

House Bill 883

By: Representative Powell of the 23<sup>rd</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 33 of the Official Code of Georgia Annotated, relating to insurance, so as to  
2 enact the Viatical Settlements Act; to provide for comprehensive regulation of viatical  
3 settlements; to provide definitions; to provide for licensing; to provide for a short title; to  
4 provide for reporting; to provide for confidentiality of certain information; to provide for  
5 certain disclosures; to provide for prohibited practices; to provide for penalties; to regulate  
6 advertising for viatical settlements and viatical settlement purchase agreements; to provide  
7 for antifraud mechanisms; to provide for injunctions and cease and desist orders; to provide  
8 for unfair trade practices; to provide for severability; to provide for related matters; to repeal  
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 33 of the Official Code of Georgia Annotated, relating to insurance, is amended by  
13 adding a new Chapter 59 to read as follows:

14 "CHAPTER 59

15 33-59-1.

16 This Act may be cited as the Viatical Settlements Act.

17 33-59-2.

18 As used in this chapter, the term:

19 (1) 'Advertising' means any written, electronic or printed communication or any  
20 communication by means of recorded telephone messages or transmitted on radio,  
21 television, the Internet, or similar communications media, including film strips, motion  
22 pictures, and videos, published, disseminated, circulated, or placed before the public,  
23 directly or indirectly, for the purpose of creating an interest in or inducing a person to

1 purchase or sell a life insurance policy or an interest in a life insurance policy pursuant  
2 to a viatical settlement contract or a viatical settlement purchase agreement.

3 (2) 'Business of viatical settlements' means an activity involved in, but not limited to, the  
4 offering, solicitation, negotiation, procurement, effectuation, purchasing, investing,  
5 financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging,  
6 or hypothecating of viatical settlement contracts or purchase agreements.

7 (3) 'Chronically ill' means:

8 (A) Being unable to perform at least two activities of daily living including, but not  
9 limited to, eating, toileting, transferring, bathing, dressing, or continence;

10 (B) Requiring substantial supervision to protect the individual from threats to health  
11 and safety due to severe cognitive impairment; or

12 (C) Having a level of disability similar to that described in subparagraph (A) of this  
13 paragraph as determined by the Commissioner.

14 (4) 'Commissioner' means the Commissioner of Insurance.

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

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

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

23 Financing entity does not include a nonaccredited investor or viatical settlement  
24 purchaser.

25 (6) 'Fraudulent viatical settlement act' includes:

26 (A) Acts or omissions committed by any person who, knowingly or with intent to  
27 defraud, for the purpose of depriving another of property or for pecuniary gain,  
28 commits or permits its employees or its agents to engage in acts including:

29 (i) Presenting, causing to be presented, or preparing with knowledge or belief that it  
30 will be presented to or by a viatical settlement provider, viatical settlement broker,  
31 viatical settlement purchaser, viatical settlement investment agent, financing entity,  
32 insurer, insurance producer, or any other person, false material information, or  
33 concealing material information, as part of, in support of, or concerning a fact  
34 material to one or more of the following:

35 (I) An application for the issuance of a viatical settlement contract or insurance  
36 policy;

37 (II) The underwriting of a viatical settlement contract or insurance policy;

1 (III) A claim for payment or benefit pursuant to a viatical settlement contract or  
2 insurance policy;

3 (IV) Premiums paid on an insurance policy or as a result of a viatical settlement  
4 purchase agreement;

5 (V) Payments and changes in ownership or beneficiary made in accordance with  
6 the terms of a viatical settlement contract, viatical settlement purchase agreement,  
7 or insurance policy;

8 (VI) The reinstatement or conversion of an insurance policy;

9 (VII) In the solicitation, offer, effectuation, or sale of a viatical settlement contract,  
10 insurance policy, or viatical settlement purchase agreement;

11 (VIII) The issuance of written evidence of viatical settlement contract, viatical  
12 settlement purchase agreement, or insurance; or

13 (IX) A financing transaction.

14 (ii) Employing any device, scheme, or artifice to defraud related to viaticated  
15 policies;

16 (B) In the furtherance of a fraud or to prevent the detection of a fraud any person  
17 commits or permits its employees or its agents to:

18 (i) Remove, conceal, alter, destroy, or sequester from the Commissioner the assets  
19 or records of a licensee or other person engaged in the business of viatical settlements;

20 (ii) Misrepresent or conceal the financial condition of a licensee, financing entity,  
21 insurer, or other person;

22 (iii) Transact the business of viatical settlements in violation of laws requiring a  
23 license, certificate of authority, or other legal authority for the transaction of the  
24 business of viatical settlements; or

25 (iv) File with the Commissioner or the chief insurance regulatory official of another  
26 jurisdiction a document containing false information or otherwise conceals  
27 information about a material fact from the Commissioner;

28 (C) Embezzlement, theft, misappropriation, or conversion of monies, funds, premiums,  
29 credits, or other property of a viatical settlement provider, insurer, insured, viator,  
30 insurance policyowner, or any other person engaged in the business of viatical  
31 settlements or insurance;

32 (D) Recklessly entering into, brokering, or otherwise dealing in a viatical settlement  
33 contract, the subject of which is a life insurance policy that was obtained by presenting  
34 false information concerning any fact material to the policy or by concealing, for the  
35 purpose of misleading another, information concerning any fact material to the policy,  
36 where the viator or the viator's agent intended to defraud the policy's issuer.  
37 'Recklessly,' as used in this subparagraph, means engaging in the conduct in conscious

1 and clearly unjustifiable disregard of a substantial likelihood of the existence of the  
2 relevant facts or risks, such disregard involving a gross deviation from acceptable  
3 standards of conduct; or

4 (E) Attempting to commit, assisting, aiding, or abetting in the commission of, or  
5 conspiracy to commit the acts or omissions specified in this paragraph.

6 (7) 'Person' means a natural person or a legal entity, including, but not limited to, an  
7 individual, partnership, limited liability company, association, trust, corporation, or other  
8 legal entity.

9 (8) 'Policy' means an individual or group policy, group certificate, contract, or  
10 arrangement of life insurance affecting the rights of a resident of this state or bearing a  
11 reasonable relation to this state, regardless of whether delivered or issued for delivery in  
12 this state.

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

22 (10) 'Special purpose entity' means a corporation, partnership, trust, limited liability  
23 company, or other similar entity formed solely to provide, either directly or indirectly,  
24 access to institutional capital markets for a financing entity or licensed viatical settlement  
25 provider.

26 (11) 'Terminally ill' means having an illness or sickness that can reasonably be expected  
27 to result in death in 24 months or less.

28 (12) 'Viatical settlement broker' means a person that, on behalf of a viator and for a fee,  
29 commission, or other valuable consideration, offers or attempts to negotiate viatical  
30 settlement contracts between a viator and one or more viatical settlement providers.

31 Notwithstanding the manner in which the viatical settlement broker is compensated, a  
32 viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty  
33 to the viator to act according to the viator's instructions and in the best interest of the  
34 viator. The term does not include an attorney, certified public accountant, or a financial  
35 planner accredited by a nationally recognized accreditation agency, who is retained to  
36 represent the viator and whose compensation is not paid, directly or indirectly by the  
37 viatical settlement provider or purchaser.

1 (13) 'Viatical settlement contract' means a written agreement establishing the terms under  
2 which compensation or anything of value will be paid, which compensation or value is  
3 less than the expected death benefit of the insurance policy or certificate, in return for the  
4 viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership  
5 of any portion of the insurance policy or certificate of insurance. A viatical settlement  
6 contract also includes a contract for a loan or other financing transaction with a viator  
7 secured primarily by an individual or group life insurance policy, other than a loan by a  
8 life insurance company pursuant to the terms of the life insurance contract, or a loan  
9 secured by the cash value of a policy. A viatical settlement contract includes an  
10 agreement with a viator to transfer ownership or change the beneficiary designation at a  
11 later date regardless of the date that compensation is paid to the viator.

