

## Substitute for HOUSE BILL No. 2306

By Committee on Insurance

2-21

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AN ACT relating to insurance companies; relating to viatical settlements; repealing K.S.A. 40-2,171, 40-2,172, 40-2,173, 40-2,174, 40-2,175, 40-2,176, 40-2,177, 40-2,178, 40-2,179, 40-2,180, 40-2,181, 40-2,182 and 40-2,183.

*Be it enacted by the Legislature of the State of Kansas:*

Section 1. Sections 1 through 16 inclusive, and amendments thereto, may be cited as the viatical settlements act of 2001.

Sec. 2. As used in this act, the following words and phrases shall have the meanings ascribed to them in this section:

(a) "Advertising" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the internet or similar communications media, including film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to sell a life insurance policy pursuant to a viatical settlement contract.

(b) "Business of viatical settlements" means an activity involved in, but not limited to, offering, soliciting, negotiating, procuring, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging or hypothecating any viatical settlement contract.

(c) "Chronically ill" means:

(1) Being unable to perform at least two activities of daily living including eating, toileting, transferring, bathing, dressing, continence or such other activity as determined by rules and regulations adopted by the commissioner; or

(2) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

(d) "Commissioner" means the commissioner of insurance.

(e) "Financing entity" means any underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer or any entity that has a direct ownership in a policy or certificate which is the subject of a viatical settlement contract, but:

1 (1) Whose principal activity related to the transaction is providing  
2 funds to effect the viatical settlement or purchase of one or more viati-  
3 cated policies; and

4 (2) who has an agreement in writing with one or more licensed vi-  
5 atical settlement providers to finance the acquisition of viatical settlement  
6 contracts.

7 Financing entity shall not include any nonaccredited investor or viatical  
8 settlement purchaser.

9 (f) "Fraudulent viatical settlement act" means and includes:

10 (1) Any act or omission committed by any person who, knowingly or  
11 with intent to defraud, for the purpose of depriving another of property  
12 or for pecuniary gain, commits, or permits such person's employees or  
13 agents to engage in acts including:

14 (A) Presenting, causing to be presented or preparing with knowledge  
15 or belief that it will be presented to or by a viatical settlement provider,  
16 viatical settlement broker, viatical settlement purchaser, financing entity,  
17 insurer, insurance producer or any other person, false material informa-  
18 tion, or concealing material information, as part of, in support of or con-  
19 cerning a fact material to one or more of the following:

20 (i) An application for the issuance of a viatical settlement contract or  
21 insurance policy;

22 (ii) the underwriting of a viatical settlement contract or insurance  
23 policy;

24 (iii) a claim for payment or benefit pursuant to a viatical settlement  
25 contract or insurance policy;

26 (iv) premiums paid on an insurance policy;

27 (v) payments and changes in ownership or beneficiary made in ac-  
28 cordance with the terms of a viatical settlement contract or insurance  
29 policy;

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

31 (vii) in the solicitation, offer, effectuation or sale of a viatical settle-  
32 ment contract or insurance policy;

33 (viii) the issuance of written evidence of viatical settlement contract  
34 or insurance; or

35 (ix) a financing transaction.

36 (B) Employing any device, scheme or artifice to defraud related to  
37 viaticated policies;

38 (2) any act done or committed in the furtherance of a fraud or to  
39 prevent the detection of a fraud any person commits or permits its em-  
40 ployees or its agents to:

41 (A) Remove, conceal, alter, destroy or sequester from the commis-  
42 sioner the assets or records of a licensee or other person engaged in the  
43 business of viatical settlements;

1 (B) misrepresent or conceal the financial condition of a licensee, fi-  
2 nancing entity, insurer or other person;

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

6 (D) file with the commissioner or the chief insurance regulatory of-  
7 ficial of another jurisdiction a document containing false information or  
8 otherwise conceals information about a material fact from the  
9 commissioner;

10 (3) embezzlement, theft, misappropriation or conversion of moneys,  
11 funds, premiums, credits or other property of a viatical settlement pro-  
12 vider, insurer, insured, viator, insurance policy owner or any other person  
13 engaged in the business of viatical settlements or insurance; or

14 (4) recklessly entering into, brokering, otherwise dealing in a viatical  
15 settlement contract, the subject of which is a life insurance policy that  
16 was obtained by presenting false information concerning any fact material  
17 to the policy or by concealing, for the purpose of misleading another,  
18 information concerning any fact material to the policy, where the viator  
19 or the viator's agent intended to defraud the policy's issuer. "Recklessly"  
20 means engaging in the conduct in conscious and clearly unjustifiable dis-  
21 regard of a substantial likelihood of the existence of the relevant facts or  
22 risks, such disregard involving a gross deviation from acceptable standards  
23 of conduct;

24 (5) attempting to commit, assisting, aiding or abetting in the com-  
25 mission of, or conspiracy to commit the acts or omissions specified in this  
26 subsection.

27 (g) "NAIC" means the national association of insurance  
28 commissioners.

29 (h) "Person" means a natural person or a legal entity, including, but  
30 not limited to, an individual, partnership, limited liability company, as-  
31 sociation, trust or corporation.

32 (i) "Policy" means an individual or group policy, group certificate,  
33 contract or arrangement of life insurance affecting the rights of a resident  
34 of this state or bearing a reasonable relation to this state, regardless of  
35 whether delivered or issued for delivery in this state.

36 (j) "Related provider trust" means a titling trust or other trust estab-  
37 lished by a licensed viatical settlement provider or a financing entity for  
38 the sole purpose of holding the ownership or beneficial interest in pur-  
39 chased policies in connection with a financing transaction. The trust shall  
40 have a written agreement with the licensed viatical settlement provider  
41 under which the licensed viatical settlement provider is responsible for  
42 ensuring compliance with all statutory and regulatory requirements and  
43 under which the trust agrees to make all records and files related to

1 viatical settlement transactions available to the commissioner as if those  
2 records and files were maintained directly by the licensed viatical settle-  
3 ment provider.

4 (k) "Special purpose entity" means any corporation, partnership,  
5 trust, limited liability company or other similar entity formed solely to  
6 provide, either directly or indirectly, access to institutional capital markets  
7 for a financing entity or licensed viatical settlement provider.

8 (l) "Terminally ill" means having an illness or sickness that can rea-  
9 sonably be expected to result in death in 24 months or less.

10 (m) "Viatical settlement broker" means a person that on behalf of a  
11 viator and for a fee, commission or other valuable consideration offers or  
12 attempts to negotiate viatical settlement contracts between a viator and  
13 one or more viatical settlement providers. Notwithstanding the manner  
14 in which the viatical settlement broker is compensated, a viatical settle-  
15 ment broker is deemed to represent only the viator and owes a fiduciary  
16 duty to the viator to act according to the viator's instructions and in the  
17 best interest of the viator. The term does not include an attorney, certified  
18 public accountant or a financial planner accredited by a nationally rec-  
19 ognized accreditation agency, who is retained to represent the viator and  
20 whose compensation is not paid directly or indirectly by the viatical set-  
21 tlement provider or purchaser.

