

## SENATE BILL No. 601

By Committee on Financial Institutions and Insurance

2-12

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9 AN ACT concerning viatical settlements; pertaining to stranger-origi-  
10 nated life insurance; amending K.S.A. 2007 Supp. 40-5002, 40-5008,  
11 40-5011 and 40-5012 and repealing the existing sections.  
12

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

14 Section 1. K.S.A. 2007 Supp. 40-5002 is hereby amended to read as  
15 follows: 40-5002. As used in this act, the following words and phrases  
16 shall have the meanings ascribed to them in this section:

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

24 (b) "Business of viatical settlements" means an activity involved in,  
25 but not limited to, offering, soliciting, negotiating, procuring, effectua-  
26 tion, purchasing, investing, financing, monitoring, tracking, underwriting,  
27 selling, transferring, assigning, pledging or hypothecating any viatical set-  
28 tlement contract.

29 (c) "Chronically ill" means:

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

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

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

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

42 (1) Whose principal activity related to the transaction is providing  
43 funds to effect the viatical settlement or purchase of one or more viati-

1 cated policies; and

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

5 Financing entity shall not include any nonaccredited investor or viatical  
6 settlement purchaser.

7 (f) “Fraudulent viatical settlement act” means and includes:

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

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

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

20 (ii) the underwriting of a viatical settlement contract or insurance  
21 policy;

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

24 (iv) premiums paid on an insurance policy;

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

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

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

31 (viii) the issuance of written evidence of viatical settlement contract  
32 or insurance; or

33 (ix) a financing transaction.

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

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

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

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

- 1 (C) transact the business of viatical settlements in violation of laws  
2 requiring a license, certificate of authority or other legal authority for the  
3 transaction of the business of viatical settlements; or
- 4 (D) file with the commissioner or the chief insurance regulatory of-  
5 ficial of another jurisdiction a document containing false information or  
6 otherwise conceals information about a material fact from the  
7 commissioner;
- 8 (3) embezzlement, theft, misappropriation or conversion of moneys,  
9 funds, premiums, credits or other property of a viatical settlement pro-  
10 vider, insurer, insured, viator, insurance policy owner or any other person  
11 engaged in the business of viatical settlements or insurance; or
- 12 (4) recklessly entering into, brokering, otherwise dealing in a viatical  
13 settlement contract, the subject of which is a life insurance policy that  
14 was obtained by presenting false information concerning any fact material  
15 to the policy or by concealing, for the purpose of misleading another,  
16 information concerning any fact material to the policy, where the viator  
17 or the viator's agent intended to defraud the policy's issuer. "Recklessly"  
18 means engaging in the conduct in conscious and clearly unjustifiable dis-  
19 regard of a substantial likelihood of the existence of the relevant facts or  
20 risks, such as disregard involving a gross deviation from acceptable standards  
21 of conduct;
- 22 (5) *stranger-originated life insurance*; or
- 23 (6) attempting to commit, assisting, aiding or abetting in the com-  
24 mission of, or conspiracy to commit the acts or omissions specified in this  
25 subsection.
- 26 (g) "NAIC" means the national association of insurance  
27 commissioners.
- 28 (h) "Person" means a natural person or a legal entity, including, but  
29 not limited to, an individual, partnership, limited liability company, as-  
30 sociation, trust or corporation.
- 31 (i) "Policy" means an individual or group policy, group certificate,  
32 contract or arrangement of life insurance affecting the rights of a resident  
33 of this state or bearing a reasonable relation to this state, regardless of  
34 whether delivered or issued for delivery in this state.
- 35 (j) "Related provider trust" means a titling trust or other trust estab-  
36 lished by a licensed viatical settlement provider or a financing entity for  
37 the sole purpose of holding the ownership or beneficial interest in pur-  
38 chased policies in connection with a financing transaction. The trust shall  
39 have a written agreement with the licensed viatical settlement provider  
40 under which the licensed viatical settlement provider is responsible for  
41 ensuring compliance with all statutory and regulatory requirements and  
42 under which the trust agrees to make all records and files related to  
43 viatical settlement transactions available to the commissioner as if those

1 records and files were maintained directly by the licensed viatical settle-  
2 ment provider.

