19 (h) The name of the licensee shall be clearly identified in  
20 all advertisements about the licensee or its viatical  
21 settlement contract, viatical settlement purchase agreements,  
22 products, or services, and if any specific viatical settlement  
23 contract or viatical settlement purchase agreement is  
24 advertised, the viatical settlement contract or viatical  
25 settlement purchase agreement shall be identified either by  
26 form number or some other appropriate description. If an



1 application is part of the advertisement, the name of the  
2 viatical settlement provider shall be shown on the application.

3 (i) An advertisement shall not use a trade name, group  
4 designation, name of the parent company of a viatical  
5 settlement licensee, name of a particular division of the  
6 viatical settlement licensee, service mark, slogan, symbol, or  
7 other device or reference without disclosing the name of the  
8 viatical settlement licensee, if the advertisement would have  
9 the capacity or tendency to mislead or deceive as to the true  
10 identity of the viatical settlement licensee, or to create the  
11 impression that a company other than the viatical settlement  
12 licensee would have any responsibility for the financial  
13 obligation under a viatical settlement contract or viatical  
14 settlement purchase agreement.

15 (j) An advertisement shall not use any combination of  
16 words, symbols, or physical materials that by their content,  
17 phraseology, shape, color, or other characteristics are so  
18 similar to a combination of words, symbols, or physical  
19 materials used by a government program or agency or otherwise  
20 appear to be of such a nature that they tend to mislead  
21 prospective viators or purchasers into believing that the  
22 solicitation is in some manner connected with a government  
23 program or agency.

24 (k) An advertisement may state that a viatical settlement  
25 licensee is licensed in the state where the advertisement  
26 appears, provided it does not exaggerate that fact or suggest

1 or imply that competing viatical settlement licensees may not  
2 be so licensed. The advertisement may ask the audience to  
3 consult the licensee's Internet website or contact the Division  
4 to find out if the state requires licensing and, if so, whether  
5 the viatical settlement provider, viatical settlement broker,  
6 or viatical settlement investment agent is licensed.

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

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

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

25 (1) any viatical settlement licensee or its business  
26 practices or methods of operation;

1           (2) the merits, desirability or advisability of any  
2           viatical settlement contract or viatical settlement  
3           purchase agreement;

4           (3) any viatical settlement contract or viatical  
5           settlement purchase agreement; or

6           (4) any life insurance policy or life insurance  
7           company.

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

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

19          Section 65. Fraud prevention and control.

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

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

25          A person in the business of viatical settlements shall not

1 knowingly or intentionally permit any person convicted of a  
2 felony involving dishonesty or breach of trust to participate  
3 in the business of viatical settlements.

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

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

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

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

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

1 settlement fraud or suspected or completed fraudulent  
2 insurance acts, if the information is provided to or received  
3 from:

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

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

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

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

19 (5) the life insurer that issued the life insurance  
20 policy covering the life of the insured.

21 (e) Subsection (d) of this Section shall not apply to  
22 statements made with actual malice. In an action brought  
23 against a person for filing a report or furnishing other  
24 information concerning a viatical settlement fraud, the party  
25 bringing the action shall plead specifically any allegation  
26 that subsection (d) does not apply because the person filing

1 the report or furnishing the information did so with actual  
2 malice.

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

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

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

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

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

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

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

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

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

26 (i) Viatical settlement providers and viatical settlement

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

11 Antifraud initiatives shall include the following:

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

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

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

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

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



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

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

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

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

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

22          (c) The Director may issue, in accordance with this Act and  
23          the Illinois Administrative Procedure Act, a cease and desist  
24          order upon a person that violates any provision of this Act,  
25          any regulation or order adopted by the Director, or any written

1 agreement entered into with the Director.

