
A BILL FOR AN ACT

RELATING TO VIATICAL SETTLEMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 431, Hawaii Revised Statutes, is
2 amended by adding a new article to be appropriately designated
3 and to read as follows:

4 **"ARTICLE**

5 **VIATICAL SETTLEMENTS**

6 **§431: -101 Scope.** This article relates to viatical
7 settlements.

8 **§431: -102 Definitions.** As used in this article, unless
9 the context indicates otherwise:

10 "Advertising" means any written, electronic, or printed
11 communication or any communication by means of recorded
12 telephone messages or transmitted on radio, television, the
13 Internet, or similar communications media, including film
14 strips, motion pictures, and videos that are published,
15 disseminated, circulated, or placed directly before the public,
16 in this State, for the purpose of creating an interest in or
17 inducing a person to sell, assign, devise, bequest, or transfer



1 the death benefit or ownership of a life insurance policy
2 pursuant to a viatical settlement contract.

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

10 "Chronically ill" means:

- 11 (1) Being unable to perform at least two activities of
12 daily living, such as eating, toileting, transferring,
13 bathing, dressing, or continence;
- 14 (2) Requiring substantial supervision to protect the
15 individual from threats to health and safety due to
16 severe cognitive impairment; or
- 17 (3) Having a level of disability similar to that described
18 in paragraph (1), as determined by the United States
19 Secretary of Health and Human Services.

20 "Commissioner" means the insurance commissioner.

21 "Financing entity" means an underwriter, placement agent,
22 lender, purchaser of securities, purchaser of a policy or



1 certificate from a viatical settlement provider, credit
2 enhancer, or any entity that has a direct ownership in a policy
3 or certificate that is the subject of a viatical settlement
4 contract, but:

5 (1) Whose principal activity related to the transaction is
6 providing funds to effect the viatical settlement or
7 purchase of one or more viaticated policies; and

8 (2) Who has an agreement in writing with one or more
9 licensed viatical settlement providers to finance the
10 acquisition of viatical settlement contracts.

11 The term shall not include a non-accredited investor or a
12 viatical settlement purchaser.

13 "Life insurance producer" means any person licensed in this
14 State as a resident or nonresident insurance producer who has
15 received qualification or authority for life insurance coverage
16 or a life line of coverage pursuant to article 9A.

17 "Person" means a natural person or a legal entity,
18 including, without limitation, an individual, partnership,
19 limited liability company, association, trust, or corporation.

20 "Policy" means an individual or group certificate,
21 contract, or arrangement of life insurance owned by a resident



1 of this State, regardless of whether delivered or issued for
2 delivery in the State.

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

16 "Special purpose entity" means a corporation, partnership,
17 trust, limited liability company, or other similar entity formed
18 solely to provide, either directly or indirectly, access to
19 institutional capital markets:

20 (1) For a financing entity or licensed viatical settlement
21 provider; or

22 (2) In connection with a transaction in which:



1 (A) The securities in the special purposes entity are
2 acquired by the viator or by "qualified
3 institutional buyers", as defined in rule 144
4 under the Securities Act of 1933, as amended; or

5 (B) The securities pay a fixed rate of return
6 commensurate with established asset-backed
7 institutional capital markets.

8 "Terminally ill" means having an illness or sickness that
9 can reasonably be expected to result in death in twenty-four
10 months or less.

11 "Viatical settlement broker" means a person, including a
12 life insurance producer as in section 431: -104, who, working
13 exclusively on behalf of a viator and for a fee, commission, or
14 other valuable consideration, offers or attempts to negotiate
15 viatical settlement contracts between a viator and one or more
16 viatical settlement providers or one or more viatical settlement
17 brokers. Notwithstanding the manner in which the viatical
18 settlement broker is compensated, a viatical settlement broker
19 is deemed to represent only the viator, and not the insurer or
20 the viatical settlement provider, and owes a fiduciary duty to
21 the viator to act according to the viator's instructions and in
22 the best interest of the viator. The term shall not include an



1 attorney, certified public accountant, or a financial planner
2 accredited by a nationally recognized accreditation agency who
3 is retained to represent the viator and whose compensation is
4 not paid directly or indirectly by the viatical settlement
5 provider or purchaser.

6 "Viatical settlement contract" means a written agreement
7 between a viator and a viatical settlement provider or any
8 affiliate of the viatical settlement provider establishing the
9 terms under which compensation or anything of value is or will
10 be paid, which compensation or value is less than the expected
11 death benefits of the policy, in return for the viator's present
12 or future assignment, transfer, sale, devise, or bequest of the
13 death benefit or ownership of any portion of the insurance
14 policy or certificate of insurance; provided that the term shall
15 include a premium finance loan made for a life insurance policy
16 by a lender to a viator on, before, or after the date of
17 issuance of the policy where the viator or the insured receives
18 on the date of the premium finance loan a guarantee of a future
19 viatical settlement value of the policy or the viator or the
20 insured agrees on the date of the premium finance loan to sell
21 the policy or any portion of its death benefit on any date



1 following the issuance of the policy; provided further that the
2 term shall not include:

3 (1) A policy loan or accelerated death benefit made by the
4 insurer pursuant to the terms of the policy;

5 (2) Loan proceeds that are used solely to pay:

6 (A) Premiums for the policy; or

7 (B) The costs of the loan, including, without
8 limitation, interest, arrangement fees,
9 utilization fees and similar fees, closing costs,
10 legal fees and expenses, trustee fees and
11 expenses, and third party collateral provider
12 fees and expenses, including fees payable to
13 letter of credit issuers;

14 (3) A loan made by a bank or other licensed financial
15 institution in which the lender takes an interest in a
16 life insurance policy solely to secure repayment of a
17 loan or, if there is a default on the loan and the
18 policy is transferred, the transfer of the policy by
19 the lender; provided that the default itself is not
20 pursuant to an agreement or understanding with any
21 other person for the purpose of evading any section of
22 this article;



- 1 (4) A loan made by a lender that does not violate the
2 State's insurance premium finance law; provided that
3 the premium finance loan is not described in paragraph
4 (2);
- 5 (5) An agreement where all the parties are closely related
6 to the insured by blood or law, have a lawful
7 substantial economic interest in the continued life,
8 health, and bodily safety of the person insured, or
9 are trusts established primarily for the benefit of
10 the parties;
- 11 (6) Any designation, consent, or agreement by an insured
12 who is an employee of an employer in connection with
13 the purchase by the employer, or trust established by
14 the employer of life insurance on the life of the
15 employee;
- 16 (7) A bona fide business succession planning arrangement:
17 (A) Between one or more shareholders in a
18 corporation, or between a corporation and one or
19 more of its shareholders or one or more trusts
20 established by its shareholders;
- 21 (B) Between one or more partners in a partnership, or
22 between a partnership and one or more of its



1 partners or one or more trusts established by its
2 partners; or

3 (C) Between one or more members in a limited
4 liability company or between a limited liability
5 company, and one or more of its members or one or
6 more trusts established by its members;

7 (8) An agreement entered into by:

8 (A) A service recipient or a trust established by the
9 service recipient; and

10 (B) A service provider or a trust established by the
11 service provider;

12 provided that the service provider performs
13 significant services for the service recipient's trade
14 or business; or

15 (9) Any other contract, transaction, or arrangement
16 exempted from the definition of viatical settlement
17 contract by the commissioner based on a determination
18 that the contract, transaction, or arrangement is not
19 of the type intended to be regulated under this
20 article.

21 "Viatical settlement provider" means a person, other than a
22 viator, that enters into or effectuates a viatical settlement



1 contract with a viator who is a resident of this State. The
2 term shall not include:

3 (1) A bank, savings bank, savings and loan association,
4 credit union, or other licensed lending institution
5 that takes an assignment of a life insurance policy
6 solely as collateral for a loan;

7 (2) A premium finance company making premium finance loans
8 that is exempted by the commissioner from the
9 licensing requirement under the premium finance laws
10 and takes an assignment of a life insurance policy
11 solely as collateral for a loan;

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

13 (4) An authorized or eligible insurer that provides stop
14 loss coverage or financial guaranty insurance to a
15 viatical settlement provider, purchaser, financing
16 entity, special purpose entity, or related provider
17 trust;

18 (5) A natural person who enters into or effectuates no
19 more than one agreement in a calendar year for the
20 transfer of life insurance policies for any value less
21 than the expected death benefit;

22 (6) A financing entity;



- 1 (7) A special purpose entity;
- 2 (8) A related provider trust;
- 3 (9) A viatical settlement purchaser; or
- 4 (10) Any other person that the commissioner determines is
- 5 not the type of person intended to be covered by the
- 6 definition of viatical settlement provider.

7 "Viatical settlement purchaser" means a person who provides

8 a sum of money as consideration for a life insurance policy or

9 an interest in the death benefits of a life insurance policy, or

10 a person who, for the purpose of deriving an economic benefit,

11 owns, acquires, or is entitled to a beneficial interest in a

12 trust that owns a viatical settlement contract or is the

13 beneficiary of a life insurance policy that has been or will be

14 the subject of a viatical settlement contract. The term shall

15 not include:

- 16 (1) A licensee under this article;
- 17 (2) An accredited investor or qualified institutional
- 18 buyer, as defined, respectively, in rule 501(a) or
- 19 rule 144A under the federal Securities Act of 1933, as
- 20 amended;
- 21 (3) A financing entity;
- 22 (4) A special purpose entity; or



1 (5) A related provider trust.