12 (14) 'Viatical settlement investment agent' means a person who is an appointed or  
13 contracted agent of a licensed viatical settlement provider who solicits or arranges the  
14 funding for the purchase of a viatical settlement by a viatical settlement purchaser and  
15 who is acting on behalf of a viatical settlement provider. A viatical settlement investment  
16 agent shall not have any contact directly or indirectly with the viator or have knowledge  
17 of the identity of the viator. A viatical settlement investment agent is deemed to represent  
18 the viatical settlement provider of whom the viatical settlement investment agent is an  
19 appointed or contracted agent.

20 (15) 'Viatical settlement provider' means a person, other than a viator, that enters into or  
21 effectuates a viatical settlement contract. Viatical settlement provider does not include:

22 (A) A bank, savings bank, savings and loan association, credit union, or other licensed  
23 lending institution that takes an assignment of a life insurance policy as collateral for  
24 a loan;

25 (B) The issuer of a life insurance policy providing accelerated benefits pursuant to the  
26 contract;

27 (C) An authorized or eligible insurer that provides stop loss coverage to a viatical  
28 settlement provider, purchaser, financing entity, special purpose entity, or related  
29 provider trust;

30 (D) A natural person who enters into or effectuates no more than one agreement in a  
31 calendar year for the transfer of life insurance policies for any value less than the  
32 expected death benefit;

33 (E) A financing entity;

34 (F) A special purpose entity;

35 (G) A related provider trust;

36 (H) A viatical settlement purchaser; or

1 (I) An accredited investor or qualified institutional buyer as defined respectively in  
2 Regulation D, Rule 501, or Rule 144A of the Federal Securities Act of 1933, as  
3 amended, and who purchases a viaticated policy from a viatical settlement provider.

4 (16) 'Viatical settlement purchase agreement' means a contract or agreement, entered into  
5 by a viatical settlement purchaser, to which the viator is not a party, to purchase a life  
6 insurance policy or an interest in a life insurance policy, that is entered into for the  
7 purpose of deriving an economic benefit.

8 (17) 'Viatical settlement purchaser' means a person who gives a sum of money as  
9 consideration for a life insurance policy or an interest in the death benefits of a life  
10 insurance policy or a person who owns or acquires or is entitled to a beneficial interest  
11 in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance  
12 policy that has been or will be the subject of a viatical settlement contract, for the purpose  
13 of deriving an economic benefit. Viatical settlement purchaser does not include:

14 (A) A licensee under this chapter;

15 (B) An accredited investor or qualified institutional buyer as defined respectively in  
16 Regulation D, Rule 501, or Rule 144A of the Federal Securities Act of 1933, as  
17 amended;

18 (C) A financing entity;

19 (D) A special purpose entity; or

20 (E) A related provider trust.

21 (18) 'Viaticated policy' means a life insurance policy or certificate that has been acquired  
22 by a viatical settlement provider pursuant to a viatical settlement contract.

23 (19) 'Viator' means the owner of a life insurance policy or a certificate holder under a  
24 group policy who enters or seeks to enter into a viatical settlement contract. For the  
25 purposes of this chapter, a viator shall not be limited to an owner of a life insurance  
26 policy or a certificate holder under a group policy insuring the life of an individual with  
27 a terminal or chronic illness or condition except where specifically addressed. Viator does  
28 not include:

29 (A) A licensee under this Chapter;

30 (B) An accredited investor or qualified institutional buyer as defined respectively in  
31 Regulation D, Rule 501, or Rule 144A of the Federal Securities Act of 1933, as  
32 amended;

33 (C) A financing entity;

34 (D) A special purpose entity; or

35 (E) A related provider trust.

1 33-59-3.

2 (a)(1) A person shall not operate as a viatical settlement provider or viatical settlement  
3 broker without first obtaining a license from the Commissioner of the state of residence  
4 of the viator. If there is more than one viator on a single policy and the viators are  
5 residents of different states, the viatical settlement shall be governed by the law of the  
6 state in which the viator having the largest percentage ownership resides or, if the viators  
7 hold equal ownership, the state of residence of one viator agreed upon in writing by all  
8 viators.

9 (2) A person shall not operate as a viatical settlement investment agent without first  
10 obtaining a license from the Commissioner of the state of residence of the viatical  
11 settlement purchaser. If there is more than one purchaser of a single policy and the  
12 purchasers are residents of different states, the viatical settlement purchase agreement  
13 shall be governed by the law of the state in which the purchaser having the largest  
14 percentage ownership resides or, if the purchasers hold equal ownership, the state of  
15 residence of one purchaser agreed upon in writing by all purchasers.

16 (b) Application for a viatical settlement provider, viatical settlement broker, or viatical  
17 settlement investment agent license shall be made to the Commissioner by the applicant  
18 on a form prescribed by the Commissioner and such applications shall be accompanied by  
19 the fees specified in Code Section 33-8-1.

20 (c) Licenses may be renewed from year to year on the anniversary date upon payment of  
21 the annual renewal fees specified in Code Section 33-8-1. Failure to pay the fees by the  
22 renewal date results in expiration of the license.

23 (d) The applicant shall provide information on forms required by the Commissioner. The  
24 Commissioner shall have authority, at any time, to require the applicant to fully disclose  
25 the identity of all stockholders, partners, officers, members, and employees, and the  
26 Commissioner may, in the exercise of the Commissioner's discretion, refuse to issue a  
27 license in the name of a legal entity if not satisfied that any officer, employee, stockholder,  
28 partner, or member thereof who may materially influence the applicant's conduct meets the  
29 standards of this chapter.

30 (e) A license issued to a legal entity authorizes all partners, officers, members, and  
31 designated employees to act as viatical settlement providers, viatical settlement brokers,  
32 or viatical settlement investment agents, as applicable, under the license, and all those  
33 persons shall be named in the application and any supplements to the application.

34 (f) Upon the filing of an application and the payment of the license fee, the Commissioner  
35 shall make an investigation of each applicant and issue a license if the Commissioner finds  
36 that the applicant:

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

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

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

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

7 (5) If a viatical settlement provider or viatical settlement broker, has provided an  
8 antifraud plan that meets the requirements of subsection (g) of Code Section 33-59-12.

9 (g) The Commissioner shall not issue a license to a nonresident applicant, unless a written  
10 designation of an agent for service of process is filed and maintained with the  
11 Commissioner or the applicant has filed with the Commissioner, the applicant's written  
12 irrevocable consent that any action against the applicant may be commenced against the  
13 applicant by service of process on the Commissioner.

14 (h) A viatical settlement provider, viatical settlement broker, or viatical settlement  
15 investment agent shall provide to the Commissioner new or revised information about  
16 officers, holders of ten percent or more of the stock of the corporation, partners, directors,  
17 members, or designated employees within 30 days of the change.

18 33-59-4.

