



Insurance Committee

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LRB095 18852 AMC 47616 a

1 AMENDMENT TO HOUSE BILL 4941

2 AMENDMENT NO. _____. Amend House Bill 4941 by replacing
3 everything after the enacting clause with the following:

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

6 Section 5. Definitions.

7 "Accredited investor" means an accredited investor as
8 defined in Rule 501(a) promulgated under the Securities Act of
9 1933 (15 U.S.C. 77 et seq.), as amended, and as that regulation
10 exists on the effective date of this Act.

11 "Advertising" means any written, electronic, or printed
12 communication or any communication by means of recorded
13 telephone messages or transmitted on radio, television, the
14 Internet, or similar communications media, including film
15 strips, digital picture slides, motion pictures, and videos
16 published, disseminated, circulated, or placed directly before

1 the public in this State, for the purpose of creating an
2 interest in or inducing a person to sell, assign, devise,
3 bequest, or transfer the death benefit or ownership of a policy
4 pursuant to a viatical settlement contract.

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

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

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

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

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

25 (3) having a level of disability similar to that
26 described in paragraph (1) as determined by the Secretary

1 of Health and Human Services.

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

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

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

10 "Escrow agent" means an independent third-party person
11 who, pursuant to a written agreement signed by the viatical
12 settlement provider and viator, provides escrow services
13 related to the acquisition of a life insurance policy pursuant
14 to a viatical settlement contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 "Special purpose entity" means a corporation, partnership,

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

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

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

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

1 (1) A written agreement between a viator and a viatical
2 settlement provider or any affiliate of the viatical
3 settlement provider establishing the terms under which
4 compensation or anything of value is or will be paid, which
5 compensation or value is less than the expected death
6 benefits of the policy, in return for the viator's present
7 or future assignment, transfer, sale, devise, or bequest of
8 the death benefit or ownership of any portion of the
9 insurance policy or any beneficial interest in the policy
10 or its ownership.

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

15 (3) A premium finance loan made for a life insurance
16 policy by a lender to a viator on, before, or after the
17 date of issuance of the policy in either of the following
18 situations:

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

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

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

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

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

10 (c) A loan made by a bank or other financial
11 institution in which the lender takes an interest in a life
12 insurance policy solely to secure repayment of a loan or,
13 if there is a default on the loan and the policy is
14 transferred, the transfer of such a policy by the lender,
15 provided that the default itself is not pursuant to an
16 agreement or understanding with any other person for the
17 purpose of evading regulation under this Act;

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

21 (e) An agreement in which all the parties (i) are
22 closely related to the insured by blood or law or (ii) have
23 a lawful substantial economic interest in the continued
24 life, health, and bodily safety of the person insured, or
25 trusts established primarily for the benefit of such
26 parties;

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

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

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

22 (i) Any other contract, transaction, or arrangement
23 exempted from the definition of viatical settlement
24 contract by the Director based on the Director's
25 determination that the contract, transaction, or
26 arrangement is not of the type intended to be regulated by

1 this Act.

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

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

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

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

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

25 (4) an authorized or eligible insurer that provides
26 stop loss coverage or financial guaranty insurance to a

1 viatical settlement provider, purchaser, financing entity,
2 special purpose entity, or related provider trust;

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

7 (6) a financing entity;

8 (7) a special purpose entity;

9 (8) a related provider trust;

10 (9) a viatical settlement purchaser; or

11 (10) any other person that the Director determines is
12 consistent with the definition of viatical settlement
13 provider.

14 "Viatical settlement purchaser" means a person who
15 provides a sum of money as consideration for a life insurance
16 policy or an interest in the death benefits of a life insurance
17 policy, or a person who owns or acquires or is entitled to a
18 beneficial interest in a trust that owns a viatical settlement
19 contract or is the beneficiary of a life insurance policy that
20 has been or will be the subject of a viatical settlement
21 contract, for the purpose of deriving an economic benefit.

22 "Viatical settlement purchaser" does not include: (i) a
23 licensee under this Act; (ii) an accredited investor or
24 qualified institutional buyer; (iii) a financing entity; (iv) a
25 special purpose entity; or (v) a related provider trust.

26 "Viaticated policy" means a life insurance policy that has

1 been acquired by a viatical settlement provider pursuant to a
2 viatical settlement contract.

3 "Viator" means the owner, including without limitation a
4 trust or other business entity, of a life insurance policy or a
5 certificate holder under a group policy who resides in this
6 State and enters or seeks to enter into a viatical settlement
7 contract. For the purposes of this Act, a viator is not limited
8 to an owner of a life insurance policy or a certificate holder
9 under a group policy insuring the life of an individual with a
10 terminal or chronic illness or condition, except where
11 specifically addressed. "Viator" does not include:

- 12 (1) a licensee;
13 (2) a qualified institutional buyer;
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 insurance producers as established by the
3 Application for Examination contained in Article XXXI of the
4 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 a resident insurance producer with a life line of authority in
11 this state or the insurance producer's home state for at least
12 one year.

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

23 If a business entity with an insurance producer license
24 registers as a viatical settlement broker, then that
25 registration authorizes all partners, officers, members, and
26 designated employees to act as viatical settlement brokers. All

1 persons acting as viatical settlement brokers pursuant to such
2 a registration shall be named in the application and any
3 supplements to the application.

4 (e) A person licensed as an attorney, certified public
5 accountant, or financial planner accredited by a nationally
6 recognized accreditation agency, who is retained to represent
7 the viator, whose compensation is not paid directly or
8 indirectly by the viatical settlement provider, may negotiate
9 viatical settlement contracts on behalf of the viator without
10 having to obtain a license as a viatical settlement broker.

