

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

HOUSE BILL NO. 2132

By: Ramsey of the House

and

Robinson of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to insurance; requiring disclosure of certain information related to assets of an insurer; requiring certain reporting of assets; exempting certain exchanges of assets from reporting requirements; specifying exchanges of assets subject to reporting requirements; stating type of information required in report; requiring reporting of certain action relating to reinsurance agreements; providing exemption from reporting requirement; stating type of information required on report; requiring an annual actuary opinion on reserves of certain life insurance companies; requiring an actuarial opinion on level of reserves; stating provisions for opinion; providing for confidentiality of certain material and opinion; defining certain term; amending 36 O.S. 1991, Section 2105, which relates to stocks and mutual insurers; changing the minimum number of directors for stock and mutual insurers; creating the Viatical Settlements Act; providing short title; defining terms; requiring a license to act as viatical settlement provider or to enter into or solicit viatical settlement contracts; providing procedure for application; requiring application and renewal fee; providing scope of license; providing for investigation by the Insurance Commissioner; authorizing licensure under certain conditions; prohibiting nonresident applications, with exceptions; requiring benefit disbursements between approved insurance companies and approved viatical settlement providers; authorizing the Insurance Commissioner to suspend, revoke or refuse to renew licenses and providing grounds therefor; providing for hearings; requiring use of viatical settlement contracts that have been approved by the Insurance Commissioner; providing procedure for approval and disapproval of contracts; authorizing the Insurance Commissioner to examine the business and affairs of any licensee or applicant for a license; providing that cost for conducting the examination shall be paid by the licensee or applicant; providing for confidentiality of certain information; requiring licensee to maintain certain records and make the records available to the Insurance Commissioner; requiring certain disclosures; requiring a viatical settlement provider entering into a viatical settlement contract to obtain certain information; providing for confidentiality of medical information;

requiring an unconditional refund provision; providing procedure for payments of proceeds; nullifying contract upon failure to tender the viatical settlement by certain date; granting the Insurance Commissioner certain authority; providing that certain acts constitute unfair viatical settlement practice; providing penalties for violations; providing for deposit of fines in the Insurance Commissioner's Revolving Fund; requiring compliance with the Viatical Settlements Act after a certain date; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 310A.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Every insurer domiciled in this state shall file a report with the Insurance Commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements unless the acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements have been submitted to the Commissioner for review, approval or information purposes pursuant to other provisions of the Oklahoma Insurance Code.

B. The report required in subsection A of this section is due within fifteen (15) days after the end of the calendar month in which any of the foregoing transactions occur.

C. One complete copy of the report, including any exhibits or other attachments, shall be filed with the National Association of Insurance Commissioners.

D. All reports obtained by or disclosed to the Insurance Commissioner pursuant to this section shall be confidential, shall not be subject to subpoena and shall not be made public by the Commissioner, the National Association of Insurance Commissioners, or any other person, except as follows:

1. The Insurance Commissioner may share such information with insurance departments of other states;

2. The Insurance Commissioner may release such information with the prior written consent of the insurer to which it pertains; and

3. The Insurance Commissioner may publish all or any part of the information, without prior written consent, in the manner the Commissioner may deem appropriate if the Commissioner, after giving the insurer who would be affected notice and an opportunity to be heard, determines that the interest of policyholders, shareholders or the public will be served by publication.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 310A.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. No acquisitions or dispositions of assets need be reported pursuant to Section 1 of this act if the acquisitions or dispositions are not material. For purposes of this act, a material acquisition, or the aggregate of any series of related acquisitions during any thirty-day period, or disposition, or the aggregate of any series of related dispositions during any thirty-day period, is one that is nonrecurring and not in the ordinary course of business and involves more than five percent (5%) of the reporting insurer's total admitted assets as reported in its most recent annual statement filed with the Insurance Commissioner pursuant to Section 311 of Title 36 of the Oklahoma Statutes.

B. 1. Asset acquisitions subject to Section 1 of this act include every purchase, lease, exchange, merger, consolidation, succession or any other acquisition.

2. Asset dispositions subject to this act include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment whether for the benefit of creditors or otherwise, abandonment, destruction or other disposition.