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

13 (e) In addition to the penalties and other enforcement  
14 provisions of this Act, any person who violates this Act is  
15 subject to civil penalties of up to \$50,000 per violation.  
16 Imposition of civil penalties shall be pursuant to an order of  
17 the Director. The Director's order may require a person found  
18 to be in violation of this Act to make restitution to persons  
19 aggrieved by violations of this Act. If the action by the  
20 Director is to impose a civil penalty pursuant to this Section,  
21 the Director shall notify the person and advise, in writing,  
22 the person of the reason for the civil penalty. The person may  
23 make written demand upon the Director within 30 days after the  
24 date of mailing for a hearing before the Director to determine  
25 the reasonableness of the Director's action.

26 (f) Any person who is subject to the provisions of this Act

1 and who is convicted of a violation of this Act by a court of  
2 competent jurisdiction shall in addition to other penalties, be  
3 sentenced pursuant to items (1), (2), (3), (4), or (5) of this  
4 subsection (f). The value of the viatical settlement contract  
5 shall be based on the greater of (i) the value of property,  
6 services, or other benefit wrongfully obtained or attempted to  
7 obtain, or (ii) the aggregate economic loss suffered by any  
8 person as a result of the violation. A violation of this Act  
9 is:

10 (1) a Class 1 non-probationable felony and may be  
11 subject to a fine of not more than \$150,000 if the value of  
12 the viatical settlement contract exceeds \$500,000;

13 (2) a Class 1 felony and may be subject to a fine of  
14 not more than \$100,000 if the value of viatical settlement  
15 contract exceeds \$100,000 and does not exceed \$500,000;

16 (3) a Class 2 felony and may be subject to a fine of  
17 not more than \$20,000 if the value of viatical settlement  
18 contract exceeds \$10,000 and does not exceed \$100,000;

19 (4) a Class 3 felony and may be subject to a fine of  
20 not more than \$10,000 if the value of viatical settlement  
21 contract exceeds \$300 and does not exceed \$10,000; or

22 (5) a Class A misdemeanor and may be subject to a fine  
23 of not more than \$3,000 if the value of viatical settlement  
24 contract does not exceed \$300.

25 In any prosecution under this Section, the value of the  
26 viatical settlement contracts within any 6-month period may be

1 aggregated and the defendant charged accordingly in applying  
2 the provisions of this Section; provided that when 2 or more  
3 offenses are committed by the same person in 2 or more  
4 counties, the accused may be prosecuted in any county in which  
5 one of the offenses was committed for all of the offenses  
6 aggregated under this Section. The statute of limitations  
7 provision shall not begin to run until the insurance company or  
8 law enforcement agency is aware of the fraud, but in no event  
9 may the prosecution be commenced later than 7 years after the  
10 act has occurred.

11 (g) A person commits the offense of viatical settlement  
12 fraud when:

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

15 (A) presents, causes to be presented or prepares  
16 with knowledge or belief that it will be presented to  
17 or by a viatical settlement provider, viatical  
18 settlement broker, life expectancy provider, viatical  
19 settlement purchaser, financing entity, insurer,  
20 insurance producer, or any other person, false  
21 material information, or concealing material  
22 information, as part of, in support of or concerning a  
23 fact material to one or more of the following:

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

26 (ii) the underwriting of a viatical settlement

1 contract or insurance policy;

2 (iii) a claim for payment or benefit pursuant

3 to a viatical settlement contract or insurance

4 policy;

5 (iv) premiums paid on an insurance policy;

6 (v) payments and changes in ownership or

7 beneficiary made in accordance with the terms of a

8 viatical settlement contract, or insurance policy;

9 (vi) the reinstatement or conversion of an

10 insurance policy;

11 (vii) in the solicitation, offer, effectuation

12 or sale of a viatical settlement contract,

13 insurance policy;

14 (viii) the issuance of written evidence of

15 viatical settlement contract, or insurance; or

16 (ix) a financing transaction; and

17 (B) employs any plan, financial structure, device,

18 scheme, or artifice to defraud related to viaticated

19 policies.