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

7 (l) “*Stranger-originated life insurance*” is the procurement of new life  
8 insurance by persons or entities that lack insurable interest on the insured  
9 and, at policy inception, such person or entity owns or controls the policy  
10 or the majority of the death benefits in the policy and the insured or the  
11 insured’s beneficiaries receive little or none of the proceeds of the death  
12 benefits of the policy.

13 (m) “Terminally ill” means having an illness or sickness that can rea-  
14 sonably be expected to result in death in 24 months or less.

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

27 ~~(n)~~ (o) (1) “Viatical settlement contract” means a written agreement  
28 establishing the terms under which compensation or anything of value  
29 will be paid, which compensation or value is less than the expected death  
30 benefit of the insurance policy or certificate, in return for the viator’s  
31 assignment, transfer, sale, devise or bequest of the death benefit or own-  
32 ership of any portion of the insurance policy or certificate of insurance.  
33 A viatical settlement contract also includes a contract for a loan or other  
34 financing transaction with a viator secured primarily by an individual or  
35 group life insurance policy, other than a loan by a life insurance company  
36 pursuant to the terms of the life insurance contract, or a loan secured by  
37 the cash value of a policy. A viatical settlement contract includes an agree-  
38 ment with a viator to transfer ownership or change the beneficiary des-  
39 ignation at a later date regardless of the date that compensation is paid  
40 to the viator. *between a viator and a viatical settlement provider estab-*  
41 *lishing the terms under which compensation or anything of value is or*  
42 *will be paid, which compensation or value is less than the expected death*  
43 *benefits of the policy, in return for the viator’s present or future assign-*

1 *ment, transfer, sale, devise or bequest of the death benefit or ownership*  
2 *of any portion of the insurance policy or certificate of insurance.*

3 (2) *Viatical settlement contract includes:*

4 (A) *The transfer for compensation or value of ownership or beneficial*  
5 *interest in a trust or other entity that owns such policy if the trust or*  
6 *other entity was formed or availed of for the principal purpose of acquir-*  
7 *ing one or more life insurance contracts, which life insurance contract*  
8 *insures the life of a person residing in this state.*

9 (B) *A premium finance loan made for a life insurance policy by a*  
10 *lender to viator on or before the date of issuance of the policy where,*  
11 *pursuant to the terms of such loan:*

12 (i) *The viator or the insured receives on the date of the premium*  
13 *finance loan a guarantee of a future viatical settlement value of the policy;*  
14 *or*

15 (ii) *the viator or the insured agrees on the date of the premium finance*  
16 *loan to sell the policy or any portion of its death benefit on any date*  
17 *following the issuance of the policy.*

18 (3) *Viatical settlement contract does not include:*

19 (A) *A policy loan or accelerated death benefit made by the insurer*  
20 *pursuant to the policy's terms.*

21 (B) *Loan proceeds that are used solely to pay:*

22 (i) *Premiums for the policy; and*

23 (ii) *the costs of the loan, including, without limitation, interest, ar-*  
24 *rangement fees, utilization fees and similar fees, closing costs, legal fees*  
25 *and expenses, trustee fees and expenses, and third party collateral pro-*  
26 *vider fees and expenses, including fees payable to letter of credit issuers.*

27 (C) *A loan made by a bank or other licensed financial institution in*  
28 *which the lender takes an interest in a life insurance policy solely to secure*  
29 *repayment of a loan or, if there is a default on the loan and the policy is*  
30 *transferred, the transfer of such a policy by the lender.*

31 (D) *A loan made by a lender that does not violate the Kansas insur-*  
32 *ance premium finance company act, K.S.A. 40-2601 et seq., and acts*  
33 *amendatory thereof or supplemental thereto, unless the premium finance*  
34 *loan is described in subparagraph (A) of paragraph (2).*

35 ~~(p)~~ (p) *“Viatical settlement provider” means a person, other than a*  
36 *viator, who enters into or effectuates a viatical settlement contract. Vi-*  
37 *atical settlement provider does not include:*