22 (n) "Viatical settlement contract" means a written agreement estab-  
23 lishing the terms under which compensation or anything of value will be  
24 paid, which compensation or value is less than the expected death benefit  
25 of the insurance policy or certificate, in return for the viator's assignment,  
26 transfer, sale, devise or bequest of the death benefit or ownership of any  
27 portion of the insurance policy or certificate of insurance. A viatical set-  
28 tlement contract also includes a contract for a loan or other financing  
29 transaction with a viator secured primarily by an individual or group life  
30 insurance policy, other than a loan by a life insurance company pursuant  
31 to the terms of the life insurance contract, or a loan secured by the cash  
32 value of a policy. A viatical settlement contract includes an agreement  
33 with a viator to transfer ownership or change the beneficiary designation  
34 at a later date regardless of the date that compensation is paid to the  
35 viator.

36 (o) "Viatical settlement provider" means a person, other than a viator,  
37 who enters into or effectuates a viatical settlement contract. Viatical set-  
38 tlement provider does not include:

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

42 (2) the issuer of a life insurance policy providing accelerated benefits  
43 under K.S.A. 40-401, and amendments thereto, and pursuant to the

1 contract;

2 (3) an authorized or eligible insurer that provides stop loss coverage  
3 to a viatical settlement provider, purchaser, financing entity, special pur-  
4 pose entity or related provider trust;

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

8 (5) a financing entity;

9 (6) a special purpose entity;

10 (7) a related provider trust;

11 (8) a viatical settlement purchaser; or

12 (9) an accredited investor or qualified institutional buyer as such term  
13 is defined respectively in regulation D, rule 501 or rule 144A of the fed-  
14 eral securities act of 1933, as in effect upon the effective date of this act,  
15 and who purchases a viaticated policy from a viatical settlement provider.

16 (o) "Viator" means the owner of a life insurance policy or a certificate  
17 holder under a group policy who enters or seeks to enter into a viatical  
18 settlement contract. For the purposes of this act, a viator shall not be  
19 limited to an owner of a life insurance policy or a certificate holder under  
20 a group policy insuring the life of an individual with a terminal or chronic  
21 illness or condition except where specifically addressed. Viator shall not  
22 include:

23 (1) A licensee under this act;

24 (2) an accredited investor or qualified institutional buyer as such term  
25 is defined respectively in regulation D, rule 501 or rule 144A of the fed-  
26 eral securities act of 1933, as in effect upon the effective date of this act;

27 (3) a financing entity;

28 (4) a special purpose entity; or

29 (5) a related provider trust.

30 (p) "Viaticated policy" means a life insurance policy or certificate that  
31 has been acquired by a viatical settlement provider pursuant to a viatical  
32 settlement contract.

33 (q) "Viatical settlement purchaser" means a person who gives a sum  
34 of money as consideration for a life insurance policy or an interest in the  
35 death benefits of a life insurance policy, or a person who owns or acquires  
36 or is entitled to a beneficial interest in a trust that owns a viatical settle-  
37 ment contract or is the beneficiary of a life insurance policy that has been  
38 or will be the subject of a viatical settlement contract, for the purpose of  
39 deriving an economic benefit. Viatical settlement purchaser shall not  
40 include:

41 (1) A licensee under this act;

42 (2) an accredited investor or qualified institutional buyer as such term  
43 is defined respectively in regulation D, rule 501 or rule 144A of the fed-

1 eral securities act of 1933, as in effect upon the effective date of this act;

2 (3) a financing entity;

3 (4) a special purpose entity; or

4 (5) a related provider trust.

5 Sec. 3. (a) No person shall operate as a viatical settlement provider  
6 or viatical settlement broker without first obtaining a license from the  
7 commissioner or the insurance regulatory official of the state of residence  
8 of the viator. If there is more than one viator on a single policy and the  
9 viators are residents of different states, the viatical settlement shall be  
10 governed by the law of the state in which the viator having the largest  
11 percentage ownership resides or, if the viators hold equal ownership, the  
12 state of residence of one viator agreed upon in writing by all viators.

13 (b) Application for a viatical settlement provider license shall be made  
14 to the commissioner by the applicant on a form prescribed by the com-  
15 missioner, and these applications shall be accompanied by a nonrefund-  
16 able fee of \$1,000.

17 (c) Licenses for viatical settlement providers may be renewed from  
18 year to year on the anniversary date upon payment of the annual renewal  
19 fee of \$500. Failure to pay the fees by the renewal date results in expi-  
20 ration of the license.

21 (d) Application for a viatical settlement broker license shall be made  
22 to the commissioner by the applicant on a form prescribed by the com-  
23 missioner. Each application shall be accompanied by a nonrefundable  
24 application fee of \$100.

25 (e) Licenses for a viatical settlement broker license may be renewed  
26 from year to year on the anniversary date upon payment of the annual  
27 renewal fee of \$50. Failure to pay the fees by the renewal date results in  
28 expiration of such license.

29 (f) The applicant shall provide information on forms required by the  
30 commissioner. The commissioner shall have authority, at any time, to  
31 require the applicant to fully disclose the identity of all stockholders,  
32 partners, officers, members and employees, and the commissioner, in the  
33 exercise of the commissioner's discretion, may refuse to issue a license in  
34 the name of a legal entity if not satisfied that any officer, employee, stock-  
35 holder, partner or member thereof who may materially influence the  
36 applicant's conduct meets the standards of this act.

37 (g) A license issued to a legal entity authorizes all partners, officers,  
38 members and designated employees to act as viatical settlement providers  
39 or viatical settlement brokers, as applicable, under the license, and all  
40 those persons shall be named in the application and any supplements to  
41 the application.

42 (h) Upon the filing of an application and the payment of the license  
43 fee, the commissioner shall make an investigation of each applicant and

1 issue a license if the commissioner finds that the applicant:

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

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

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

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

11 (5) if a viatical settlement provider or viatical settlement broker, has  
12 provided an anti-fraud plan that meets the requirements of paragraph (g)  
13 of section 12, and amendments thereto.

