

SB 704

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WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

COMMITTEE SUBSTITUTE
FOR

ENROLLED

Senate Bill No. 704

(SENATOR MINARD, *original sponsor*)

[Passed February 29, 2008; in effect ninety days from passage.]

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CLARENCE S. BROWN
SECRETARY OF STATE

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(SENATOR MINARD, *original sponsor*)

[Passed February 29, 2008; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-13C-1, §33-13C-2, §33-13C-3, §33-13C-4, §33-13C-5, §33-13C-6, §33-13C-7, §33-13C-8, §33-13C-9, §33-13C-10, §33-13C-11, §33-13C-12, §33-13C-13, §33-13C-14, §33-13C-15, §33-13C-16, §33-13C-17 and §33-13C-18, all relating to viatical settlements of life insurance policies between life insurance policyholders and third parties; providing for licensing of viatical settlement providers and

brokers; requiring payment of fees; authorizing proposal of and promulgation of rules, including emergency rules; and providing civil and criminal penalties for violations.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-13C-1, §33-13C-2, §33-13C-3, §33-13C-4, §33-13C-5, §33-13C-6, §33-13C-7, §33-13C-8, §33-13C-9, §33-13C-10, §33-13C-11, §33-13C-12, §33-13C-13, §33-13C-14, §33-13C-15, §33-13C-16, §33-13C-17 and §33-13C-18, all to read as follows:

ARTICLE 13C. VIATICAL SETTLEMENTS ACT.

§33-13C-1. Short title.

1 This article may be cited as the “Viatical Settlements
2 Act”.

§33-13C-2. Definitions.

1 As used in this article:

2 (1) “Advertising” means any written, electronic or
3 printed communication or any communication by means
4 of recorded telephone messages or transmitted on radio,
5 television, the internet or similar communications
6 media, including film strips, motion pictures and videos,
7 published, disseminated, circulated or placed, directly
8 or indirectly, before the public in this state for the
9 purpose of creating an interest in or inducing a person
10 to sell, assign, devise, bequest or transfer the death
11 benefit or ownership of a life insurance policy pursuant
12 to a viatical settlement contract.

13 (2) "Business of viatical settlements" means an
14 activity involved in, but not limited to, the offering,
15 soliciting, negotiating, procuring, effectuating,
16 purchasing, investing, financing, monitoring, tracking,
17 underwriting, selling, transferring, assigning, pledging,
18 hypothecating or in any other manner, acquiring an
19 interest in a life insurance policy by means of a viatical
20 settlement contract.

21 (3) "Chronically ill" means having been certified
22 within the preceding twelve-month period by a licensed
23 health professional as:

24 (A) Being unable to perform, without substantial
25 assistance from another individual, at least two of the
26 following activities of daily living, including, but not
27 limited to, eating, toileting, transferring, bathing,
28 dressing or continence due to a loss of functional
29 capacity;

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

33 (C) Having a level of disability similar to that
34 described in paragraph (A) of this subdivision as
35 determined under regulations prescribed by the United
36 States Secretary of the Treasury in consultation with
37 the United States Secretary of Health and Human
38 Services.

39 (4) "Financing entity" means an underwriter,
40 placement agent, lender, purchaser of securities,
41 purchaser of a policy or certificate from a viatical
42 settlement provider, credit enhancer or any entity that

43 has a direct ownership in a policy or certificate that is
44 the subject of a viatical settlement contract, but whose
45 principal activity related to the transaction is providing
46 funds to effect the viatical settlement or purchase of one
47 or more viaticated polices and who has an agreement in
48 writing with one or more licensed viatical settlement
49 providers to finance the acquisition of viatical
50 settlement contracts. "Financing entity" does not
51 include a nonaccredited investor or a viatical settlement
52 purchaser.

53 (5) "Fraudulent viatical settlement act" includes:

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

59 (i) Presenting, causing to be presented or preparing
60 with knowledge or belief that it will be presented to or
61 by a viatical settlement provider, viatical settlement
62 broker, viatical settlement purchaser, financing entity,
63 insurer, insurance producer or any other person, false
64 material information or concealing material
65 information, as part of, in support of or concerning a
66 fact material to one or more of the following:

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

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

71 (III) A claim for payment or benefit pursuant to a

72 viatical settlement contract or insurance policy;

73 (IV) Premiums paid on an insurance policy;

74 (V) Payments and changes in ownership or beneficiary
75 made in accordance with the terms of a viatical
76 settlement contract or insurance policy;

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

79 (VII) In the solicitation, offer, effectuation or sale of a
80 viatical settlement contract or insurance policy;

81 (VIII) The issuance of written evidence of viatical
82 settlement contract or insurance; or

83 (IX) A financing transaction; and

84 (ii) Employing any plan, financial structure, device,
85 scheme or artifice to defraud related to viaticated
86 policies;

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

90 (i) Remove, conceal, alter, destroy or sequester from
91 the commissioner the assets or records of a licensee or
92 other person engaged in the business of viatical
93 settlements;

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

96 (iii) Transact the business of viatical settlements in
97 violation of laws requiring a license, certificate of
98 authority or other legal authority for the transaction of
99 the business of viatical settlements; or

100 (iv) File with the commissioner or the equivalent chief
101 insurance regulatory official of another jurisdiction a
102 document containing false information or otherwise
103 conceals information about a material fact from the
104 commissioner;

105 (C) Embezzlement, theft, misappropriation or
106 conversion of moneys, funds, premiums, credits or other
107 property of a viatical settlement provider, insurer,
108 insured, viator, insurance policyowner or any other
109 person engaged in the business of viatical settlements or
110 insurance;

111 (D) Recklessly entering into, negotiating, brokering,
112 otherwise dealing in a viatical settlement contract, the
113 subject of which is a life insurance policy that was
114 obtained by presenting false information concerning
115 any fact material to the policy or by concealing, for the
116 purpose of misleading another, information concerning
117 any fact material to the policy, where the person or the
118 persons intended to defraud the policy's issuer, the
119 viatical settlement provider or the viator;

120 (E) Facilitating the change of state of ownership of a
121 policy or certificate or the state of residency of a viator
122 to a state or jurisdiction that does not have a law similar
123 to this article for the express purposes of evading or
124 avoiding the provisions of this article;

125 (F) Issuing, soliciting, marketing or otherwise

126 promoting stranger-originated life insurance; or

127 (G) Attempting to commit, assisting, aiding or
128 abetting in the commission of, or conspiracy to commit
129 the acts or omissions specified in this subsection.

130 (6) "Life insurance producer" means any person
131 licensed in accordance with the provisions of article
132 twelve of this chapter as a resident or nonresident
133 insurance producer who has received qualification or
134 authority for a license in the life insurance coverage line
135 of authority.

136 (7) "Person" means a natural person or a legal entity,
137 including, without limitation, an individual,
138 partnership, limited liability company, association, trust
139 or corporation.

140 (8) "Policy" means an individual or group policy,
141 group certificate, contract or arrangement of life
142 insurance owned by a resident of this state, regardless
143 of whether delivered or issued for delivery in this state.

144 (9) "Related provider trust" means a titling trust or
145 other trust established by a licensed viatical settlement
146 provider or a financing entity for the sole purpose of
147 holding the ownership or beneficial interest in
148 purchased policies in connection with a financing
149 transaction. The trust shall have a written agreement
150 with the licensed viatical settlement provider under
151 which the licensed viatical settlement provider is
152 responsible for ensuring compliance with all statutory
153 and regulatory requirements and under which the trust
154 agrees to make all records and files related to viatical
155 settlement transactions available to the commissioner as

156 if those records and files were maintained directly by
157 the licensed viatical settlement provider.

158 (10) "Special purpose entity" means a corporation,
159 partnership, trust, limited liability company or other
160 similar entity formed solely to provide either directly or
161 indirectly access, either directly or indirectly, to
162 institutional capital markets for a financing entity or
163 licensed viatical settlement provider or in connection
164 with a transaction in which the securities in the special
165 purpose entity are acquired by qualified institutional
166 buyers.

167 (11) "Terminally ill" means certified by a physician as
168 having an illness or physical condition that can
169 reasonably be anticipated to result in death in twenty-
170 four months or less.

171 (12) "Viatical settlement broker" means a person who,
172 working exclusively on behalf of a viator and for a fee,
173 commission or other valuable consideration, offers or
174 attempts to negotiate viatical settlement contracts
175 between a viator and one or more viatical settlement
176 providers or one or more viatical settlement brokers.
177 Notwithstanding the manner in which the viatical
178 settlement broker is compensated, a viatical settlement
179 broker is deemed to represent only the viator, and not
180 the insurer or the viatical settlement provider, and owes
181 a fiduciary duty to the viator to act according to the
182 viator's instructions and in the best interest of the
183 viator. The term does not include an attorney, certified
184 public accountant or a financial planner accredited by
185 a nationally recognized accreditation agency, who is
186 retained to represent the viator and whose
187 compensation is not paid directly or indirectly by the

188 viatical settlement provider or purchaser, provided that
189 the viatical settlement activities are incidental to the
190 professional practice of the attorney, certified public
191 accountant or financial planner.