C. 1. The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

- a. date of the transaction,
- b. manner of acquisition or disposition,
- c. description of the assets involved,

- d. nature and amount of the consideration given or received,
- e. purpose of, or reason for, the transaction,
- f. manner by which the amount of consideration was determined,
- g. gain or loss recognized or realized as a result of the transaction, and
- h. names of the persons from whom the assets were acquired or to whom they were disposed.

2. Insurers are required to report material acquisitions and dispositions on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if:

- a. the insurer has less than One Million Dollars (\$1,000,000.00) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement, and
- b. the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 310A.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 1. No nonrenewals, cancellations or revisions of ceded reinsurance agreements need be reported pursuant to Section 1 of this act if the nonrenewals, cancellations or revisions are not material. For purposes of this act, a material nonrenewal, cancellation or revision is one that affects:

- a. as respects property and casualty business, including accident and health business written by a property and casualty insurer:

- (1) more than fifty percent (50%) of the insurer's total ceded written premium, or
  - (2) more than fifty percent (50%) of the insurer's total ceded indemnity and loss adjustment reserves,
- b. as respects life, annuity, and accident and health business: more than fifty percent (50%) of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement, and
- c. as respects either property and casualty or life, annuity, and accident and health business, either of the following events shall constitute a material revision which must be reported:
  - (1) an authorized reinsurer representing more than ten percent (10%) of a total cession is replaced by one or more unauthorized reinsurers, or
  - (2) previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent (10%) of a total cession.

2. However, no filing shall be required if:

- a. as respects property and casualty business, including accident and health business written by a property and casualty insurer: the insurer's total ceded written premium represents, on an annualized basis, less than ten percent (10%) of its total written premium for direct and assumed business, or
- b. as respects life, annuity, and accident and health business: the total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent (10%) of the statutory reserve requirement prior to any cession.

B. 1. The following information is required to be disclosed in any report of a material nonrenewal, cancellation or revision of ceded reinsurance agreements:

- a. effective date of the nonrenewal, cancellation or revision,
- b. the description of the transaction with an identification of the initiator thereof,
- c. purpose of, or reason for, the transaction, and
- d. if applicable, the identity of the replacement reinsurers.

2. Insurers are required to report all material nonrenewals, cancellations or revisions of ceded reinsurance agreements on a nonconsolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or one hundred percent (100%) reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if:

- a. the insurer has less than One Million Dollars (\$1,000,000.00) total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement, and
- b. the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4061 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Beginning January 1, 1998, every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the Insurance Commissioner by rule are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported accounts and comply

with applicable laws of this state. The Commissioner by rule shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.

B. 1. Beginning January 1, 1998, every life insurance company, except as exempted by or pursuant to rule, shall also annually include in the opinion required by subsection A of this section, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the Commissioner by rule, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

2. The Commissioner may provide by rule for a transition period for establishing any higher reserves which the qualified actuary may deem necessary in order to render the opinion required by this section.

C. Each opinion required by subsection B of this section shall be accompanied by a memorandum, in form and substance acceptable to the Commissioner as specified by rule, prepared to support each actuarial opinion. If the insurance company fails to provide a supporting memorandum at the request of the Commissioner within a period specified by rule, or the Commissioner determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed by the rules or is otherwise unacceptable to the Commissioner, the Commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the Commissioner.

D. Every opinion shall be governed by the following provisions:

1. The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December 31, 1997;

2. The opinion shall apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the Commissioner as specified by rule;

3. The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on such additional standards as the Commissioner may by rule prescribe;

4. In the case of an opinion required to be submitted by a foreign or alien company, the Commissioner may accept the opinion filed by that company with the insurance supervisory official of another state if the Commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state;

5. Except in cases of fraud or willful misconduct, the qualified actuary shall not be liable for damages to any person, other than the insurance company and the Commissioner, for any act, error, omission, decision or conduct with respect to the actuary's opinion; and

6. Disciplinary action by the Commissioner against the company or the qualified actuary shall be defined in rules by the Commissioner.

E. 1. Any memorandum in support of the opinion, and any other material provided by the company to the Commissioner in connection therewith, shall be kept confidential by the Commissioner and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by rules promulgated hereunder; provided, however, that the memorandum or other material may otherwise be released by the Commissioner as follows:

- a. with the written consent of the company, or
- b. to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional

disciplinary proceedings and setting forth procedures satisfactory to the Commissioner for preserving the confidentiality of the memorandum or other material.