2 "Viaticated policy" means a life insurance policy or
3 certificate that has been acquired by a viatical settlement
4 provider pursuant to a viatical settlement contract.

5 "Viator" means the owner of a life insurance policy or a
6 certificate holder under a group policy, who resides in this
7 State and enters or seeks to enter into a viatical settlement
8 contract. For the purposes of this article, a viator shall not
9 be limited to an owner of a life insurance policy or a
10 certificate holder under a group policy insuring the life of an
11 individual with a terminal or chronic illness or condition,
12 except where specifically addressed. If there is more than one
13 viator on a single policy and the viators are residents of
14 different states, the transaction shall be governed by the law
15 of the state in which the viator having the largest percentage
16 of ownership resides or, if the viators hold equal ownership,
17 the state of residence of one viator agreed upon in writing by
18 all the viators. The term shall not include:

19 (1) A licensee under this article, including a life
20 insurance producer acting as a viatical settlement
21 broker pursuant to this article;



1 (2) A qualified institutional buyer, as defined in rule
2 144A under the federal Securities Act of 1933, as
3 amended;

4 (3) A financing entity;

5 (4) A special purpose entity; or

6 (5) A related provider trust.

7 **§431: -103 Fraudulent viatical settlement act. A**

8 fraudulent viatical settlement act shall include:

9 (1) Acts or omissions committed by any person who,
10 knowingly or with intent to defraud, for the purpose
11 of depriving another of property or for pecuniary
12 gain, commits or permits its employees or its agents
13 to engage in acts including:

14 (A) Presenting, causing to be presented, or preparing
15 with knowledge or belief that it will be
16 presented to or by a viatical settlement
17 provider, viatical settlement broker, viatical
18 settlement purchaser, financing entity, insurer,
19 insurance producer, or any other person, false
20 material information, or concealing material
21 information, as part of, in support of, or



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

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

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

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

11 (iv) Premiums paid on an insurance policy;

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

16 (vi) The reinstatement or conversion of an
17 insurance policy;

18 (vii) The solicitation, offer, effectuation, or
19 sale of a viatical settlement contract or
20 insurance policy;



- 1 (viii) The issuance of written evidence of a
2 viatical settlement contract or insurance;
3 or
4 (ix) A financing transaction; and
5 (B) Employing any plan, financial structure, device,
6 scheme, or artifice to defraud that is related to
7 viaticated policies.
- 8 (2) Acts of committing or permitting one's employees or
9 agents, in the furtherance of fraud or to prevent the
10 detection of fraud, to:
- 11 (A) Remove, conceal, alter, destroy, or sequester
12 from the commissioner the assets or records of a
13 licensee or other person engaged in the business
14 of viatical settlements;
- 15 (B) Misrepresent or conceal the financial condition
16 of a licensee, financing entity, insurer, or
17 other person;
- 18 (C) Transact the business of viatical settlements in
19 violation of laws requiring a license,
20 certificate of authority, or other legal
21 authority for the transaction of the business of
22 viatical settlements; or



- 1 (D) File with the commissioner or the equivalent
2 chief insurance regulatory official of another
3 jurisdiction a document that contains false
4 information or otherwise conceals information
5 about a material fact from the commissioner;
- 6 (3) Acts of embezzlement, theft, misappropriation, or
7 conversion of moneys, funds, premiums, credits, or
8 other property committed by a viatical settlement
9 provider, insurer, insured, viator, insurance policy
10 owner, or any other person engaged in the business of
11 viatical settlements or insurance;
- 12 (4) Acts of recklessly entering into, negotiating,
13 brokering, or otherwise dealing in a viatical
14 settlement contract, the subject of which is a life
15 insurance policy that was obtained by presenting false
16 information concerning any fact material to the policy
17 or by concealing, for the purpose of misleading
18 another, information concerning any fact material to
19 the policy, where the person or the persons intended
20 to defraud the policy's issuer, the viatical
21 settlement provider, or the viator. For purposes of



1 this section, "recklessly" shall have the same meaning
2 as in section 702-206(3);

3 (5) Acts of facilitating the change of state of ownership
4 of a policy or certificate or the state of residency
5 of a viator, to a state or jurisdiction that does not
6 have a law similar to this article for the express
7 purposes of evading or avoiding the provisions of this
8 article; or

9 (6) Acts of attempting to commit, conspiring to commit, or
10 assisting, aiding, or abetting in the commission of
11 the acts or omissions specified in this section.

12 **§431: -104 License and bond requirements.** (a) A person
13 shall not operate as a viatical settlement provider or viatical
14 settlement broker without first obtaining a license from the
15 commissioner of the state in which the viator resides.

16 (b) A life insurance producer who has been duly licensed:

17 (1) As a resident insurance producer with a life line of
18 authority in this State; or

19 (2) In the life insurance producer's home state for at
20 least one year and is licensed as a nonresident
21 producer in this State,



1 shall be deemed to meet the licensing requirements of this
2 section and shall be permitted to operate as a viatical
3 settlement broker.

4 Not later than thirty days from the first day of operating
5 as a viatical settlement broker, the life insurance producer
6 shall notify the commissioner that the producer is acting as a
7 viatical settlement broker on a form prepared by the
8 commissioner and shall pay a fee to be determined by the
9 commissioner. Notification shall include an acknowledgment by
10 the life insurance producer that the producer will operate as a
11 viatical settlement broker in accordance with this article.

12 (c) The insurer that issued the policy being viaticated
13 shall not be responsible for any act or omission of a viatical
14 settlement broker or viatical settlement provider arising out of
15 or in connection with the viatical settlement transaction,
16 unless the insurer receives compensation for the placement of a
17 viatical settlement contract from the viatical settlement
18 provider or viatical settlement broker in connection with the
19 viatical settlement contract.

20 (d) A person licensed as an attorney, certified public
21 accountant, or financial planner accredited by a nationally
22 recognized accreditation agency, who is retained to represent



1 the viator and whose compensation is not paid directly or
2 indirectly by the viatical settlement provider, may negotiate
3 viatical settlement contracts on behalf of the viator without
4 having to obtain a license as a viatical settlement broker.

5 (e) Application for a viatical settlement provider or
6 viatical settlement broker license shall be made to the
7 commissioner by the applicant on a form prepared by the
8 commissioner, and each application shall be accompanied by the
9 fees specified for producers in article 7.

10 (f) A license may be renewed from year to year on the
11 anniversary date upon payment of the annual renewal fees
12 specified for producers in article 7. Failure to pay the fees
13 by the renewal date results in expiration of the license.

14 (g) The applicant shall provide information on forms
15 required by the commissioner. The commissioner shall have the
16 authority, at any time, to require the applicant to fully
17 disclose the identity of all stockholders, partners, officers,
18 members, and employees, and the commissioner, in the exercise of
19 the commissioner's discretion, may refuse to issue a license in
20 the name of a legal entity if the commissioner is not satisfied
21 that any officer, employee, stockholder, partner, or member of



1 the legal entity, who may materially influence the applicant's
2 conduct, meets the standards of this article.

3 (h) A business entity acting as a viatical settlement
4 broker or viatical settlement provider shall obtain a viatical
5 settlement broker or viatical settlement provider license.
6 Application shall be made using the uniform business entity
7 application. Before approving the application, the commissioner
8 shall find that:

- 9 (1) The business entity has paid all applicable fees;
- 10 (2) The business entity has designated a licensed viatical
11 settlement broker or viatical settlement provider for
12 the business entity's compliance with the insurance
13 laws and rules of this State; and
- 14 (3) Any licensed viatical settlement broker or viatical
15 settlement provider may not be designated or empowered
16 by more than one corporation or partnership, except
17 when the corporations or partnerships are affiliates
18 of each other. As used herein, a corporation or
19 partnership is an affiliate of another corporation or
20 partnership if the same person, directly or indirectly
21 through one or more intermediaries, controls both
22 corporations or partnerships. As used herein,



1 "control" shall have the same meaning as in section
2 431:11-102.

3 (i) Upon the filing of an application and the payment of
4 the license fee, the commissioner shall issue a license if the
5 commissioner finds that the applicant:

6 (1) If a viatical settlement provider, has provided a
7 detailed plan of operation;

8 (2) Is competent and trustworthy and intends to act in
9 good faith in the capacity in which the license
10 applied for is involved;

11 (3) Has a good business reputation and has had experience,
12 training, or education that ensures that the applicant
13 is qualified in the business in which the license
14 applied for is involved;

15 (4) If a viatical settlement provider, has demonstrated
16 evidence of financial responsibility in a format
17 prescribed by the commissioner through either a surety
18 bond executed and issued by an insurer authorized to
19 issue surety bonds in this State, or a deposit of
20 cash, certificates of deposit, securities, or any
21 combination thereof in the amount of \$250,000;
22 provided that any surety bond issued shall be in the



1 favor of the State and shall specifically authorize
2 recovery by the commissioner on behalf of any person
3 in this State who sustained damages as the result of
4 erroneous acts, failure to act, conviction of fraud,
5 or conviction of unfair practices by the viatical
6 settlement provider;

7 (5) If a viatical settlement broker, has demonstrated
8 evidence of financial responsibility, in a format
9 prescribed by the commissioner, through either a
10 surety bond executed and issued by an insurer
11 authorized to issue surety bonds in this State, or a
12 deposit of cash, certificates of deposit, securities,
13 or any combination thereof in the amount of \$250,000;
14 provided that any surety bond issued shall be in the
15 favor of this State and shall specifically authorize
16 recovery by the commissioner on behalf of any person
17 in the State who sustained damages as the result of
18 erroneous acts, failure to act, conviction of fraud,
19 or conviction of unfair practices by the viatical
20 settlement broker;

21 (6) If a legal entity, has provided a certificate of good
22 standing from the state of its domicile; and



1 (7) If a viatical settlement provider or viatical
2 settlement broker, has provided an anti-fraud plan
3 that meets the requirements of section 431: -115(g).