192 (13) "Viatical settlement contract" means any of the
193 following:

194 (A) A written agreement between a viator and a
195 viatical settlement provider or any affiliate of the
196 viatical settlement provider establishing the terms
197 under which compensation or anything of value is or
198 will be paid, which compensation or value is less than
199 the expected death benefits of the policy, in return for
200 the viator's present or future assignment, transfer, sale,
201 devise or bequest of the death benefit or ownership of
202 any portion of the insurance policy or certificate of
203 insurance;

204 (B) A premium finance loan made for a life insurance
205 policy by a lender to a viator on, before or after the date
206 of issuance of the policy in either of the following
207 situations:

208 (i) The viator or the insured receives a guarantee of a
209 future viatical settlement value of the policy; or

210 (ii) The viator or the insured agrees to sell the policy
211 or any portion of its death benefit on any date following
212 the issuance of the policy.

213 (C) The transfer or acquisition for compensation or
214 anything of value for ownership or beneficial interest in
215 a trust or other person that owns such a policy if the
216 trust or other person was formed or availed of for the

217 principal purpose of acquiring one or more life
218 insurance policies.

219 (D) "Viatical settlement contract" does not include
220 any of the following unless part of a plan, scheme,
221 device or artifice to avoid the application of this article:

222 (i) A policy loan or accelerated death benefit made by
223 the insurer pursuant to the policy's terms;

224 (ii) Loan proceeds that are used solely to pay
225 premiums for the policy and the costs of the loan,
226 including interest, arrangement fees, utilization fees and
227 similar fees, closing costs, legal fees and expenses,
228 trustee fees and expenses and third-party collateral
229 provider fees and expenses, including fees payable to
230 letter of credit issuers;

231 (iii) A loan made by a bank or other licensed financial
232 institution in which the lender takes an interest in a life
233 insurance policy solely to secure repayment of a loan or,
234 if there is a default on the loan and the policy is
235 transferred, the transfer of such a policy by the lender,
236 provided that the default itself is not pursuant to an
237 agreement or understanding with any other person for
238 the purpose of evading regulation under this article;

239 (iv) An agreement where all the parties are closely
240 related to the insured by blood or law or have a lawful
241 substantial economic interest in the continued life,
242 health and bodily safety of the person insured or are
243 trusts established primarily for the benefit of such
244 parties;

245 (v) Any designation, consent or agreement by an

246 insured who is an employee of an employer in
247 connection with the purchase by the employer, or trust
248 established by the employer, of life insurance on the life
249 of the employee;

250 (vi) Any of the following business succession planning
251 arrangements if those arrangements are bona fide
252 arrangements:

253 (I) An arrangement between one or more shareholders
254 in a corporation or between a corporation and one or
255 more of its shareholders or one or more trusts
256 established by its shareholders;

257 (II) An arrangement between one or more partners in
258 a partnership or between a partnership and one or more
259 of its partners or one or more trusts established by its
260 partners; or

261 (III) An arrangement between one or more members in
262 a limited liability company or between a limited
263 liability company and one or more of its members or one
264 or more trusts established by its members;

265 (vii) An agreement entered into by a service recipient,
266 or a trust established by the service recipient and a
267 service provider, or a trust established by the service
268 provider who performs significant services for the
269 service recipient's trade or business; or

270 (viii) Any other contract, transaction or arrangement
271 exempted from the definition of a viatical settlement
272 contract by the commissioner based on a determination
273 that the contract, transaction or arrangement is not of
274 the type intended to be regulated by this article.

275 (14)(A) "Viatical settlement provider" means a person,
276 other than a viator, that enters into or effectuates a
277 viatical settlement contract with a viator resident in this
278 state.

279 (B) "Viatical settlement provider" does not include:

280 (i) A bank, savings bank, savings and loan association,
281 credit union or other licensed lending institution that
282 takes an assignment of a life insurance policy solely as
283 collateral for a loan;

284 (ii) The issuer of the life insurance policy;

285 (iii) An authorized or eligible insurer that provides
286 stop loss coverage or financial guaranty insurance to a
287 viatical settlement provider, purchaser, financing entity,
288 special purpose entity or related provider trust;

289 (iv) An individual who enters into or effectuates no
290 more than one viatical settlement contract in a calendar
291 year for the transfer of life insurance policies for any
292 value less than the expected death benefit;

293 (v) A financing entity;

294 (vi) A special purpose entity;

295 (vii) A related provider trust;

296 (viii) A viatical settlement purchaser; or

297 (ix) Any other person that the commissioner
298 determines is not the type of person intended to be
299 covered by the definition of viatical settlement provider.

300 (15)(A) “Viatical settlement purchaser” means a
301 person who provides a sum of money as consideration
302 for a life insurance policy or an interest in the death
303 benefits of a life insurance policy, or a person who owns
304 or acquires or is entitled to a beneficial interest in a
305 trust that owns a viatical settlement contract or is the
306 beneficiary of a life insurance policy that has been or
307 will be the subject of a viatical settlement contract, for
308 the purpose of deriving an economic benefit.

309 (B) “Viatical settlement purchaser” does not include:

310 (i) A licensee under this article;

311 (ii) An accredited investor or qualified institution
312 buyer as defined in, respectively, Rule 501(a) or Rule
313 144A promulgated under the Federal Securities Act of
314 1933, as amended;

315 (iii) A financing entity;

316 (iv) A special purpose entity; or

317 (v) A related provider trust.

318 (16) “Viaticated policy” means a life insurance policy
319 or certificate that has been acquired by a viatical
320 settlement provider pursuant to a viatical settlement
321 contract.

322 (17)(A) “Viator” means the owner of a life insurance
323 policy or a certificate holder under a group policy who
324 resides in this state and enters or seeks to enter into a
325 viatical settlement contract. For the purposes of this
326 article, a viator shall not be limited to an owner of a life

327 insurance policy or a certificate holder under a group
328 policy insuring the life of an individual with a terminal
329 or chronic illness or condition except where specifically
330 addressed. If there is more than one viator on a single
331 policy and the viators are residents of different states,
332 the transaction shall be governed by the law of the state
333 in which the viator having the largest percentage
334 ownership resides or, if the viators hold equal
335 ownership, the state of residence of one viator agreed
336 upon in writing by all the viators.

337 (B) "Viator" does not include:

338 (i) A licensee under this article, including a life
339 insurance producer acting as a viatical settlement
340 broker pursuant to this article;

341 (ii) Qualified institution buyer as defined, respectively,
342 in Rule 144A promulgated under the Federal Securities
343 Act of 1933, as amended;

344 (iii) A financing entity;

345 (iv) A special purpose entity; or

346 (v) A related provider trust.

347 (18) "Stranger-originated life insurance" or "STOLI"
348 means a plan or agreement that provides for both of the
349 following at the time of the origination of a life
350 insurance policy.

351 (A) The purchase of a life insurance policy by an
352 applicant primarily for the benefit of a third-party
353 investor that lacks insurable interest in the insured

354 person; and

355 (B) The subsequent accrual, directly or indirectly, to
356 that third-party investor of the legal or beneficial
357 ownership of the policy or the benefits of the policy.

§33-13C-3. License and bond requirements.

1 (a) (1) A person shall not operate as a viatical
2 settlement provider or viatical settlement broker
3 without first obtaining a license from the commissioner.

4 (2) (A) An insurance producer who is authorized to sell
5 life insurance in this state pursuant to a resident or
6 nonresident license issued in accordance with the
7 provisions of article twelve of this chapter may operate
8 as a viatical settlement broker without obtaining a
9 license pursuant to this section if the viatical settlement
10 activities of the producer are incidental to the
11 producer's insurance business activities.

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

21 (3) A person licensed as an attorney, certified public
22 accountant or financial planner accredited by a
23 nationally recognized accreditation agency, who is
24 retained to represent the viator, whose compensation is

25 not paid directly or indirectly by the viatical settlement
26 provider, may negotiate viatical settlement contracts on
27 behalf of the viator without having to obtain a license as
28 a viatical settlement broker.

29 (b) Application for a viatical settlement provider or
30 viatical settlement broker license and for renewals of
31 such licenses shall be made in the manner prescribed by
32 the commissioner and shall be accompanied by fees
33 established in legislative rules, including emergency
34 rules, promulgated by the commissioner.