19 (a) The Commissioner may refuse to issue, suspend, revoke, or refuse to renew the license  
20 of a viatical settlement provider, viatical settlement broker, or viatical settlement  
21 investment agent if the Commissioner finds that:

22 (1) There was any material misrepresentation in the application for the license;

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

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

28 (4) The licensee or any officer, partner, member, or key management personnel has been  
29 found guilty of or has pleaded guilty or nolo contendere to any felony or to a  
30 misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of  
31 conviction has been entered by the court;

32 (5) The viatical settlement provider has entered into any viatical settlement contract that  
33 has not been approved pursuant to this chapter;

34 (6) The viatical settlement provider has failed to honor contractual obligations set out in  
35 a viatical settlement contract or a viatical settlement purchase agreement;

36 (7) The licensee no longer meets the requirements for initial licensure;

1 (8) The viatical settlement provider has assigned, transferred, or pledged a viaticated  
 2 policy to a person other than a viatical settlement provider licensed in this state; viatical  
 3 settlement purchaser; an accredited investor or qualified institutional buyer as defined  
 4 respectively in Regulation D, Rule 501, or Rule 144A of the Federal Securities Act of  
 5 1933, as amended; financing entity; special purpose entity; or related provider trust; or

6 (9) The licensee or any officer, partner, member, or key management personnel has  
 7 violated any provision of this chapter.

8 (b) If the Commissioner denies a license application or suspends, revokes or refuses to  
 9 renew the license of a viatical settlement provider, viatical settlement broker, or viatical  
 10 settlement investment agent, the Commissioner shall conduct a hearing in accordance with  
 11 Chapter 13 of Title 50.

12 33-59-5.

13 A person shall not use a viatical settlement contract or provide to a viator a disclosure  
 14 statement form in this state unless filed with and approved by the Commissioner. The  
 15 Commissioner shall disapprove a viatical settlement contract form or disclosure statement  
 16 form if, in the Commissioner's opinion, the contract or provisions contained therein are  
 17 unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to  
 18 the viator. At the Commissioner's discretion, the Commissioner may require the  
 19 submission of advertising material.

20 33-59-6.

21 (a) Each licensee shall file with the Commissioner on or before March 1 of each year an  
 22 annual statement containing such information as the Commissioner may prescribe by  
 23 regulation.

24 (b) Except as otherwise allowed or required by law, a viatical settlement provider, viatical  
 25 settlement broker, viatical settlement investment agent, insurance company, insurance  
 26 producer, information bureau, rating agency or company, or any other person with actual  
 27 knowledge of an insured's identity, shall not disclose that identity as an insured or the  
 28 insured's financial or medical information to any other person unless the disclosure:

29 (1) Is necessary to effect a viatical settlement between the viator and a viatical settlement  
 30 provider and the viator and insured have provided prior written consent to the disclosure;

31 (2) Is necessary to effect a viatical settlement purchase agreement between the viatical  
 32 settlement purchaser and a viatical settlement provider and the viator and insured have  
 33 provided prior written consent to the disclosure;

1 (3) Is provided in response to an investigation or examination by the Commissioner or  
 2 any other governmental officer or agency or pursuant to the requirements of Code Section  
 3 33-59-12(c);

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

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

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

12 (7) Is required to purchase stop loss coverage.

13 33-59-7.

14 (a)(1) The Commissioner may conduct an examination under this chapter of a licensee  
 15 as often as the Commissioner in his or her sole discretion deems appropriate.

16 (2) For purposes of completing an examination of a licensee under this chapter, the  
 17 Commissioner may examine or investigate any person, or the business of any person, in  
 18 so far as the examination or investigation is, in the sole discretion of the Commissioner,  
 19 necessary or material to the examination of the licensee.

20 (3) In lieu of an examination under this chapter of any foreign or alien licensee licensed  
 21 in this state, the Commissioner may, at the Commissioner's discretion, accept an  
 22 examination report on the licensee as prepared by the Commissioner for the licensee's  
 23 state of domicile or port-of-entry state.

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

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

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

30 (3) All other records and documents related to the requirements of this chapter.

31 This section does not relieve a person of the obligation to produce these documents to the  
 32 Commissioner after the retention period has expired if the person has retained the  
 33 documents. Records required to be retained by this section must be legible and complete  
 34 and may be retained in paper, photograph, microprocess, magnetic, mechanical, or  
 35 electronic media, or by any process that accurately reproduces or forms a durable medium  
 36 for the reproduction of a record.

1 (c)(1) Upon determining that an examination should be conducted, the Commissioner  
2 shall issue an examination warrant appointing one or more examiners to perform the  
3 examination and instructing them as to the scope of the examination. In conducting the  
4 examination, the examiner shall observe those guidelines and procedures set forth in the  
5 *Examiners' Handbook* adopted by the National Association of Insurance Commissioners  
6 (NAIC). The Commissioner may also employ such other guidelines or procedures as the  
7 Commissioner may deem appropriate.

8 (2) Every licensee or person from whom information is sought, its officers, directors, and  
9 agents shall provide to the examiners timely, convenient, and free access at all reasonable  
10 hours at its offices to all books, records, accounts, papers, documents, assets, and  
11 computer or other recordings relating to the property, assets, business, and affairs of the  
12 licensee being examined. The officers, directors, employees, and agents of the licensee  
13 or person shall facilitate the examination and aid in the examination so far as it is in their  
14 power to do so. The refusal of a licensee by its officers, directors, employees, or agents  
15 to submit to examination or to comply with any reasonable written request of the  
16 Commissioner shall be grounds for suspension or refusal of or nonrenewal of any license  
17 or authority held by the licensee to engage in the viatical settlement business or other  
18 business subject to the Commissioner's jurisdiction. Any proceedings for suspension,  
19 revocation, or refusal of any license or authority shall be conducted pursuant to Code  
20 Section 33-2-24.

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

27 (4) When making an examination under this chapter, the Commissioner may retain  
28 attorneys, appraisers, independent actuaries, independent certified public accountants, or  
29 other professionals and specialists as examiners, the reasonable cost of which shall be  
30 borne by the licensee that is the subject of the examination.

31 (5) Nothing contained in this chapter shall be construed to limit the Commissioner's  
32 authority to terminate or suspend an examination in order to pursue other legal or  
33 regulatory action pursuant to the insurance laws of this state. Findings of fact and  
34 conclusions made pursuant to any examination shall be prima-facie evidence in any legal  
35 or regulatory action.

36 (6) Nothing contained in this chapter shall be construed to limit the Commissioner's  
37 authority to use and, if appropriate, to make public any final or preliminary examination

1 report, any examiner or licensee workpapers or other documents, or any other information  
2 discovered or developed during the course of any examination in the furtherance of any  
3 legal or regulatory action which the Commissioner may, in his or her sole discretion,  
4 deem appropriate.

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

10 (2) No later than 60 days following completion of the examination, the examiner in  
11 charge shall file with the Commissioner a verified written report of examination under  
12 oath. Upon receipt of the verified report, the Commissioner shall transmit the report to  
13 the licensee examined together with a notice that shall afford the licensee examined a  
14 reasonable opportunity of not more than 30 days to make a written submission or rebuttal  
15 with respect to any matters contained in the examination report.

16 (3) In the event the Commissioner determines that regulatory action is appropriate as a  
17 result of an examination, the Commissioner may initiate any proceedings or actions  
18 provided by law.

19 (e)(1) Names and individual identification data for all viators shall be considered private  
20 and confidential information and shall not be disclosed by the Commissioner, unless  
21 required by law.

22 (2) Except as otherwise provided in this chapter, all examination reports, working papers,  
23 recorded information, documents, and copies thereof produced by, obtained by, or  
24 disclosed to the Commissioner or any other person in the course of an examination made  
25 under this chapter or in the course of analysis or investigation by the Commissioner of  
26 the financial condition or market conduct of a licensee shall be confidential by law and  
27 privileged, shall not be subject to the provisions of Article 4 of Chapter 18 of Title 50,  
28 shall not be subject to subpoena, and shall not be subject to discovery or admissible in  
29 evidence in any private civil action. The Commissioner is authorized to use the  
30 documents, materials, or other information in the furtherance of any regulatory or legal  
31 action brought as part of the Commissioner's official duties.