11 (f) A person shall not operate as a viatical settlement
12 provider without first obtaining a license from the Director.

13 (g) Application for a viatical settlement provider license
14 shall be made to the Director by the applicant on a form
15 prescribed by the Director. The applications shall be
16 accompanied by a \$3,000 fee, which shall be deposited into the
17 Insurance Producer Administration Fund.

18 (h) Viatical settlement provider licenses may be renewed
19 from year to year on the anniversary date upon payment of the
20 annual renewal fee of \$1,500. Failure to pay the fees by the
21 renewal date results in expiration of the license.

22 (i) The applicant for a viatical settlement provider
23 license shall provide information on forms required by the
24 Director. The Director shall have authority, at any time, to
25 require the applicant to fully disclose the identity of all
26 stockholders, partners, officers, members, and employees, and

1 the Director may, in the exercise of the Director's discretion,
2 refuse to issue a license in the name of a legal entity if not
3 satisfied that any officer, employee, stockholder, partner, or
4 member thereof who may materially influence the applicant's
5 conduct meets the standards of this Act.

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

12 (j) Upon the filing of a viatical settlement provider
13 license application and the payment of the license fee, the
14 Director shall make an investigation of each applicant and
15 issue a license if the Director finds that the applicant:

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

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

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

23 (4) (A) has demonstrated evidence of financial
24 responsibility in a format prescribed by the Director
25 through either a surety bond executed and issued by an
26 insurer authorized to issue surety bonds in this State or a

1 deposit of cash, certificates of deposit or securities or
2 any combination thereof in the amount of \$250,000;

3 (B) the Director may ask for evidence of financial
4 responsibility at any time the Director deems
5 necessary;

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

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

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

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

24 (k) 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 (l) An applicant for a viatical settlement provider license
6 shall provide all information requested by the Director. The
7 Director may, at any time, require the applicant to fully
8 disclose the identity of all stockholders, partners, officers,
9 members, and employees of the viatical settlement provider, and
10 the Director may refuse to issue a license to an applicant that
11 is not an individual if the Director is not satisfied that each
12 stockholder, partner, officer, member, and employee who may
13 materially influence the applicant's conduct meets the
14 standards set forth in this Act. The Director may also require
15 the applicant to disclose the method the applicant will use to
16 determine and receive life expectancies, the applicant's
17 intended use of life expectancies, and a written plan
18 containing policies and procedures to use when determining life
19 expectancies.

20 (m) A viatical settlement provider shall provide to the
21 Director new or revised information about officers, 10% or more
22 stockholders, partners, directors, members, or designated
23 employees within 30 days after the change.

24 (n) Viatical settlement providers licensed under the
25 Viatical Settlements Act shall be subject to the license
26 requirements of this Act upon renewal and after the effective

1 date of this Act.

2 Section 15. License revocation for viatical settlement
3 providers.

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

7 (1) there was any material misrepresentation in the
8 application for the license;

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

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

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

24 (5) the viatical settlement provider has used a
25 viatical settlement contract that has not been approved

1 pursuant to this Act;

2 (6) the viatical settlement provider has failed to
3 honor contractual obligations set out in a viatical
4 settlement contract;

5 (7) the viatical settlement provider no longer meets
6 the requirements for initial licensure;

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

13 (9) the viatical settlement provider or any officer,
14 partner, member, or controlling person of the viatical
15 settlement provider has violated any of the provisions of
16 this Act.

17 (b) If the Director denies a viatical settlement provider
18 license application or suspends, revokes, or refuses to renew
19 the license of a viatical settlement provider, the Director
20 shall notify the applicant or viatical settlement provider and
21 advise, in writing, the applicant or viatical settlement
22 provider of the reason for the suspension, revocation, denial,
23 or nonrenewal of the applicant's or licensee's license. The
24 applicant or viatical settlement provider may make a written
25 demand upon the Director within 30 days after the date of
26 mailing for a hearing before the Director to determine the

1 reasonableness of the Director's action. The hearing must be
2 held within not fewer than 20 days nor more than 30 days after
3 the mailing of the notice of hearing and shall be held in
4 accordance with the Illinois Administrative Procedure Act and
5 Section 2402 of Chapter 50 of the Illinois Administrative Code.

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

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

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

10 Section 25. Reporting requirements.

11 (a) Each viatical settlement provider shall file with the
12 Director on or before March 1 of each year 2 copies of its
13 annual statement verified by 2 officers in the form prescribed
14 by the Director. The approved statement for a viatical
15 settlement provider shall include all of the following
16 information about the viatical settlement provider's
17 transactions during the preceding calendar year, unless newly
18 licensed, in which case the Director may require additional
19 years:

20 (1) A list of each life insurance policy, including
21 policy number, date of issue, viator, insured, insurance
22 company, issuing policy, date the viatical settlement
23 contract is signed by viator, viatical settlement broker,
24 agent of record on the policy, and any life insurance
25 agents receiving compensation, regardless of the form, and

1 any premium finance companies.

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

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

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

9 (b) On or before the first day of May of each year, a
10 viatical settlement provider licensed in this State shall file
11 with the Director its financial statement, audited by an
12 independent certified public accountant along with a letter
13 stating whether any significant deficiencies or material
14 weaknesses were detected during the audit pursuant to the
15 Auditing Standard Board's Statement on Auditing Standards
16 Number 112, as amended or superseded.