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

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

- 1 (3) an authorized or eligible insurer that provides stop loss coverage  
2 to a viatical settlement provider, purchaser, financing entity, special pur-  
3 pose entity or related provider trust;
- 4 (4) a natural person who enters into or effectuates no more than one  
5 agreement in a calendar year for the transfer of life insurance policies for  
6 any value less than the expected death benefit;
- 7 (5) a financing entity;
- 8 (6) a special purpose entity;
- 9 (7) a related provider trust;
- 10 (8) a viatical settlement purchaser; or
- 11 (9) an accredited investor or qualified institutional buyer as such term  
12 is defined respectively in regulation D, rule 501 or rule 144A of the fed-  
13 eral securities act of 1933, as in effect upon the effective date of this act,  
14 and who purchases a viaticated policy from a viatical settlement provider.
- 15 ~~(p)~~ (q) “Viator” means the owner of a life insurance policy or a cer-  
16 tificate holder under a group policy who enters or seeks to enter into a  
17 viatical settlement contract. For the purposes of this act, a viator shall not  
18 be limited to an owner of a life insurance policy or a certificate holder  
19 under a group policy insuring the life of an individual with a terminal or  
20 chronic illness or condition except where specifically addressed. Viator  
21 shall not include:
- 22 (1) A licensee under this act;
- 23 (2) an accredited investor or qualified institutional buyer as such term  
24 is defined respectively in regulation D, rule 501 or rule 144A of the fed-  
25 eral securities act of 1933, as in effect upon the effective date of this act;
- 26 (3) a financing entity;
- 27 (4) a special purpose entity; or
- 28 (5) a related provider trust.
- 29 ~~(q)~~ (r) “Viaticated policy” means a life insurance policy or certificate  
30 that has been acquired by a viatical settlement provider pursuant to a  
31 viatical settlement contract.
- 32 ~~(r)~~ (s) “Viatical settlement purchaser” means a person who gives a  
33 sum of money as consideration for a life insurance policy or an interest  
34 in the death benefits of a life insurance policy, or a person who owns or  
35 acquires or is entitled to a beneficial interest in a trust that owns a viatical  
36 settlement contract or is the beneficiary of a life insurance policy that has  
37 been or will be the subject of a viatical settlement contract, for the pur-  
38 pose of deriving an economic benefit. Viatical settlement purchaser shall  
39 not include:
- 40 (1) A licensee under this act;
- 41 (2) an accredited investor or qualified institutional buyer as such term  
42 is defined respectively in regulation D, rule 501 or rule 144A of the fed-  
43 eral securities act of 1933, as in effect upon the effective date of this act;

- 1 (3) a financing entity;
  - 2 (4) a special purpose entity; or
  - 3 (5) a related provider trust.
- 4 Sec. 2. K.S.A. 2007 Supp. 40-5008 is hereby amended to read as  
5 follows: 40-5008. (a) With each application for a viatical settlement, a  
6 viatical settlement provider or viatical settlement broker shall provide the  
7 viator with at least the following disclosures no later than the time the  
8 application 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 K.S.A. 2007 Supp. 40-5009,  
27 and amendments thereto. If the insured dies during the rescission period,  
28 the settlement contract shall be deemed to have been rescinded, subject  
29 to repayment of all viatical settlement proceeds and any premiums, loans  
30 and loan interest 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 (c) *In addition to other questions an insurance carrier may lawfully*  
4 *pose to a life insurance applicant, insurance carriers may inquire in the*  
5 *application for insurance whether the proposed owner intends to pay*  
6 *premiums with the assistance of financing from a lender that will use the*  
7 *policy as collateral to support the financing.*

8 (1) *If, as described in paragraph (3) of subsection (o) of K.S.A. 40-*  
9 *5002, and amendments thereto, the loan provides funds which can be used*  
10 *for a purpose other than paying for the premiums, costs, and expenses*  
11 *associated with obtaining and maintaining the life insurance policy and*  
12 *loan, the application shall be rejected as a violation of this act.*

13 (2) *If the financing does not violate this section in this manner, the*  
14 *insurance carrier:*

15 (A) *May make disclosures, including, but not limited to, such as the*  
16 *following, to the applicant and the insured, either on the application or*  
17 *an amendment to the application to be completed no later than the deliv-*  
18 *ery of the policy:*

19 *“If you have entered into a loan arrangement where the policy is used*  
20 *as collateral, and the policy does change ownership at some point in the*  
21 *future in satisfaction of the loan, the following may be true:*