32 (3) Documents, materials, or other information, including, but not limited to, all working  
33 papers, and copies thereof, in the possession or control of the NAIC and its affiliates and  
34 subsidiaries shall be confidential by law and privileged, shall not be subject to subpoena,  
35 and shall not be subject to discovery or admissible in evidence in any private civil action  
36 if they are:

1 (A) Created, produced, or obtained by or disclosed to the NAIC and its affiliates and  
2 subsidiaries in the course of assisting an examination made under this chapter or  
3 assisting a commissioner in the analysis or investigation of the financial condition or  
4 market conduct of a licensee; or

5 (B) Disclosed to the NAIC and its affiliates and subsidiaries under paragraph(4) of this  
6 subsection by a commissioner.

7 For the purposes of paragraph (2) of this subsection, 'chapter' includes the law of another  
8 state or jurisdiction that is substantially similar to this chapter.

9 (4) Neither the Commissioner nor any person that received the documents, material, or  
10 other information while acting under the authority of the Commissioner, including the  
11 NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil  
12 action concerning any confidential documents, materials, or information subject to  
13 paragraph (1) of this subsection.

14 (5) In order to assist in the performance of the Commissioner's duties, the  
15 Commissioner:

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

23 (B) May receive documents, materials, communications, or information, including  
24 otherwise confidential and privileged documents, materials, or information, from the  
25 NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement  
26 officials of other foreign or domestic jurisdictions, and shall maintain as confidential  
27 or privileged any document, material, or information received with the notice or  
28 understanding that it is confidential or privileged under the laws of the jurisdiction that  
29 is the source of the document, material, or information; and

30 (C) May enter into agreements governing sharing and use of information consistent  
31 with this subsection.

32 (6) No waiver of any applicable privilege or claim of confidentiality in the documents,  
33 materials, or information shall occur as a result of disclosure to the Commissioner under  
34 this Code section or as a result of sharing as authorized in paragraph (4) of this  
35 subsection.

1 (7) A privilege established under the law of any state or jurisdiction that is substantially  
2 similar to the privilege established under this subsection shall be available and enforced  
3 in any proceeding in, and in any court of, this state.

4 (8) Nothing contained in this chapter shall prevent or be construed as prohibiting the  
5 Commissioner from disclosing the content of an examination report, preliminary  
6 examination report or results, or any matter relating thereto, to the commissioner of any  
7 other state or country, or to law enforcement officials of this or any other state or agency  
8 of the federal government at any time, or to the NAIC, so long as such agency or office  
9 receiving the report or matters relating thereto agrees in writing to hold it confidential and  
10 in a manner consistent with this chapter.

11 (f)(1) An examiner may not be appointed by the Commissioner if the examiner, either  
12 directly or indirectly, has a conflict of interest or is affiliated with the management of or  
13 owns a pecuniary interest in any person subject to examination under this chapter. This  
14 section shall not be construed to automatically preclude an examiner from being:

15 (A) A viator;

16 (B) An insured in a viaticated insurance policy; or

17 (C) A beneficiary in an insurance policy that is proposed to be viaticated.

18 (2) Notwithstanding the requirements of this clause, the Commissioner may retain from  
19 time to time, on an individual basis, qualified actuaries, certified public accountants, or  
20 other similar individuals who are independently practicing their professions, even though  
21 these persons may from time to time be similarly employed or retained by persons subject  
22 to examination under this chapter.

23 (g)(1) No cause of action shall arise nor shall any liability be imposed against the  
24 Commissioner, the Commissioner's authorized representatives, or any examiner  
25 appointed by the Commissioner for any statements made or conduct performed in good  
26 faith while carrying out the provisions of this chapter.

27 (2) No cause of action shall arise nor shall any liability be imposed against any person  
28 for the act of communicating or delivering information or data to the Commissioner or  
29 the Commissioner's authorized representative or examiner pursuant to an examination  
30 made under this chapter, if the act of communication or delivery was performed in good  
31 faith and without fraudulent intent or the intent to deceive. This paragraph does not  
32 abrogate or modify in any way any common law or statutory privilege or immunity  
33 heretofore enjoyed by any person identified in paragraph (1) of this subsection.

34 (3) A person identified in paragraph (1) or (2) of this subsection shall be entitled to an  
35 award of attorney's fees and costs if he or she is the prevailing party in a civil cause of  
36 action for libel, slander, or any other relevant tort arising out of activities in carrying out  
37 the provisions of this chapter and the party bringing the action was not substantially

1 justified in doing so. For purposes of this section a proceeding is 'substantially justified'  
2 if it had a reasonable basis in law or fact at the time that it was initiated.

3 (h) The Commissioner may investigate suspected fraudulent viatical settlement acts and  
4 persons engaged in the business of viatical settlements.

5 33-59-8.

6 (a) With each application for a viatical settlement, a viatical settlement provider, or viatical  
7 settlement broker shall provide the viator with at least the following disclosures no later  
8 than the time the application for the viatical settlement contract is signed by all parties.  
9 The disclosures shall be provided in a separate document that is signed by the viator and  
10 the viatical settlement provider or viatical settlement broker, and shall provide the  
11 following information:

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

14 (2) Some or all of the proceeds of the viatical settlement may be taxable under federal  
15 income tax and state franchise and income taxes and assistance should be sought from a  
16 professional tax advisor.

17 (3) Proceeds of the viatical settlement could be subject to the claims of creditors.

18 (4) Receipt of the proceeds of a viatical settlement may adversely affect the viator's  
19 eligibility for Medicaid or other government benefits or entitlements, and advice should  
20 be obtained from the appropriate government agencies.

21 (5) The viator has the right to rescind a viatical settlement contract for 15 calendar days  
22 after the receipt of the viatical settlement proceeds by the viator, as provided in  
23 subsection (c) of Code Section 33-59-9. If the insured dies during the rescission period,  
24 the settlement contract shall be deemed to have been rescinded, subject to repayment of  
25 all viatical settlement proceeds and any premiums, loans, and loan interest to the viatical  
26 settlement provider or purchaser.

27 (6) Funds will be sent to the viator within three business days after the viatical settlement  
28 provider has received the insurer or group administrator's acknowledgment that  
29 ownership of the policy or interest in the certificate has been transferred and the  
30 beneficiary has been designated.

31 (7) Entering into a viatical settlement contract may cause other rights or benefits,  
32 including conversion rights and waiver of premium benefits that may exist under the  
33 policy or certificate, to be forfeited by the viator. Assistance should be sought from a  
34 financial adviser.

1 (8) Disclosure to a viator shall include distribution of a brochure describing the process  
2 of viatical settlements. The NAIC's form for the brochure shall be used unless one is  
3 developed by the Commissioner.

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

13 (10) The insured may be contacted by either the viatical settlement provider or broker  
14 or its authorized representative for the purpose of determining the insured's health status.  
15 This contact is limited to once every three months if the insured has a life expectancy of  
16 more than one year, and no more than once per month if the insured has a life expectancy  
17 of one year or less.

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

23 (1) The affiliation, if any, between the viatical settlement provider and the issuer of the  
24 insurance policy to be viaticated.

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

26 (3) A viatical settlement broker shall disclose to a prospective viator the amount and  
27 method of calculating the broker's compensation. The term 'compensation' includes  
28 anything of value paid or given to a viatical settlement broker for the placement of a  
29 policy.

30 (4) If an insurance policy to be viaticated has been issued as a joint policy or involves  
31 family riders or any coverage of a life other than the insured under the policy to be  
32 viaticated, the viator shall be informed of the possible loss of coverage on the other lives  
33 under the policy and shall be advised to consult with his or her insurance producer or the  
34 insurer issuing the policy for advice on the proposed viatical settlement.