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

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

24 Sec. 4. (a) The commissioner may refuse to issue, suspend, revoke  
25 or refuse to renew the license of a viatical settlement provider or viatical  
26 settlement broker in the event that investigation by the commissioner  
27 discloses that:

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

30 (2) the licensee or any officer, partner, member or key management  
31 personnel has been convicted of fraudulent or dishonest practices, is sub-  
32 ject to a final administrative action in this state or another state or is  
33 otherwise shown to be untrustworthy or incompetent;

34 (3) the viatical settlement provider demonstrates a pattern of unrea-  
35 sonable payments to viators;

36 (4) the licensee or any officer, partner, member or key management  
37 personnel has been found guilty of, or has pleaded guilty or *nolo contem-*  
38 *dere* to, any felony, or to a misdemeanor involving fraud or moral turpi-  
39 tude, regardless of whether a judgment of conviction has been entered  
40 by the court;

41 (5) the viatical settlement provider has entered into any viatical set-  
42 tlement contract that has not been approved pursuant to this act;

43 (6) the viatical settlement provider has failed to honor contractual

1 obligations set out in a viatical settlement contract;

2 (7) the licensee no longer meets the requirements for initial  
3 licensure;

4 (8) the viatical settlement provider has assigned, transferred or  
5 pledged a viaticated policy to a person other than a viatical settlement  
6 provider licensed in this state, viatical settlement purchaser, an accredited  
7 investor or qualified institutional buyer as defined respectively in regu-  
8 lation D, rule 501 or rule 144A of the federal securities act of 1933, as in  
9 effect on the effective date of this act, financing entity, special purpose  
10 entity or related provider trust; or

11 (9) the licensee or any officer, partner, member or key management  
12 personnel has violated any provision of this act.

13 (b) If the commissioner denies a license application or suspends, re-  
14 vokes or refuses to renew the license of a viatical settlement provider or  
15 viatical settlement broker, the commissioner shall conduct a hearing in  
16 accordance with the Kansas administrative procedure act.

17 Sec. 5. No person shall use a viatical settlement contract or provide  
18 to a viator a disclosure statement form in this state unless filed with and  
19 approved by the commissioner. The commissioner shall disapprove a vi-  
20 atical settlement contract form or disclosure statement form if, in the  
21 commissioner's opinion, the contract or provisions contained therein are  
22 unreasonable, contrary to the interests of the public or otherwise mis-  
23 leading or unfair to the viator. At the commissioner's discretion, the com-  
24 missioner may require the submission of advertising material to the  
25 commissioner.

26 Sec. 6 (a) Each licensee shall file with the commissioner on or before  
27 March 1 of each year an annual statement containing such information  
28 as the commissioner may prescribe by rule and regulation.

29 (b) Except as otherwise allowed or required by law, a viatical settle-  
30 ment provider, viatical settlement broker, insurance company, insurance  
31 producer, information bureau, rating agency or company, or any other  
32 person with actual knowledge of an insured's identity, shall not disclose  
33 that identity as an insured, or the insured's financial or medical infor-  
34 mation to any other person unless the disclosure is:

35 (1) Necessary to effect a viatical settlement between the viator and a  
36 viatical settlement provider and the viator and insured have provided  
37 prior written consent to the disclosure;

38 (2) provided in response to an investigation or examination by the  
39 commissioner or any other governmental officer or agency or pursuant  
40 to the requirements of paragraph (c) of section 12, and amendments  
41 thereto;

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



1 (4) necessary to permit a financing entity, related provider trust or  
2 special purpose entity to finance the purchase of policies by a viatical  
3 settlement provider and the viator and insured have provided prior writ-  
4 ten consent to the disclosure;

5 (5) necessary to allow the viatical settlement provider or viatical set-  
6 tlement broker or their authorized representatives to make contacts for  
7 the purpose of determining health status; or

8 (6) required to purchase stop loss coverage.

9 Sec. 7. (a) (1) The commissioner may conduct an examination under  
10 this act of a licensee as often as the commissioner in such commissioner's  
11 sole discretion deems appropriate.

12 (2) For purposes of completing an examination of a licensee under  
13 this act, the commissioner may examine or investigate any person, or the  
14 business of any person, in so far as the examination or investigation, in  
15 the sole discretion of the commissioner, is necessary or material to the  
16 examination of the licensee.

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

22 (b) (1) Any person required to be licensed by this act shall for five  
23 years retain copies of all:

24 (A) Proposed, offered or executed contracts, underwriting docu-  
25 ments, policy forms, and applications from the date of the proposal, offer  
26 or execution of the contract, whichever is later;

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

30 (C) all other records and documents related to the requirements of  
31 this act.

32 (2) This section shall not relieve any person licensed under this act  
33 of the obligation to produce these documents and provide copies thereof  
34 to the commissioner after the retention period has expired if the person  
35 has retained such documents.

36 (3) Records required to be retained by this section must be legible  
37 and complete and may be retained in paper, photograph, microprocess,  
38 magnetic, mechanical, electronic media or by any process that accurately  
39 reproduces or forms a durable medium for the reproduction of a record.

40 (c) (1) Upon determining that an examination should be conducted,  
41 the commissioner shall issue an examination warrant appointing one or  
42 more examiners to perform the examination and instructing them as to  
43 the scope of the examination. The commissioner may also employ such

1 other guidelines or procedures as the commissioner may deem  
2 appropriate.

3 (2) Every licensee or person from whom information is sought, its  
4 officers, directors and agents shall provide to the examiners timely, con-  
5 venient and free access at all reasonable hours at its offices to all books,  
6 records, accounts, papers, documents, assets and computer or other re-  
7 cordings relating to the property, assets, business and affairs of the li-  
8 censee being examined. The officers, directors, employees and agents of  
9 the licensee or person shall facilitate the examination and aid in the ex-  
10 amination so far as it is in their power to do so. The refusal of a licensee,  
11 by its officers, directors, employees or agents, to submit to examination  
12 or to comply with any reasonable written request of the commissioner  
13 shall be grounds for suspension or refusal of, or nonrenewal of any license  
14 or authority held by the licensee to engage in the viatical settlement busi-  
15 ness or other business subject to the commissioner's jurisdiction. Any  
16 proceedings for suspension, revocation or refusal of any license or au-  
17 thority shall be conducted pursuant to the Kansas administrative proce-  
18 dure act.

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

27 (4) When making an examination under this act, the commissioner  
28 may retain attorneys, appraisers, independent actuaries, independent cer-  
29 tified public accountants or other professionals and specialists as exam-  
30 iners, the reasonable cost of which shall be borne by the licensee that is  
31 the subject of the examination.

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

37 (6) Nothing contained in this act shall be construed to limit the com-  
38 missioner's authority to use and, if appropriate, to make public any final  
39 or preliminary examination report, any examiner or licensee work papers  
40 or other documents, or any other information discovered or developed  
41 during the course of any examination in the furtherance of any legal or  
42 regulatory action which the commissioner, in such commissioner's sole  
43 discretion, may deem appropriate.

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

7 (2) Not later than 60 days following completion of the examination,  
8 the examiner in charge shall file with the commissioner a verified written  
9 report of examination under oath. Upon receipt of the verified report,  
10 the commissioner shall transmit the report to the licensee examined, to-  
11 gether with a notice that shall afford the licensee examined a reasonable  
12 opportunity of not more than 30 days to make a written submission or  
13 rebuttal with respect to any matters contained in the examination report.

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

17 (e) (1) Names and individual identification data for all viators shall  
18 be considered private and confidential information and shall not be dis-  
19 closed by the commissioner, unless required by law.