17 (c) Each viatical settlement provider shall file with the
18 Director interim unaudited financial statements, including
19 comparative results and footnotes to the financial statements,
20 on a quarterly basis within 45 days after the end of each
21 quarter. The interim financial statements shall meet both of
22 the following requirements:

23 (1) Be certified by the chief executive officer and
24 chief financial officer as to the accuracy and fair
25 presentation.

26 (2) Include disclosures either on the face of the

1 financial statements or in accompanying footnotes
2 sufficient so as to make the interim information not
3 misleading.

4 Viatical settlement providers may assume that the users of
5 the interim financial statements have access to the prior
6 fiscal year-end audited financial statements and that the
7 adequacy of additional disclosure needed for a fair
8 presentation, except in regard to material contingencies, may
9 be determined in that context. A footnote disclosure that would
10 substantially duplicate the disclosure contained in the
11 audited financial statements for the preceding fiscal year may
12 be omitted. A footnote disclosure shall be provided if events
13 subsequent to the fiscal year end have a material impact on the
14 viatical settlement provider.

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

22 (e) The Director shall keep confidential and not a matter
23 of public record all individual transaction data regarding the
24 business of viatical settlements and data that could compromise
25 the privacy of personal, financial, and health information of
26 the viator or the insured.

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

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

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

16 (3) a term of or condition to the transfer of a policy
17 by one viatical settlement provider to another viatical
18 settlement provider;

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

24 (5) necessary to allow the viatical settlement
25 provider or viatical settlement broker or their authorized
26 representatives to make contacts for the purpose of

1 determining health status; or

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

4 (g) A viatical settlement investment agent shall not have
5 any contact directly or indirectly with the viator or the
6 insured or have knowledge of the identity of the viator or the
7 insured.

8 Section 30. Examination or investigation.

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

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

19 (b) For purposes of completing an examination of a licensee
20 under this Act, the Director may examine or investigate any
21 person, or the business of any person, in so far as the
22 examination or investigation is, in the sole discretion of the
23 Director, necessary or material to the examination.

24 (c) In lieu of an examination under this Act of any foreign
25 licensee or alien licensee licensed in this State, the Director

1 may, at the Director's discretion, accept an examination report
2 on the licensee as prepared by the chief insurance regulatory
3 official for the licensee's state of domicile or port-of-entry
4 state.

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

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

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

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

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

23 This subsection (e) does not relieve a person of the
24 obligation to produce records required by this subsection to
25 the Director after the retention period has expired if the
26 person has retained the documents.

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

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

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

1 license or authority held by the licensee to engage in the
2 viatical settlement business or other business subject to the
3 Director's jurisdiction.

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

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

20 (g) Nothing contained in this Act limits the Director's
21 authority to terminate or suspend an examination in order to
22 pursue other legal or regulatory action pursuant to the
23 insurance laws of this State. Findings of fact and conclusions
24 made pursuant to any examination shall be prima facie evidence
25 in any legal or regulatory action.

26 (h) Nothing contained in this Act shall be construed to

1 limit the Director's authority to use and, if appropriate, to
2 make public any final or preliminary examination report, any
3 examiner or licensee workpapers or other documents, or any
4 other information discovered or developed during the course of
5 any examination in the furtherance of any legal or regulatory
6 action that the Director may, in the Director's discretion,
7 deem appropriate.

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

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

20 (k) The licensee may request a hearing within 10 days after
21 receipt of the examination report by giving the Director
22 written notice of that request, together with a statement of
23 its objections. The Director then must conduct a hearing in
24 conjunction with Sections 402 and 403 of the Illinois Insurance
25 Code. The Director must issue a written order based upon the
26 examination report and upon the hearing within 90 days after

1 the report is filed or within 90 days after the hearing. After
2 the hearing, the Director may make such order or orders as may
3 be reasonably necessary to correct, eliminate, or remedy
4 unlawful conduct.

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

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

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

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

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

5 (1) confidential by law and privileged;

6 (2) not subject to subpoena; and

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

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

16 (B) disclosed under this subsection (m) by the
17 Director or another state's chief insurance regulatory
18 official to the NAIC and its affiliates and
19 subsidiaries.

20 Neither the Director nor any person that received the
21 documents, material, or other information while acting under
22 the authority of the Director, including the NAIC and its
23 affiliates and subsidiaries, shall be permitted to testify in
24 any private civil action concerning any confidential
25 documents, materials, or information subject to this
26 subsection (m).

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

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

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

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

26 (o) No waiver of any applicable privilege or claim of

1 confidentiality in the documents, materials, or information
2 shall occur as a result of disclosure to the Director under
3 this Section or as a result of sharing as authorized in
4 subsection (n) of this Section.

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

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

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

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

26 No cause of action shall arise, nor shall any liability be

1 imposed against any person for the act of communicating or
2 delivering information or data to the Director or the
3 Director's authorized representative or examiner pursuant to
4 an examination made under this Section, if the act of
5 communication or delivery was performed in good faith and
6 without fraudulent intent or the intent to deceive. This
7 subsection (s) does not abrogate or modify in any way any
8 common law or statutory privilege or immunity heretofore
9 enjoyed by any person identified in this subsection (s).

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

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

22 Section 35. Disclosure to viator.

23 (a) With each application for a viatical settlement
24 contract, a viatical settlement provider or viatical
25 settlement broker shall provide the viator with at least the

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

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

17 (2) That there are possible alternatives to viatical
18 settlement contracts including any accelerated death
19 benefits or policy loans offered under the viator's life
20 insurance policy.

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

26 (4) That some or all of the proceeds of the viatical

1 settlement may be taxable under federal income tax and
2 state franchise and income taxes, and assistance may be
3 sought from a professional tax advisor.

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

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

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

1 death.