20 (2) In furtherance of a scheme to defraud, to further a

21 fraud, or to prevent or hinder the detection of a scheme to

22 defraud any person knowingly does or permits his employees

23 or agents to do any of the following:

24 (A) remove, conceal, alter, destroy, or sequester

25 from the Director the assets or records of a licensee

26 or other person engaged in the business of viatical

1 settlements;

2 (B) misrepresent or conceal the financial  
3 condition of a licensee, financing entity, insurer, or  
4 other person;

5 (C) transact the business of viatical settlements  
6 in violation of laws requiring a license, certificate  
7 of authority, or other legal authority for the  
8 transaction of the business of viatical settlements;  
9 or

10 (D) file with the Director or the equivalent chief  
11 insurance regulatory official of another jurisdiction  
12 a document containing false information or otherwise  
13 conceals information about a material fact from the  
14 Director;

15 (3) Any person knowingly steals, misappropriates, or  
16 converts monies, funds, premiums, credits, or other  
17 property of a viatical settlement provider, insurer,  
18 insured, viator, insurance policyowner, or any other  
19 person engaged in the business of viatical settlements or  
20 insurance;

21 (4) Any person recklessly enters into, negotiates,  
22 brokers, or otherwise deals in a viatical settlement  
23 contract, the subject of which is a life insurance policy  
24 that was obtained by presenting false information  
25 concerning any fact material to the policy or by  
26 concealing, for the purpose of misleading another,

1 information concerning any fact material to the policy,  
2 where the person or the persons intended to defraud the  
3 policy's issuer, the viatical settlement provider or the  
4 viator; or

5 (5) Any person facilitates the change of state of  
6 ownership of a policy or the state of residency of a viator  
7 to a state or jurisdiction that does not have a law similar  
8 to this Act for the express purposes of evading or avoiding  
9 the provisions of this Act.

10 Section 75. Unfair trade practices. A violation of this  
11 Act, including the commission of a viatical settlement fraud,  
12 shall be considered an unfair trade practice under Article XXVI  
13 of the Illinois Insurance Code.

14 Section 80. Authority of the Director. The Director may  
15 adopt rules as necessary to implement the provisions of this  
16 Act, including, but not limited to:

17 (1) Establishing standards for evaluating  
18 reasonableness of payments under viatical settlement  
19 contracts for persons who are terminally or chronically  
20 ill. This authority includes, but is not limited to,  
21 regulation of discount rates used to determine the amount  
22 paid in exchange for assignment, transfer, sale, devise, or  
23 bequest of a benefit under a life insurance policy insuring  
24 the life of a person that is chronically or terminally ill.

1           (2) Establishing appropriate licensing requirements,  
2           fees, and standards for continued licensure for viatical  
3           settlement providers, and viatical settlement brokers.

4           (3) Requiring a bond or other mechanism for financial  
5           accountability for viatical settlement providers and  
6           brokers.

7           (4) Establishing standards governing the relationship  
8           and responsibilities of both insurers and viatical  
9           settlement providers, viatical settlement brokers, and  
10          viatical settlement investment agents during the  
11          viatication of a life insurance policy or certificate.

12          (5) Establishing standards that prescribe the minimum  
13          records that must be maintained by licensees.

14          Section 85. Applicability of securities laws. Nothing in  
15          this Act shall preempt or otherwise limit the provisions of the  
16          Illinois Securities Law of 1953 or any regulations, bulletins,  
17          or other interpretations issued by or through the Division  
18          acting pursuant to the Illinois Securities Law of 1953.  
19          Compliance with the provisions of this Act shall not constitute  
20          compliance with any applicable provision of the Illinois  
21          Securities Law of 1953 and any amendments thereto or any  
22          regulations, notices, bulletins, or other interpretations  
23          issued by or through the Division acting pursuant to the  
24          Illinois Securities Law of 1953.



1           Section 90. Viatical settlement provider application. A  
2 viatical settlement provider lawfully transacting business in  
3 this State may continue to do so pending approval or  
4 disapproval of the provider's application for a license as long  
5 as the application is filed with the Director not later than 30  
6 days after the effective date of this Act.