35 (c) The commissioner shall have authority, at any time,
36 to require the applicant to fully disclose the identity of
37 all stockholders, partners, officers, members and
38 employees, and the commissioner may, in the exercise of
39 the commissioner's discretion, refuse to issue a license
40 in the name of a legal entity if not satisfied that any
41 officer, employee, stockholder, partner or member
42 thereof who may materially influence the applicant's
43 conduct meets the standards of this article.

44 (d) The commissioner shall make an investigation of
45 each applicant and issue a license if the commissioner
46 finds that the applicant:

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

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

52 (3) Has a good business reputation and has had
53 experience, training or education so as to be qualified in

54 the business for which the license is applied for;

55 (4) Has demonstrated evidence of financial
56 responsibility in a format prescribed by the
57 commissioner by possessing a minimum equity of not
58 less than two hundred fifty thousand dollars in cash or
59 cash equivalents reflected in the applicant's audited
60 financial statements or through a surety bond executed
61 and issued by an insurer authorized to issue surety
62 bonds in this state in the amount of two hundred fifty
63 thousand dollars: *Provided*, That the commissioner
64 shall accept, as evidence of financial responsibility,
65 proof that financial instruments in accordance with the
66 requirements in this paragraph have been filed with a
67 state in which the applicant is licensed as a viatical
68 settlement provider or viatical settlement broker. Any
69 surety bond issued pursuant to this subdivision shall be
70 in the favor of this state and shall specifically authorize
71 recovery by the commissioner on behalf of any person in
72 this state who sustained damages as the result of
73 erroneous acts, failure to act, conviction of fraud or
74 conviction of unfair practices by the viatical settlement
75 provider or viatical settlement broker. The
76 commissioner may ask for evidence of financial
77 responsibility at any time he or she deems necessary.

78 (5) If a legal entity, has provided a certificate of good
79 standing from the state of its domicile; and

80 (6) Has provided an antifraud plan that meets the
81 requirements of subsection (g), section fourteen of this
82 article.

83 (e) The commissioner shall not issue a license to a
84 nonresident applicant unless the applicant files with the

85 commissioner either a written designation of an agent
86 for service of process or the applicant's written
87 irrevocable consent that any action against the
88 applicant may be commenced against the applicant by
89 service of process on the commissioner.

90 (f) A viatical settlement provider or viatical settlement
91 broker shall provide to the commissioner new or revised
92 information about officers, ten percent or more
93 stockholders, partners, directors, members or
94 designated employees within thirty days of the change.

95 (g) An individual licensed as a viatical settlement
96 broker shall complete on a biennial basis fifteen hours
97 of training related to viatical settlements and viatical
98 settlement transactions, as required by the
99 commissioner. A life insurance producer operating as a
100 viatical settlement broker pursuant to subdivision (2),
101 subsection (a) of this section shall not be subject to the
102 requirements of this subsection. Any person failing to
103 meet the requirements of this subsection shall be subject
104 to the penalties imposed by the commissioner.

§33-13C-4. License revocation and denial.

1 (a) The commissioner may refuse to issue, suspend,
2 revoke, place on probation or refuse to renew the license
3 of a viatical settlement provider or viatical settlement
4 broker if the commissioner finds that:

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

7 (2) The licensee or any officer, partner, member or key
8 management personnel has been convicted of fraudulent

9 or dishonest practices, is subject to a final
10 administrative action or is otherwise shown to be
11 untrustworthy or incompetent;

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

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

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

23 (6) The viatical settlement provider has failed to honor
24 contractual obligations set out in a viatical settlement
25 contract;

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

28 (8) The viatical settlement provider has assigned,
29 transferred or pledged a viaticated policy to a person
30 other than a viatical settlement provider licensed in this
31 state, viatical settlement purchaser, an accredited
32 investor or qualified institutional buyer as defined
33 respectively in Rule 501(a) or Rule 144A promulgated
34 under the Federal Securities Act of 1933, as amended,
35 financing entity, special purpose entity or related
36 provider trust; or

37 (9) The licensee or any officer, partner, member or key
38 management personnel has violated any provision of
39 this article.

40 (b) The commissioner may suspend, revoke or refuse
41 to renew the license of a viatical settlement broker or a
42 life insurance producer operating as a viatical
43 settlement broker pursuant to this article if the
44 commissioner finds that the viatical settlement broker
45 or life insurance producer has violated the provisions of
46 this article or has otherwise engaged in bad faith
47 conduct with one or more viators.

48 (c) If the commissioner denies a license application or
49 suspends, revokes or refuses to renew the license of a
50 viatical settlement provider, viatical settlement broker
51 or life insurance producer operating as a viatical
52 settlement broker, the commissioner shall conduct a
53 hearing in accordance with section thirteen, article two
54 of this chapter.

**§33-13C-5. Approval of viatical settlement contracts and
disclosure statements.**

1 (a) A person shall not use a viatical settlement
2 contract form or provide a disclosure statement form to
3 a viator in this state unless it has been filed with and
4 approved by the commissioner. The commissioner shall
5 disapprove a viatical settlement contract form,
6 disclosure statement form or any provision contained
7 therein if, in the commissioner's opinion, the contract,
8 disclosure form or any provision contained therein fail
9 to meet the requirements of section eight, ten, thirteen
10 or fourteen of this article, is unreasonable, is contrary to
11 the interests of the public or is otherwise misleading or

12 unfair to the viator. At the commissioner's discretion,
13 the commissioner may require the submission of
14 advertising material.

15 (b) Forms required to be filed are subject to the
16 provisions of section eight, article six of this chapter
17 and shall be deemed "forms for noncommercial
18 insurance". The commissioner shall establish fees for
19 form filings by rule, including emergency rule.

§33-13C-6. Reporting requirements and privacy.

1 (a) On or before the first day of March of each year,
2 each viatical settlement provider shall file with the
3 commissioner an annual statement containing such
4 information as the commissioner may prescribe. The
5 information shall be limited to only those transactions
6 where the viator is a resident of this state. Individual
7 transaction data regarding the business of viatical
8 settlements or data that could compromise the privacy
9 of personal, financial and health information of the
10 viator or insured shall be filed with the commissioner on
11 a confidential basis.

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

20 (1) Is necessary to effect a viatical settlement between
21 the viator and a viatical settlement provider and the

22 viator and insured have provided prior written consent
23 to the disclosure;

24 (2) Is provided in response to an investigation or
25 examination by the commissioner or any other
26 governmental officer or agency or pursuant to the
27 requirements of subsection (c), section fourteen of this
28 article;

29 (3) Is a term of or condition to the transfer of a policy
30 by one viatical settlement provider to another viatical
31 settlement provider;

32 (4) Is necessary to permit a financing entity, related
33 provider trust or special purpose entity to finance the
34 purchase of policies by a viatical settlement provider
35 and the viator and insured have provided prior written
36 consent to the disclosure;

37 (5) Is necessary to allow the viatical settlement
38 provider or viatical settlement broker or their
39 authorized representative to make contacts for the
40 purpose of determining health status; or

41 (6) Is required to purchase stop loss coverage or
42 financial guaranty insurance.

§33-13C-7. Examination or investigation.

1 (a) (1) The commissioner may conduct an examination
2 under this article of a licensee as often as he or she
3 deems appropriate after considering such matters as
4 consumer complaints, results of financial statement
5 analyses and ratios, changes in management or
6 ownership, actuarial opinions, report of independent

7 certified public accountants and other relevant criteria
8 as determined by the commissioner.

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

15 (3) In lieu of an examination under this article of any
16 foreign or alien licensee licensed in this state, the
17 commissioner may, at the commissioner's discretion,
18 accept an examination report on the licensee as
19 prepared by the commissioner for the licensee's state of
20 domicile or port-of-entry state; as far as practical, the
21 examination of a foreign or alien licensee shall be made
22 in cooperation with the insurance supervisory officials
23 of other states in which the licensee transacts business.

24 (b) (1) A person required to be licensed by this article
25 shall for five years retain copies of all records and
26 documents related to the requirements of this article,
27 including, but not limited to, proposed, offered or
28 executed contracts, purchase agreements, underwriting
29 documents, policy forms and applications from the date
30 of the proposal, offer or execution of the contract or
31 purchase agreement, whichever is later; and all checks,
32 drafts or other evidence and documentation related to
33 the payment, transfer, deposit or release of funds from
34 the date of the transaction: *Provided*, That this
35 subsection does not relieve a person of the obligation to
36 produce these documents to the commissioner after the
37 retention period has expired if the person has retained
38 the documents.

39 (2) Records required to be retained by this section
40 shall be legible and complete and may be retained in
41 paper, photograph, microprocess, magnetic, mechanical
42 or electronic media or by any process that accurately
43 reproduces or forms a durable medium for the
44 reproduction of a record.