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

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

12 (10) That the disclosure document must contain the
13 following language: "A viatical settlement provider or
14 viatical settlement broker may ask the insured for 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 an insured, including the insured's identity
19 or the identity of the insured's family members, the
20 insured's spouse or the insured's significant other, may be
21 disclosed as necessary to effect the viatical settlement
22 between the viator and the viatical settlement provider. If
23 you are asked to provide this information, you will be
24 asked to consent to the disclosure. The information may be
25 provided to someone who buys the policy or provides funds
26 for the purchase. You may be asked to renew your permission

1 to share information every 2 years.

2 (11) 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 for other purposes
7 permitted by law. This contact is limited to once every 3
8 months if the insured has a life expectancy of more than
9 one year, and no more than once each month if the insured
10 has a life expectancy of one year or less. All such
11 contracts shall be made only by a viatical settlement
12 provider licensed in the state in which the viator resided
13 at the time of the viatical settlement, or by the
14 authorized representative of a duly licensed viatical
15 settlement provider.

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

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

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

1 the prospective viator and contain, in conspicuous type size
2 and format, the following:

3 "By entering into a viatical settlement contract:

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

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

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

12 (d) You will receive proceeds that may be subject
13 federal and state taxes and to the claims of creditors.

14 (e) You have sold your life insurance policy to
15 investors who profit if you die before your policy term
16 expires.

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

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

1 viator.

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

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

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

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

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

26 (5) The dollar amount of the current death benefit

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

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

25 (7) The amount of compensation received by the escrow
26 agent.

1 (8) The following details of any compensation paid to
2 viatical settlement brokers:

3 (A) The name of each viatical settlement broker who
4 has received or will receive compensation and the
5 amount of compensation received by each. For the
6 purposes of this Section, compensation means anything
7 of value paid or given by or at the direction of a
8 viatical settlement provider or person acquiring an
9 interest in the life insurance policy to the viatical
10 settlement broker in connection with the proposed
11 viatical settlement contract;

12 (B) A complete reconciliation of the gross offer or
13 bid by the viatical settlement provider to the net
14 amount of proceeds or value to be received by the
15 viator. For the purposes of this Section, gross offer
16 or bid shall mean the total amount or value offered by
17 the viatical settlement provider for the purchase of
18 one or more life insurance policies, inclusive of
19 commissions, compensation, fees or other expenditures
20 related to the transaction.

21 (C) If a viatical settlement contract has been
22 entered into and the contract is subsequently amended
23 or if there is any change in the viatical settlement
24 provider's gross offer or bid amount or change in the
25 information provided in the disclosure statement to
26 the viator, the viatical settlement provider shall

1 provide an amended disclosure statement to the viator,
2 containing the information in subparagraphs (A) and
3 (B) of this paragraph (8). The amended disclosure
4 statement shall be signed and dated by the viator.

5 (D) The viatical settlement provider shall, on the
6 disclosure document and for the compensation
7 disclosures required by this paragraph (8), obtain the
8 signature of each viatical settlement broker receiving
9 compensation.

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

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

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

21 (3) any affiliations or contractual arrangements
22 between the viatical settlement broker and any person
23 making an offer in connection with the proposed viatical
24 settlement contracts;

25 (4) the amount and method of calculating the broker's
26 compensation, which term "compensation" includes anything

1 of value paid or given to a proposed settlement broker in
2 connection with the proposed viatical settlement contract;

3 (5) if any portion of the viatical settlement broker's
4 compensation, as defined in paragraph (3) of this
5 subsection (c), is taken from a proposed viatical
6 settlement offer, the broker shall disclose the total
7 amount of the viatical settlement offer and the percentage
8 of the viatical settlement offer comprised by the viatical
9 settlement broker's compensation; and

10 (6) the name of the legal owner and beneficiary of the
11 insurance policy after the policy is sold pursuant to the
12 viatical settlement contract and whether legal ownership
13 of the policy and the beneficiary's right to collect
14 benefits upon the viator's death can be sold.

15 (d) The viatical settlement provider shall communicate in
16 writing any change in ownership or beneficiary to the insured
17 within 20 days of any change.

18 Section 40. Disclosure to insurer. Prior to the initiation
19 of a plan, transaction, or series of transactions, a broker or
20 viatical settlement provider shall fully disclose to an insurer
21 a plan, transaction, or series of transactions to which the
22 viatical settlement broker or viatical settlement provider is a
23 party to originate, renew, continue, or finance a life
24 insurance policy with the insurer for the purpose of engaging
25 in the business of viatical settlements at anytime prior to or

1 during the first 5 years after issuance of the policy. Any
2 disclosure required under this Section must be made in writing.

3 Section 45. General rules.

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

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

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

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

1 subsection (c) of this Section.

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

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

25 (e) If a viatical settlement broker performs any of the
26 activities required of a viatical settlement provider as

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

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

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

22 (h) All viatical settlement contracts entered into in this
23 State shall provide the viator with an absolute right to
24 rescind the contract before the earlier of 60 calendar days
25 after the date upon which the viatical settlement contract is
26 executed by all parties or 30 calendar days after the viatical

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

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

5 (j) The viatical settlement provider shall instruct the
6 viator to send the executed documents required to effect the
7 change in ownership, assignment, or change in beneficiary
8 directly to the escrow agent. Within 3 business days after the
9 date the escrow agent receives the document (or from the date
10 the viatical settlement provider receives the documents, if the
11 viator erroneously provides the documents directly to the
12 viatical settlement provider), the viatical settlement
13 provider shall pay or transfer the gross amount paid by the
14 viatical settlement purchaser to the escrow agent for deposit
15 in a trust account and set up for that purpose by the escrow
16 agent in a state or federally-chartered financial institution
17 whose deposits are insured by the Federal Deposit Insurance
18 Corporation (FDIC). Upon payment of the settlement proceeds
19 into the escrow or trust account, the escrow agent or trustee
20 shall deliver the original change in ownership, assignment, or
21 change in beneficiary forms to the viatical settlement
22 provider, a representative of the viatical settlement
23 provider, or related provider trust. 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. Funds shall be
2 deemed sent by a viatical settlement provider to a viator as of
3 the date that the escrow agent either releases the funds for
4 wire transfer to the viator or places a check for delivery to
5 the viator via United States Postal Service or other nationally
6 recognized delivery service.