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

9           (5 ILCS 140/7) (from Ch. 116, par. 207)

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 the disclosure of which is exempted  
14 under the Viatical Settlements Act of 2008.

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

19 (Source: P.A. 94-280, eff. 1-1-06; 94-508, eff. 1-1-06; 94-664,  
20 eff. 1-1-06; 94-931, eff. 6-26-06; 94-953, eff. 6-27-06;  
21 94-1055, eff. 1-1-07; 95-331, eff. 8-21-07; 95-481, eff.  
22 8-28-07.)

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

1 (215 ILCS 5/500-70)

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

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

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

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

13 (3) obtaining or attempting to obtain a license through  
14 misrepresentation or fraud;

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

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

21 (6) having been convicted of a felony;

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

24 (8) using fraudulent, coercive, or dishonest  
25 practices, or demonstrating incompetence,  
26 untrustworthiness or financial irresponsibility in the

1 conduct of business in this State or elsewhere;

2 (9) having an insurance producer license, or its  
3 equivalent, denied, suspended, or revoked in any other  
4 state, province, district or territory;

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

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

10 (12) knowingly accepting insurance business from an  
11 individual who is not licensed;

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

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

19 (15) failing to make satisfactory repayment to the  
20 Illinois Student Assistance Commission for a delinquent or  
21 defaulted student loan; or ~~or~~

22 (16) failing to comply with any provision of the  
23 Viatical Settlements Act of 2008.

24 (b) If the action by the Director is to nonrenew, suspend,  
25 or revoke a license or to deny an application for a license,  
26 the Director shall notify the applicant or licensee and advise,



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

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

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

23 (e) The Director has the authority to enforce the  
24 provisions of and impose any penalty or remedy authorized by  
25 this Article against any person who is under investigation for  
26 or charged with a violation of this Code or rules even if the

1 person's license or registration has been surrendered or has  
2 lapsed by operation of law.

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

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

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

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

20 (815 ILCS 5/2.1) (from Ch. 121 1/2, par. 137.2-1)

21 Sec. 2.1. Security. "Security" means any note, stock,  
22 treasury stock, bond, debenture, evidence of indebtedness,  
23 certificate of interest or participation in any profit-sharing  
24 agreement, collateral-trust certificate, preorganization

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

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

20 (815 ILCS 5/2.33 new)

21 Sec. 2.33. Viatical investment. "Viatical investment"  
22 means the contractual right to receive any portion of the death  
23 benefit or ownership of a life insurance policy or certificate  
24 for consideration that is less than the expected death benefit  
25 of the life insurance policy or certificate. "Viatical

1 investment" does not include:

2 (1) any transaction between a viator and a viatical  
3 settlement provider, as defined in the Viatical  
4 Settlements Act of 2008;

5 (2) any transfer of ownership or beneficial interest in  
6 a life insurance policy from a viatical settlement provider  
7 to another viatical settlement provider, as defined in the  
8 Viatical Settlements Act of 2008, or to any legal entity  
9 formed solely for the purpose of holding ownership or  
10 beneficial interest in a life insurance policy or policies;

11 (3) the bona fide assignment of a life insurance policy  
12 to a bank, savings bank, savings and loan association,  
13 credit union, or other licensed lending institution as  
14 collateral for a loan; 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 (215 ILCS 158/Act rep.)

20 Section 915. The Viatical Settlements Act is repealed.

21 Section 997. Severability. If any portion of this Act or  
22 any amendments thereto, or its applicability to any person or  
23 circumstance is held invalid by a court, the remainder of this  
24 Act or its applicability to other persons or circumstances

1 shall not be affected.

2 Section 999. Effective date. This Act takes effect July 1,  
3 2009.

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Statutes amended in order of appearance

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New Act

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5 ILCS 140/7

from Ch. 116, par. 207

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215 ILCS 5/500-70

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815 ILCS 5/2.1

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

7

815 ILCS 5/2.33 new

8

215 ILCS 158/Act rep.