45 (c) (1) Upon determining that an examination should
46 be conducted, the commissioner shall issue an
47 examination warrant appointing one or more examiners
48 to perform the examination and instructing them as to
49 the scope of the examination. In conducting the
50 examination, the examiner shall observe those
51 guidelines and procedures set forth in the Examiners
52 Handbook adopted by the National Association of
53 Insurance Commissioners (NAIC). The commissioner
54 may also employ such other guidelines or procedures as
55 the commissioner may deem appropriate.

56 (2) Every licensee or person from whom information is
57 sought, its officers, directors and agents shall provide to
58 the examiners timely, convenient and free access at all
59 reasonable hours at its offices to all books, records,
60 accounts, papers, documents, assets and computer or
61 other recordings relating to the property, assets,
62 business and affairs of the licensee being examined.
63 The officers, directors, employees and agents of the
64 licensee or person shall facilitate the examination and
65 aid in the examination so far as it is in their power to do
66 so. The refusal of a licensee, by its officers, directors,
67 employees or agents, to submit to examination or to
68 comply with any reasonable written request of the
69 commissioner shall be grounds for suspension or refusal
70 of, or nonrenewal of any license or authority held by the
71 licensee to engage in the viatical settlement business or

72 other business subject to the commissioner's
73 jurisdiction. Any proceedings for suspension,
74 revocation or refusal of any license or authority shall be
75 conducted pursuant to section eleven, article two of this
76 chapter.

77 (3) The commissioner shall have the power to issue
78 subpoenas, to administer oaths and to examine under
79 oath any person as to any matter pertinent to the
80 examination. Upon the failure or refusal of a person to
81 obey a subpoena, the commissioner may petition a court
82 of competent jurisdiction and, upon proper showing, the
83 court may enter an order compelling the witness to
84 appear and testify or produce documentary evidence.
85 Failure to obey the court order is punishable as
86 contempt of court.

87 (4) When making an examination under this article,
88 the commissioner may retain attorneys, appraisers,
89 independent actuaries, independent certified public
90 accountants or other professionals and specialists as
91 examiners, the reasonable cost of which shall be borne
92 by the licensee that is the subject of the examination.

93 (5) Nothing contained in this article shall be construed
94 to limit the commissioner's authority to terminate or
95 suspend an examination in order to pursue other legal
96 or regulatory action pursuant to the insurance laws of
97 this state. Findings of fact and conclusions made
98 pursuant to any examination shall be prima facie
99 evidence in any legal or regulatory action.

100 (6) No later than sixty days following completion of
101 the examination, the examiner in charge shall file with
102 the commissioner a verified written report of

103 examination under oath. Upon receipt of the verified
104 report, the commissioner shall transmit the report to the
105 licensee examined, together with a notice that shall
106 afford the licensee examined a reasonable opportunity
107 of not more than thirty days to make a written
108 submission or rebuttal with respect to any matters
109 contained in the examination report.

110 (7) In the event the commissioner determines that
111 regulatory action is appropriate as a result of an
112 examination, the commissioner may initiate any
113 proceedings or actions provided by law.

114 (d) (1) Names and individual identification data for all
115 viators is considered private and confidential
116 information and shall not be disclosed by the
117 commissioner unless required by law.

118 (2) Except as otherwise provided in this article, all
119 examination reports, working papers, recorded
120 information, documents and copies thereof produced by,
121 obtained by or disclosed to the commissioner or any
122 other person in the course of an examination made
123 under this article, or in the course of analysis or
124 investigation by the commissioner of the financial
125 condition or market conduct of a licensee is confidential
126 by law and privileged, is not subject to the public
127 disclosure provisions of article one, chapter twenty-
128 nine-b of this code, is not subject to subpoena and is not
129 subject to discovery or admissible in evidence in any
130 private civil action. The commissioner is authorized to
131 use the documents, materials or other information in the
132 furtherance of any regulatory or legal action brought as
133 part of the commissioner's official duties.

134 (3) Documents, materials or other information,
135 including, but not limited to, all working papers, and
136 copies thereof, in the possession or control of the NAIC
137 and its affiliates and subsidiaries is confidential by law
138 and privileged, is not subject to subpoena and is not
139 subject to discovery or admissible in evidence in any
140 private civil action if they are:

141 (A) Created, produced or obtained by or disclosed to
142 the NAIC and its affiliates and subsidiaries in the
143 course of assisting an examination made under this
144 article, or assisting a commissioner in the analysis or
145 investigation of the financial condition or market
146 conduct of a licensee; or

147 (B) Disclosed to the NAIC and its affiliates and
148 subsidiaries under subdivision (5) of this subsection by
149 a commissioner.

150 (4) Neither the commissioner nor any person that
151 received the documents, material or other information
152 while acting under the authority of the commissioner,
153 including the NAIC and its affiliates and subsidiaries,
154 shall be permitted to testify in any private civil action
155 concerning any confidential documents, materials or
156 information subject to subdivision (1) of this subsection.

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

159 (A) May share documents, materials or other
160 information, including the confidential and privileged
161 documents, materials or information subject to
162 subdivision (1) of this subsection, with other state,
163 federal and international regulatory agencies, with the

164 NAIC and its affiliates and subsidiaries, and with state,
165 federal and international law-enforcement authorities,
166 provided that the recipient agrees to maintain the
167 confidentiality and privileged status of the document,
168 material, communication or other information;

169 (B) May receive documents, materials,
170 communications or information, including otherwise
171 confidential and privileged documents, materials or
172 information, from the NAIC and its affiliates and
173 subsidiaries, and from regulatory and law-enforcement
174 officials of other foreign or domestic jurisdictions, and
175 shall maintain as confidential or privileged any
176 document, material or information received with notice
177 or the understanding that it is confidential or privileged
178 under the jurisdiction that is the source of the
179 document, material or information; and

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

182 (6) No waiver of any applicable privilege or claim of
183 confidentiality in the documents, materials or
184 information shall occur as a result of disclosure to the
185 commissioner under this section or as a result of sharing
186 as authorized in subdivision (5) of this subsection.

187 (7) A privilege established under the law of any state
188 or jurisdiction that is substantially similar to the
189 privilege established under this subsection shall be
190 available and enforced in any proceeding in, and in any
191 court of, this state.

192 (8) Nothing contained in this article shall prevent or
193 be construed as prohibiting the commissioner from

194 disclosing the content of an examination report,
195 preliminary examination report or results, or any matter
196 relating thereto, to the commissioner of any other state
197 or country, or to law-enforcement officials of this or any
198 other state or agency of the federal government at any
199 time or to the NAIC, so long as such agency or office
200 receiving the report or matters relating thereto agrees in
201 writing to hold it confidential and in a manner
202 consistent with this article.

203 (e) (1) An examiner may not be appointed by the
204 commissioner if the examiner, either directly or
205 indirectly, has a conflict of interest or is affiliated with
206 the management of or owns a pecuniary interest in any
207 person subject to examination under this article. This
208 section shall not be construed to automatically preclude
209 an examiner from being:

210 (A) A viator;

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

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

214 (2) Notwithstanding the requirements of this clause,
215 the commissioner may retain, from time to time, on an
216 individual basis, qualified actuaries, certified public
217 accountants or other similar individuals who are
218 independently practicing their professions, even though
219 these persons may, from time to time, be similarly
220 employed or retained by persons subject to examination
221 under this article.

222 (f) (1) No cause of action shall arise nor shall any

223 liability be imposed against the commissioner, the
224 commissioner's authorized representatives or any
225 examiner appointed by the commissioner for any
226 statements made or conduct performed in good faith
227 while carrying out the provisions of this article.

228 (2) No cause of action shall arise, nor shall any
229 liability be imposed against any person for the act of
230 communicating or delivering information or data to the
231 commissioner or the commissioner's authorized
232 representative or examiner pursuant to an examination
233 made under this article, if the act of communication or
234 delivery was performed in good faith and without
235 fraudulent intent or the intent to deceive. This
236 subdivision does not abrogate or modify in any way any
237 common law or statutory privilege or immunity
238 heretofore enjoyed by any person identified in
239 subdivision (1) of this subsection.

240 (3) A person identified in subdivision (1) or (2) of this
241 subsection shall be entitled to an award of attorney's
242 fees and costs if he or she is the prevailing party in a
243 civil cause of action for libel, slander or any other
244 relevant tort arising out of activities in carrying out the
245 provisions of this article and the party bringing the
246 action was not substantially justified in doing so. For
247 purposes of this section, a proceeding is "substantially
248 justified" if it had a reasonable basis in law or fact at
249 the time that it was initiated.

250 (g) The insurance fraud unit created in article forty-
251 one of this chapter may investigate suspected violations
252 of this article by persons engaged in the business of
253 viatical settlements in the same manner as the fraud
254 unit investigates suspected violators of those statutes set

255 forth in subsection (b), section eight, article forty-one of
256 this chapter.

§33-13C-8. Disclosure to viator.