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

16 (l) After the viatical settlement has occurred, no person
17 engaged in the business of viatical settlements or any agent of
18 a person engaged in the business of viatical settlements shall
19 contact the insured for the purpose of determining the health
20 status of the insured.

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

1 viatical settlement contract from the viatical settlement
2 provider or viatical settlement broker in connection with the
3 viatical settlement contract.

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

10 If the viator is a resident of this State, then all
11 agreements to be signed by the viator shall provide exclusive
12 jurisdiction to courts of this State and the laws of this State
13 shall govern the agreements. Nothing in the agreements shall
14 abrogate the viator's right to a trial by jury.

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

21 Section 50. Prohibited practices.

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

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

5 (c) It is a violation of this Act for any person to enter
6 into a viatical settlement contract within a 5-year period
7 commencing with the date of issuance of the insurance policy
8 unless the viator certifies to the viatical settlement provider
9 that one or more of the following conditions have been met
10 within the 5-year period:

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

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

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

25 (B) the viator's spouse dies;

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

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

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

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

13 (G) the sole beneficiary of the policy is a family
14 member of the viator and the beneficiary dies.

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

20 (A) policy premiums have been funded exclusively
21 with unencumbered assets, including an interest in the
22 life insurance policy being financed only to the extent
23 of its net cash surrender value, provided by, or fully
24 recourse liability incurred by the insured or person
25 described in subsection (e) of the definition of
26 "viatical settlement contract" found in Section 5 of

1 this Act;

2 (B) there is no agreement or understanding with any
3 other person to guarantee any such liability or to
4 purchase or stand ready to purchase the policy,
5 including, through an assumption or forgiveness of the
6 loan; and

7 (C) neither the insured nor the policy has been
8 evaluated for settlement.

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

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

1 insurer shall timely respond to the request.

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

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

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

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

1 control with such 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, financing entity, or related provider
10 trust that is involved in such viatical settlement contract.

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

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

22 (e) No insurance producer, insurance company, viatical
23 settlement broker, or viatical settlement provider shall make
24 any statement or representation to a potential or actual
25 insured or potential or actual viator in connection with the
26 sale or financing of a life insurance policy to the effect that

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

3 Section 60. Advertising for viatical settlements.

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

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

21 (c) Every licensee shall establish and at all times
22 maintain a system of control over the content, form, and method
23 of dissemination of all advertisements of its contracts,
24 products, and services. All advertisements, regardless of by
25 whom written, created, designed, or presented, shall be the

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

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

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

23 An advertisement shall not omit material information or use
24 words, phrases, statements, references, or illustrations if
25 the omission or use has the capacity, tendency, or effect of
26 misleading or deceiving viators as to the nature or extent of

1 any benefit, loss covered, premium payable, or state or federal
2 tax consequence. The fact that the viatical settlement contract
3 offered is made available for inspection prior to consummation
4 of the sale, or an offer is made to refund the payment if the
5 viator is not satisfied or that the viatical settlement
6 contract includes a "free look" period that satisfies or
7 exceeds legal requirements, does not remedy misleading
8 statements.

9 An advertisement shall not use the name or title of an
10 insurance company or an insurance policy unless the
11 advertisement has been approved by the insurer.

12 An advertisement shall not state or imply that interest
13 charged on an accelerated death benefit or a policy loan is
14 unfair, inequitable, or in any manner an incorrect or improper
15 practice.

16 The words "free", "no cost", "without cost", "no additional
17 cost", "at no extra cost", or words of similar import shall not
18 be used with respect to any life insurance policy or to any
19 benefit or service unless true. An advertisement may specify
20 the charge for a benefit or a service or may state that a
21 charge is included in the payment or use other appropriate
22 language.

23 Testimonials, appraisals, or analysis used in
24 advertisements must be genuine; represent the current opinion
25 of the author; be applicable to the viatical settlement
26 contract, product, or service advertised, if any; and be

1 accurately reproduced with sufficient completeness to avoid
2 misleading or deceiving prospective viators as to the nature or
3 scope of the testimonials, appraisal, analysis, or
4 endorsement. In using testimonials, appraisals, or analyses, a
5 licensee under this Act makes as its own all the statements
6 contained therein, and the statements are subject to all the
7 provisions of this Section.

8 If the individual making a testimonial, appraisal,
9 analysis, or endorsement has a financial interest in the
10 subject of the testimonial, appraisal, analysis, or
11 endorsement, either directly or indirectly as a stockholder,
12 director, officer, employee, or otherwise, or receives any
13 benefit directly or indirectly other than required union scale
14 wages, that fact shall be prominently disclosed in the
15 advertisement.

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

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

4 (f) An advertisement shall not contain statistical
5 information unless the information accurately reflects recent
6 and relevant facts. The source of all statistics used in an
7 advertisement shall be identified.

8 (g) An advertisement shall not disparage insurers,
9 viatical settlement providers, viatical settlement brokers,
10 insurance producers, policies, services, or methods of
11 marketing.