35 (5) The dollar amount of the current death benefit payable to the viatical settlement  
36 provider under the policy or certificate. If known, the viatical settlement provider shall  
37 also disclose the availability of any additional guaranteed insurance benefits, the dollar

1 amount of any accidental death and dismemberment benefits under the policy or  
2 certificate, and the viatical settlement provider's interest in those benefits.

3 (6) The name, business address, and telephone number of the independent third party  
4 escrow agent and the fact that the viator or owner may inspect or receive copies of the  
5 relevant escrow or trust agreements or documents.

6 (c) If the provider transfers ownership or changes the beneficiary of the insurance policy,  
7 the provider shall communicate the change in ownership or beneficiary to the insured  
8 within 20 days after the change.

9 (d) A viatical settlement provider or its viatical settlement investment agent shall provide  
10 the viatical settlement purchaser with at least the following disclosures prior to the date the  
11 viatical settlement purchase agreement is signed by all parties. The disclosures shall be  
12 conspicuously displayed in any viatical purchase contract or in a separate document signed  
13 by the viatical settlement purchaser and viatical settlement provider or viatical settlement  
14 investment agent and shall make the following disclosure to the viatical settlement  
15 purchaser:

16 (1) The purchaser will receive no returns, dividends, or interest until the insured dies.

17 (2) The actual annual rate of return on a viatical settlement contract is dependent upon  
18 an accurate projection of the insured's life expectancy and the actual date of the insured's  
19 death. An annual 'guaranteed' rate of return is not determinable.

20 (3) The viaticated life insurance contract should not be considered a liquid purchase  
21 since it is impossible to predict the exact timing of its maturity and the funds probably are  
22 not available until the death of the insured. There is no established secondary market for  
23 resale of these products by the purchaser.

24 (4) The purchaser may lose all benefits or may receive substantially reduced benefits if  
25 the insurer goes out of business during the term of the viatical investment.

26 (5) The purchaser is responsible for payment of the insurance premium or other costs  
27 related to the policy, if required by the terms of the viatical purchase agreement. These  
28 payments may reduce the purchaser's return. If a party other than the purchaser is  
29 responsible for the payment, the name and address of that party also shall be disclosed.

30 (6) The purchaser is responsible for payment of the insurance premiums or other costs  
31 related to the policy if the insured returns to health. The amount of such premiums, if  
32 applicable, shall be disclosed.

33 (7) The name and address of any person providing escrow services and the relationship  
34 to the broker shall be disclosed.

35 (8) The amount of any trust fees or other expenses to be charged to the viatical  
36 settlement purchaser shall be disclosed.

1 (9) State whether the purchaser is entitled to a refund of all or part of his or her  
2 investment under the settlement contract if the policy is later determined to be null and  
3 void.

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

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

13 (12) Whether the purchaser will be the owner of the policy in addition to being the  
14 beneficiary and, if the purchaser is the beneficiary only and not also the owner, the  
15 special risks associated with that status including, but not limited to, the risk that the  
16 beneficiary may be changed or the premium may not be paid shall be disclosed.

17 (13) The experience and qualifications of the person who determines the life expectancy  
18 of the insured, such as, in-house staff, independent physicians, and specialty firms that  
19 weigh medical and actuarial data; the information this projection is based on; and the  
20 relationship of the projection maker to the viatical settlement provider, if any, shall be  
21 disclosed.

22 (14) Disclosure to an investor shall include the distribution of a brochure describing the  
23 process of investment in viatical settlements. The NAIC's form for the brochure shall be  
24 used unless one is developed by the Commissioner.

25 (e) A viatical settlement provider or its viatical settlement investment agent shall provide  
26 the viatical settlement purchaser with at least the following disclosures no later than at the  
27 time of the assignment, transfer, or sale of all or a portion of an insurance policy. The  
28 disclosures shall be contained in a document signed by the viatical settlement purchaser  
29 and viatical settlement provider or viatical settlement investment agent and shall make the  
30 following disclosures to the viatical settlement purchaser:

31 (1) All the life expectancy certifications obtained by the provider in the process of  
32 determining the price paid to the viator.

33 (2) Whether premium payments or other costs related to the policy have been escrowed  
34 and, if escrowed, the date upon which the escrowed funds will be depleted and whether  
35 the purchaser will be responsible for payment of premiums thereafter and, if so, the  
36 amount of the premiums.

1 (3) Whether premium payments or other costs related to the policy have been waived  
2 and, if waived, whether the investor will be responsible for payment of the premiums if  
3 the insurer that wrote the policy terminates the waiver after purchase and the amount of  
4 those premiums.

5 (4) The type of policy offered or sold, such as, whole life, term life, universal life, or a  
6 group policy certificate; any additional benefits contained in the policy; and the current  
7 status of the policy.

8 (5) If the policy is term insurance, the special risks associated with term insurance  
9 including, but not limited to, the purchaser's responsibility for additional premiums if the  
10 viator continues the term policy at the end of the current term.

11 (6) Whether the policy is contestable.

12 (7) Whether the insurer that wrote the policy has any additional rights that could  
13 negatively affect or extinguish the purchaser's rights under the viatical settlement  
14 contract, what these rights are, and under what conditions these rights are activated.

15 (8) The name and address of the person responsible for monitoring the insured's  
16 condition. A description of how often the monitoring of the insured's condition is done,  
17 how the date of death is determined, and how and when this information will be  
18 transmitted to the purchaser.

19 (f) The viatical settlement purchase agreement is voidable by the purchaser at any time  
20 within three days after the disclosures mandated by subsections (d) and (e) of this Code  
21 section are received by the purchaser.

22 33-59-9.

23 (a)(1) A viatical settlement provider entering into a viatical settlement contract shall first  
24 obtain:

25 (A) If the viator is the insured, a written statement from a licensed attending physician  
26 that the viator is of sound mind and under no constraint or undue influence to enter into  
27 a viatical settlement contract; and

28 (B) A document in which the insured consents to the release of his or her medical  
29 records to a viatical settlement provider, viatical settlement broker, and the insurance  
30 company that issued the life insurance policy covering the life of the insured.

31 (2) Within 20 days after a viator executes documents necessary to transfer any rights  
32 under an insurance policy or within 20 days of entering any agreement, option, promise,  
33 or any other form of understanding, expressed or implied, to viaticate the policy, the  
34 viatical settlement provider shall give written notice to the insurer that issued that  
35 insurance policy that the policy has or will become a viaticated policy. The notice shall  
36 be accompanied by the documents required by paragraph (3) of this subsection.

1 (3) The viatical provider shall deliver a copy of the medical release required under  
2 subparagraph (1)(B) of this subsection, a copy of the viator's application for the viatical  
3 settlement contract, the notice required under paragraph (2) of this subsection, and a  
4 request for verification of coverage to the insurer that issued the life policy that is the  
5 subject of the viatical transaction. The NAIC's form for verification shall be used unless  
6 standards for verification are developed by the Commissioner.

7 (4) The insurer shall respond to a request for verification of coverage submitted on an  
8 approved form by a viatical settlement provider within 30 calendar days of the date the  
9 request is received and shall indicate whether, based on the medical evidence and  
10 documents provided, the insurer intends to pursue an investigation at this time regarding  
11 the validity of the insurance contract.

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

21 (6) If a viatical settlement broker performs any of these activities required of the viatical  
22 settlement provider, the provider is deemed to have fulfilled the requirements of this  
23 Code section.

24 (b) All medical information solicited or obtained by any licensee shall be subject to the  
25 applicable provisions of state law relating to confidentiality of medical information.

26 (c) All viatical settlement contracts entered into in this state shall provide the viator with  
27 an unconditional right to rescind the contract for at least 15 calendar days from the receipt  
28 of the viatical settlement proceeds. If the insured dies during the rescission period, the  
29 viatical settlement contract shall be deemed to have been rescinded, subject to repayment  
30 to the viatical settlement provider or purchaser of all viatical settlement proceeds and any  
31 premiums, loans, and loan interest that have been paid by the viatical settlement provider  
32 or purchaser.