20 (2) Except as otherwise provided in this act, all examination reports,  
21 working papers, recorded information, documents and copies thereof  
22 produced by, obtained by or disclosed to the commissioner or any other  
23 person in the course of an examination made under this act, or in the  
24 course of analysis or investigation by the commissioner of the financial  
25 condition or market conduct of a licensee shall be confidential by law and  
26 privileged, shall not be subject to the provisions of the Kansas open re-  
27 cords act, K.S.A. 45-215 *et seq.*, and amendments thereto, shall not be  
28 subject to subpoena, and shall not be subject to discovery or admissible  
29 in evidence in any private civil action. The commissioner is authorized to  
30 use the documents, materials or other information in the furtherance of  
31 any regulatory or legal action brought as part of the commissioner's of-  
32 ficial duties.

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

39 (A) Created, produced or obtained by or disclosed to the NAIC and  
40 its affiliates and subsidiaries in the course of assisting an examination  
41 made under this act, or assisting a commissioner in the analysis or inves-  
42 tigation of the financial condition or market conduct of a licensee; or

43 (B) disclosed to the NAIC and its affiliates and subsidiaries under

1 paragraph (4) of subsection (e) by the commissioner.

2 For the purposes of paragraph (2) of subsection (e), the term “act”  
3 includes the law of another state or jurisdiction that is substantially similar  
4 to this act.

5 (4) Neither the commissioner nor any person that received the doc-  
6 uments, material or other information while acting under the authority  
7 of the commissioner, including the NAIC and its affiliates and subsidia-  
8 ries, shall be permitted to testify in any private civil action concerning any  
9 confidential documents, materials or information subject to paragraph (1)  
10 of subsection (e).

11 (5) In order to assist in the performance of the commissioner’s duties,  
12 the commissioner may:

13 (A) Share documents, materials or other information, including the  
14 confidential and privileged documents, materials or information subject  
15 to paragraph (1) of subsection (e), with other state, federal and interna-  
16 tional regulatory agencies, with the NAIC and its affiliates and subsidia-  
17 ries, and with state, federal and international law enforcement authorities,  
18 provided that the recipient agrees to maintain the confidentiality and  
19 privileged status of the document, material, communication or other  
20 information;

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

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

31 (6) No waiver of any applicable privilege or claim of confidentiality  
32 in the documents, materials or information shall occur as a result of dis-  
33 closure to the commissioner under this section or as a result of sharing  
34 as authorized in paragraph (4) of subsection (e).

35 (7) A privilege established under the law of any state or jurisdiction  
36 that is substantially similar to the privilege established under this subsec-  
37 tion shall be available and enforced in any proceeding in, and in any court  
38 of, this state.

39 (8) Nothing contained in this act shall prevent or be construed as  
40 prohibiting the commissioner from disclosing the content of an exami-  
41 nation report, preliminary examination report or results, or any matter  
42 relating thereto, to the commissioner of any other state or country, or to  
43 law enforcement officials of this or any other state or agency of the federal

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

4 (9) The provisions of this subsection shall expire July 1, 2006, unless  
5 the legislature acts to reenact such provisions. The provisions of this sec-  
6 tion shall be reviewed by the legislature prior to July 1, 2006.

7 (f) (1) An examiner may not be appointed by the commissioner if the  
8 examiner, either directly or indirectly, has a conflict of interest or is af-  
9 filiated with the management of or owns a pecuniary interest in any per-  
10 son subject to examination under this act. This section shall not be con-  
11 strued to automatically preclude an examiner from being:

12 (A) A viator;

13 (B) an insured in a viaticated insurance policy; or

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

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

22 (g) Unless provided otherwise, all fees and procedures for examina-  
23 tions under this act shall be in accordance with K.S.A. 40-223, and amend-  
24 ments thereto.

25 (h) (1) No cause of action shall arise nor shall any liability be imposed  
26 against the commissioner, the commissioner's authorized representatives  
27 or any examiner appointed by the commissioner for any statements made  
28 or conduct performed in good faith while carrying out the provisions of  
29 this act.

30 (2) No cause of action shall arise, nor shall any liability be imposed  
31 against any person for the act of communicating or delivering information  
32 or data to the commissioner or the commissioner's authorized represen-  
33 tative or examiner pursuant to an examination made under this act, if the  
34 act of communication or delivery was performed in good faith and without  
35 fraudulent intent or the intent to deceive. This paragraph does not ab-  
36rogate or modify in any way any common law or statutory privilege or  
37 immunity heretofore enjoyed by any person identified in paragraph (1).

38 (3) A person identified in paragraph (1) or (2) shall be entitled to an  
39 award of attorney fees and costs if such person is the prevailing party in  
40 a civil cause of action for libel, slander or any other relevant tort arising  
41 out of activities in carrying out the provisions of this act and the party  
42 bringing the action was not substantially justified in doing so. For pur-  
43 poses of this section a proceeding is "substantially justified" if it had a

1 reasonable basis in law or fact at the time that it was initiated.

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

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

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

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

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

20 (4) Receipt of the proceeds of a viatical settlement may adversely  
21 affect the viator's eligibility for medicaid or other government benefits or  
22 entitlements, and advice should be obtained from the appropriate gov-  
23 ernment agencies.

24 (5) The viator has the right to rescind a viatical settlement contract  
25 for 15 calendar days after the receipt of the viatical settlement proceeds  
26 by the viator, as provided in subsection (c) of section 9, and amendments  
27 thereto. If the insured dies during the rescission period, the settlement  
28 contract shall be deemed to have been rescinded, subject to repayment  
29 of all viatical settlement proceeds and any premiums, loans and loan in-  
30 terest to the viatical settlement provider or purchaser.

31 (6) Funds will be sent to the viator within three business days after  
32 the viatical settlement provider has received the insurer or group admin-  
33 istrator's acknowledgment that ownership of the policy or interest in the  
34 certificate has been transferred and the beneficiary has been designated.

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

39 (8) Disclosure to a viator shall include distribution of a brochure de-  
40 scribing the process of viatical settlements. The form for the brochure  
41 shall be developed by the commissioner.

42 (9) The disclosure document shall contain the following language:  
43 "All medical, financial or personal information solicited or obtained by a

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

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

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

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

24 (2) The name, address and telephone number of the viatical settle-  
25 ment provider.

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

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

36 (5) State the dollar amount of the current death benefit payable to  
37 the viatical settlement provider under the policy or certificate. If known,  
38 the viatical settlement provider shall also disclose the availability of any  
39 additional guaranteed insurance benefits, the dollar amount of any acci-  
40 dental death and dismemberment benefits under the policy or certificate  
41 and the viatical settlement provider's interest in those benefits.

42 (6) State the name, business address and telephone number of the  
43 independent third party escrow agent, and the fact that the viator or

1 owner may inspect or receive copies of the relevant escrow or trust agree-  
2 ments or documents.

3 Sec. 9. (a) (1) A viatical settlement provider entering into a viatical  
4 settlement contract shall first obtain:

5 (A) If the viator is the insured, a written statement from a licensed  
6 attending physician that the viator is of sound mind and under no con-  
7 straint or undue influence to enter into a viatical settlement contract; and

8 (B) a document in which the insured consents to the release of such  
9 insured's medical records to a viatical settlement provider, viatical settle-  
10 ment broker and the insurance company that issued the life insurance  
11 policy covering the life of the insured.