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

20 (i) An advertisement shall not use a trade name, group
21 designation, name of the parent company of a licensee, name of
22 a particular division of the licensee, service mark, slogan,
23 symbol, or other device or reference without disclosing the
24 name of the licensee, if the advertisement would have the
25 capacity or tendency to mislead or deceive as to the true
26 identity of the licensee, or to create the impression that a

1 company other than the licensee would have any responsibility
2 for the financial obligation under a viatical settlement
3 contract.

4 (j) An advertisement shall not use any combination of
5 words, symbols, or physical materials that by their content,
6 phraseology, shape, color, or other characteristics are so
7 similar to a combination of words, symbols, or physical
8 materials used by a government program or agency or otherwise
9 appear to be of such a nature that they tend to mislead
10 prospective viators into believing that the solicitation is in
11 some manner connected with a government program or agency.

12 (k) An advertisement may state that a licensee is licensed
13 in the state where the advertisement appears, provided it does
14 not exaggerate that fact or suggest or imply that competing
15 licensees may not be so licensed. The advertisement may ask the
16 audience to consult the licensee's Internet website or contact
17 the Division to find out if the state requires licensing and,
18 if so, whether the viatical settlement provider, or viatical
19 settlement broker, is licensed.

20 (l) An advertisement shall not create the impression that
21 the viatical settlement provider, its financial condition or
22 status, the payment of its claims or the merits, desirability,
23 or advisability of its viatical settlement contracts are
24 recommended or endorsed by any government entity.

25 (m) The name of the actual licensee shall be stated in all
26 of a licensee's advertisements. An advertisement shall not use

1 a trade name, any group designation, name of any affiliate or
2 controlling entity of the licensee, service mark, slogan,
3 symbol, or other device in a manner that would have the
4 capacity or tendency to mislead or deceive as to the true
5 identity of the actual licensee or create the false impression
6 that an affiliate or controlling entity would have any
7 responsibility for the financial obligation of the licensee.

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

11 (1) any licensee or its business practices or methods
12 of operation;

13 (2) any viatical settlement contract; or

14 (3) any life insurance policy or life insurance
15 company.

16 (o) If the advertiser emphasizes the speed with which the
17 viatication will occur, the advertising must disclose the
18 average time frame from completed application to the date of
19 offer and from acceptance of the offer to receipt of the funds
20 by the viator.

21 (p) If the advertising emphasizes the dollar amounts
22 available to viators, the advertising shall disclose, using the
23 same type and font size as the dollar amount available to the
24 viator, the average purchase price as a percent of face value
25 obtained by viators contracting with the licensee during the
26 past 6 months.

1 Section 65. Fraud prevention and control.

2 (a) A person shall not commit the offense of viatical
3 settlement fraud.

4 A person shall not knowingly or intentionally interfere
5 with the enforcement of the provisions of this Act or
6 investigations of suspected or actual violations of this Act.

7 A person in the business of viatical settlements shall not
8 knowingly or intentionally permit any person convicted of a
9 felony involving dishonesty or breach of trust to participate
10 in the business of viatical settlements.

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

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

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

25 Any other person having knowledge or a reasonable belief

1 that viatical settlement fraud is being, will be, or has been
2 committed may provide to the Director the information required
3 by, and in a manner prescribed by, the Director.

4 (d) No civil liability shall be imposed on and no cause of
5 action shall arise from a person's furnishing information
6 concerning suspected, anticipated, or completed viatical
7 settlement fraud or suspected or completed fraudulent
8 insurance acts, if the information is provided to or received
9 from:

10 (1) the Director or the Director's employees, agents,
11 or representatives;

12 (2) federal, State, or local law enforcement or
13 regulatory officials or their employees, agents, or
14 representatives;

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

18 (4) the NAIC, the National Association of Securities
19 Dealers (NASD), the North American Securities
20 Administrators Association (NASAA), or their employees,
21 agents, or representatives, or other regulatory body
22 overseeing life insurance, viatical settlements,
23 securities, or investment fraud; or

24 (5) the life insurer that issued the life insurance
25 policy covering the life of the insured.

26 (e) The immunity provided by subsection (d) of this Section

1 shall not apply to statements made with actual malice. In an
2 action brought against a person for filing a report or
3 furnishing other information concerning viatical settlement
4 fraud, the party bringing the action shall plead specifically
5 any allegation that subsection (d) does not apply because the
6 person filing the report or furnishing the information did so
7 with actual malice.

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

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

23 Subsection (d) of this Section does not apply to a person
24 furnishing information concerning that person's own suspected,
25 anticipated, or completed viatical settlement fraud or
26 suspected, anticipated, or completed fraudulent insurance

1 acts.

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

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

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

24 (2) Prevent or prohibit a person from disclosing
25 voluntarily information concerning viatical settlement
26 fraud to a law enforcement or regulatory agency other than

1 the Division.

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

6 (i) Viatical settlement providers and viatical settlement
7 brokers shall have in place antifraud initiatives reasonably
8 calculated to detect, prosecute, and prevent viatical
9 settlement fraud. At the discretion of the Director, the
10 Director may order, or a licensee may request and the Director
11 may grant, such modifications of the following required
12 initiatives as necessary to ensure an effective antifraud
13 program. The modifications may be more or less restrictive than
14 the required initiatives so long as the modifications may
15 reasonably be expected to accomplish the purpose of this
16 Section.