33 (d) The purchaser shall have the right to rescind a viatical settlement contract within three  
34 days after the disclosures mandated by subsections (d) and (e) of Code Section 33-59-8 are  
35 received by the purchaser.

36 (e) The viatical settlement provider shall instruct the viator to send the executed  
37 documents required to effect the change in ownership, assignment, or change in beneficiary

1 directly to the independent escrow agent. Within three business days after the date the  
2 escrow agent receives the document or from the date the viatical settlement provider  
3 receives the documents, if the viator erroneously provides the documents directly to the  
4 provider, the provider shall pay or transfer the proceeds of the viatical settlement into an  
5 escrow or trust account maintained in a state or federally chartered financial institution  
6 whose deposits are insured by the Federal Deposit Insurance Corporation. Upon payment  
7 of the settlement proceeds into the escrow account, the escrow agent shall deliver the  
8 original change in ownership, assignment, or change in beneficiary forms to the viatical  
9 settlement provider or related provider trust. Upon the escrow agent's receipt of the  
10 acknowledgment of the properly completed transfer of ownership, assignment, or  
11 designation of beneficiary from the insurance company, the escrow agent shall pay the  
12 settlement proceeds to the viator.

13 (f) Failure to tender consideration to the viator for the viatical settlement contract within  
14 the time disclosed pursuant to paragraph (6) of subsection (a) of Code Section 33-59-8  
15 renders the viatical settlement contract voidable by the viator for lack of consideration until  
16 the time consideration is tendered to and accepted by the viator.

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

28 33-59-10.

29 It is a violation of this chapter for any person to enter into a viatical settlement contract  
30 within a two-year period commencing with the date of issuance of the insurance policy or  
31 certificate unless the viator certifies to the viatical settlement provider that one or more of  
32 the following conditions have been met within the two-year period:

33 (1) The policy was issued upon the viator's exercise of conversion rights arising out of  
34 a group or individual policy, provided the total of the time covered under the conversion  
35 policy plus the time covered under the prior policy is at least 24 months. The time  
36 covered under a group policy shall be calculated without regard to any change in

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

3 (2) The viator is a charitable organization exempt from taxation under 26 U.S.C. § 501  
4 (c)(3);

5 (3) The viator is not a natural person;

6 (4)(A) The viator submits independent evidence to the viatical settlement provider that  
7 one or more of the following conditions have been met within the two-year period:

8 (i) The viator or insured is terminally or chronically ill;

9 (ii) The viator's spouse dies;

10 (iii) The viator divorces his or her spouse;

11 (iv) The viator retires from full-time employment;

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

14 (vi) The viator was the insured's employer at the time the policy or certificate was  
15 issued and the employment relationship terminated;

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

20 (viii) The viator experiences a significant decrease in income that is unexpected and  
21 that impairs the viator's reasonable ability to pay the policy premium; or

22 (ix) The viator or insured disposes of his or her ownership interests in a closely held  
23 corporation.

24 (B) Copies of the independent evidence described in paragraph (1) of this subsection  
25 and documents required by subsection (a) of Code Section 33-59-9 shall be submitted  
26 to the insurer when the viatical settlement provider submits a request to the insurer for  
27 verification of coverage. The copies shall be accompanied by a letter of attestation from  
28 the viatical settlement provider that the copies are true and correct copies of the  
29 documents received by the viatical settlement provider.

30 (e) If the viatical settlement provider submits to the insurer a copy of the owner or  
31 insured's certification described in subsection (d) of this Code section when the provider  
32 submits a request to the insurer to effect the transfer of the policy or certificate to the  
33 viatical settlement provider, the copy shall be deemed to conclusively establish that the  
34 viatical settlement contract satisfies the requirements of this Code section and the insurer  
35 shall timely respond to the request.

1 33-59-11.

2 (a) The purpose of this Code section is to provide prospective viators and viatical  
3 settlement purchasers with clear and unambiguous statements in the advertisement of  
4 viatical settlements and to assure the clear, truthful, and adequate disclosure of the benefits,  
5 risks, limitations, and exclusions of any viatical settlement contract or viatical settlement  
6 purchase agreement bought or sold. This purpose is intended to be accomplished by the  
7 establishment of guidelines and standards of permissible and impermissible conduct in the  
8 advertising of viatical settlements to assure that product descriptions are presented in a  
9 manner that prevents unfair, deceptive, or misleading advertising and is conducive to  
10 accurate presentation and description of viatical settlements through the advertising media  
11 and material used by viatical settlement licensees.

12 (b) This Code section shall apply to any advertising of viatical settlement contracts,  
13 viatical purchase agreements, or related products or services intended for dissemination in  
14 this state including Internet advertising viewed by persons located in this state. Where  
15 disclosure requirements are established pursuant to federal regulation, this Code section  
16 shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever  
17 possible.

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

27 (d) Advertisements shall be truthful and not misleading in fact or by implication. The form  
28 and content of an advertisement of a viatical settlement contract or viatical settlement  
29 purchase agreement, product, or service shall be sufficiently complete and clear so as to  
30 avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether  
31 an advertisement has the capacity or tendency to mislead or deceive shall be determined  
32 by the Commissioner from the overall impression that the advertisement may be reasonably  
33 expected to create upon a person of average education or intelligence within the segment  
34 of the public to which it is directed.

35 (e) Certain viatical settlement advertisements are deemed false and misleading on their  
36 face and are prohibited. False and misleading viatical settlement advertisements include,  
37 but are not limited to, the following representations:

1 (1) 'Guaranteed,' 'fully secured,' '100 percent secured,' 'fully insured,' 'secure,' 'safe,'  
2 'backed by rated insurance companies,' 'backed by federal law,' 'backed by state law,' or  
3 'state guaranty funds,' or similar representations;

4 (2) 'No risk,' 'minimal risk,' 'low risk,' 'no speculation,' 'no fluctuation,' or similar  
5 representations;

6 (3) 'Qualified or approved for individual retirement accounts (IRAs), Roth IRAs, 401(k)  
7 plans, simplified employee pensions (SEP), 403(b), Keogh plans, TSA, other retirement  
8 account rollovers,' 'tax deferred,' or similar representations;

9 (4) Utilization of the word 'guaranteed' to describe the fixed return, annual return,  
10 principal, earnings, profits, investment, or similar representations;

11 (5) 'No sales charges or fees' or similar representations;

12 (6) 'High yield,' 'superior return,' 'excellent return,' 'high return,' 'quick profit,' or similar  
13 representations;

14 (7) Purported favorable representations or testimonials about the benefits of viatical  
15 settlement contracts or viatical settlement purchase agreements as an investment, taken  
16 out of context from newspapers, trade papers, journals, radio, and television programs,  
17 and all other forms of print and electronic media.

18 (f)(1) The information required to be disclosed under this Code section shall not be  
19 minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with  
20 the text of the advertisement so as to be confusing or misleading.

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

30 (3) An advertisement shall not use the name or title of a life insurance company or a life  
31 insurance policy unless the advertisement has been approved by the insurer.

32 (4) An advertisement shall not represent that premium payments will not be required to  
33 be paid on the life insurance policy that is the subject of a viatical settlement contract, or  
34 viatical settlement purchase agreement in order to maintain that policy unless that is the  
35 fact.

1 (5) An advertisement shall not state or imply that interest charged on an accelerated  
2 death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or  
3 improper practice.