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

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

14 (2) That a viatical settlement broker represents
15 exclusively the viator, and not the insurer or the viatical
16 settlement provider, and owes a fiduciary duty to the
17 viator, including a duty to act according to the viator's
18 instructions and in the best interest of the viator.

19 (3) That some or all of the proceeds of the viatical
20 settlement may be taxable under federal income tax and
21 state franchise and income taxes, and assistance should
22 be sought from a professional tax advisor.

23 (4) That proceeds of the viatical settlement could be
24 subject to the claims of creditors.

25 (5) That receipt of the proceeds of a viatical settlement

26 may adversely affect the viator's eligibility for Medicaid
27 or other government benefits or entitlements, and
28 advice should be obtained from the appropriate
29 government agencies.

30 (6) The viator has the right to rescind a viatical
31 settlement contract by providing notice of rescission
32 and repaying all viatical settlement proceeds paid to the
33 viator pursuant to the escrow agreement by the earlier
34 of sixty calendar days after the date upon which the
35 viatical settlement contract is executed by all parties or
36 thirty calendar days after the viatical settlement
37 proceeds have been paid to the viator, as provided in
38 subsection (e), section ten of this article. If the insured
39 dies during the rescission period, the viatical settlement
40 contract shall be deemed to have been rescinded, subject
41 to repayment by the viator or the viator's estate of all
42 viatical settlement proceeds to the viatical settlement
43 provider within sixty days of the insured's death.

44 (7) That funds will be sent to the viator within three
45 business days after the viatical settlement provider has
46 received the insurer or group administrator's written
47 acknowledgment that ownership of the policy or
48 interest in the certificate has been transferred and the
49 beneficiary has been designated.

50 (8) That entering into a viatical settlement contract
51 may cause other rights or benefits, including conversion
52 rights and waiver of premium benefits that may exist
53 under the policy or certificate, to be forfeited by the
54 viator and that assistance should be sought from a
55 financial adviser.

56 (9) Disclosure to a viator shall include distribution of

57 a brochure prescribed by the commissioner describing
58 the process of viatical settlements.

59 (10) The disclosure document shall contain the
60 following language: "All medical, financial or personal
61 information solicited or obtained by a viatical
62 settlement provider or viatical settlement broker about
63 an insured, including the insured's identity or the
64 identity of family members, a spouse or a significant
65 other may be disclosed as necessary to effect the viatical
66 settlement between the viator and the viatical
67 settlement provider. If you are asked to provide this
68 information, you will be asked to consent to the
69 disclosure. The information may be provided to
70 someone who buys the policy or provides funds for the
71 purchase. You may be asked to renew your permission
72 to share information every two years."

73 (11) That following execution of a viatical contract,
74 the insured may be contacted for the purpose of
75 determining the insured's health status and to confirm
76 the insured's residential or business street address and
77 telephone number or as otherwise provided in this
78 article. This contact shall be limited to once every three
79 months if the insured has a life expectancy of more than
80 one year, and not more than once per month if the
81 insured has a life expectancy of one year or less. All
82 such contracts shall be made only by a viatical
83 settlement provider licensed in the state in which the
84 viator resided at the time of the viatical settlement, or
85 by the authorized representative of a duly licensed
86 viatical settlement provider.

87 (b) A viatical settlement provider shall provide the
88 viator with at least the following disclosures no later

89 than the date the viatical settlement contract is signed
90 by all parties. The disclosures shall be conspicuously
91 displayed in the viatical settlement contract or in a
92 separate document signed by the viator and provide the
93 following information:

94 (1) The affiliation, if any, between the viatical
95 settlement provider and the issuer of the insurance
96 policy to be viaticated;

97 (2) The document shall include the name, business
98 address and telephone number of the viatical settlement
99 provider;

100 (3) Any affiliations or contractual arrangements
101 between the viatical settlement provider and the viatical
102 settlement purchaser;

103 (4) If an insurance policy to be viaticated has been
104 issued as a point policy or involved family riders or any
105 coverage of a life other than the insured under the
106 policy to be viaticated, the viator shall be informed of
107 the possible loss of coverage on the other lives under the
108 policy and shall be advised to consult with his or her
109 insurance producer or the insurer issuing the policy for
110 advice on the proposed viatical settlement;

111 (5) State the dollar amount of the current death
112 benefit payable to the viatical settlement provider under
113 the policy or certificate. If known, the viatical
114 settlement provider shall also disclose the availability of
115 any additional guaranteed insurance benefits, the dollar
116 amount of any accidental death and dismemberment
117 benefits under the policy or certificate and the extent to
118 which the viator's interest in those benefits will be

119 transferred as a result of the viatical settlement
120 contract; and

121 (6) State whether the funds will be escrowed with an
122 independent third party during the transfer process
123 and, if so, provide the name, business address and
124 telephone number of the independent third-party
125 escrow agent, and the fact that the viator or owner may
126 inspect or receive copies of the relevant escrow or trust
127 agreements or documents.

128 (c) A viatical settlement broker shall provide the
129 viator with at least the following disclosures no later
130 than the date the viatical settlement contract is signed
131 by all parties. The disclosures shall be conspicuously
132 displayed in the viatical settlement contract or in a
133 separate document signed by the viator and provide the
134 following information:

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

137 (2) A full, complete and accurate description of all
138 offers, counter-offers, acceptances and rejections
139 relating to the proposed viatical settlement contract;

140 (3) A written disclosure of any affiliations or
141 contractual arrangements between the viatical
142 settlement broker and any person making an offer in
143 connection with the proposed viatical settlement
144 contracts;

145 (4) The amount and method of calculating the broker's
146 compensation, which term "compensation" includes
147 anything of value paid or given to a viatical settlement

148 broker for the placement of a policy; and

149 (5) Where any portion of the viatical settlement
150 broker's compensation, as defined in subdivision (4) of
151 this subsection, is taken from a proposed viatical
152 settlement offer, the broker shall disclose the total
153 amount of the viatical settlement offer and the
154 percentage of the viatical settlement offer comprised by
155 the viatical settlement broker's compensation.

156 (d) If the viatical settlement provider transfers
157 ownership or changes the beneficiary of the insurance
158 policy, the provider shall communicate in writing the
159 change in ownership or beneficiary to the insured
160 within twenty days after the change.

§33-13C-9. Disclosure to insurer.

1 Before the initiation of a plan, transaction or series of
2 transactions, a viatical settlement broker or viatical
3 settlement provider shall fully disclose to an insurer a
4 plan, transaction or series of transactions, to which the
5 viatical settlement broker or viatical settlement
6 provider is a part, to originate, renew, continue or
7 finance a life insurance policy with the insurer for the
8 purpose of engaging in the business of viatical
9 settlements at anytime prior to, or during the first five
10 years after, issuance of the policy.

§33-13C-10. General rules.

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

3 (A) If the viator is the insured, a written statement

4 from a licensed attending physician that the viator is of
5 sound mind and under no constraint or undue influence
6 to enter into a viatical settlement contract; and

7 (B) A document in which the insured consents to the
8 release of his or her medical records to a licensed
9 viatical settlement provider, viatical settlement broker
10 and the insurance company that issued the life
11 insurance policy covering the life of the insured.

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

23 (3) The viatical provider shall deliver a copy of the
24 medical release required under paragraph (B),
25 subdivision (1) of this subsection, a copy of the viator's
26 application for the viatical settlement contract, the
27 notice required under subdivision (2) of this subsection
28 and a request for verification of coverage to the insurer
29 that issued the life insurance policy that is the subject
30 of the viatical transaction. The request for verification
31 of coverage shall be on a form prescribed by the
32 commissioner.

33 (4) The insurer shall respond to a request for
34 verification of coverage within thirty calendar days of

35 the date the request is received and shall indicate
36 whether, based on the medical evidence and documents
37 provided, the insurer intends to pursue an investigation
38 at this time regarding the validity of the insurance
39 contract or possible fraud. The insurer shall accept a
40 request for verification made on an approved form or
41 any facsimile or electronic copy of such request and any
42 accompanying authorization signed by the viator.
43 Failure by the insurer to meet its obligations under this
44 subsection shall be a violation of subsection (c), section
45 eleven of this article and section sixteen of this article.

46 (5) Prior to or at the time of execution of the viatical
47 settlement contract, the viatical settlement provider
48 shall obtain a witnessed document in which the viator
49 consents to the viatical settlement contract, represents
50 that the viator has a full understanding of the viatical
51 settlement contract, that he or she has a full
52 understanding of the benefits of the life insurance
53 policy, acknowledges that he or she is entering into the
54 viatical settlement contract freely and voluntarily and,
55 for persons with a terminal or chronic illness or
56 condition, acknowledges that the insured has a terminal
57 or chronic illness and that the terminal or chronic
58 illness or condition was diagnosed after the life
59 insurance policy was issued.