2. Once any portion of the confidential memorandum is cited by the company in its marketing or is cited before any governmental agency other than a state insurance department or is released by the company to the news media, all portions of the confidential memorandum shall be no longer confidential.

F. For the purposes of this section, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements set forth in rules promulgated by the Insurance Commissioner.

SECTION 5. AMENDATORY 36 O.S. 1991, Section 2105, is amended to read as follows:

Section 2105. A. This section applies to stock and mutual insurers hereafter incorporated in Oklahoma.

B. Five or more individuals of age of twenty-one (21) years or more may incorporate a stock insurer; ten or more such individuals may incorporate a mutual insurer. Not less than two-thirds (2/3) of the incorporators shall be citizens of the United States residing in Oklahoma. The articles of incorporation shall be signed and acknowledged by the incorporators as deeds are required to be acknowledged.

C. The articles of incorporation shall state:

1. The name of the corporation; if a mutual, the word "mutual" shall be a part of the name-i

2. The duration of its existence, which may be perpetual-i

3. The kinds of insurance the corporation is formed to transact, according to the definitions thereof in this Code-i

4. If a stock corporation, its authorized capital, the classes and number of shares into which divided, the par value of each such share, and the respective rights of each such class. Shares without par value shall not be authorized-i

5. If a mutual corporation, the maximum contingent liability of its members, other than as to nonassessable policies, for

payment of losses and expenses incurred, which liability shall be as stated in the articles of incorporation but not less than one nor more than six times the premium for the member's policy at the annual premium rate for a term of one (1) year-; i

6. The number of directors, of which there shall be not less than ~~five~~ three nor more than fifty, who shall conduct the affairs of the corporation, and the names and addresses of the corporation's first directors and officers for stated terms of office of not less than two (2) months nor more than one (1) year-; i

7. The city or town in Oklahoma in which is to be located the principal place of business, and the counties, states, and countries in which business may be transacted-; i

8. The limitations, if any, on the corporation's indebtedness-; i

9. If a stock corporation, the extent, if any, to which stock of the corporation shall be liable to assessment-; i

10. Such other provisions, not inconsistent with law, as deemed appropriate by the incorporators-; i

11. The names and addresses of the incorporators-; i and

12. The name and address of the person in Oklahoma upon whom all process in any action or proceeding may be served. Such designation may be changed or amended on authority of the Board of Directors evidenced by the filing of a certificate stating such change, executed by the President, attested by the Secretary, and filed with the Insurance Commissioner.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4041 of Title 36, unless there is created a duplication in numbering, reads as follows:

Sections 6 through 17 of this act shall be known and may be cited as the "Viatical Settlements Act".

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4042 of Title 36, unless there is created a duplication in numbering, reads as follows:

For purposes of the Viatical Settlements Act, the following definitions shall apply:

1. "Person" means any natural or artificial entity including, but not limited to, individuals, partnerships, associations, trusts, or corporations;

2. "Viatical settlement broker" means an individual, partnership, corporation or other entity who or which for another and for a fee, commission or other valuable consideration offers or advertises the availability of viatical settlements, introduces viators to viatical settlement providers, or offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers. "Viatical settlement broker" does not include an attorney, accountant, or financial planner retained to represent the viator whose compensation is not paid by the viatical settlement provider;

3. "Viatical settlement contract" means a written agreement entered into between a viatical settlement provider and a person owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life-threatening illness or condition. The agreement shall establish the terms under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyholder's assignment, transfer, sale, devise, or bequest of death benefit or ownership of the insurance policy or certificate to the viatical settlement provider;

4. "Viatical settlement provider" means an individual, partnership, corporation, or other entity that enters into an agreement with a person owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life-threatening illness or condition, under the terms of which the viatical settlement provider pays compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyholder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical

settlement provider. Viatical settlement provider does not include:

- a. any bank, savings bank, savings and loan association, credit union or other licensed lending institution which takes an assignment of a life insurance policy as collateral for a loan,
- b. the issuer of a life insurance policy providing accelerated benefits, or
- c. any natural person who enters into no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit; and

5. "Viator" means the owner of a life insurance policy insuring the life of a person with a catastrophic or life-threatening illness or condition or the certificateholder who enters into an agreement under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4043 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. No individual, partnership, corporation, or other entity may act as a viatical settlement provider or enter into or solicit a viatical settlement contract without first having obtained a license from the Insurance Commissioner.