22 (i) *A change of ownership could lead to a stranger owning an interest*  
23 *in the insured’s life;*

24 (ii) *a change of ownership could in the future limit your ability to*  
25 *purchase future insurance on the insured’s life because there is a limit to*  
26 *how much coverage insurers will issue on one life;*

27 (iii) *should there be a change of ownership and you wish to obtain*  
28 *more insurance coverage on the insured’s life in the future, the insured’s*  
29 *higher issue age, a change in health status, or other factors, or both, may*  
30 *reduce the ability to obtain coverage or may result in significantly higher*  
31 *premiums or both;*

32 (iv) *you should consult a professional advisor, since a change in own-*  
33 *ership in satisfaction of the loan may result in tax consequences to the*  
34 *owner, depending on the structure of the loan;” and*

35 (B) *may require certifications, such as the following, from the appli-*  
36 *cant or the insured or both:*

37 (i) *I have not entered into any agreement or arrangement providing*  
38 *for the future sale of this life insurance policy;*

39 (ii) *my loan arrangement for this policy provides funds sufficient to*  
40 *pay for some or all of the premiums, costs, and expenses associated with*  
41 *obtaining and maintaining my life insurance policy, but I have not entered*  
42 *into any agreement by which I am to receive consideration in exchange*  
43 *for procuring this policy; and*

1       (iii) *the borrower has an insurable interest in the insured.*”

2       Sec. 3. K.S.A. 2007 Supp. 40-5011 is hereby amended to read as  
3 follows: 40-5011. The purpose of this section is to provide prospective  
4 viators with clear and unambiguous statements in the advertisement of  
5 viatical settlements and to assure the clear, truthful and adequate disclo-  
6 sure of the benefits, risks, limitations and exclusions of any viatical settle-  
7 ment contract. This purpose is intended to be accomplished by the es-  
8 tablishment of guidelines and standards of permissible and impermissible  
9 conduct in the advertising of viatical settlements to assure that product  
10 descriptions are presented in a manner that prevents unfair, deceptive or  
11 misleading advertising and is conducive to accurate presentation and de-  
12 scription of viatical settlements through the advertising media and ma-  
13 terial used by viatical settlement licensees.

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

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

31       (c) Advertisements shall be truthful and not misleading in fact or by  
32 implication. The form and content of an advertisement of a viatical set-  
33 tlement contract, product or service shall be sufficiently complete and  
34 clear so as to avoid deception. It shall not have the capacity or tendency  
35 to mislead or deceive. Whether an advertisement has the capacity or  
36 tendency to mislead or deceive shall be determined by the commissioner  
37 from the overall impression that the advertisement may be reasonably  
38 expected to create upon a person of average education or intelligence  
39 within the segment of the public to which it is directed.

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

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

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

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

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

22 (5) Testimonials, appraisals or analysis used in advertisements must  
23 be genuine; represent the current opinion of the author; be applicable to  
24 the viatical settlement contract, product or service advertised, if any; and  
25 be accurately reproduced with sufficient completeness to avoid mislead-  
26 ing or deceiving prospective viators as to the nature or scope of the tes-  
27 timonials, appraisal, analysis or endorsement. In using testimonials, ap-  
28 praisals or analysis, the viatical settlement licensee makes as its own all  
29 the statements contained therein, and the statements are subject to all  
30 the provisions of this section.

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

36 (B) An advertisement shall not state or imply that a viatical settlement  
37 contract, benefit or service has been approved or endorsed by a group of  
38 individuals, society, association or other organization unless that is the  
39 fact and unless any relationship between an organization and the viatical  
40 settlement licensee is disclosed. If the entity making the endorsement or  
41 testimonial is owned, controlled or managed by the viatical settlement  
42 licensee, or receives any payment or other consideration from the viatical  
43 settlement licensee for making an endorsement or testimonial, that fact

1 shall be disclosed in the advertisement.

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

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

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

11 (g) The name of the viatical settlement licensee shall be clearly iden-  
12 tified in all advertisements about the licensee or its viatical settlement  
13 contract, products or services, and if any specific viatical settlement con-  
14 tract is advertised, the viatical settlement contract shall be identified ei-  
15 ther by form number or some other appropriate description. If an appli-  
16 cation is part of the advertisement, the name of the viatical settlement  
17 provider shall be shown on the application.