60 (6) If a viatical settlement broker performs any of
61 these activities required of the viatical settlement
62 provider, the provider is deemed to have fulfilled the
63 requirements of this section.

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

67 information.

68 (c) All viatical settlement contracts entered into in this
69 state shall provide the viator with an absolute right to
70 rescind the contract before the earlier of sixty calendar
71 days after the date upon which the viatical settlement
72 contract is executed by all parties or thirty calendar
73 days after the viatical settlement proceeds have been
74 sent to the viator as provided in subsection (e) of this
75 section. Rescission by the viator may be conditioned
76 upon the viator both giving notice and repaying to the
77 viatical settlement provider within the rescission period
78 all proceeds of the settlement and any premiums, loans
79 and loan interest paid by or on behalf of the viatical
80 settlement provider in connection with or as a result of
81 the viatical settlement. If the insured dies during the
82 rescission period, the viatical settlement contract shall
83 be deemed to have been rescinded, subject to repayment
84 to the viatical settlement provider or purchaser of all
85 viatical settlement proceeds, any premiums, loans and
86 loan interest that have been paid by the viatical
87 settlement provider or purchaser, which shall be paid
88 within sixty calendar days of the death of the insured.
89 In the event of any rescission, if the viatical settlement
90 provider has paid commissions or other compensation to
91 a viatical settlement broker in connection with the
92 rescinded transaction, the viatical settlement broker
93 shall refund all such commissions and compensation to
94 the viatical settlement provider within five business
95 days following receipt of written demand from the
96 viatical settlement provider, which demand shall be
97 accompanied by either the viator's notice of rescission
98 if rescinded at the election of the viator, or notice of the
99 death of the insured if rescinded by reason of the death
100 of the insured within the applicable rescission period.

101 (d) The viatical settlement provider shall instruct the
102 viator to send the executed documents required to effect
103 the change in ownership, assignment or change in
104 beneficiary directly to the independent escrow agent.
105 Within three business days after the escrow agent
106 receives the document or, if the viator erroneously
107 provides the documents directly to the provider, after
108 the viatical settlement provider receives the documents,
109 the provider shall pay or transfer the proceeds of the
110 viatical settlement into an escrow or trust account
111 maintained in a state or federally chartered financial
112 institution whose deposits are insured by the Federal
113 Deposit Insurance Corporation (FDIC). Upon payment
114 of the settlement proceeds into the escrow account, the
115 escrow agent shall deliver the original change in
116 ownership assignment or change in beneficiary forms to
117 the viatical settlement provider or related provider trust
118 or other designated representative of the viatical
119 settlement provider. Upon the escrow agent's receipt of
120 the acknowledgment of the properly completed transfer
121 of ownership, assignment or designation of beneficiary
122 from the insurance company, the escrow agent shall pay
123 the settlement proceeds to the viator.

124 (e) Failure to tender consideration to the viator for the
125 viatical settlement contract within the time set forth in
126 the disclosure pursuant to subdivision (7), subsection
127 (a), section eight of this article renders the viatical
128 settlement contract voidable by the viator for lack of
129 consideration until the time consideration is tendered to
130 and accepted by the viator. Funds shall be deemed sent
131 by a viatical settlement provider to a viator as of the
132 date that the escrow agent either releases funds for wire
133 transfer to the viator or places a check for delivery to
134 the viator via United State Postal Service or other

135 nationally recognized delivery service.

136 (f) Contacts with the insured for the purpose of
137 determining the health status of the insured by the
138 viatical settlement provider or viatical settlement
139 broker after the viatical settlement has occurred shall
140 only be made by the viatical settlement provider or
141 broker licensed in this state or its authorized
142 representatives and shall be limited to once every three
143 months for insureds with a life expectancy of more than
144 one year, and to no more than once per month for
145 insureds with a life expectancy of one year or less. The
146 provider or broker shall explain the procedure for these
147 contacts at the time the viatical settlement contract is
148 entered into. The limitations set forth in this subsection
149 shall not apply to any contacts with an insured for
150 reasons other than determining the insured's health
151 status. Viatical settlement providers and viatical
152 settlement brokers shall be responsible for the actions
153 of their authorized representatives.

§33-13C-11. Prohibited practices.

1 (a) It is a violation of this article for any person to
2 enter into a viatical settlement contract at any time
3 prior to the application for or issuance of a policy that
4 is the subject of a viatical settlement contract or within
5 a five-year period commencing with the date of issuance
6 of the insurance policy or certificate unless the viator
7 certifies to the viatical settlement provider that one or
8 more of the following conditions have been met within
9 the five-year period after issuance of the policy or
10 certificate:

11 (1) The policy was issued upon the viator's exercise of

12 conversion rights arising out of a group or individual
13 policy, provided the total of the time covered under the
14 conversion policy plus the time covered under the prior
15 policy is at least sixty (60) months. The time covered
16 under a group policy shall be computed without regard
17 to any change in insurance carriers, provided the
18 coverage has been continuous and under the same group
19 sponsorship;

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

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

26 (B) The viator's spouse dies;

27 (C) The viator divorces his or her spouse;

28 (D) The viator retires from full-time employment;

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

33 (F) A court of competent jurisdiction enters a final
34 order, judgment or decree on the application of a
35 creditor of the viator and adjudicates the viator
36 bankrupt or insolvent or approves a petition seeking
37 reorganization of the viator or appoints a receiver,
38 trustee or liquidator to all or a substantial part of the
39 viator's assets; or

40 (3) The viator enters into a viatical settlement contract
41 more than two years after the date of issuance of a
42 policy and, at all times during that two-year period, all
43 of the following conditions are true with respect to the
44 policy;

45 (A) Policy premiums have been funded exclusively
46 with unencumbered assets, including an interest in the
47 life insurance policy being financed only to the extent of
48 its net cash surrender value, provided by, or fully
49 recourse liability incurred by, the insured on a person
50 described in subparagraph (iv), paragraph (C),
51 subdivision (13), section two of this article;

52 (B) There is no agreement or understanding with any
53 other person to guarantee any such liability or to
54 purchase, or stand ready to purchase, the policy,
55 including through an assumption or forgiveness of the
56 loan; and

57 (C) Neither the insured nor the policy has been
58 evaluated for settlement.

59 (b) Copies of the independent evidence described in
60 subdivision (2), subsection (a) of this section and
61 documents required by subsection (a), section ten of this
62 article shall be submitted to the insurer when the
63 viatical settlement provider or other party entering into
64 a viatical settlement contract with a viator submits a
65 request to the insurer for verification of coverage. The
66 copies shall be accompanied by a letter of attestation
67 from the viatical settlement provider that the copies are
68 true and correct copies of the documents received by the
69 viatical settlement provider.

70 (c) If the viatical settlement provider submits to the
71 insurer a copy of the owner or insured's certification
72 described in and the independent evidence required by
73 subdivision (2), subsection (a) of this section when the
74 provider submits a request to the insurer to effect the
75 transfer of the policy or certificate to the viatical
76 settlement provider, the copy shall be deemed to
77 conclusively establish that the viatical settlement
78 contract satisfies the requirements of this section and
79 the insurer shall timely respond to the request.

80 (d) No insurer may, as a condition of responding to a
81 request for verification of coverage or effecting the
82 transfer of a policy pursuant to a viatical settlement
83 contract, require that the viator, insured, viatical
84 settlement provider or viatical settlement broker sign
85 any forms, disclosures, consent or waiver form that has
86 not been expressly approved by the commissioner for
87 use in connection with viatical settlement contracts in
88 this state.

89 (e) Upon receipt of a properly completed request for
90 change of ownership or beneficiary of a policy, the
91 insurer shall respond in writing within thirty calendar
92 days with written acknowledgment confirming that the
93 change has been effected or specifying the reasons why
94 the request change cannot be processed. The insurer
95 shall not unreasonably delay effecting change of
96 ownership or beneficiary and shall not otherwise seek to
97 interfere with any viatical settlement contract lawfully
98 entered into in this state.

§33-13C-12. Prohibited practices and conflicts of interest.

1 (a) With respect to any viatical settlement contract or

2 insurance policy, no viatical settlement broker
3 knowingly shall solicit an offer from, effectuate a
4 viatical settlement with or make a sale to any viatical
5 settlement provider, viatical settlement purchaser,
6 financing entity or related provider trust that is
7 controlling, controlled by or under common control with
8 such viatical settlement broker.

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

19 (c) A violation of subsection (a) or (b) of this section
20 shall be deemed a fraudulent viatical settlement act.

21 (d) No viatical settlement provider shall enter into a
22 viatical settlement contract unless the viatical
23 settlement promotional, advertising and marketing
24 materials, as may be prescribed by rule, have been filed
25 with the commissioner. In no event shall any marketing
26 materials expressly reference that the insurance is
27 "free" for any period of time. The inclusion of any
28 reference in the marketing materials that would cause
29 a viator to reasonably believe that the insurance is free
30 for any period of time shall be considered a violation of
31 this article.