4 The commissioner may request evidence of financial
5 responsibility at any time the commissioner deems necessary.
6 Notwithstanding any provision of this section to contrary, the
7 commissioner shall accept, as evidence of financial
8 responsibility, proof that financial instruments in accordance
9 with the requirements in this section have been filed with one
10 state where the applicant is licensed as a viatical settlement
11 provider or viatical settlement broker.

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

19 (k) A viatical settlement provider or viatical settlement
20 broker shall provide to the commissioner updated information
21 within thirty days of the change.



1 (1) An individual licensed as a viatical settlement broker
2 shall complete on a biennial basis fifteen hours of training
3 related to viatical settlements and viatical settlement
4 transactions, as required by the commissioner; provided that a
5 life insurance producer who is operating as a viatical
6 settlement broker pursuant to subsection (b) shall not be
7 subject to the requirements of this subsection. Any person
8 failing to meet the requirements of this subsection shall be
9 subject to the penalties imposed by the commissioner, including
10 license revocation, suspension, or nonrenewal.

11 (m) Licensees shall maintain their own continuing
12 education records and shall keep these records for four years
13 after completion of an approved continuing education course.
14 These course providers shall make the records available at all
15 times to the commissioner.

16 (n) Approved course providers shall maintain attendance
17 records for five years to permit the commissioner to verify the
18 attendance and course completion of all licensees enrolled in an
19 approved course. These course providers shall make the records
20 available at all times to the commissioner.

21 **§431: -105 License revocation and denial.** (a) The
22 commissioner may suspend, revoke, or refuse to issue or renew



1 the license of a viatical settlement provider or viatical
2 settlement broker if the commissioner finds that:

3 (1) There was any incorrect, misleading, incomplete, or
4 materially untrue information in the application for
5 the license;

6 (2) The licensee or any officer, partner, member, or key
7 management personnel has been convicted of fraudulent
8 or dishonest practices, is subject to a final
9 administrative action, or is otherwise shown to be
10 untrustworthy or incompetent;

11 (3) The viatical settlement provider demonstrates a
12 pattern of unreasonable payments to viators;

13 (4) The licensee or any officer, partner, member, or key
14 management personnel has been found guilty of or has
15 pleaded guilty or nolo contendere to any felony or
16 misdemeanor involving fraud or moral turpitude,
17 regardless of whether a judgment of conviction has
18 been entered by the court;

19 (5) The viatical settlement provider has entered into any
20 viatical settlement contract that has not been
21 approved pursuant to this article;



- 1 (6) The viatical settlement provider has failed to honor
2 contractual obligations set out in a viatical
3 settlement contract;
- 4 (7) The licensee no longer meets the requirements for
5 licensure;
- 6 (8) The viatical settlement provider has assigned,
7 transferred, or pledged a viaticated policy to a
8 person other than a viatical settlement provider
9 licensed in this State, a viatical settlement
10 purchaser, an accredited investor or qualified
11 institutional buyer as defined respectively in rule
12 501(a) or rule 144A under the federal Securities Act
13 of 1933, as amended, a financing entity, a special
14 purpose entity, or a related provider trust; or
- 15 (9) The licensee or any officer, partner, member, or key
16 management personnel has violated this article.
- 17 (b) The commissioner may suspend, revoke, or refuse to
18 renew the license of a viatical settlement broker or a life
19 insurance producer operating as a viatical settlement broker
20 pursuant to this article if the commissioner finds that the
21 viatical settlement broker or life insurance producer has



1 violated this article or has otherwise engaged in bad faith
2 conduct with one or more viators.

3 (c) If the commissioner:

4 (1) Denies a license application;

5 (2) Suspends, revokes, or refuses to renew the license of
6 a viatical settlement provider or viatical settlement
7 broker; or

8 (3) Suspends, revokes, or refuses to renew a license of a
9 life insurance producer operating as a viatical
10 settlement broker pursuant to this article,

11 the commissioner shall conduct a hearing in accordance with
12 section 431:2-308.

13 **§431: -106 Approval of viatical settlement contracts and**
14 **disclosure statements.** A person shall not use a viatical
15 settlement contract form or provide to a viator a disclosure
16 statement form in this State unless first filed with and
17 approved by the commissioner. The commissioner shall not
18 approve a viatical settlement contract form or disclosure
19 statement form if, in the commissioner's opinion, the contract
20 or provisions contained in the contract fail to meet the
21 requirements of sections 431: -109, 431: -111, 431: -114,
22 or 431: -115(b) or are unreasonable, contrary to the interests



1 of the public, or otherwise misleading or unfair to the viator.
2 At the commissioner's discretion, the commissioner may require
3 the submission of advertising material.

4 **§431: -107 Reporting requirements and privacy. (a)**

5 Each viatical settlement provider shall file with the
6 commissioner on or before March 1 of each year a statement
7 containing information as the commissioner may prescribe by
8 form. The information shall be limited to only those
9 transactions where the viator is a resident of this State.
10 Individual transaction data regarding the business of viatical
11 settlements or data that could compromise the privacy of
12 personal, financial, and health information of the viator or
13 insured shall be filed with the commissioner on a confidential
14 basis.

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



- 1 (1) Necessary to effectuate a viatical settlement between
2 the viator and a viatical settlement provider and the
3 viator and insured have provided prior written consent
4 to the disclosure;
- 5 (2) Necessary to effectuate a viatical settlement purchase
6 agreement between the viatical settlement purchaser
7 and a viatical settlement provider and the viator and
8 insured have provided prior written consent to the
9 disclosure;
- 10 (3) In response to an investigation or examination by the
11 commissioner or any other governmental officer or
12 agency or pursuant to the requirements of section
13 431: -115(c);
- 14 (4) A term of or condition to the transfer of a policy by
15 one viatical settlement provider to another viatical
16 settlement provider;
- 17 (5) Necessary to permit a financing entity, related
18 provider trust, or special purpose entity to finance
19 the purchase of policies by a viatical settlement
20 provider, and the viator and insured have provided
21 prior written consent to the disclosure;



1 (6) Necessary to allow the viatical settlement provider or
2 viatical settlement broker or their authorized
3 representatives to make contacts for the purpose of
4 determining health status; or

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

7 **§431: -108 Examination or investigations.** (a) The
8 commissioner may conduct an examination of a licensee as often
9 as the commissioner deems necessary after considering the
10 factors set forth in this subsection. When scheduling and
11 determining the nature, scope, and frequency of the
12 examinations, the commissioner shall consider consumer
13 complaints, results of financial statement analyses and ratios,
14 changes in management or ownership, actuarial opinions, reports
15 of independent certified public accountants, and other criteria
16 as determined to be relevant by the commissioner.

17 For purposes of completing an examination of a licensee
18 under this article, the commissioner may examine or investigate
19 any person or the business of any person, insofar as the
20 examination or investigation is necessary or material to the
21 examination of the licensee.



1 In lieu of an examination under this article of any foreign
2 or alien licensee licensed in this State, the commissioner may
3 accept an examination report on the licensee as prepared by the
4 commissioner of the licensee's state of domicile or port-of-
5 entry state.

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

10 (b) A person required to be licensed by this article shall
11 for five years retain copies of all:

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

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

20 (3) Other records and documents related to the
21 requirements of this article.



1 This subsection does not relieve a person of the obligation
2 to produce the documents required to be retained to the
3 commissioner after the retention period has expired if the
4 person has retained the documents.

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

10 (c) Upon determining that an examination should be
11 conducted, the commissioner shall issue an examination warrant
12 appointing one or more examiners to perform the examination and
13 instructing them as to the scope of the examination. In
14 conducting the examination, the examiner shall observe the
15 guidelines and procedures set forth in the Examiners Handbook
16 adopted by the National Association of Insurance Commissioners.
17 The commissioner may also employ other guidelines or procedures
18 as the commissioner deems appropriate.

19 Every licensee or person from whom information is sought,
20 and the licensee or person's officers, directors, and agents, if
21 any, shall provide to the examiners timely, convenient, and free
22 access at all reasonable hours at its offices to all books,



1 records, accounts, papers, documents, assets, and computer or
2 other recordings relating to the property, assets, business, and
3 affairs of the licensee being examined. The officers,
4 directors, employees, and agents of the licensee or person shall
5 facilitate the examination and aid in the examination so far as
6 it is in their power to do so. The refusal of a licensee, by
7 its officers, directors, employees, or agents, to submit to
8 examination or to comply with any reasonable written request of
9 the commissioner shall be grounds for suspension, refusal of, or
10 nonrenewal of any license or authority held by the licensee to
11 engage in the viatical settlement business or other business
12 subject to the jurisdiction of the commissioner. Any
13 proceedings for suspension, revocation, or refusal of any
14 license or authority shall be conducted pursuant to section
15 431:9A-112.