B. Application for a viatical settlement provider license shall be made to the Commissioner by the applicant on a form prescribed by the Commissioner, and the application shall be accompanied by a fee of One Thousand Dollars (\$1,000.00).

C. Licenses may be renewed from year to year on the anniversary date upon payment of the annual renewal fee of One Thousand Dollars (\$1,000.00). Failure to pay the fee within the

terms prescribed shall result in the automatic revocation of the license.

D. The applicant shall provide such information as the Commissioner may require on forms prepared by the Commissioner. The Commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, and employees, and the Commissioner may, in the exercise of discretion, refuse to issue a license in the name of any firm, partnership, or corporation or other entity if not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of this act.

E. A license issued to a firm, partnership, corporation, or other entity authorizes all members, officers, and designated employees to act as viatical settlement providers under the license, and all such persons must be named in the application and any supplements to the application.

F. Upon filing an application and payment of the license fee, the Commissioner shall investigate each applicant and may issue a license if the Commissioner finds that the applicant:

1. Has provided a detailed plan of operation;
2. Is competent and trustworthy and intends to act in good faith in the capacity for which licensure is sought;
3. Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which licensure is sought; and
4. If the applicant is a corporation, is incorporated under the laws of this state or is a foreign corporation authorized to transact business in this state.

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

H. Viatical settlement benefit disbursements shall only be made between an approved Oklahoma insurance company and an Oklahoma approved viatical settlement provider.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4044 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner shall have the right to suspend, revoke, or refuse to renew the license of any viatical settlement provider if the Commissioner finds that:

1. There was any misrepresentation in the application for the license;

2. The holder of the license has been guilty of fraudulent or dishonest practices, is subject to final administrative actions, or is otherwise shown to be untrustworthy or incompetent to act as a viatical settlement provider;

3. The licensee demonstrates a pattern of unreasonable payments to policyholders;

4. The licensee has been convicted of a felony or any misdemeanor of which criminal fraud is an element; or

5. The licensee has violated any of the provisions of the Viatical Settlements Act.

B. Before the Commissioner shall deny a license application or suspend, revoke or refuse to renew the license of a viatical settlement provider, the Commissioner shall conduct a hearing in accordance with the Administrative Procedures Act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4045 of Title 36, unless there is created a duplication in numbering, reads as follows:

No viatical settlement provider may use any viatical settlement contract in this state unless it has been filed with and approved by the Commissioner. Any viatical settlement contract form filed with the Commissioner shall be deemed approved if it has not been disapproved within sixty (60) days of the filing. The Commissioner shall disapprove a viatical settlement contract form if, in the Commissioner's opinion, the contract or

any of its provisions are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the policyholder.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4046 of Title 36, unless there is created a duplication in numbering, reads as follows:

Each licensee shall file with the Commissioner on or before March 1 of each year an annual statement containing such information as the Commissioner by rule may prescribe.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4047 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner may, when the Commissioner deems it reasonably necessary to protect the interest of the public, examine the business and affairs of any licensee or applicant for a license. The Commissioner shall have the authority to order any licensee or applicant to produce any records, books, files, or other information reasonably necessary to ascertain whether or not the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

B. Names and individual identification data for all viators shall be considered confidential information and shall not be disclosed by the Commissioner, unless required by law.

C. Records of all transactions of viatical settlement contracts shall be maintained by the licensee and shall be available to the Commissioner for inspection during reasonable business hours.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4048 of Title 36, unless there is created a duplication in numbering, reads as follows:

A viatical settlement provider shall disclose the following information to the viator no later than the date the viatical settlement contract is signed by all parties:

1. Possible alternative to viatical settlement contracts for persons with catastrophic or life-threatening illnesses including, but not limited to, accelerated benefits offered by the issuer of the life insurance policy;

2. That some or all of the proceeds of the viatical settlement may be taxable and that assistance should be sought from a personal tax advisor;

3. That the viatical settlement could be subject to creditors' claims;

4. That receipt of a viatical settlement may adversely affect the recipients' eligibility for Medicaid or other government benefits or entitlements, and that advice should be obtained from the appropriate agencies;