17 Antifraud initiatives shall include the following:

18 (1) fraud investigators, who may be viatical
19 settlement providers or viatical settlement broker
20 employees or independent contractors; and

21 (2) an antifraud plan, which shall be submitted to the
22 Director. The antifraud plan shall include, but not be
23 limited to:

24 (A) a description of the procedures for detecting
25 and investigating possible viatical settlement fraud
26 and procedures for resolving material inconsistencies

1 between medical records and insurance applications;

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

4 (C) a description of the plan for antifraud
5 education and training of underwriters and other
6 personnel;

7 (D) a description or chart outlining the
8 organizational arrangement of the antifraud personnel
9 who are responsible for the investigation and
10 reporting of possible viatical settlement fraud and
11 investigating unresolved material inconsistencies
12 between medical records and insurance applications;
13 and

14 (E) a description of the procedures used to perform
15 initial and continuing review of the accuracy of life
16 expectancies used in connection with a viatical
17 settlement contract.

18 Antifraud plans submitted to the Director shall be
19 privileged and confidential and are not public record and are
20 not subject to discovery or subpoena in a civil or criminal
21 action.

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

23 (a) In addition to the penalties and other enforcement
24 provisions of this Act, if any person violates this Act or any
25 rules implementing this Act, the Director may seek an

1 injunction in a court of competent jurisdiction and may apply
2 for temporary and permanent orders that the Director determines
3 are necessary to restrain the person from committing the
4 violation.

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

8 (c) The Director may issue, in accordance with Section
9 401.1 of the Illinois Insurance Code and the Illinois
10 Administrative Procedure Act, a cease and desist order upon a
11 person that violates any provision of this Act, any regulation
12 or order adopted by the Director, or any written agreement
13 entered into with the Director.

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

1 Section 72. Crimes and offenses.

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

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 (c) For purposes of this Section, "person" means (i) an
11 individual, (ii) a corporation, (iii) an officer, agent, or
12 employee of a corporation, (iv) a member, agent, or employee of
13 a partnership, or (v) a member, manager, employee, officer,
14 director, or agent of a limited liability company who, in any
15 such capacity described by this subsection (c), commits
16 viatical settlement fraud.

17 Section 75. Unfair trade practices. A violation of this
18 Act, including the commission of viatical settlement fraud,
19 shall be considered an unfair trade practice under Article XXVI
20 of the Illinois Insurance Code.

21 Section 85. Additional powers. In addition to any other
22 hearing, examination, or investigation specifically provided
23 for by this Act, the Director may conduct such hearings,
24 examinations, and investigations as are provided for by

1 Sections 402 and 403 of the Illinois Insurance Code.

2 Section 90. Insurance Code Provisions. Insurance
3 producers operating as viatical settlement brokers shall be
4 subject to Article XXXI of the Illinois Insurance Code.

5 Section 95. Applicability of securities laws. Nothing in
6 this Act shall preempt or otherwise limit the provisions of the
7 Illinois Securities Law of 1953 or any regulations, bulletins,
8 or other interpretations issued by or through the Division
9 acting pursuant to the Illinois Securities Law of 1953.
10 Compliance with the provisions of this Act shall not constitute
11 compliance with any applicable provision of the Illinois
12 Securities Law of 1953 and any amendments thereto or any
13 regulations, notices, bulletins, or other interpretations
14 issued by or through the Division acting pursuant to the
15 Illinois Securities Law of 1953.

16 Section 100. Viatical settlement provider application. A
17 viatical settlement provider lawfully transacting business in
18 this State may continue to do so pending approval or
19 disapproval of the provider's application for a license as long
20 as the application is filed with the Director not later than 30
21 days after the effective date of this Act.

22 Section 900. The Freedom of Information Act is amended by

1 changing Section 7 as follows:

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

3 Sec. 7. Exemptions.

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

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

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

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

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

1 those positions;

2 (iii) files and personal information maintained
3 with respect to any applicant, registrant or licensee
4 by any public body cooperating with or engaged in
5 professional or occupational registration, licensure
6 or discipline;

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

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

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

25 (c) Records compiled by any public body for
26 administrative enforcement proceedings and any law

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

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

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

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

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

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

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

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

24 (viii) obstruct an ongoing criminal investigation.

25 (d) Criminal history record information maintained by
26 State or local criminal justice agencies, except the

1 following which shall be open for public inspection and
2 copying:

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

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

8 (iii) court records that are public;

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

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

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

1 ascertainable, or to information that is for criminal
2 investigative or intelligence purposes.

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

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

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

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

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

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

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

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

21 (i) Valuable formulae, computer geographic systems,
22 designs, drawings and research data obtained or produced by
23 any public body when disclosure could reasonably be
24 expected to produce private gain or public loss. The
25 exemption for "computer geographic systems" provided in
26 this paragraph (i) does not extend to requests made by news

1 media as defined in Section 2 of this Act when the
2 requested information is not otherwise exempt and the only
3 purpose of the request is to access and disseminate
4 information regarding the health, safety, welfare, or
5 legal rights of the general public.

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

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

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

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

26 (n) Communications between a public body and an

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

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

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

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

26 (r) Drafts, notes, recommendations and memoranda

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

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

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

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

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

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

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

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

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

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

23 (bb) Insurance or self insurance (including any
24 intergovernmental risk management association or self
25 insurance pool) claims, loss or risk management
26 information, records, data, advice or communications.

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

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

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

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

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

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

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

1 private keys intended to be used to create electronic or
2 digital signatures under the Electronic Commerce Security
3 Act.

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

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

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

26 (mm) Maps and other records regarding the location or

1 security of generation, transmission, distribution,
2 storage, gathering, treatment, or switching facilities
3 owned by a utility or by the Illinois Power Agency.