16 The commissioner shall have the power to issue subpoenas,
17 to administer oaths, and to examine under oath any person as to
18 any matter pertinent to the examination. Upon the failure or
19 refusal of a person to obey to a subpoena, the commissioner may
20 petition a court of competent jurisdiction, and upon proper
21 showing, the court may enter an order compelling the witness to



1 appear and testify or produce documentary evidence. Failure to
2 obey the court order shall be punishable as contempt of court.

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

9 Nothing contained in this article shall be construed to
10 limit the commissioner's authority to terminate or suspend an
11 examination in order to pursue other legal or regulatory action
12 pursuant to the insurance laws of the State. Findings of fact
13 and conclusions made pursuant to any examination shall be prima
14 facie evidence in any legal or regulatory action.

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

22 (d) Examination reports shall be comprised of:



- 1 (1) Facts appearing upon the books, records, or other
2 documents of the licensee, its agents or other persons
3 examined, or as ascertained from the testimony of its
4 officers or agents or other persons examined
5 concerning its affairs; and
- 6 (2) The conclusions and recommendations as the examiners
7 find reasonably warranted from the facts.

8 No later than sixty days following completion of the
9 examination, the examiner in charge shall file with the
10 commissioner a verified written report of examination under
11 oath. Upon receipt of the verified report, the commissioner
12 shall transmit the report to the licensee examined, together
13 with a notice that shall afford the licensee examined a
14 reasonable opportunity of not more than thirty days to make a
15 written submission or rebuttal with respect to any matters
16 contained in the examination report.

17 If the commissioner determines that regulatory action is
18 appropriate as a result of an examination, the commissioner may
19 initiate any proceedings or actions provided by law.

20 (e) The confidentiality of examination information shall
21 be maintained as follows:



1 (1) Names and individual identification data for all
2 viators shall be considered private and confidential
3 information and shall not be disclosed by the
4 commissioner, unless provided by law;

5 (2) Except as otherwise provided in this article, all
6 examination reports, working papers, recorded
7 information, documents, and copies thereof produced
8 by, obtained by, or disclosed to the commissioner or
9 any other person in the course of an examination made
10 under this article, or in the course of analysis or
11 investigation by the commissioner of the financial
12 condition or market conduct of a licensee, shall be
13 confidential by law and privileged; shall not be
14 subject to chapter 92F; shall not be subject to
15 subpoena; and shall not be subject to discovery or
16 admissible in evidence in any private civil action.
17 The commissioner is authorized to use the documents,
18 materials, or other information in the furtherance of
19 any regulatory or legal action brought as part of the
20 commissioner's official duties. For the purposes of
21 this paragraph, "article" includes the law of another



1 state or jurisdiction that is substantially similar to
2 this article;

3 (3) Documents, materials, or other information, including
4 but not limited to all working papers, and copies
5 thereof, in the possession or control of the National
6 Association of Insurance Commissioners and its
7 affiliates and subsidiaries shall be confidential by
8 law and privileged, shall not be subject to subpoena,
9 and shall not be subject to discovery or admissible in
10 evidence in any private civil action; provided that
11 the documents, materials, or other information are:

12 (A) Created, produced, or obtained by or disclosed to
13 the National Association of Insurance
14 Commissioners and its affiliates and subsidiaries
15 in the course of assisting an examination made
16 under this article or assisting a commissioner in
17 the analysis or investigation of the financial
18 condition or market conduct of a licensee; or

19 (B) Disclosed to the National Association of
20 Insurance Commissioners and its affiliates and
21 subsidiaries under paragraph (4) by a
22 commissioner;



1 (4) Neither the commissioner nor any person that received
2 the documents, material, or other information while
3 acting under the authority of the commissioner,
4 including the National Association of Insurance
5 Commissioners and its affiliates and subsidiaries,
6 shall be permitted to testify in any private civil
7 action concerning any confidential documents,
8 materials, or information subject to paragraph (1);

9 (5) In order to assist in the performance of the
10 commissioner's duties, the commissioner:

11 (A) May share documents, materials, or other
12 information, including the confidential and
13 privileged documents, materials, or information
14 subject to paragraph (1), with other state,
15 federal, and international regulatory agencies,
16 with the National Association of Insurance
17 Commissioners and its affiliates and
18 subsidiaries, and with state, federal, and
19 international law enforcement authorities;
20 provided that the recipient agrees to maintain
21 the confidentiality and privileged status of the



1 documents, material, communication, or other
2 information;

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

17 (C) May enter into agreements governing sharing and
18 use of information consistent with this
19 subsection;

20 (6) No waiver of any applicable privilege or claim of
21 confidentiality in the documents, materials, or
22 information shall occur as a result of disclosure to



1 the commissioner under this section or as a result of
2 sharing as authorized in paragraph (5);

3 (7) A privilege established under the law of any state or
4 jurisdiction that is substantially similar to the
5 privilege established under this subsection shall be
6 available and enforced in any proceeding in this State
7 and in any court of this State; and

8 (8) Nothing contained in this article shall prevent or be
9 construed as prohibiting the commissioner from
10 disclosing the content of an examination report,
11 preliminary examination report or results, or any
12 matter relating thereto, to the commissioner of any
13 other state or country, or to law enforcement
14 officials of this State, any other state or agency of
15 the federal government at any time, or to the National
16 Association of Insurance Commissioners, so long as the
17 agency or office receiving the report or matters
18 relating thereto agrees in writing to hold it
19 confidential and in a manner consistent with this
20 article.

21 (f) An examiner may not be appointed by the commissioner
22 if the examiner, either directly or indirectly, has a conflict



1 of interest or is affiliated with the management of or owns a
2 pecuniary interest in any licensee or person subject to
3 examination under this article. This subsection shall not be
4 construed to automatically preclude an examiner from being:

- 5 (1) A viator;
- 6 (2) An insured in a viaticated insurance policy; or
- 7 (3) A beneficiary in an insurance policy that is proposed
8 to be viaticated.

9 Notwithstanding the requirements of this subsection, the
10 commissioner may retain from time to time, on an individual
11 basis, qualified actuaries, certified public accountants, or
12 other similar individuals who are independently practicing their
13 professions, even though these persons may from time to time be
14 similarly employed or retained by persons subject to examination
15 under this article.

16 (g) The commissioner shall assess examination costs under
17 this article pursuant to section 431:2-306.

18 (h) No cause of action shall arise nor shall any liability
19 be imposed against the commissioner, the commissioner's
20 authorized representatives, or any examiner appointed by the
21 commissioner for any statements made or conduct performed in
22 good faith while carrying out this article.



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

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

19 (i) The commissioner may investigate suspected fraudulent
20 viatical settlement acts and persons engaged in the business of
21 viatical settlements.



1 **§431: -109 Disclosure to viator.** (a) With each
2 application for a viatical settlement, a viatical settlement
3 provider or viatical settlement broker shall provide the viator
4 with at least the following disclosures no later than the time
5 the application for the viatical settlement contract is signed
6 by all parties; provided that the disclosures shall be provided
7 in a separate document that is signed by the viator and the
8 viatical settlement provider or viatical settlement broker. The
9 required disclosures shall:

10 (1) Inform the viator that:

11 (A) There are possible alternatives to viatical
12 settlement contracts including any accelerated
13 death benefits or policy loans offered under the
14 viator's life insurance policy;

15 (B) The viatical settlement broker represents
16 exclusively the viator, and not the insurer or
17 the viatical settlement provider, and owes a
18 fiduciary duty to the viator, including a duty to
19 act according to the viator's instructions and in
20 the best interest of the viator;

21 (C) Some or all of the proceeds of the viatical
22 settlement may be taxable under federal income



1 tax and state franchise and income taxes and
2 assistance should be sought from a professional
3 tax advisor;

4 (D) Proceeds of the viatical settlement may be
5 subject to the claims of creditors;

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

11 (F) The viator has the right to rescind a viatical
12 settlement contract before the earlier of sixty
13 calendar days after the date upon which the
14 viatical settlement contract is executed by all
15 parties or thirty calendar days after the
16 viatical settlement proceeds have been paid to
17 the viator, as provided in section
18 431: -111(j). Rescission, if exercised by the
19 viator, is effective only if both notice of the
20 rescission is given and the viator repays all
21 proceeds and any premiums, loans, and loan
22 interest paid on account of the viatical



1 settlement within the rescission period. If the
2 insured dies during the rescission period, the
3 viatical settlement contract shall be deemed to
4 have been rescinded, subject to repayment by the
5 viator or the viator's estate of all viatical
6 settlement proceeds and any premiums, loans, and
7 loan interest paid on account of the viatical
8 settlement within sixty days of the insured's
9 death;

10 (G) Funds shall be sent to the viator within three
11 business days after the viatical settlement
12 provider has received the insurer or group
13 administrator's written acknowledgment that
14 ownership of the policy or interest in the
15 certificate has been transferred and the
16 beneficiary has been designated;

17 (H) Entering into a viatical settlement contract may
18 cause other rights or benefits, including
19 conversion rights and waiver of premium benefits
20 that may exist under the policy or certificate,
21 to be forfeited by the viator. Assistance should
22 be sought from a financial advisor; and



- 1 (I) Following execution of a viatical contract, the
2 insured may be contacted for the purpose of
3 determining the insured's health status and to
4 confirm the insured's residential or business
5 street address and telephone number, or as
6 otherwise provided in this article. This contact
7 shall be limited to once every three months if
8 the insured has a life expectancy of more than
9 one year and no more than once per month if the
10 insured has a life expectancy of one year or
11 less. All contacts shall be made only by a
12 viatical settlement provider licensed in the
13 state in which the viator resided at the time of
14 the viatical settlement, or by the authorized
15 representative of a duly licensed viatical
16 settlement provider;
- 17 (2) Include distribution of a brochure describing the
18 process of viatical settlements. The National
19 Association of Insurance Commissioners' form for the
20 brochure shall be used unless another form is
21 developed or approved by the commissioner; and
- 22 (3) Contain the following language:



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

15 (b) A viatical settlement provider shall provide the
16 viator with at least the following disclosures no later than the
17 date the viatical settlement contract is signed by all parties;
18 provided that the disclosures shall be conspicuously displayed
19 in the viatical settlement contract or in a separate document
20 signed by the viator:



- 1 (1) The affiliation, if any, between the viatical
2 settlement provider and the issuer of the insurance
3 policy to be viaticated;
- 4 (2) The name, business address, and telephone number of
5 the viatical settlement provider;
- 6 (3) Any affiliations or contractual arrangements between
7 the viatical settlement provider and the viatical
8 settlement purchaser;
- 9 (4) That an insurance policy to be viaticated has been
10 issued as a joint policy or involves family riders or
11 any coverage of a life other than the insured under
12 the policy to be viaticated and that the possible loss
13 of coverage on the other lives under the policy may
14 occur and accordingly, the viator should consult with
15 the viator's insurance producer or the insurer issuing
16 the policy for advice on the proposed viatical
17 settlement;
- 18 (5) A statement of the dollar amount of the current death
19 benefit payable to the viatical settlement provider
20 under the policy or certificate. If known, the
21 viatical settlement provider shall also disclose the
22 availability of any additional guaranteed insurance



1 benefits, the dollar amount of any accidental death
2 and dismemberment benefits under the policy or
3 certificate, and the extent to which the viator's
4 interest in those benefits will be transferred as a
5 result of the viatical settlement contract; and

6 (6) A statement regarding whether the funds will be
7 escrowed with an independent third party during the
8 transfer process, and if so, a statement that provides
9 the name, business address, and telephone number of
10 the independent third party escrow agent and informs
11 the viator of the fact that the viator or owner may
12 inspect or receive copies of the relevant escrow or
13 trust agreements or documents.

14 (c) A viatical settlement broker shall provide the viator
15 with at least the following disclosures no later than the date
16 the viatical settlement contract is signed by all parties;
17 provided that the disclosures shall be conspicuously displayed
18 in the viatical settlement contract or in a separate document
19 signed by the viator:

20 (1) The name, business address, and telephone number of
21 the viatical settlement broker;



- 1 (2) A full, complete, and accurate description of all
2 offers, counter-offers, acceptances, and rejections
3 relating to the proposed viatical settlement contract;
- 4 (3) A written statement of any affiliations or contractual
5 arrangements between the viatical settlement broker
6 and any person making an offer in connection with the
7 proposed viatical settlement contracts;
- 8 (4) The amount and method of calculating the viatical
9 settlement broker's compensation. For the purposes of
10 this subsection, "compensation" includes anything of
11 value paid or given to a viatical settlement broker
12 for the placement of a policy; and
- 13 (5) The total amount of the viatical settlement offer and
14 the percentage of the viatical settlement offer
15 comprised by the viatical settlement broker's
16 compensation, where any portion of the viatical
17 settlement broker's compensation, as defined in
18 paragraph (4) is taken from a proposed viatical
19 settlement offer.
- 20 (d) If the viatical settlement provider transfers
21 ownership or changes the beneficiary of the insurance policy,
22 the provider shall communicate in writing the change in



1 ownership or beneficiary to the insured within twenty days after
2 the change.

3 (e) A viatical settlement provider shall provide the
4 viatical settlement purchaser with at least the following
5 disclosures prior to the date the viatical settlement purchase
6 agreement is signed by all parties:

- 7 (1) That the purchaser will receive no returns, including
8 dividends and interest, until the insured dies and a
9 death claim payment is made;
- 10 (2) That the actual annual rate of return on a viatical
11 settlement contract is dependent upon an accurate
12 projection of the insured's life expectancy and the
13 actual date of the insured's death and an annual
14 "guaranteed" rate of return is not determinable;
- 15 (3) That the viaticated life insurance contract should not
16 be considered a liquid purchase since it is impossible
17 to predict the exact timing of its maturity, funds
18 probably will not be available until the death of the
19 insured, and there is no established secondary market
20 for resale of these products by the purchaser;
- 21 (4) That the purchaser may lose all benefits or may
22 receive substantially reduced benefits if the insurer



- 1 goes out of business during the term of the viatical
2 investment;
- 3 (5) That the purchaser is responsible for payment of the
4 insurance premium or other costs related to the
5 policy, if required by the terms of the viatical
6 purchase agreement. These payments may reduce the
7 purchaser's return; provided that, if a party other
8 than the purchaser is responsible for the payment, the
9 name and address of that party also shall be
10 disclosed;
- 11 (6) That the purchaser is responsible for payment of the
12 insurance premiums or other costs related to the
13 policy if the insured returns to health. The amount
14 of the premiums shall be disclosed, if applicable;
- 15 (7) The name, business address, and telephone number of
16 the independent third party providing escrow services
17 and that party's relationship to the broker;
- 18 (8) The amount of any trust fees or other expenses to be
19 charged to the viatical settlement purchaser;
- 20 (9) Whether the purchaser is entitled to a refund of all
21 or part of the purchaser's investment under the



1 settlement contract if the policy is later determined
2 to be void;

3 (10) That group policies may contain limitations or caps in
4 the conversion rights, that additional premiums may
5 have to be paid if the policy is converted and the
6 name of the party responsible for the payment of the
7 additional premiums, and that there may be no right to
8 convert the original coverage if a group policy is
9 terminated and replaced by another group policy;

10 (11) The risks associated with policy contestability,
11 including but not limited to the risk that the
12 purchaser will have no claim or only a partial claim
13 to death benefits should the insurer rescind the
14 policy within the contestability period;

15 (12) Whether the purchaser will be the owner of the policy
16 in addition to being the beneficiary, and if the
17 purchaser is only the beneficiary and not also the
18 owner, the special risks associated with that status,
19 including but not limited to the risk that the
20 beneficiary may be changed or the premium may not be
21 paid;



1 (13) A description of the experience and qualifications of
2 the person who determines the life expectancy of the
3 insured, including in-house staff, independent
4 physicians, and specialty firms that weigh medical and
5 actuarial data, the information this projection is
6 based on, and the relationship of the projection maker
7 to the viatical settlement provider, if any; and

8 (14) A brochure describing the process of investment in
9 viatical settlements. The National Association of
10 Insurance Commissioners' form for the brochure shall
11 be used unless one is developed by the commissioner;
12 provided that the disclosures shall be conspicuously displayed
13 in any viatical purchase contract or in a separate document
14 signed by the viatical settlement purchaser and viatical
15 settlement provider.

16 (f) A viatical settlement provider shall provide the
17 viatical settlement purchaser with at least the following
18 disclosures no later than at the time of the assignment,
19 transfer, or sale of all or a portion of an insurance policy:

20 (1) All the life expectancy certifications obtained by the
21 provider in the process of determining the price paid
22 to the viator;



- 1 (2) A statement of whether premium payments or other costs
2 related to the policy have been escrowed; provided
3 that, if escrowed, a statement shall be provided
4 indicating the date upon which the escrowed funds will
5 be depleted and whether the purchaser will be
6 responsible for payment of premiums thereafter and, if
7 so, the amount of the premiums;
- 8 (3) A statement regarding whether premium payments or
9 other costs related to the policy have been waived.
10 If waived, the viatical settlement provider shall
11 disclose whether the viatical settlement provider will
12 be responsible for payment of the premiums if the
13 insurer that wrote the policy terminates the waiver
14 after purchase and the amount of those premiums;
- 15 (4) Disclose the type of policy offered or sold, such as
16 whole life, term life, universal life, or a group
17 policy certificate, any additional benefits contained
18 in the policy, and the current status of the policy;
- 19 (5) If the policy is term insurance, the special risks
20 associated with term insurance, including but not
21 limited to the purchaser's responsibility for



1 additional premiums if the viator continues the term
2 policy at the end of the current term;

3 (6) Whether the policy is contestable;

4 (7) Whether the insurer that wrote the policy has any
5 additional rights that could negatively affect or
6 extinguish the purchaser's rights under the viatical
7 settlement contract, what these rights are, and under
8 what conditions these rights are activated; and

9 (8) The name and address of the person responsible for
10 monitoring the insured's condition and a description
11 of how often the monitoring of the insured's condition
12 is done, how the date of death is determined, and how
13 and when this information will be transmitted to the
14 purchaser;

15 provided that the disclosures shall be contained in a document
16 signed by the viatical settlement purchaser and viatical
17 settlement provider.

18 **§431: -110 Disclosure to insurer.** Prior to the
19 initiation of a plan, transaction, or series of transactions, a
20 viatical settlement broker or viatical settlement provider shall
21 fully disclose to the insurer the plan, transaction, or series
22 of transactions, to which the viatical settlement broker or



1 viatical settlement provider is a party, to originate, renew,
2 continue, or finance a life insurance policy with the insurer
3 for the purpose of engaging in the business of viatical
4 settlements at any time prior to or during the first five years
5 after issuance of the policy.