18 (h) No advertisement shall use a trade name, group designation,  
19 name of the parent company of a viatical settlement licensee, name of a  
20 particular division of the viatical settlement licensee, service mark, slogan,  
21 symbol or other device or reference without disclosing the name of the  
22 viatical settlement licensee, if the advertisement would have the capacity  
23 or tendency to mislead or deceive as to the true identity of the viatical  
24 settlement licensee, or to create the impression that a company other  
25 than the viatical settlement licensee would have any responsibility for the  
26 financial obligation under a viatical settlement contract.

27 (i) No advertisement shall use any combination of words, symbols or  
28 physical materials that by their content, phraseology, shape, color or other  
29 characteristics are so similar to a combination of words, symbols or phys-  
30 ical materials used by a government program or agency or otherwise ap-  
31 pear to be of such a nature that they tend to mislead prospective viators  
32 into believing that the solicitation is in some manner connected with a  
33 government program or agency.

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

41 (k) No advertisement shall create the impression that the viatical set-  
42 tlement provider, its financial condition or status, the payment of its  
43 claims or the merits, desirability or advisability of its viatical settlement

1 contracts are recommended or endorsed by any government entity.

2 (l) The name of the actual licensee shall be stated in all of its adver-  
3 tisements. No advertisement shall use a trade name, any group designa-  
4 tion, name of any affiliate or controlling entity of the licensee, service  
5 mark, slogan, symbol or other device in a manner that would have the  
6 capacity or tendency to mislead or deceive as to the true identity of the  
7 actual licensee or create the false impression that an affiliate or controlling  
8 entity would have any responsibility for the financial obligation of the  
9 licensee.

10 (m) No advertisement shall, directly or indirectly, create the impres-  
11 sion that any division or agency of the state or of the United States gov-  
12 ernment endorses, approves or favors:

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

15 (2) the merits, desirability or advisability of any viatical settlement  
16 contract;

17 (3) any viatical settlement contract; or

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

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

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

27 (p) *No advertising by any person shall solicit, market or otherwise*  
28 *promote the purchase of an insurance policy for the sole purpose of or*  
29 *with the primary emphasis on entering into a viatical settlement contract.*

30 Sec. 4. K.S.A. 2007 Supp. 40-5012 is hereby amended to read as  
31 follows: 40-5012. (a) No person shall:

32 (1) Commit a fraudulent viatical settlement act.

33 (2) Knowingly or intentionally interfere with the enforcement of any  
34 provision of this act or any investigation of suspected or actual violations  
35 of this act.

36 (3) Knowingly or intentionally permit any person, employed by a per-  
37 son in the business of viatical settlements, convicted of a felony involving  
38 dishonesty or breach of trust to participate in the business of viatical  
39 settlements. No person in the business of viatical settlements shall know-  
40 ingly or intentionally permit any person convicted of a felony involving  
41 dishonesty or breach of trust to participate in the business of viatical  
42 settlements.