4 (6) The words 'free,' 'no cost,' 'without cost,' 'no additional cost,' 'at no extra cost,' or  
5 words of similar import shall not be used with respect to any benefit or service unless  
6 true. An advertisement may specify the charge for a benefit or a service or may state that  
7 a charge is included in the payment or use other appropriate language.

8 (7) Testimonials, appraisals, or analysis used in advertisements must be genuine;  
9 represent the current opinion of the author; be applicable to the viatical settlement  
10 contract or viatical settlement purchase agreement, product, or service advertised, if any;  
11 and be accurately reproduced with sufficient completeness to avoid misleading or  
12 deceiving prospective viators or purchasers as to the nature or scope of the testimonials,  
13 appraisal, analysis, or endorsement. In using testimonials, appraisals, or analysis, the  
14 viatical settlement licensee makes as its own all the statements contained therein, and the  
15 statements are subject to all the provisions of this Code section. If the individual making  
16 a testimonial, appraisal, analysis, or an endorsement has a financial interest in the viatical  
17 settlement provider or related entity as a stockholder, director, officer, employee, or  
18 otherwise, or receives any benefit directly or indirectly other than required union scale  
19 wages, that fact shall be prominently disclosed in the advertisement. An advertisement  
20 shall not state or imply that a viatical settlement contract or viatical settlement purchase  
21 agreement, benefit, or service has been approved or endorsed by a group of individuals,  
22 society, association, or other organization unless that is the fact and unless any  
23 relationship between an organization and the viatical settlement licensee is disclosed. If  
24 the entity making the endorsement or testimonial is owned, controlled, or managed by the  
25 viatical settlement licensee or receives any payment or other consideration from the  
26 viatical settlement licensee for making an endorsement or testimonial that fact shall be  
27 disclosed in the advertisement. When an endorsement refers to benefits received under  
28 a viatical settlement contract or viatical settlement purchase agreement all pertinent  
29 information shall be retained for a period of five years after its use.

30 (g) An advertisement shall not contain statistical information unless it accurately reflects  
31 recent and relevant facts. The source of all statistics used in an advertisement shall be  
32 identified.

33 (h) An advertisement shall not disparage insurers, viatical settlement providers, viatical  
34 settlement brokers, viatical settlement investment agents, insurance producers, policies,  
35 services, or methods of marketing.

36 (i) The name of the viatical settlement licensee shall be clearly identified in all  
37 advertisements about the licensee or its viatical settlement contract or viatical settlement

1 purchase agreements, products or services, and if any specific viatical settlement contract  
2 or viatical settlement purchase agreement is advertised, the viatical settlement contract or  
3 viatical settlement purchase agreement shall be identified either by form number or some  
4 other appropriate description. If an application is part of the advertisement, the name of  
5 the viatical settlement provider shall be shown on the application.

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

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

20 (l) An advertisement may state that a viatical settlement licensee is licensed in the state  
21 where the advertisement appears, provided it does not exaggerate that fact or suggest or  
22 imply that competing viatical settlement licensee may not be so licensed. The  
23 advertisement may ask the audience to consult the licensee's web site or contact the  
24 department of insurance to find out if the state requires licensing and, if so, whether the  
25 viatical settlement provider, viatical settlement broker, or viatical settlement investment  
26 agent is licensed.

27 (m) An advertisement shall not create the impression that the viatical settlement provider,  
28 its financial condition or status, the payment of its claims or the merits, desirability, or  
29 advisability of its viatical settlement contracts or viatical settlement purchase agreement  
30 forms are recommended or endorsed by any government entity.

31 (n) The name of the actual licensee shall be stated in all of its advertisements. An  
32 advertisement shall not use a trade name, any group designation, name of any affiliate, or  
33 controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner  
34 that would have the capacity or tendency to mislead or deceive as to the true identity of the  
35 actual licensee or create the false impression that an affiliate or controlling entity would  
36 have any responsibility for the financial obligation of the licensee.

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

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

4 (2) The merits, desirability, or advisability of any viatical settlement contract or viatical  
5 settlement purchase agreement;

6 (3) Any viatical settlement contract or viatical settlement purchase agreement; or

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

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

11 (q) If the advertising emphasizes the dollar amounts available to viators, the advertising  
12 shall disclose the average purchase price as a percent of face value obtained by viators  
13 contracting with the licensee during the past six months.

14 33-59-12.

15 (a)(1) A person shall not commit a fraudulent viatical settlement act.

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

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

22 (b)(1) Viatical settlements contracts and purchase agreement forms and applications for  
23 viatical settlements, regardless of the form of transmission, shall contain the following  
24 statement or a substantially similar statement:

25 'Any person who knowingly presents false information in an application for insurance  
26 or viatical settlement contract or a viatical settlement purchase agreement is guilty of  
27 a crime and may be subject to fines and confinement in prison.'

28 (2) The lack of a statement as required in paragraph (1) of this subsection does not  
29 constitute a defense in any prosecution for a fraudulent viatical settlement act.

30 (c)(1) Any person engaged in the business of viatical settlements having knowledge or  
31 a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been  
32 committed shall provide to the Commissioner the information required by, and in a  
33 manner prescribed by, the Commissioner.

34 (2) Any other person having knowledge or a reasonable belief that a fraudulent viatical  
35 settlement act is being, will be, or has been committed may provide to the Commissioner  
36 the information required by, and in a manner prescribed by, the Commissioner.

1 (d)(1) No civil liability shall be imposed on and no cause of action shall arise from a  
2 person's furnishing information concerning suspected, anticipated, or completed  
3 fraudulent viatical settlement acts or suspected or completed fraudulent insurance acts,  
4 if the information is provided to or received from:

5 (A) The Commissioner or the Commissioner's employees, agents, or representatives;

6 (B) Federal, state, or local law enforcement or regulatory officials or their employees,  
7 agents, or representatives;

8 (C) A person involved in the prevention and detection of fraudulent viatical settlement  
9 acts or that person's agents, employees, or representatives;

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

15 (E) The life insurer that issued the life insurance policy covering the life of the insured.

16 (2) Paragraph (1) of this subsection shall not apply to statements made with actual  
17 malice. In an action brought against a person for filing a report or furnishing other  
18 information concerning a fraudulent viatical settlement act or a fraudulent insurance act,  
19 the party bringing the action shall plead specifically any allegation that paragraph (1) of  
20 this subsection does not apply because the person filing the report or furnishing the  
21 information did so with actual malice.

22 (3) A person identified in paragraph (1) of this subsection shall be entitled to an award  
23 of attorney's fees and costs if he or she is the prevailing party in a civil cause of action  
24 for libel, slander, or any other relevant tort arising out of activities in carrying out the  
25 provisions of this chapter and the party bringing the action was not substantially justified  
26 in doing so. For purposes of this Code section a proceeding is 'substantially justified' if  
27 it had a reasonable basis in law or fact at the time that it was initiated.

28 (4) This Code section does not abrogate or modify common law or statutory privileges  
29 or immunities enjoyed by a person described in paragraph (1) of this subsection.

30 (e)(1) The documents and evidence provided pursuant to subsection (d) of this Code  
31 section or obtained by the Commissioner in an investigation of suspected or actual  
32 fraudulent viatical settlement acts shall be privileged and confidential and shall not be a  
33 public record and shall not be subject to discovery or subpoena in a civil or criminal  
34 action.