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

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

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

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

24 (rr) Information contained in or related to proposals,
25 bids, or negotiations related to electric power
26 procurement under Section 1-75 of the Illinois Power Agency

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

5 (ss) Information the disclosure of which is exempted
6 under the Viatical Settlements Act of 2008.

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

11 (Source: P.A. 94-280, eff. 1-1-06; 94-508, eff. 1-1-06; 94-664,
12 eff. 1-1-06; 94-931, eff. 6-26-06; 94-953, eff. 6-27-06;
13 94-1055, eff. 1-1-07; 95-331, eff. 8-21-07; 95-481, eff.
14 8-28-07.)

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

17 (215 ILCS 5/500-70)

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

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

24 (1) providing incorrect, misleading, incomplete, or

1 materially untrue information in the license application;

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

5 (3) obtaining or attempting to obtain a license through
6 misrepresentation or fraud;

7 (4) improperly withholding, misappropriating or
8 converting any moneys or properties received in the course
9 of doing insurance business;

10 (5) intentionally misrepresenting the terms of an
11 actual or proposed insurance contract or application for
12 insurance;

13 (6) having been convicted of a felony;

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

16 (8) using fraudulent, coercive, or dishonest
17 practices, or demonstrating incompetence,
18 untrustworthiness or financial irresponsibility in the
19 conduct of business in this State or elsewhere;

20 (9) having an insurance producer license, or its
21 equivalent, denied, suspended, or revoked in any other
22 state, province, district or territory;

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

25 (11) improperly using notes or any other reference
26 material to complete an examination for an insurance

1 license;

2 (12) knowingly accepting insurance business from an
3 individual who is not licensed;

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

6 (14) failing to pay state income tax or penalty or
7 interest or comply with any administrative or court order
8 directing payment of state income tax or failed to file a
9 return or to pay any final assessment of any tax due to the
10 Department of Revenue; ~~or~~

11 (15) failing to make satisfactory repayment to the
12 Illinois Student Assistance Commission for a delinquent or
13 defaulted student loan; or ~~or~~

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

16 (b) If the action by the Director is to nonrenew, suspend,
17 or revoke a license or to deny an application for a license,
18 the Director shall notify the applicant or licensee and advise,
19 in writing, the applicant or licensee of the reason for the
20 suspension, revocation, denial or nonrenewal of the
21 applicant's or licensee's license. The applicant or licensee
22 may make written demand upon the Director within 30 days after
23 the date of mailing for a hearing before the Director to
24 determine the reasonableness of the Director's action. The
25 hearing must be held within not fewer than 20 days nor more
26 than 30 days after the mailing of the notice of hearing and

1 shall be held pursuant to 50 Ill. Adm. Code 2402.

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

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

15 (e) The Director has the authority to enforce the
16 provisions of and impose any penalty or remedy authorized by
17 this Article against any person who is under investigation for
18 or charged with a violation of this Code or rules even if the
19 person's license or registration has been surrendered or has
20 lapsed by operation of law.

21 (f) Upon the suspension, denial, or revocation of a
22 license, the licensee or other person having possession or
23 custody of the license shall promptly deliver it to the
24 Director in person or by mail. The Director shall publish all
25 suspensions, denials, or revocations after the suspensions,
26 denials, or revocations become final in a manner designed to

1 notify interested insurance companies and other persons.

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

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

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

12 (815 ILCS 5/2.1) (from Ch. 121 1/2, par. 137.2-1)

13 Sec. 2.1. Security. "Security" means any note, stock,
14 treasury stock, bond, debenture, evidence of indebtedness,
15 certificate of interest or participation in any profit-sharing
16 agreement, collateral-trust certificate, preorganization
17 certificate or subscription, transferable share, investment
18 contract, viatical investment, investment fund share,
19 face-amount certificate, voting-trust certificate, certificate
20 of deposit for a security, fractional undivided interest in
21 oil, gas or other mineral lease, right or royalty, any put,
22 call, straddle, option, or privilege on any security,
23 certificate of deposit, or group or index of securities
24 (including any interest therein or based on the value thereof),

1 or any put, call, straddle, option, or privilege entered into,
2 relating to foreign currency, or, in general, any interest or
3 instrument commonly known as a "security", or any certificate
4 of interest or participation in, temporary or interim
5 certificate for, receipt for, guarantee of, or warrant or right
6 to subscribe to or purchase, any of the foregoing. "Security"
7 does not mean a mineral investment contract or a mineral
8 deferred delivery contract; provided, however, the Department
9 shall have the authority to regulate these contracts as
10 hereinafter provided.

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

12 (815 ILCS 5/2.33 new)

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

19 (1) any transaction between a viator and a viatical
20 settlement provider, as defined in the Viatical
21 Settlements Act of 2008;

22 (2) any transfer of ownership or beneficial interest in
23 a life insurance policy from a viatical settlement provider
24 to another viatical settlement provider, as defined in the
25 Viatical Settlements Act of 2008, or to any legal entity

1 formed solely for the purpose of holding ownership or
2 beneficial interest in a life insurance policy or policies;

3 (3) the bona fide assignment of a life insurance policy
4 to a bank, savings bank, savings and loan association,
5 credit union, or financial institution as collateral for a
6 loan; for the purposes of this item (3), "financial
7 institution" means financial institution as defined by
8 Viatical Settlements Act of 2008; or

9 (4) a policy loan by a life insurance company or the
10 exercise of accelerated benefits pursuant to the terms of a
11 life insurance policy issued in accordance with the
12 Illinois Insurance Code.

13 Section 999. Effective date. This Act takes effect July 1,
14 2009.".