6 **§431: -111 General rules.** (a) A viatical settlement
7 provider entering into a viatical settlement contract shall
8 first obtain:

9 (1) If the viator is the insured, a written statement from
10 a licensed attending physician that the viator is of
11 sound mind and under no constraint or undue influence
12 to enter into a viatical settlement contract; and

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

18 (b) Within twenty days after a viator executes documents
19 necessary to transfer any rights under an insurance policy or
20 within twenty days of 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



1 give written notice to the insurer that issued the insurance
2 policy, which notice shall state that the policy has or will
3 become a viaticated policy. The notice shall be accompanied by
4 the documents required under subsection (c).

5 (c) The viatical provider shall deliver a copy of the
6 medical release required under subsection (a)(2), a copy of the
7 viator's application for the viatical settlement contract, the
8 notice required under subsection (b), and a request for
9 verification of coverage to the insurer that issued the life
10 policy that is the subject of the viatical transaction. The
11 National Association of Insurance Commissioners' form for
12 verification of coverage shall be used unless another form is
13 developed and approved by the commissioner.

14 (d) The insurer shall respond to a request for
15 verification of coverage submitted on an approved form by a
16 viatical settlement provider or viatical settlement broker
17 within thirty calendar days of the date the request is received
18 and shall indicate whether, based on the medical evidence and
19 documents provided, the insurer intends to pursue an
20 investigation at this time regarding the validity of the
21 insurance contract or possible fraud. The insurer shall accept
22 a request for verification of coverage made on a National



1 Association of Insurance Commissioner form or any other form
2 approved by the commissioner. The insurer shall accept an
3 original, facsimile, or electronic copy of the request and any
4 accompanying authorization signed by the viator. Failure by the
5 insurer to meet its obligations under this subsection shall be a
6 violation of section 431: -112(c) and section 431: -117.

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

20 (f) If a viatical settlement broker performs any of the
21 activities required of the viatical settlement provider, the



1 provider is deemed to have fulfilled the requirements of this
2 section.

3 (g) All medical information solicited or obtained by any
4 licensee shall be subject to any applicable state law relating
5 to confidentiality of medical information.

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



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

14 (i) The viatical settlement provider shall instruct the
15 viator to send the executed documents required to effect the
16 change in ownership, assignment, or change in beneficiary
17 directly to the independent escrow agent. Within three business
18 days after the date the escrow agent receives the document (or
19 from the date the viatical settlement provider receives the
20 documents, if the viator erroneously provides the documents
21 directly to the provider), the provider shall pay or transfer
22 the proceeds of the viatical settlement into an escrow or trust



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

13 (j) Failure to tender consideration to the viator for the
14 viatical settlement contract within the time set forth in the
15 disclosure pursuant to section 431: -109(a)(1)(G) renders the
16 viatical settlement contract voidable by the viator for lack of
17 consideration until the time consideration is tendered to and
18 accepted by the viator. Funds shall be deemed sent by a
19 viatical settlement provider to a viator as of the date that the
20 escrow agent either releases funds for wire transfer to the
21 viator or places a check for delivery to the viator via the



1 United States Postal Service or other nationally recognized
2 delivery service.

3 (k) Contacts with the insured for the purpose of
4 determining the health status of the insured by the viatical
5 settlement provider or viatical settlement broker after the
6 viatical settlement has occurred shall only be made by a
7 viatical settlement provider or broker licensed in this State or
8 the viatical settlement provider or broker's authorized
9 representatives and shall be limited to once every three months
10 for insureds with a life expectancy of more than one year, and
11 to no more than once per month for insureds with a life
12 expectancy of one year or less. The provider or broker shall
13 explain the procedure for these contacts at the time the
14 viatical settlement contract is entered. The limitations set
15 forth in this subsection shall not apply to any contacts with an
16 insured for reasons other than determining the insured's health
17 status. Viatical settlement providers and viatical settlement
18 brokers shall be responsible for the actions of their authorized
19 representatives.

20 **§431: -112 Prohibited practices.** (a) It is a violation
21 of this article for any person to enter into a viatical
22 settlement contract at any time prior to the application or



1 issuance of a policy that is the subject of the viatical
2 settlement contract or within a five-year period commencing with
3 the date of issuance of the insurance policy or certificate,
4 unless the viator certifies to the viatical settlement provider
5 that one or more of the following conditions have been met
6 within the five-year period:

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

16 (2) The viator submits independent evidence to the
17 viatical settlement provider that one or more of the
18 following conditions have been met within the five-
19 year period:

20 (A) The viator or insured is terminally or
21 chronically ill;

22 (B) The viator's spouse dies;



- 1 (C) The viator divorces the viator's spouse;
- 2 (D) The viator retires from full-time employment;
- 3 (E) The viator becomes physically or mentally
- 4 disabled and a physician determines that the
- 5 disability prevents the viator from maintaining
- 6 full-time employment; or
- 7 (F) A final order, judgment, or decree is entered by
- 8 a court of competent jurisdiction on the
- 9 application of a creditor of the viator,
- 10 adjudicating the viator bankrupt or insolvent, or
- 11 approving a petition seeking reorganization of
- 12 the viator or appointing a receiver, trustee, or
- 13 liquidator to all or a substantial part of the
- 14 viator's assets; or
- 15 (3) The viator enters into a viatical settlement contract
- 16 more than two years after the date of issuance of a
- 17 policy and, with respect to the policy, at all times
- 18 prior to the date that is two years after policy
- 19 issuance, the following conditions are met:
- 20 (A) Policy premiums have been funded exclusively with
- 21 unencumbered assets, including an interest in the
- 22 life insurance policy being financed only to the



1 extent of its net cash surrender value, provided
2 by, or fully recourse liability incurred by, the
3 insured or a person described in paragraph (2) of
4 the definition of "viatical settlement contract"
5 in section 431: -102;

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

11 (C) Neither the insured nor the policy has been
12 evaluated for settlement.

13 (b) Copies of the independent evidence described in
14 subsection (a)(2) and documents required by section
15 431: -111(a) shall be submitted to the insurer when the
16 viatical settlement provider or other party entering into a
17 viatical settlement contract with a viator submits a request to
18 the insurer for verification of coverage. The copies shall be
19 accompanied by a letter of attestation from the viatical
20 settlement provider that the copies are true and correct copies
21 of the documents received by the viatical settlement provider.



1 (c) If the viatical settlement provider submits to the
2 insurer a copy of the owner's or insured's certification
3 described in subsection (a)(2) and the independent evidence
4 required by subsection (a)(2) when the provider submits a
5 request to the insurer to effect the transfer of the policy or
6 certificate to the viatical settlement provider, the copy shall
7 be deemed to conclusively establish that the viatical settlement
8 contract satisfies the requirements of this section and the
9 insurer shall timely respond to the request.

10 (d) No insurer may require, as a condition of responding
11 to a request for verification of coverage or effecting the
12 transfer of a policy pursuant to a viatical settlement contract,
13 that the viator, insured, viatical settlement provider, or
14 viatical settlement broker sign any forms, disclosures, consent,
15 or waiver form that has not been expressly approved by the
16 commissioner for use in connection with viatical settlement
17 contracts in this State.

18 (e) Upon receipt of a properly completed request for
19 change of ownership or beneficiary of a policy, the insurer
20 shall respond in writing within thirty calendar days with
21 written acknowledgement confirming that the change has been
22 effected or specifying the reasons why the requested change



1 cannot be processed. The insurer shall not unreasonably delay
2 effecting the change of ownership or beneficiary and shall not
3 otherwise seek to interfere with any viatical settlement
4 contract lawfully entered into in this State.

5 **§431 -113 Prohibited practices and conflicts of**
6 **interest.** (a) With respect to any viatical settlement contract
7 or insurance policy, no viatical settlement broker knowingly
8 shall solicit an offer from, effectuate a viatical settlement
9 with, or make a sale to any viatical settlement provider,
10 viatical settlement purchaser, financing entity, or related
11 provider trust that is controlling, controlled by, or under
12 common control with the viatical settlement broker.

13 (b) With respect to any viatical settlement contract or
14 insurance policy, no viatical settlement provider knowingly may
15 enter into a viatical settlement contract with a viator, if, in
16 connection with the viatical settlement contract, anything of
17 value will be paid to a viatical settlement broker that is
18 controlling, controlled by, or under common control with the
19 viatical settlement provider or the viatical settlement
20 purchaser, financing entity, or related provider trust that is
21 involved in the viatical settlement contract.



1 (c) A violation of subsection (a) or (b) shall be deemed a
2 fraudulent viatical settlement act.

3 (d) No viatical settlement provider shall enter into a
4 viatical settlement contract unless the viatical settlement
5 promotional, advertising, and marketing materials, as may be
6 adopted by rule, have been filed with the commissioner. In no
7 event shall any marketing materials expressly reference that the
8 insurance is "free" for any period of time. The inclusion of
9 any reference in the marketing materials that would cause a
10 viator to reasonably believe that the insurance is free for any
11 period of time shall be considered a violation of this article.

12 (e) Unless provided in the policy, no life insurance
13 producer, insurance company, viatical settlement broker, or
14 viatical settlement provider shall make any statement or
15 representation to the applicant or policyholder in connection
16 with the sale or financing of a life insurance policy to the
17 effect that the insurance is free or without cost to the
18 policyholder for any period of time.

19 **§431: -114 Advertising for viatical settlements. (a)**
20 This section shall apply to any advertising of viatical
21 settlement contracts or related products or services intended
22 for dissemination in this State, including internet advertising



1 viewed by persons located in this State. Where disclosure
2 requirements are established pursuant to federal regulation,
3 this section shall be interpreted so as to minimize or eliminate
4 conflict with the federal regulation, wherever possible.