43 (4) *Enter into a viatical settlement contract on a policy that was the*

- 1 *subject of a premium finance agreement described in paragraph (3) of*  
2 *subsection (o) of K.S.A. 2007 Supp. 40-5002 and amendments thereto.*
- 3 (b) (1) Viatical settlements contracts and applications for viatical set-  
4 tlements, regardless of the form of transmission, shall contain the follow-  
5 ing statement or a substantially similar statement:  
6 “Any person who knowingly presents false information in an application  
7 for insurance or viatical settlement contract is guilty of a crime and may  
8 be subject to fines and confinement in prison.”
- 9 (2) The lack of a statement as required in paragraph (1) shall not  
10 constitute a defense in any prosecution for a fraudulent viatical settlement  
11 act.
- 12 (c) (1) Any person engaged in the business of viatical settlements  
13 having knowledge or a reasonable belief that a fraudulent viatical settle-  
14 ment act is being, will be or has been committed shall provide to the  
15 commissioner the information required by, and in a manner prescribed  
16 by, the commissioner.
- 17 (2) Any other person having knowledge or a reasonable belief that a  
18 fraudulent viatical settlement act is being, will be or has been committed  
19 may provide to the commissioner the information required by, and in a  
20 manner prescribed by, the commissioner.
- 21 (d) (1) No civil liability shall be imposed on and no cause of action  
22 shall arise from a person’s furnishing information concerning suspected,  
23 anticipated or completed fraudulent viatical settlement acts or suspected  
24 or completed fraudulent insurance acts, if the information is provided to  
25 or received from:
- 26 (A) The commissioner or the commissioner’s employees, agents or  
27 representatives;
- 28 (B) federal, state or local law enforcement or regulatory officials or  
29 their employees, agents or representatives;
- 30 (C) any person involved in the prevention and detection of fraudulent  
31 viatical settlement acts or that person’s agents, employees or  
32 representatives;
- 33 (D) the NAIC, national association of securities dealers, the North  
34 american securities administrators association, or their employees, agents  
35 or representatives, or other regulatory body overseeing life insurance,  
36 viatical settlements, securities or investment fraud; or
- 37 (E) the life insurer that issued the life insurance policy covering the  
38 life of the insured.
- 39 (2) Paragraph (1) shall not apply to statements made with actual mal-  
40 ice. In an action brought against a person for filing a report or furnishing  
41 other information concerning a fraudulent viatical settlement act or a  
42 fraudulent insurance act, the party bringing the action shall plead specif-  
43 ically any allegation that paragraph (1) does not apply because the person

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

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

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

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

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

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

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

24 (C) at the discretion of the commissioner or pursuant to a court order,  
25 to a person in the business of viatical settlements that is aggrieved by a  
26 fraudulent viatical settlement act; or

27 (D) at the discretion of the commissioner or pursuant to a court or-  
28 der, to a person that is aggrieved by a fraudulent viatical settlement act.

29 (3) Release of documents and evidence under subparagraphs (A) and  
30 (B) of paragraph (2) of this subsection does not abrogate or modify the  
31 privilege granted in paragraph (1).

32 (4) The provisions of this subsection shall expire July 1, 2007, unless  
33 the legislature acts to reenact such provisions. The provisions of this sec-  
34 tion shall be reviewed by the legislature prior to July 1, 2007.

35 (f) This act shall not:

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

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

42 (3) limit the powers granted elsewhere by the laws of this state to the  
43 commissioner or an insurance fraud unit to investigate and examine pos-

1 sible violations of law and to take appropriate action against wrongdoers.  
2 (g) Viatical settlement providers and viatical settlement brokers shall  
3 have in place antifraud initiatives reasonably calculated to detect, prose-  
4 cute and prevent fraudulent viatical settlement acts. At the discretion of  
5 the commissioner, the commissioner may order, or a licensee may request  
6 and the commissioner may grant, such modifications of the following  
7 required initiatives as necessary to ensure an effective antifraud program.  
8 The modifications may be more or less restrictive than the required ini-  
9 tiatives so long as the modifications reasonably may be expected to ac-  
10 complish the purpose of this section. Antifraud initiatives shall include:  
11 (1) Fraud investigators, who may be viatical settlement providers or  
12 viatical settlement broker employees or independent contractors; and  
13 (2) an antifraud plan, which shall be submitted to the commissioner.  
14 The antifraud plan shall include, but not be limited to:  
15 (A) A description of the procedures for detecting and investigating  
16 possible fraudulent viatical settlement acts and procedures for resolving  
17 material inconsistencies between medical records and insurance  
18 applications;  
19 (B) a description of the procedures for reporting possible fraudulent  
20 viatical settlement acts to the commissioner;  
21 (C) a description of the plan for antifraud education and training of  
22 underwriters and other personnel; and  
23 (D) a description or chart outlining the organizational arrangement  
24 of the antifraud personnel who are responsible for the investigation and  
25 reporting of possible fraudulent viatical settlement acts and investigating  
26 unresolved material inconsistencies between medical records and insur-  
27 ance applications; and  
28 (3) antifraud plans submitted to the commissioner shall be privileged  
29 and confidential and shall not be a public record and shall not be subject  
30 to discovery or subpoena in a civil or criminal action.  
31 Sec. 5. K.S.A. 2007 Supp. 40-5002, 40-5008, 40-5011 and 40-5012  
32 are hereby repealed.  
33 Sec. 6. This act shall take effect and be in force from and after its  
34 publication in the statute book.