12 (2) Within 20 days after a viator executes documents necessary to  
13 transfer any rights under an insurance policy or within 20 days of entering  
14 any agreement, option, promise or any other form of understanding, ex-  
15 pressed or implied, to viaticate the policy, the viatical settlement provider  
16 shall give written notice to the insurer that issued that insurance policy  
17 that the policy has or will become a viaticated policy. The notice shall be  
18 accompanied by the documents required by paragraph (3).

19 (3) The viatical settlement provider shall deliver a copy of the medical  
20 release required under clause (B) of paragraph (1), a copy of the viator's  
21 application for the viatical settlement contract, the notice required under  
22 paragraph (2) and a request for verification of coverage to the insurer  
23 that issued the life policy that is the subject of the viatical transaction.  
24 The form for verification shall be developed by the commissioner.

25 (4) The insurer shall respond to a request for verification of coverage  
26 submitted on an approved form by a viatical settlement provider within  
27 30 calendar days of the date the request is received and shall indicate  
28 whether, based on the medical evidence and documents provided, the  
29 insurer intends to pursue an investigation at this time regarding the va-  
30 lidity of the insurance contract.

31 (5) Prior to or at the time of execution of the viatical settlement con-  
32 tract, the viatical settlement provider shall obtain a witnessed document  
33 in which the viator consents to the viatical settlement contract, represents  
34 that the viator has a full and complete understanding of the viatical set-  
35 tlement contract, that such viator has a full and complete understanding  
36 of the benefits of the life insurance policy, acknowledges that such viator  
37 is entering into the viatical settlement contract freely and voluntarily and,  
38 for persons with a terminal or chronic illness or condition, acknowledges  
39 that the insured has a terminal or chronic illness and that the terminal or  
40 chronic illness or condition was diagnosed after the life insurance policy  
41 was issued.

42 (6) If a viatical settlement broker performs any of these activities  
43 required of the viatical settlement provider, the viatical settlement pro-



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

2 (b) (1) All medical information solicited or obtained by any licensee  
3 shall be subject to the applicable provisions of state law relating to con-  
4 fidentiality of medical information.

5 (2) The provisions of this subsection shall expire July 1, 2006, unless  
6 the legislature acts to reenact such provisions. The provisions of this sec-  
7 tion shall be reviewed by the legislature prior to July 1, 2006.

8 (c) All viatical settlement contracts entered into in this state shall  
9 provide the viator with an unconditional right to rescind the contract for  
10 at least 15 calendar days from the receipt of the viatical settlement pro-  
11 ceeds. If the insured dies during the rescission period, the viatical settle-  
12 ment contract shall be deemed to have been rescinded, subject to repay-  
13 ment to the viatical settlement provider or purchaser of all viatical  
14 settlement proceeds, and any premiums, loans and loan interest that have  
15 been paid by the viatical settlement provider or purchaser.

16 (d) The viatical settlement provider shall instruct the viator to send  
17 the executed documents required to effect the change in ownership, as-  
18 signment or change in beneficiary directly to the independent escrow  
19 agent. Within three business days after the date the escrow agent receives  
20 the document, or from the date the viatical settlement provider receives  
21 the documents, if the viator erroneously provides the documents directly  
22 to the provider, the provider shall pay or transfer the proceeds of the  
23 viatical settlement into an escrow or trust account maintained in a state  
24 or federally-chartered financial institution whose deposits are insured by  
25 the federal deposit insurance corporation. Upon payment of the settle-  
26 ment proceeds into the escrow account, the escrow agent shall deliver  
27 the original change in ownership, assignment or change in beneficiary  
28 forms to the viatical settlement provider or related provider trust. Upon  
29 the escrow agent's receipt of the acknowledgment of the properly com-  
30 pleted transfer of ownership, assignment or designation of beneficiary  
31 from the insurance company, the escrow agent shall pay the settlement  
32 proceeds to the viator.

33 (e) Failure to tender consideration to the viator for the viatical set-  
34 tlement contract within the time disclosed pursuant to clause (6) of sub-  
35 section (a) of section 8, and amendments thereto, renders the viatical  
36 settlement contract voidable by the viator for lack of consideration until  
37 the time consideration is tendered to and accepted by the viator.

38 (f) Contacts with the insured for the purpose of determining the  
39 health status of the insured by the viatical settlement provider or viatical  
40 settlement broker after the viatical settlement has occurred shall only be  
41 made by the viatical settlement provider or viatical settlement broker  
42 licensed in this state or its authorized representatives and shall be limited  
43 to once every three months for insureds with a life expectancy of more

1 than one year, and to no more than once per month for insureds with a  
2 life expectancy of one year or less. The viatical settlement provider or  
3 viatical settlement broker shall explain the procedure for these contacts  
4 at the time the viatical settlement contract is entered into. The limitations  
5 set forth in this subsection shall not apply to any contacts with an insured  
6 for reasons other than determining the insured's health status. Viatical  
7 settlement providers and viatical settlement brokers shall be responsible  
8 for the actions of their authorized representatives.

9 Sec. 10. It shall be a violation of this act for any person to enter into  
10 a viatical settlement contract within a two-year period commencing with  
11 the date of issuance of the insurance policy or certificate unless the viator  
12 certifies to the viatical settlement provider that one or more of the fol-  
13 lowing conditions have been met within the two-year period:

14 (a) The policy was issued upon the viator's exercise of conversion  
15 rights arising out of a group or individual policy, provided the total of the  
16 time covered under the conversion policy plus the time covered under  
17 the prior policy is at least 24 months. The time covered under a group  
18 policy shall be calculated without regard to any change in insurance car-  
19 riers, provided the coverage has been continuous and under the same  
20 group sponsorship;

21 (b) the viator is a charitable organization exempt from taxation under  
22 26 U.S.C. §501 (c)(3);

23 (c) the viator is not a natural person;

24 (d) (1) The viator submits independent evidence to the viatical set-  
25 tlement provider that one or more of the following conditions have been  
26 met within the two-year period:

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

28 (B) the viator's spouse dies;

29 (C) the viator divorces such viator's spouse;

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

31 (E) the viator becomes physically or mentally disabled and a physician  
32 determines that the disability prevents the viator from maintaining full-  
33 time employment;

34 (F) the viator was the insured's employer at the time the policy or  
35 certificate was issued and the employment relationship terminated;

36 (G) a final order, judgment or decree is entered by a court of com-  
37 petent jurisdiction, on the application of a creditor of the viator, adjudi-  
38 cating the viator bankrupt or insolvent, or approving a petition seeking  
39 reorganization of the viator or appointing a receiver, trustee or liquidator  
40 to all or a substantial part of the viator's assets;

41 (H) the viator experiences a significant decrease in income that is  
42 unexpected and that impairs the viator's reasonable ability to pay the  
43 policy premium; or

1 (I) the viator or insured disposes of such viator's or insured's own-  
2 ership interests in a closely held corporation.