5 (b) Every viatical settlement licensee shall establish and
6 at all times maintain a system of control over the content,
7 form, and method of dissemination of all advertisements of its
8 contracts, products, and services. All advertisements,
9 regardless of by whom written, created, designed, or presented,
10 shall be the responsibility of the viatical settlement licensee,
11 as well as the individual who created or presented the
12 advertisement. A system of control shall include regular
13 notification, at least once a year, to agents and others
14 authorized by the viatical settlement licensee to disseminate
15 advertisements of the requirements and procedures for
16 advertisement approval that shall be compiled with prior to the
17 use of any advertisement not furnished by the viatical
18 settlement licensee.

19 (c) Advertisements shall be truthful and not misleading in
20 fact or by implication. The form and content of an
21 advertisement of a viatical settlement contract shall be
22 sufficiently complete and clear so as to avoid deception and



1 shall not have the capacity or tendency to mislead or deceive.
2 Whether an advertisement has the capacity or tendency to mislead
3 or deceive shall be determined by the commissioner from the
4 overall impression that the advertisement may be reasonably
5 expected to create upon a person of average education or
6 intelligence within the segment of the public to which the
7 advertisement is directed.

8 (d) The information required to be disclosed under this
9 section shall not be minimized, rendered obscure, or presented
10 in an ambiguous fashion or intermingled with the text of the
11 advertisement so as to be confusing or misleading.

12 (1) An advertisement shall not omit material information
13 or use words, phrases, statements, references, or
14 illustrations if the omission or use has the capacity,
15 tendency, or effect of misleading or deceiving viators
16 as to the nature or extent of any benefit, loss
17 covered, premium payable, or state or federal tax
18 consequence. Misleading statements shall not be
19 remedied by the fact that:

20 (A) The viatical settlement contract offered is made
21 available for inspection prior to consummation of
22 the sale;



- 1 (B) An offer is made to refund the payment if the
2 viator is not satisfied; or
- 3 (C) The viatical settlement contract includes a "free
4 look" period that satisfies or exceeds legal
5 requirements;
- 6 (2) An advertisement shall not use the name or title of a
7 life insurance company or a life insurance policy,
8 unless the advertisement has been approved by the
9 insurer;
- 10 (3) An advertisement shall not state or imply that
11 interest charged on an accelerated death benefit or a
12 policy loan is unfair, inequitable, or, in any manner,
13 an incorrect or improper practice;
- 14 (4) Unless true, the words "free", "no cost", "without
15 cost", "no additional cost", "at no extra cost", or
16 words of similar import shall not be used with respect
17 to any benefit or service. An advertisement may
18 specify the charge for a benefit or a service, state
19 that a charge is included in the payment, or use other
20 appropriate language;
- 21 (5) Testimonials, appraisals, or analysis used in
22 advertisements shall:



- 1 (A) Be genuine;
- 2 (B) Represent the current opinion of the author;
- 3 (C) Be applicable to the viatical settlement contract
4 product or service advertised, if any; and
- 5 (D) Be accurately reproduced with sufficient
6 completeness to avoid misleading or deceiving
7 prospective viators as to the nature or scope of
8 the testimonials, appraisal, analysis, or
9 endorsement. In using testimonials, appraisals,
10 or analysis, a licensee under this article makes
11 as its own all the statements contained therein.
12 All statements are subject to all the provisions
13 of this section;
- 14 (6) If the individual making a testimonial, appraisal,
15 analysis, or an endorsement has a financial interest
16 in the party making use of the testimonial, appraisal,
17 analysis, or endorsement, either directly or through a
18 related entity as a stockholder, director, officer,
19 employee, or otherwise, or receives any benefit
20 directly or indirectly other than required union scale
21 wages, that fact shall be prominently disclosed in the
22 advertisement;



- 1 (7) An advertisement shall not state or imply that a
2 viatical settlement contract, benefit, or service has
3 been approved or endorsed by a group of individuals, a
4 society, an association, or other organization unless
5 that is the fact and unless any relationship between
6 an organization and the viatical settlement licensee
7 is disclosed. If the entity making the endorsement or
8 testimonial is owned, controlled, or managed by the
9 viatical settlement licensee, or receives any payment
10 or other consideration from the viatical settlement
11 licensee for making an endorsement or testimonial,
12 that fact shall be prominently disclosed in the
13 advertisement; and
- 14 (8) When an endorsement refers to benefits received under
15 a viatical settlement contract all pertinent
16 information shall be retained for a period of five
17 years after its use.
- 18 (e) An advertisement shall not contain statistical
19 information unless it accurately reflects recent and relevant
20 facts. The source of all statistics used in an advertisement
21 shall be identified.



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

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

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



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

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

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

20 (k) 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,



1 or advisability of its viatical settlement contracts are
2 recommended or endorsed by any government entity.

3 (1) The name of the actual licensee shall be stated in all
4 of its advertisements. An advertisement shall not use a trade
5 name, any group designation, name of any affiliate or
6 controlling entity of the licensee, service mark, slogan,
7 symbol, or other device in a manner that would have the capacity
8 or tendency to mislead or deceive as to the true identity of the
9 actual licensee or create the false impression that an affiliate
10 or controlling entity would have any responsibility for the
11 financial obligation of the licensee.

12 (m) An advertisement shall not directly or indirectly
13 create the impression that any division or agency of the State
14 or of the United States government endorses, approves, or
15 favors:

16 (1) Any viatical settlement licensee or its business
17 practices or methods of operation;

18 (2) The merits, desirability, or advisability of any
19 viatical settlement contract;

20 (3) Any viatical settlement contract; or

21 (4) Any life insurance policy or life insurance company.



1 (n) If the advertiser emphasizes the speed with which the
2 viatication will occur, the advertising shall disclose the
3 average timeframe from completed application to the date of
4 offer and from acceptance of the offer to receipt of the funds
5 by the viator.

6 (o) If the advertising emphasizes the dollar amounts
7 available to viators, the advertising shall disclose the average
8 purchase price as a per cent of face value obtained by viators
9 contracting with the licensee during the past six months.

10 **§431: -115 Fraud prevention and control.** (a) The
11 following fraudulent viatical settlement acts, interference, and
12 participation of convicted felons shall be prohibited:

13 (1) A person shall not commit a fraudulent viatical
14 settlement act;

15 (2) A person shall not knowingly or intentionally
16 interfere with the enforcement of the provisions of
17 this article or investigations of suspected or actual
18 violations of this article; or

19 (3) A person in the business of viatical settlements shall
20 not knowingly or intentionally permit any person
21 convicted of a felony involving dishonesty or breach



1 of trust to participate in the business of viatical
2 settlements.

3 (b) Viatical settlements contracts and applications for
4 viatical settlements, regardless of the form of transmission,
5 shall contain the following statement or a substantially similar
6 statement:

7 "Any person who knowingly presents false information
8 in an application for insurance or viatical settlement
9 contract or a viatical settlement purchase agreement
10 is guilty of a crime and may be subject to fines and
11 confinement in prison."

12 The lack of this statement as required shall not constitute
13 a defense in any prosecution for a fraudulent viatical
14 settlement act.

15 (c) Any person engaged in the business of viatical
16 settlements who has knowledge or a reasonable suspicion that a
17 fraudulent viatical settlement act is being, will be, or has
18 been committed shall provide to the commissioner, in a manner
19 prescribed by the commissioner, the information required by the
20 commissioner.

21 Any other person having knowledge or a reasonable belief
22 that a fraudulent viatical settlement act is being, will be, or



1 has been committed may provide to the commissioner, in a manner
2 prescribed by the commissioner, the information required by the
3 commissioner.

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 fraudulent
7 viatical settlement acts, or suspected or completed fraudulent
8 insurance acts, if the information is provided to or received
9 from:

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

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

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

18 (4) The National Association of Insurance Commissioners,
19 National Association of Securities Dealers, the North
20 American Securities Administrators Association, or
21 their employees, agents, or representatives, or other



1 regulatory body overseeing life insurance, viatical
2 settlements, securities, or investment fraud; or
3 (5) The life insurer that issued the life insurance policy
4 covering the life of the insured.

5 This subsection shall not apply to statements made with
6 actual malice. In an action brought against a person for filing
7 a report or furnishing other information concerning a fraudulent
8 viatical settlement act, the party bringing the action shall
9 plead specifically any allegation that this subsection does not
10 apply because the person filing the report or furnishing the
11 information did so with actual malice.

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



1 person furnishing information concerning the person's own
2 fraudulent viatical settlement acts.

3 This subsection does not abrogate or modify common law or
4 statutory privileges or immunities enjoyed by a person.

5 (e) The documents and evidence provided pursuant to
6 subsection (d) or obtained by the commissioner in an
7 investigation of suspected or actual fraudulent viatical
8 settlement acts shall be privileged and confidential, shall not
9 be a public record, and shall not be subject to discovery or
10 subpoena in a civil or criminal action.

11 This subsection shall not prohibit release by the
12 commissioner of documents and evidence obtained in an
13 investigation of suspected or actual fraudulent viatical
14 settlement acts:

15 (1) In administrative or judicial proceedings to enforce
16 laws administered by the commissioner;

17 (2) To federal, state, or local law enforcement or
18 regulatory agencies, an organization established for
19 the purpose of detecting and preventing fraudulent
20 viatical settlement acts, or to the National
21 Association of Insurance Commissioners; or



1 (3) At the discretion of the commissioner, to a person in
2 the business of viatical settlements that is aggrieved
3 by a fraudulent viatical settlement act.