32 (e) No life insurance producer, insurance company,

33 viatical settlement broker or viatical settlement
34 provider shall make any statement or representation to
35 the applicant or policyholder in connection with the sale
36 or financing of a life insurance policy to the effect that
37 the insurance is free or without cost to the policyholder
38 for any period of time unless provided in the policy.

§33-13C-13. Advertising for viatical settlements.

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

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

23 (c) Every viatical settlement licensee shall establish
24 and at all times maintain a system of control over the

25 content, form and method of dissemination of all
26 advertisements of its contracts, products and services.
27 All advertisements, regardless of by whom written,
28 created, designed or presented, shall be the
29 responsibility of the viatical settlement licensees, as well
30 as the individual who created or presented the
31 advertisement. A system of control shall include regular
32 routine notification, at least once a year, to agents and
33 others authorized by the viatical settlement licensee
34 who disseminates advertisements of the requirements
35 and procedures for approval prior to the use of any
36 advertisements not furnished by the viatical settlement
37 license.

38 (d) Advertisements shall be truthful and not
39 misleading in fact or by implication. The form and
40 content of an advertisement of a viatical settlement
41 contract shall be sufficiently complete and clear so as to
42 avoid deception. It shall not have the capacity or
43 tendency to mislead or deceive. Whether an
44 advertisement has the capacity or tendency to mislead
45 or deceive shall be determined by the commissioner
46 from the overall impression that the advertisement may
47 be reasonably expected to create upon a person of
48 average education or intelligence within the segment of
49 the public to which it is directed.

50 (e) The information required to be disclosed under this
51 section shall not be minimized, rendered obscure, or
52 presented in an ambiguous fashion or intermingled with
53 the text of the advertisement so as to be confusing or
54 misleading.

55 (1) An advertisement shall not omit material
56 information or use words, phrases, statements,

57 references or illustrations if the omission or use has the
58 capacity, tendency or effect of misleading or deceiving
59 viators as to the nature or extent of any benefit, loss
60 covered, premium payable or state or federal tax
61 consequence. The fact that the viatical settlement
62 contract offered is made available for inspection prior
63 to consummation of the sale, or an offer is made to
64 refund the payment if the viator is not satisfied or that
65 the viatical settlement contract includes a "free look"
66 period that satisfies or exceeds legal requirements, does
67 not remedy misleading statements.

68 (2) An advertisement shall not use the name or title of
69 a life insurance company or a life insurance policy
70 unless the advertisement has been approved by the
71 insurer.

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

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

83 (5) Testimonials, appraisals or analysis used in
84 advertisements must be genuine; represent the current
85 opinion of the author; be applicable to the viatical
86 settlement contract product or service advertised, if any;
87 and be accurately reproduced with sufficient

88 completeness to avoid misleading or deceiving
89 prospective viators as to the nature or scope of the
90 testimonials, appraisals or analysis, a licensee under
91 this article makes as its own all the statements
92 contained therein, and the statements are subject to all
93 the provisions of this section.

94 (A) If the individual making a testimonial, appraisal,
95 analysis or an endorsement has a financial interest in
96 the party making use of the testimonial, appraisal,
97 analysis or endorsement, either directly or through a
98 related entity as a stockholder, director, officer,
99 employee or otherwise, or receives any benefit directly
100 or indirectly other than required union scale wages, that
101 fact shall be prominently disclosed in the advertisement.

102 (B) An advertisement shall not state or imply that a
103 viatical settlement contract benefit or service has been
104 approved or endorsed by a group of individuals, society,
105 association or other organization unless that is the fact
106 and unless any relationship between an organization
107 and the viatical settlement licensee is disclosed. If the
108 entity making the endorsement or testimonial is owned,
109 controlled or managed by the viatical settlement
110 licensee, or receives any payment or other consideration
111 from the viatical settlement licensee for making an
112 endorsement or testimonial, the fact shall be disclosed
113 in the advertisement.

114 (C) When an endorsement refers to benefits received
115 under a viatical settlement contract all pertinent
116 information shall be retained for a period of five years
117 after its use.

118 (f) An advertisement shall not contain statistical

119 information unless it accurately reflects recent and
120 relevant facts. The course of all statistics used in an
121 advertisement shall be identified.

122 (g) An advertisement shall not disparage insurers,
123 viatical settlement providers, viatical settlement
124 brokers, viatical settlement investment agents,
125 insurance producers, policies, services or methods of
126 marketing.

127 (h) The name of the viatical settlement licensee shall
128 be clearly identified in all advertisements about the
129 licensee or its viatical settlement contract, products or
130 services, and if any specific viatical settlement contract
131 is advertised, the viatical settlement contract shall be
132 identified either by form number or some other
133 appropriate description. If an application is part of the
134 advertisement, the name of the viatical settlement
135 provider shall be shown on the application.

136 (i) An advertisement shall not use a trade name, group
137 designation, name of the parent company of a viatical
138 settlement licensee, name of a particular division of the
139 viatical settlement licensee, service mark, slogan,
140 symbol or other device or reference without disclosing
141 the name of the viatical settlement licensee, if the
142 advertisement would have the capacity or tendency to
143 mislead or deceive as to the true identity of the viatical
144 settlement licensee, or to create the impression that a
145 company other than the viatical settlement licensee
146 would have any responsibility for the financial
147 obligation under a viatical settlement contract.

148 (j) An advertisement shall not use any combination of
149 words, symbols or physical materials that by their

150 content, phraseology, shape, color or other
151 characteristics are so similar to a combination of words,
152 symbols or physical materials used by a government
153 program or agency or otherwise appear to be of such a
154 nature that they tend to mislead prospective viators into
155 believing that the solicitation is in some manner
156 connected with a government program or agency.

157 (k) An advertisement may state that a viatical
158 settlement licensee is licensed in the state where the
159 advertisement appears, provided it does not exaggerate
160 that fact or suggest or imply that competing viatical
161 settlement licensees may not be so licensed. The
162 advertisement may ask the audience to consult the
163 licensee's website or contact the department of
164 insurance to find out if the state requires licensing and,
165 if so, whether the viatical settlement provider or viatical
166 settlement broker is licensed.

167 (l) An advertisement shall not create the impression
168 that the viatical settlement provider, its financial
169 condition or status, the payment of its claims or the
170 merits, desirability, or advisability of its viatical
171 settlement contracts are recommended or endorsed by
172 any government entity.

173 (m) The name of the actual licensee shall be stated in
174 all of its advertisements. An advertisement shall not use
175 a trade name, any group designation, name of any
176 affiliate or controlling entity of the licensee, service
177 mark, slogan, symbol or other device in a manner that
178 would have the capacity or tendency to mislead or
179 deceive as to the true identity of the actual licensee or
180 create the false impression that an affiliate or
181 controlling entity would have any responsibility for the

182 financial obligation of the licensee.

183 (n) An advertisement shall not, directly or indirectly,
184 create the impression that any division or agency of the
185 state or of the United States government endorses,
186 approves or favors:

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

189 (2) The merits, desirability or advisability of any
190 viatical settlement contract;

191 (3) Any viatical settlement contract; or

192 (4) Any life insurance policy or life insurance
193 company.

194 (o) If the advertiser emphasizes the speed with which
195 the viatication will occur, the advertising must disclose
196 the average time frame from completed application to
197 the date of offer and from acceptance of the offer to
198 receipt of the funds by the viator.

199 (p) If the advertising emphasizes the dollar amounts
200 available to viators, the advertising shall disclose the
201 average purchase price as a percent of face value
202 obtained by viators contracting with the licensee during
203 the past six months.

§33-13C-14. Fraud prevention and control.

1 (a) *Fraudulent viatical settlement acts, interference*
2 *and participation of convicted felons prohibited. —*

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

5 (2) A person shall not knowingly or intentionally
6 interfere with the enforcement of the provisions of this
7 article or investigations of suspected or actual violations
8 of this article.

9 (3) A person in the business of viatical settlements
10 shall not knowingly or intentionally permit any person
11 convicted of a felony involving dishonesty or breach of
12 trust to participate in the business of viatical
13 settlements.

14 (b) *Fraud warning required.* —

15 (1) Viatical settlement contracts and applications for
16 viatical settlements, regardless of the form of
17 transmission shall contain the following statement or a
18 substantially similar statement:

19 “Any person who knowingly presents false
20 information in an application for insurance or viatical
21 settlement contract is guilty of a crime and may be
22 subject to fines and confinement in prison.”

23 (2) The lack of a statement as required in subdivision
24 (1) of this subsection does not constitute a defense in
25 any prosecution for a fraudulent viatical settlement act.