3 (2) Copies of the independent evidence described in paragraph (1)  
4 of this subsection and documents required by subsection (a) of section 9,  
5 and amendments thereto shall be submitted to the insurer when the vi-  
6 atical settlement provider submits a request to the insurer for verification  
7 of coverage. The copies shall be accompanied by a letter of attestation  
8 from the viatical settlement provider that the copies are true and correct  
9 copies of the documents received by the viatical settlement provider.

10 (e) If the viatical settlement provider submits to the insurer a copy  
11 of the owner or insured's certification described in subsection (d) when  
12 the provider submits a request to the insurer to effect the transfer of the  
13 policy or certificate to the viatical settlement provider, the copy shall be  
14 deemed to conclusively establish that the viatical settlement contract sat-  
15 isfies the requirements of this section and the insurer shall timely respond  
16 to the request.

17 Sec. 11. The purpose of this section is to provide prospective viators  
18 with clear and unambiguous statements in the advertisement of viatical  
19 settlements and to assure the clear, truthful and adequate disclosure of  
20 the benefits, risks, limitations and exclusions of any viatical settlement  
21 contract. This purpose is intended to be accomplished by the establish-  
22 ment of guidelines and standards of permissible and impermissible con-  
23 duct in the advertising of viatical settlements to assure that product de-  
24 scriptions are presented in a manner that prevents unfair, deceptive or  
25 misleading advertising and is conducive to accurate presentation and de-  
26 scription of viatical settlements through the advertising media and ma-  
27 terial used by viatical settlement licensees.

28 (a) This section shall apply to any advertising of viatical settlement  
29 contracts or related products or services intended for dissemination in  
30 this state, including internet advertising viewed by persons located in this  
31 state. Where disclosure requirements are established pursuant to federal  
32 regulation, this section shall be interpreted so as to minimize or eliminate  
33 conflict with federal regulation wherever possible.

34 (b) Every viatical settlement licensee shall establish and at all times  
35 maintain a system of control over the content, form and method of dis-  
36 semination of all advertisements of its contracts, products and services.  
37 All advertisements, regardless of by whom written, created, designed or  
38 presented, shall be the responsibility of the viatical settlement licensee,  
39 as well as the individual who created or presented the advertisement. A  
40 system of control shall include regular routine notification, at least once  
41 a year, to agents and others authorized by the viatical settlement licensee  
42 who disseminate advertisements of the requirements and procedures for  
43 approval prior to the use of any advertisements not furnished by the

1 viatical settlement licensee.

2 (c) Advertisements shall be truthful and not misleading in fact or by  
3 implication. The form and content of an advertisement of a viatical set-  
4 tlement contract, product or service shall be sufficiently complete and  
5 clear so as to avoid deception. It shall not have the capacity or tendency  
6 to mislead or deceive. Whether an advertisement has the capacity or  
7 tendency to mislead or deceive shall be determined by the commissioner  
8 from the overall impression that the advertisement may be reasonably  
9 expected to create upon a person of average education or intelligence  
10 within the segment of the public to which it is directed.

11 (d) The information required to be disclosed under this section shall  
12 not be minimized, rendered obscure, or presented in an ambiguous fash-  
13 ion or intermingled with the text of the advertisement so as to be con-  
14 fusing or misleading.

15 (1) An advertisement shall not omit material information or use  
16 words, phrases, statements, references or illustrations if the omission or  
17 use has the capacity, tendency or effect of misleading or deceiving viators  
18 as to the nature or extent of any benefit, loss covered, premium payable  
19 or state or federal tax consequence. The fact that the viatical settlement  
20 contract offered is made available for inspection prior to consummation  
21 of the sale, an offer is made to refund the payment if the viator is not  
22 satisfied or that the viatical settlement contract includes a "free look"  
23 period that satisfies or exceeds legal requirements, shall not remedy mis-  
24 leading statements.

25 (2) No advertisement shall use the name or title of a life insurance  
26 company or a life insurance policy unless the advertisement has been  
27 approved by the insurer.

28 (3) No advertisement shall state or imply that interest charged on an  
29 accelerated death benefit or a policy loan is unfair, inequitable or in any  
30 manner an incorrect or improper practice.

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

36 (5) Testimonials, appraisals or analysis used in advertisements must  
37 be genuine; represent the current opinion of the author; be applicable to  
38 the viatical settlement contract, product or service advertised, if any; and  
39 be accurately reproduced with sufficient completeness to avoid mislead-  
40 ing or deceiving prospective viators as to the nature or scope of the tes-  
41 timonials, appraisal, analysis or endorsement. In using testimonials, ap-  
42 praisals or analysis, the viatical settlement licensee makes as its own all  
43 the statements contained therein, and the statements are subject to all

1 the provisions of this section.

2 (A) If the individual making a testimonial, appraisal, analysis or an  
3 endorsement has a financial interest in the viatical settlement provider or  
4 related entity as a stockholder, director, officer, employee or otherwise,  
5 or receives any benefit directly or indirectly other than required union  
6 scale wages, that fact shall be prominently disclosed in the advertisement.

7 (B) An advertisement shall not state or imply that a viatical settlement  
8 contract, benefit or service has been approved or endorsed by a group of  
9 individuals, society, association or other organization unless that is the  
10 fact and unless any relationship between an organization and the viatical  
11 settlement licensee is disclosed. If the entity making the endorsement or  
12 testimonial is owned, controlled or managed by the viatical settlement  
13 licensee, or receives any payment or other consideration from the viatical  
14 settlement licensee for making an endorsement or testimonial, that fact  
15 shall be disclosed in the advertisement.

16 (C) When an endorsement refers to benefits received under a viatical  
17 settlement contract, all pertinent information shall be retained for a pe-  
18 riod of five years after its use.

19 (e) No advertisement shall contain statistical information unless it ac-  
20 curately reflects recent and relevant facts. The source of all statistics used  
21 in an advertisement shall be identified.

22 (f) No advertisement shall disparage insurers, viatical settlement pro-  
23 viders, viatical settlement brokers, insurance producers, policies, services  
24 or methods of marketing.

25 (g) The name of the viatical settlement licensee shall be clearly iden-  
26 tified in all advertisements about the licensee or its viatical settlement  
27 contract, products or services, and if any specific viatical settlement con-  
28 tract is advertised, the viatical settlement contract shall be identified ei-  
29 ther by form number or some other appropriate description. If an appli-  
30 cation is part of the advertisement, the name of the viatical settlement  
31 provider shall be shown on the application.

32 (h) No advertisement shall use a trade name, group designation,  
33 name of the parent company of a viatical settlement licensee, name of a  
34 particular division of the viatical settlement licensee, service mark, slogan,  
35 symbol or other device or reference without disclosing the name of the  
36 viatical settlement licensee, if the advertisement would have the capacity  
37 or tendency to mislead or deceive as to the true identity of the viatical  
38 settlement licensee, or to create the impression that a company other  
39 than the viatical settlement licensee would have any responsibility for the  
40 financial obligation under a viatical settlement contract.