4 Release of documents and evidence by the commissioner shall
5 not abrogate or modify the privilege granted in this subsection.

6 (f) With respect to other law enforcement or regulatory
7 authority, this article shall not:

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

11 (2) Prevent or prohibit a person from disclosing
12 voluntarily information concerning viatical settlement
13 fraud to a law enforcement or regulatory agency other
14 than the insurance division of the State; or

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

19 (g) Viatical settlement providers and viatical settlement
20 brokers shall have in place antifraud initiatives reasonably
21 calculated to detect, prosecute, and prevent fraudulent viatical
22 settlement acts. The commissioner may order, or a licensee may



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

7 Antifraud initiatives shall include:

- 8 (1) Fraud investigators who may be employees of a viatical
9 settlement provider or viatical settlement broker or
10 independent contractors; and
- 11 (2) An antifraud plan, which shall be submitted to the
12 commissioner. The antifraud plan shall include, but
13 not be limited to:
- 14 (A) A description of the procedures for detecting and
15 investigating possible fraudulent viatical
16 settlement acts and procedures for resolving
17 material inconsistencies between medical records
18 and insurance applications;
- 19 (B) A description of the procedures for reporting
20 possible fraudulent viatical settlement acts to
21 the commissioner;



1 (C) A description of the plan for antifraud education
2 and training of underwriters and other personnel;
3 and

4 (D) A description or chart outlining the
5 organizational arrangement of the antifraud
6 personnel who are responsible for the
7 investigation and reporting of possible
8 fraudulent viatical settlement acts and
9 investigating unresolved material inconsistencies
10 between medical records and insurance
11 applications.

12 Antifraud plans submitted to the commissioner shall be
13 privileged and confidential, shall not be public records, and
14 shall not be subject to discovery or subpoena in a civil or
15 criminal action.

16 **§431: -116 Injunctions; civil remedies; cease and**
17 **desist; penalties.** (a) In addition to the penalties and other
18 enforcement provisions of this article, if any person violates
19 this article or any rule adopted pursuant to this article, the
20 commissioner may seek an injunction in a court of competent
21 jurisdiction and may apply for temporary and permanent orders



1 that the commissioner determines are necessary to restrain the
2 person from committing the violation.

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

7 (c) The commissioner may issue, in accordance with chapter
8 91, a cease and desist order upon a person that violates any
9 provision of this article, any rule or order adopted by the
10 commissioner, or any written agreement entered into with the
11 commissioner.

12 (d) Notwithstanding any other provision in this chapter,
13 when the commissioner finds that an activity in violation of
14 this article presents an immediate danger to the public that
15 requires an immediate final order, the commissioner may issue an
16 emergency cease and desist order reciting with particularity the
17 facts underlying the findings. The emergency cease and desist
18 order shall be effective immediately upon service of a copy of
19 the order on the respondent and shall remain effective for
20 ninety days. If the commissioner begins non-emergency cease and
21 desist proceedings, the emergency cease and desist order shall



1 remain effective, absent an order by a court of competent
2 jurisdiction pursuant to chapter 91.

3 (e) In addition to the penalties and other enforcement
4 provisions of this article, any person who violates this article
5 shall be subject to civil penalties of not less than \$100 nor
6 more than \$10,000 per violation. Imposition of civil penalties
7 shall be pursuant to an order of the commissioner issued under
8 sections 431:2-202 and 431:2-308. The commissioner's order may
9 require a person found to be in violation of this article to
10 make restitution to persons aggrieved by violations of this
11 article.

12 (f) A person convicted of a violation of this article by a
13 court of competent jurisdiction for the crime of theft under
14 chapter 708 shall be ordered to pay restitution to persons
15 aggrieved by the violation of this article. Restitution shall
16 be ordered in addition to a fine or imprisonment, but not in
17 lieu of a fine or imprisonment.

18 (g) Except for a fraudulent viatical settlement act
19 committed by a viator, the enforcement provisions and penalties
20 of this section shall not apply to a viator.

21 (h) A person convicted of a violation of this article by a
22 court of competent jurisdiction may be sentenced in accordance



1 with paragraph (1), (2), (3), or (4) based on the greater of the
2 value of property, services, or other benefit wrongfully
3 obtained, attempted to be obtained, or the aggregate economic
4 loss suffered by any person as a result of the violation:

5 (1) Imprisonment for not more than twenty years or payment
6 of a fine of not more than \$100,000, or both, if the
7 value of viatical settlement contract is more than
8 \$35,000;

9 (2) Imprisonment for not more than ten years or payment of
10 a fine of not more than \$20,000, or both, if the value
11 of viatical settlement contract is more than \$2,500
12 but not more than \$35,000;

13 (3) Imprisonment for not more than five years or payment
14 of a fine of not more than \$10,000, or both, if the
15 value of viatical settlement contract is more than
16 \$500 but not more than \$2,500; or

17 (4) Imprisonment for not more than one year or payment of
18 a fine of not more than \$3,000, or both, if the value
19 of viatical settlement contract is \$500 or less.

20 A person convicted of a fraudulent viatical settlement act
21 shall be ordered to pay restitution to persons aggrieved by the
22 fraudulent viatical settlement act. Restitution shall be



1 ordered in addition to a fine or imprisonment but not in lieu of
2 a fine or imprisonment.

3 In any prosecution under paragraph (1), (2), (3), or (4)
4 the value of the viatical settlement contracts within any six-
5 month period may be aggregated and the defendant charged
6 accordingly in applying this section; provided that when two or
7 more offenses are committed by the same person in two or more
8 counties, the accused may be prosecuted in any county in which
9 one of the offenses was committed for all of the offenses
10 aggregated under this section. The applicable statute of
11 limitations provision under section 701-108 shall not begin to
12 run until the insurance company or law enforcement agency is
13 aware of the fraud, but in no event may the prosecution be
14 commenced later than seven years after the act has occurred.

15 **§431: -117 Unfair trade practices.** A violation of this
16 article, including the commission of a fraudulent viatical
17 settlement act, shall be considered an unfair trade practice
18 under article 13.

19 **§431: -118 Authority to adopt rules and establish**
20 **standards and other requirements.** The commissioner may:

21 (1) Adopt rules to implement this article;



- 1 (2) Establish standards for evaluating reasonableness of
2 payments under viatical settlement contracts for
3 persons who are terminally or chronically ill. This
4 authority includes, but is not limited to regulation
5 of discount rates used to determine the amount paid in
6 exchange for assignment, transfer, sale, devise, or
7 bequest of a benefit under a life insurance policy
8 insuring the life of a person that is chronically or
9 terminally ill;
- 10 (3) Establish appropriate licensing requirements, fees,
11 and standards for continued licensure for viatical
12 settlement providers and viatical settlement brokers;
- 13 (4) Require a bond or other mechanism for financial
14 accountability for viatical settlement providers and
15 brokers; and
- 16 (5) Adopt rules governing the relationship and
17 responsibilities of insurers, viatical settlement
18 providers, and viatical settlement brokers during the
19 viatication of a life insurance policy or certificate.
- 20 **§431: -119 Other jurisdiction.** Nothing in this article
21 shall be construed to affect in any manner chapter 485A."



1 SECTION 2. Section 431:2-306, Hawaii Revised Statutes, is
2 amended by amending subsections (a) and (b) to read as follows:

3 "(a) Examinations of:

4 (1) Any insurer;

5 (2) Any person subject to examination under section
6 431:2-303(2); [~~or~~]

7 (3) Any insurance guaranty fund established pursuant to
8 article 16; or

9 (4) Any licensee subject to examination under section
10 431: -108

11 shall be at the expense of the insurer, person, [~~or~~] guaranty
12 fund, or licensee examined. Examination expenses shall include
13 fees, mileage, and expenses incurred as to witnesses or any
14 other person, as defined in article 1, subject to an examination
15 by the commissioner.

16 (b) The insurer, person, [~~or~~] guaranty fund, or licensee
17 examined and liable therefor shall pay to the commissioner's
18 examiners upon presentation of an itemized statement, their
19 actual travel expenses, their reasonable living expense
20 allowance, and their per diem compensation at a reasonable rate
21 approved by the commissioner, incurred on account of the



1 examination. All payments collected by the commissioner shall
2 be remitted to:

- 3 (1) The compliance resolution fund; or
4 (2) The captive insurance administrative fund if
5 independent contractor examiners or captive staff
6 examiners were employed for a captive insurer's
7 examination.

8 The commissioner or the commissioner's examiners shall not
9 receive or accept any additional emolument on account of any
10 examination."

11 SECTION 3. A viatical settlement provider or viatical
12 settlement broker transacting business in this State may
13 continue to do so pending approval or disapproval of the
14 provider or broker's application for a license as long as the
15 application is filed with the commissioner by July 1, 2009.

16 SECTION 4. If any portion of this article or any
17 amendments thereto, or its applicability to any person or
18 circumstance is held invalid by a court, the remainder of this
19 article or its applicability to other persons or circumstances
20 shall not be affected.



1 SECTION 5. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on July 1, 2050.



Report Title:

Viatical Settlements

Description:

Protects those with terminal or chronic illnesses from unscrupulous brokers who trade in life insurance policies of the sick, by requiring disclosure of the consequences to the consumer, providing the right to rescind the contract, and prohibiting the transfer of the life insurance benefits to the new owner for five years. (SD1)