26 (c) (1) Any person engaged in the business of viatical
27 settlements having knowledge or a reasonable suspicion
28 that a fraudulent viatical settlement act is being, will be
29 or has been committed shall provide such information
30 to the commissioner.

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

36 (d) (1) No civil liability shall be imposed on and no
37 cause of action shall arise from a person's furnishing
38 information concerning suspected, anticipated or
39 completed fraudulent viatical settlement acts or
40 suspected or completed fraudulent insurance acts if the
41 information is provided without actual malice and is
42 provided to or received from:

43 (A) The commissioner or the commissioner's
44 employees, agents or representatives;

45 (B) Federal, state or local law enforcement or
46 regulatory officials or their employees, agents or
47 representatives;

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

51 (D) The National Association of Insurance
52 Commissioners (NAIC), National Association of
53 Securities Dealers (NASD), the North American
54 Securities Administrators Association (NASAA), or
55 their employees, agents or representatives, or other
56 regulatory body overseeing life insurance, viatical
57 settlements, securities or investment fraud; or

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

60 (2) A person furnishing information pursuant to
61 subdivision (1) of this subsection shall be entitled to an
62 award of attorney's fees and costs if he or she is the
63 prevailing party in a civil cause of action for libel,
64 slander or any other relevant tort arising out of
65 activities in carrying out the provisions of this article
66 and the party bringing the action was not substantially
67 justified in doing so.

68 (3) This subsection does not abrogate or modify
69 common law or statutory privileges or immunities
70 enjoyed by a person described in subdivision (1) of this
71 subsection.

72 (e) (1) Documents and evidence provided pursuant to
73 subsection (d) of this section or obtained by the
74 commissioner in an investigation of suspected or actual
75 fraudulent viatical settlement acts shall be privileged
76 and confidential and shall not be a public record and
77 shall not be subject to discovery or subpoena in a civil
78 or criminal action.

79 (2) The commissioner may release documents and
80 evidence obtained in an investigation of suspected or
81 actual fraudulent viatical settlement acts in
82 administrative or judicial proceedings to enforce laws
83 administered by the commissioner; to federal, state or
84 local law enforcement or regulatory agencies, to an
85 organization established for the purpose of detecting
86 and preventing fraudulent viatical settlement acts or to
87 the NAIC; or, at the discretion of the commissioner, to
88 a person in the business of viatical settlements that is
89 aggrieved by a fraudulent viatical settlement act:
90 *Provided*, That release of documents and evidence
91 under this subdivision does not abrogate or modify the

92 privilege granted in subdivision (1) of this subsection.

93 (f) This section does not:

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

97 (2) Prevent or prohibit a person from disclosing
98 voluntarily information concerning viatical settlement
99 fraud to a law enforcement or regulatory agency other
100 than the insurance department; or

101 (3) Limit the powers granted elsewhere by the laws of
102 this state to the commissioner or an insurance fraud
103 unit to investigate and examine possible violations of
104 law and to take appropriate action against wrongdoers.

105 (g) (1) Viatical settlement providers and viatical
106 settlement brokers shall have in place antifraud
107 initiatives reasonably computed to detect, prosecute and
108 prevent fraudulent viatical settlement acts. At the
109 discretion of the commissioner, the commissioner may
110 order, or a licensee may request and the commissioner
111 may grant, such modifications of the following required
112 initiatives as necessary to ensure an effective antifraud
113 program. The modifications may be more or less
114 restrictive than the required initiatives so long as the
115 modifications may reasonably be expected to
116 accomplish the purpose of this section.

117 (2) Antifraud initiatives shall include:

118 (A) Fraud investigators who may be viatical
119 settlement provider or viatical settlement broker

120 employees or independent contractors; and

121 (B) An antifraud plan, which shall be submitted to the
122 commissioner. The antifraud plan shall include, but not
123 be limited to:

124 (i) A description of the procedures for detecting and
125 investigating possible fraudulent viatical settlement
126 acts and procedures for resolving material
127 inconsistencies between medical records and insurance
128 applications;

129 (ii) A description of the procedures for reporting
130 possible fraudulent viatical settlement acts to the
131 commissioner;

132 (iii) A description of the plan for antifraud education
133 and training of underwriters and other personnel; and

134 (iv) A description or chart outlining the organization
135 arrangement of the antifraud personnel who are
136 responsible for the investigation and reporting of
137 possible fraudulent viatical settlement acts and
138 investigating unresolved material inconsistencies
139 between medical records and insurance applications.

140 (3) Antifraud plans submitted to the commissioner
141 shall be privileged and confidential and shall not be a
142 public record and shall not be subject to discovery or
143 subpoena in a civil or criminal action.

§33-13C-15. Injunctions; civil remedies; cease and desist.

1 (a) In addition to the penalties and other enforcement
2 provisions of this chapter, if any person violates any

3 provision of this article or of any rule implementing this
4 article, the commissioner may seek an injunction in a
5 court of competent jurisdiction and may apply for
6 temporary and permanent orders that the commissioner
7 determines are necessary to restrain the person from
8 committing the violation.

9 (b) Any person damaged by the acts of a person in
10 violation of this article may bring a civil action against
11 the person committing the violation in a court of
12 competent jurisdiction.

13 (c) The commissioner may issue cease and desist order
14 upon a person that violates any provision of this article
15 or any rule promulgated thereunder, any order adopted
16 by the commissioner, or any written agreement entered
17 into with the commissioner.

18 (d) When the commissioner finds that an activity in
19 violation of this article presents an immediate danger to
20 the public that requires an immediate final order, the
21 commissioner may issue an emergency cease and desist
22 order reciting with particularity the facts underlying
23 the findings. The emergency cease and desist order is
24 effective immediately upon service of a copy of the
25 order on the respondent and remains effective for ninety
26 days. If the commissioner begins nonemergency cease
27 and desist proceedings, the emergency cease and desist
28 order remains effective, absent an order by a court of
29 competent jurisdiction pursuant to this chapter.

30 (e) In addition to the penalties and other enforcement
31 provisions of this article, any person who violates this
32 article is subject to civil penalties of up to ten thousand
33 dollars per violation. Imposition of civil penalties shall

34 be pursuant to an order of the commissioner issued after
35 notice and hearing. The commissioner's order may
36 require a person found to be in violation of this article
37 to make restitution to persons aggrieved by violations of
38 this article.

§33-13C-16. Criminal penalties.

1 (a) A viator convicted of a fraudulent viatical
2 settlement act is guilty of a felony and, upon conviction
3 thereof, shall be sentenced as follows:

4 (1) Imprisonment in a state correctional facility for not
5 more than twenty years or payment of a fine of not more
6 than one hundred thousand dollars, or both, if the value
7 of the viatical settlement contract is more than thirty-
8 five thousand dollars;

9 (2) Imprisonment in a state correctional facility for not
10 more than ten years or to payment of a fine of not more
11 than twenty thousand dollars, or both if the value of the
12 viatical settlement contract is more than two thousand
13 five hundred dollars, but not more than thirty-five
14 thousand dollars;

15 (3) Imprisonment in a state correctional facility for not
16 more than five years or payment of a fine of not more
17 than ten thousand dollars, or both, if the value of the
18 viatical settlement contract is more than five hundred
19 dollars, but not more than two thousand five hundred
20 dollars.

21 (b) Any person who violates any other provision of this
22 article is guilty of a misdemeanor and, upon conviction
23 thereof, shall be fined not more than one thousand

24 dollars or confined in jail not more than one year, or
25 both fined and imprisoned.

§33-13C-17. Authority to promulgate rules.

1 The commissioner shall have the authority to
2 promulgate legislative rules, including emergency rules,
3 implementing this article, pursuant to article three,
4 chapter twenty-nine-a of this code. Such rules may
5 include standards for evaluating reasonableness of
6 payments under viatical settlement contracts for
7 persons who are terminally or chronically ill; regulation
8 of discount rates used to determine the amount paid in
9 exchange for assignment, transfer, sale, devise or
10 bequest of a benefit under a life insurance policy
11 insuring the life of a person that is chronically or
12 terminally ill; and provisions governing the relationship
13 and responsibilities of both insurers and viatical
14 settlement providers and viatical settlement brokers
15 during the viatication of a life insurance policy or
16 certificate.

§33-13C-18. No preemption of securities laws.

1 This article shall not preempt, supersede or limit any
2 provision of any state securities law or any rule, order
3 or notice issued thereunder.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

..... *Candy White*
Chairman Senate Committee

..... *[Signature]*
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

..... *Russell Hobbs*
Clerk of the Senate

..... *[Signature]*
Clerk of the House of Delegates

..... *Carl Ray Tomblin*
President of the Senate

..... *[Signature]*
Speaker House of Delegates

The within *is approved* this
the *13th* Day of *March*, 2008.

..... *[Signature]*
Governor

PRESENTED TO THE
GOVERNOR

MAR 7 X 2008

Time 9:40am