35 (2) Paragraph (1) of this subsection does not prohibit release by the Commissioner of  
36 documents and evidence obtained in an investigation of suspected or actual fraudulent  
37 viatical settlement acts:

- 1 (A) In administrative or judicial proceedings to enforce laws administered by the  
2 Commissioner;
- 3 (B) To federal, state, or local law enforcement or regulatory agencies, to an  
4 organization established for the purpose of detecting and preventing fraudulent viatical  
5 settlement acts or to the NAIC; or
- 6 (C) At the discretion of the Commissioner, to a person in the business of viatical  
7 settlements that is aggrieved by a fraudulent viatical settlement act.
- 8 (3) Release of documents and evidence under paragraph (2) of this subsection does not  
9 abrogate or modify the privilege granted in paragraph (1) of this subsection.
- 10 (f) This chapter shall not:
- 11 (1) Preempt the authority or relieve the duty of other law enforcement or regulatory  
12 agencies to investigate, examine, and prosecute suspected violations of law;
- 13 (2) Prevent or prohibit a person from disclosing voluntarily information concerning  
14 viatical settlement fraud to a law enforcement or regulatory agency other than the  
15 insurance department; or
- 16 (3) Limit the powers granted elsewhere by the laws of this state to the Commissioner or  
17 an insurance fraud unit to investigate and examine possible violations of law and to take  
18 appropriate action against wrongdoers.
- 19 (g) Viatical settlement providers and viatical settlement brokers shall have in place  
20 antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent  
21 viatical settlement acts. At the discretion of the Commissioner, the Commissioner may  
22 order, or a licensee may request and the Commissioner may grant, such modifications of  
23 the following required initiatives as necessary to ensure an effective antifraud program. The  
24 modifications may be more or less restrictive than the required initiatives so long as the  
25 modifications may reasonably be expected to accomplish the purpose of this section.  
26 Antifraud initiatives shall include:
- 27 (1) Fraud investigators, who may be viatical settlement provider or viatical settlement  
28 broker employees or independent contractors; and
- 29 (2) An antifraud plan, which shall be submitted to the Commissioner. The antifraud plan  
30 shall include, but not be limited to:
- 31 (A) A description of the procedures for detecting and investigating possible fraudulent  
32 viatical settlement acts and procedures for resolving material inconsistencies between  
33 medical records and insurance applications;
- 34 (B) A description of the procedures for reporting possible fraudulent viatical settlement  
35 acts to the Commissioner;
- 36 (C) A description of the plan for antifraud education and training of underwriters and  
37 other personnel; and

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

5 (3) Antifraud plans submitted to the Commissioner shall be privileged and confidential  
6 and shall not be a public record and shall not be subject to discovery or subpoena in a  
7 civil or criminal action.

8 33-59-13.

9 (a) In addition to the penalties and other enforcement provisions of this chapter, if any  
10 person violates this chapter or any regulation implementing this chapter, the Commissioner  
11 may seek an injunction in a court of competent jurisdiction and may apply for temporary  
12 and permanent orders that the Commissioner determines are necessary to restrain the  
13 person from committing the violation.

14 (b) Any person damaged by the acts of a person in violation of this chapter may bring a  
15 civil action against the person committing the violation in a court of competent jurisdiction.

16 (c) A violation of this chapter attendant to the execution of a viatical settlement purchase  
17 agreement renders the viatical settlement purchase agreement voidable and subject to  
18 rescission by the viatical settlement purchaser, upon return of the policy received to the  
19 viatical settlement provider. Suit for rescission may be brought in a court of competent  
20 jurisdiction or where the alleged violator resides or has a principal place of business or  
21 where the alleged violation occurred.

22 (d) The Commissioner may issue, in accordance with Code Section 33-2-24, a cease and  
23 desist order upon a person that violates any provision of this chapter, any regulation or  
24 order adopted by the Commissioner, or any written agreement entered into with the  
25 Commissioner.

26 (e) When the Commissioner finds that an activity in violation of this chapter presents an  
27 immediate danger to the public that requires an immediate final order, the Commissioner  
28 may issue an emergency cease and desist order reciting with particularity the facts  
29 underlying the findings. The emergency cease and desist order is effective immediately  
30 upon service of a copy of the order on the respondent and remains effective for 90 days.  
31 If the Commissioner begins nonemergency cease and desist proceedings, the emergency  
32 cease and desist order remains effective, absent an order by a court of competent  
33 jurisdiction pursuant to Code Section 33-2-26.

34 (f) In addition to the penalties and other enforcement provisions of this chapter, any person  
35 who violates this chapter is subject to civil penalties of up to \$25,000.00 per violation.  
36 Imposition of civil penalties shall be pursuant to an order of the Commissioner issued

1 under Chapter 2 of this title. The Commissioner's order may require a person found to be  
 2 in violation of this chapter to make restitution to persons aggrieved by violations of this  
 3 chapter.

4 (g) A person convicted of a violation of this chapter by a court of competent jurisdiction  
 5 may be sentenced in accordance with paragraphs (1), (2), (3), or (4) based on the greater  
 6 of: (i) the value of property, services, or other benefit wrongfully obtained or attempted to  
 7 obtain, or (ii) the aggregate economic loss suffered by any person as a result of the  
 8 violation. A person convicted of a fraudulent viatical settlement act must be ordered to pay  
 9 restitution to persons aggrieved by the fraudulent viatical settlement act. Restitution must  
 10 be ordered in addition to a fine or imprisonment but not in lieu of a fine or imprisonment.

11 A person convicted of a violation of this chapter shall be sentenced to:

12 (1) Imprisonment for not less than one nor more than 20 years or to payment of a fine  
 13 of not more than \$100,000.00, or both, if the value of viatical settlement contract is more  
 14 than \$35,000.00;

15 (2) Imprisonment for not less than one nor more than ten years or to payment of a fine  
 16 of not more than \$20,000.00, or both, if the value of viatical settlement contract is more  
 17 than \$2,500.00 but not more than \$35,000.00;

18 (3) Imprisonment for not less than one nor more than five years or to payment of a fine  
 19 of not more than \$10,000.00, or both, if the value of viatical settlement contract is more  
 20 than \$500.00 but not more than \$2,500.00; or

21 (4) Imprisonment for not less than one year nor more than three years or to payment of  
 22 a fine of not more than \$3,000.00, or both, if the value of viatical settlement contract is  
 23 \$500.00 or less.

24 In any prosecution under this Code section under paragraphs (1), (2), (3), and (4), the value  
 25 of the viatical settlement contracts within any six-month period may be aggregated and the  
 26 defendant charged accordingly in applying the provisions of this Code section; provided  
 27 that when two or more offenses are committed by the same person in two or more counties,  
 28 the accused may be prosecuted in any county in which one of the offenses was committed  
 29 for all of the offenses aggregated under this Code section. The statute of limitations shall  
 30 not begin to run until the insurance company or law enforcement agency is aware of the  
 31 fraud, but in no event may the prosecution be commenced later than seven years after the  
 32 act has occurred.

33 33-59-14.

34 A violation of this chapter shall be considered an unfair trade practice under Chapter 6 of  
 35 this title and subject to the penalties contained in that chapter. Such penalties shall be  
 36 cumulative and in addition to the penalties contained in this chapter.

1 33-59-15.

2 The Commissioner shall have the authority to:

3 (1) Promulgate regulations implementing this chapter;

4 (2) Establish standards for evaluating reasonableness of payments under viatical  
5 settlement contracts for persons who are terminally or chronically ill. This authority  
6 includes, but is not limited to, regulation of discount rates used to determine the amount  
7 paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life  
8 insurance policy;

9 (3) Establish appropriate licensing requirements, fees, and standards for continued  
10 licensure for viatical settlement providers, brokers, and investment agents;

11 (4) Require a bond or other mechanism for financial accountability for viatical settlement  
12 providers and brokers; and

13 (5) Adopt rules governing the relationship and responsibilities of both insurers and  
14 viatical settlement providers, viatical settlement brokers, and viatical settlement  
15 investment agents during the viatication of a life insurance policy or certificate."

16 **SECTION 2.**

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

20 **SECTION 3.**

21 All laws and parts of laws in conflict with this Act are repealed.