41 (i) No advertisement shall use any combination of words, symbols or  
42 physical materials that by their content, phraseology, shape, color or other  
43 characteristics are so similar to a combination of words, symbols or phys-

1 ical materials used by a government program or agency or otherwise ap-  
2 pear to be of such a nature that they tend to mislead prospective viators  
3 into believing that the solicitation is in some manner connected with a  
4 government program or agency.

5 (j) An advertisement may state that a viatical settlement licensee is  
6 licensed in the state where the advertisement appears, provided it does  
7 not exaggerate that fact or suggest or imply that competing viatical set-  
8 tlement licensee may not be so licensed. The advertisement may ask the  
9 audience to consult the licensee's web site or contact the department of  
10 insurance to find out if the state requires licensing and, if so, whether the  
11 viatical settlement provider or viatical settlement broker is licensed.

12 (k) No advertisement shall create the impression that the viatical set-  
13 tlement provider, its financial condition or status, the payment of its  
14 claims or the merits, desirability or advisability of its viatical settlement  
15 contracts are recommended or endorsed by any government entity.

16 (l) The name of the actual licensee shall be stated in all of its adver-  
17 tisements. No advertisement shall use a trade name, any group designa-  
18 tion, name of any affiliate or controlling entity of the licensee, service  
19 mark, slogan, symbol or other device in a manner that would have the  
20 capacity or tendency to mislead or deceive as to the true identity of the  
21 actual licensee or create the false impression that an affiliate or controlling  
22 entity would have any responsibility for the financial obligation of the  
23 licensee.

24 (m) No advertisement shall, directly or indirectly, create the impres-  
25 sion that any division or agency of the state or of the united states gov-  
26 ernment endorses, approves or favors:

27 (1) Any viatical settlement licensee or its business practices or meth-  
28 ods of operation;

29 (2) the merits, desirability or advisability of any viatical settlement  
30 contract;

31 (3) any viatical settlement contract; or

32 (4) any life insurance policy or life insurance company.

33 (n) If the advertiser emphasizes the speed with which the viatication  
34 will occur, the advertising shall disclose the average time frame from  
35 completed application to the date of offer and from acceptance of the  
36 offer to receipt of the funds by the viator.

37 (o) If the advertising emphasizes the dollar amounts available to via-  
38 tors, the advertising shall disclose the average purchase price as a percent  
39 of face value obtained by viators contracting with the licensee during the  
40 past six months.

41 Sec. 12. (a) No person shall:

42 (1) Commit a fraudulent viatical settlement act.

43 (2) Knowingly or intentionally interfere with the enforcement of any

1 provision of this act or any investigation of suspected or actual violations  
2 of this act.

3 (3) Knowingly or intentionally permit any person, employed by a per-  
4 son in the business of viatical settlements, convicted of a felony involving  
5 dishonesty or breach of trust to participate in the business of viatical  
6 settlements. No person in the business of viatical settlements shall know-  
7 ingly or intentionally permit any person convicted of a felony involving  
8 dishonesty or breach of trust to participate in the business of viatical  
9 settlements.

10 (b) (1) Viatical settlements contracts and applications for viatical set-  
11 tlements, regardless of the form of transmission, shall contain the follow-  
12 ing statement or a substantially similar statement:

13 "Any person who knowingly presents false information in an application  
14 for insurance or viatical settlement contract is guilty of a crime and may  
15 be subject to fines and confinement in prison."

16 (2) The lack of a statement as required in paragraph (1) shall not  
17 constitute a defense in any prosecution for a fraudulent viatical settlement  
18 act.

19 (c) (1) Any person engaged in the business of viatical settlements  
20 having knowledge or a reasonable belief that a fraudulent viatical settle-  
21 ment act is being, will be or has been committed shall provide to the  
22 commissioner the information required by, and in a manner prescribed  
23 by, the commissioner.

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

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

33 (A) The commissioner or the commissioner's employees, agents or  
34 representatives;

35 (B) federal, state or local law enforcement or regulatory officials or  
36 their employees, agents or representatives;

37 (C) any person involved in the prevention and detection of fraudulent  
38 viatical settlement acts or that person's agents, employees or  
39 representatives;

40 (D) the NAIC, national association of securities dealers, the north  
41 american securities administrators association, or their employees, agents  
42 or representatives, or other regulatory body overseeing life insurance,  
43 viatical settlements, securities or investment fraud; or

1 (E) the life insurer that issued the life insurance policy covering the  
2 life of the insured.

3 (2) Paragraph (1) shall not apply to statements made with actual mal-  
4 ice. In an action brought against a person for filing a report or furnishing  
5 other information concerning a fraudulent viatical settlement act or a  
6 fraudulent insurance act, the party bringing the action shall plead specif-  
7 ically any allegation that paragraph (1) does not apply because the person  
8 filing the report or furnishing the information did so with actual malice.

9 (3) A person identified in paragraph (1) shall be entitled to an award  
10 of attorney fees and costs if such person is the prevailing party in a civil  
11 cause of action for libel, slander or any other relevant tort arising out of  
12 activities in carrying out the provisions of this act and the party bringing  
13 the action was not substantially justified in doing so. For purposes of this  
14 section a proceeding is substantially justified if it had a reasonable basis  
15 in law or fact at the time that it was initiated.

16 (4) This section does not abrogate or modify common law or statutory  
17 privileges or immunities enjoyed by a person described in paragraph (1).

18 (e) (1) The documents and evidence provided pursuant to subsection  
19 (d) of this section or obtained by the commissioner in an investigation of  
20 suspected or actual fraudulent viatical settlement acts shall be privileged  
21 and confidential and shall not be a public record and shall not be subject  
22 to discovery or subpoena in a civil or criminal action.

23 (2) Paragraph (1) of this subsection shall not prohibit release by the  
24 commissioner of documents and evidence obtained in an investigation of  
25 suspected or actual fraudulent viatical settlement acts:

26 (A) In administrative or judicial proceedings to enforce laws admin-  
27 istered by the commissioner;

28 (B) to federal, state or local law enforcement or regulatory agencies,  
29 to an organization established for the purpose of detecting and preventing  
30 fraudulent viatical settlement acts or to the NAIC; or

31 (C) at the discretion of the commissioner, to a person in the business  
32 of viatical settlements that is aggrieved by a fraudulent viatical settlement  
33 act.

34 (3) Release of documents and evidence under paragraph (2) of this  
35 subsection does not abrogate or modify the privilege granted in paragraph  
36 (1).

37 (f) This act shall not:

38 (1) Preempt the authority or relieve the duty of other law enforce-  
39 ment or regulatory agencies to investigate, examine and prosecute sus-  
40 pected violations of law;

41 (2) prevent or prohibit a person from disclosing voluntarily infor-  
42 mation concerning viatical settlement fraud to a law enforcement or reg-  
43 ulatory agency other than the insurance department; or



1 (3) limit the powers granted elsewhere by the laws of this state to the  
2 commissioner or an insurance fraud unit to investigate and examine pos-  
3 sible violations of law and to take appropriate action against wrongdoers.