5. The policyholder's right to rescind a viatical settlement contract within thirty (30) days of the date it is executed by all parties or fifteen (15) days of the receipt of the viatical settlement proceeds by the viator, whichever is less, as provided in subsection C of Section 14 of this act; and

6. The date by which the funds will be available to the viator and the source of the funds.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4049 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A viatical settlement provider entering into a viatical settlement contract with any person with a catastrophic or life-threatening illness or condition shall first obtain:

1. A written statement from a licensed attending physician, as defined in Section 725.2 of Title 59 of the Oklahoma Statutes, that the person is of sound mind and under no constraint or undue influence; and

2. A witnessed document in which the person:

a. consents to the viatical settlement contract,

- b. acknowledges the catastrophic or life-threatening illness,
- c. represents a full and complete understanding of the viatical settlement contract,
- d. represents a full and complete understanding of the benefits of the life insurance policy,
- e. releases medical records, and
- f. acknowledges that the viatical settlement contract has been entered into freely and voluntarily.

The witness, as required in this paragraph, shall be a disinterested third party.

B. All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information.

C. All viatical settlement contracts entered into in this state shall contain an unconditional refund provision of at least thirty (30) days from the date of the contract, or fifteen (15) days of the receipt of the viatical settlement proceeds, whichever is less.

D. Immediately upon receipt from the viator of documents to effect the transfer of the insurance policy, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a bank approved by the Commissioner, pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent shall be required to transfer the proceeds due to the viator immediately upon receipt of acknowledgment of the transfer from the insurer.

E. Failure to tender the viatical settlement by the date disclosed to the viator renders the contract null and void.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4050 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Commissioner shall have the authority to:

1. Promulgate rules implementing the Viatical Settlements Act;

2. Establish standards for evaluating reasonableness of payments under viatical settlement contracts. This authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy;

3. Establish appropriate licensing requirements and fees for agents and brokers; and

4. Require a bond in a penal amount to be set by the Commissioner.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4051 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Any of the following acts by a viatical settlement provider or broker constitutes an unfair viatical settlement practice:

1. Failing to fully disclose to a viator, benefits, coverages, or other provisions of any viatical settlement contract when such benefits, coverages or other provisions are pertinent to the contract;

2. Knowingly misrepresenting to a viator pertinent facts relating to the viatical settlement contract at issue;

3. Failing to adopt and implement reasonable standards for prompt payment of amounts arising under its viatical settlement contracts;

4. Not attempting in good faith to effectuate prompt, fair and equitable payment of amounts arising under its viatical settlement contracts;

5. Requesting a viator to sign a release that extends beyond the subject matter that gave rise to the viatical settlement contract;

6. Issuing checks or drafts in partial settlement of a viatical loss which contain language which releases a viatical company from its total liability;

7. Compelling, without just cause, viators to institute suits to recover amounts due under viatical contracts by offering substantially less than the amounts ultimately recovered in suits brought by them, when such viators have made claims for amounts reasonably similar to the amounts ultimately recovered;

8. Failing to maintain a complete record of all complaints which it has received during the preceding three (3) years or since the date of its last examination by the Commissioner, whichever time is shorter. This record shall indicate the total number of complaints, their classification, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. For the purposes of this paragraph, "complaint" means any written communication primarily expressing a grievance;

9. Entering into a viatical settlement contract where the subject life insurance policy or certificate was issued by the viatical settlement provider; and

10. Offering or advertising the availability of viatical settlements or negotiating a viatical settlement contract with policyholders or certificateholders where the subject life insurance policy or certificate was issued by the principal viatical settlement provider.

B. For any violation of this section, the Insurance Commissioner may, after notice and hearing, subject a viatical settlement provider or broker to a civil fine of not less than One Thousand Dollars (\$1,000.00) for a nonwillful violation or Five Thousand Dollars (\$5,000.00) for a willful violation for each occurrence. Such fine may be enforced in the same manner in which civil judgments may be enforced. Such fines shall be placed in the Insurance Commissioner's Revolving Fund.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4052 of Title 36,

unless there is created a duplication in numbering, reads as follows:

No viatical settlement provider transacting business in this state may continue to do so after June 30, 1997, unless it is in compliance with the Viatical Settlements Act.

SECTION 18. This act shall become effective July 1, 1997.

SECTION 19. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

46-1-7556

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