4 (g) Viatical settlement providers and viatical settlement brokers shall  
5 have in place antifraud initiatives reasonably calculated to detect, prose-  
6 cute and prevent fraudulent viatical settlement acts. At the discretion of  
7 the commissioner, the commissioner may order, or a licensee may request  
8 and the commissioner may grant, such modifications of the following  
9 required initiatives as necessary to ensure an effective antifraud program.  
10 The modifications may be more or less restrictive than the required ini-  
11 tiatives so long as the modifications reasonably may be expected to ac-  
12 complish the purpose of this section. Antifraud initiatives shall include:

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

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

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

21 (B) a description of the procedures for reporting possible fraudulent  
22 viatical settlement acts to the commissioner;

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

25 (D) a description or chart outlining the organizational arrangement  
26 of the antifraud personnel who are responsible for the investigation and  
27 reporting of possible fraudulent viatical settlement acts and investigating  
28 unresolved material inconsistencies between medical records and insur-  
29 ance applications; and

30 (3) antifraud plans submitted to the commissioner shall be privileged  
31 and confidential and shall not be a public record and shall not be subject  
32 to discovery or subpoena in a civil or criminal action.

33 (h) The provisions of this subsection shall expire July 1, 2006, unless  
34 the legislature acts to reenact such provisions. The provisions of this sec-  
35 tion shall be reviewed by the legislature prior to July 1, 2006.

36 Sec. 13. (a) If the commissioner determines after notice and oppor-  
37 tunity for a hearing that any person has engaged or is engaging in any act  
38 or practice constituting a violation of any provision of this act, the Kansas  
39 insurance statutes or any rule and regulation or order thereunder, the  
40 commissioner may in the exercise of discretion, order any one or more  
41 of the following:

42 (1) Payment of a monetary penalty of not more than \$1,000 for each  
43 and every act or violation, unless the person knew or reasonably should

1 have known such person was in violation of this act, the Kansas insurance  
2 statutes or any rule and regulation or order thereunder, in which case the  
3 penalty shall be not more than \$2,000 for each and every act or violation;

4 (2) suspension or revocation of the person's license or certificate if  
5 such person knew or reasonably should have known that such person was  
6 in violation of this act, the Kansas insurance statutes or any rule and  
7 regulation or order thereunder; or

8 (3) that such person cease and desist from the unlawful act or practice  
9 and take such affirmative action as in the judgment of the commissioner  
10 will carry out the purposes of the violated or potentially violated provision.

11 (b) If any person fails to file any report or other information with the  
12 commissioner as required by statute or fails to respond to any proper  
13 inquiry of the commissioner, the commissioner, after notice and oppor-  
14 tunity for hearing, may impose a penalty of up to \$500 for each violation  
15 or act, along with an additional penalty of up to \$100 for each week  
16 thereafter that such report or other information is not provided to the  
17 commissioner.

18 (c) If the commissioner makes written findings of fact that there is a  
19 situation involving an immediate danger to the public health, safety or  
20 welfare or the public interest will be irreparably harmed by delay in is-  
21 suing an order under paragraph (3) of subsection (a), the commissioner  
22 may issue an emergency temporary cease and desist order. Such order,  
23 even when not an order within the meaning of K.S.A. 77-502, and amend-  
24 ments thereto, shall be subject to the same procedures as an emergency  
25 order issued under K.S.A. 77-536, and amendments thereto. Upon the  
26 entry of such an order, the commissioner shall promptly notify the person  
27 subject to the order that: (1) It has been entered; (2) the reasons therefor;  
28 and (3) that upon written request within 15 days after service of the order  
29 the matter will be set for a hearing which shall be conducted in accord-  
30 ance with the provisions of the Kansas administrative procedure act. If  
31 no hearing is requested and none is ordered by the commissioner, the  
32 order will remain in effect until it is modified or vacated by the commis-  
33 sioner. If a hearing is requested or ordered, the commissioner, after no-  
34 tice of and opportunity for hearing to the person subject to the order, by  
35 written findings of fact and conclusions of law, shall vacate, modify or  
36 make permanent the order.

37 (d) (1) Any person who violates the provisions of this act shall be  
38 guilty of a:

39 (A) Severity level 7, nonperson felony if the value of the viatical set-  
40 tlement contract is \$25,000 or more;

41 (B) severity level 9, nonperson felony if the value of the viatical set-  
42 tlement contract is at least \$500 but less than \$25,000; or

43 (C) class A nonperson misdemeanor if the value of the viatical settle-

1 ment contract is less than \$500.

2 (2) If the value of the insurance premium is less than \$500 and such  
3 agent or broker has, within five years immediately preceding commission  
4 of the crime, been convicted of violating this section two or more times  
5 shall be guilty of a severity level 9, nonperson felony.

6 (e) Restitution may be ordered in addition to, but not in lieu of, any  
7 other penalty imposed under this act.

8 Sec. 14. Any violation of this act shall also be considered an unfair  
9 or deceptive act or practice under K.S.A. 40-2404, and amendments  
10 thereto, and subject to the penalties contained in K.S.A. 40-2401 *et seq.*,  
11 and amendments thereto.

12 Sec. 15. The commissioner shall have the authority to:

13 (a) Promulgate rules and regulations necessary to implement the pro-  
14 visions of this act;

15 (b) establish standards for evaluating reasonableness of payments un-  
16 der viatical settlement contracts for persons who are terminally or chron-  
17 ically ill. Such authority includes, but is not limited to, regulation of dis-  
18 count rates used to determine the amount paid in exchange for  
19 assignment, transfer, sale, devise or bequest of a benefit under a life  
20 insurance policy;

21 (c) establish appropriate licensing requirements, fees and standards  
22 for continued licensure for viatical settlement providers or viatical settle-  
23 ment brokers;

24 (d) require a bond or other mechanism for financial accountability  
25 for viatical settlement providers and viatical settlement brokers; and

26 (e) adopt rules and regulations governing the relationship and re-  
27 sponsibilities of both insurers and viatical settlement providers or viatical  
28 settlement brokers during the viatication of a life insurance policy or  
29 certificate.

30 Sec. 16. A viatical settlement provider or viatical settlement broker  
31 transacting business in this state may continue to do so pending approval  
32 or disapproval of the viatical settlement provider or viatical settlement  
33 broker's application for a license as long as the application is filed with  
34 the commissioner by July 1, 2001.

35 Sec. 17. K.S.A. 40-2,171, 40-2,172, 40-2,173, 40-2,174, 40-2,175, 40-  
36 2,176, 40-2,177, 40-2,178, 40-2,179, 40-2,180, 40-2,181, 40-2,182 and 40-  
37 2,183 are hereby repealed.

38 Sec. 18. This act shall take effect and be in force from and after its  
39 publication in the Kansas register.

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