

ENGROSSED HOUSE
BILL NO. 1422

By: Braddock of the House
and
Snyder of the Senate

(insurance - Viatical Settlement Act - Life
Settlement Act - prohibiting certain acts -
amending 36 O.S., Sections 4051, 4085, 4092 and
4095 - unfair viatical settlement practices -
codification -

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 4048.1 of Title 36, unless there
is created a duplication in numbering, reads as follows:

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

B. This section shall apply to any advertising of viatical settlement contracts or related products or services intended for dissemination in this state, including Internet advertising viewed by persons located in this state. If disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

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

D. Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract, product or service shall be sufficiently complete and clear so as to avoid deception and any capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Insurance Commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

E. Certain viatical settlement advertisements are deemed false and misleading on their face and are prohibited. False and

misleading viatical settlement advertisements include, but are not limited to, the following representations:

1. "Guaranteed", "fully secured", "one hundred percent (100%) secured", "fully insured", "secure", "safe", "backed by rated insurance companies", "backed by federal law", "backed by state law", or "state guaranty funds", or similar representations;

2. "No risk", "minimal risk", "low risk", "no speculation", "no fluctuation", or similar representations;

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

4. Utilization of the word "guaranteed" to describe the fixed return, annual return, principal, earnings, profits, investment, or similar representations;

5. "No sales charges or fees" or similar representations;

6. "High yield", "superior return", "excellent return", "high return", "quick profit", or similar representations; and

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

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

2. An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or use has the capacity, tendency or effect of misleading or deceiving viators, purchasers or prospective purchasers as to the nature or extent of any benefit, loss covered, premium payable, or

state or federal tax consequence. The fact that the viatical settlement contract offered is made available for inspection prior to consummation of the sale, or an offer is made to refund the payment if the viator is not satisfied or that the viatical settlement contract includes a "free look" period that satisfies or exceeds legal requirements, does not remedy misleading statements.

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

4. An advertisement shall not represent that premium payments will not be required to be paid on the life insurance policy that is the subject of a viatical settlement contract in order to maintain that policy, unless that is the fact.

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

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

7. Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the viatical settlement contract, product, or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, the viatical settlement licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

- a. If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the viatical settlement provider or related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.
- b. An advertisement shall not state or imply that a viatical settlement contract, benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the viatical settlement licensee, or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.
- c. If an endorsement refers to benefits received under a viatical settlement contract, all pertinent information shall be retained by the viatical settlement licensee for a period of five (5) years after its use.

G. An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

H. An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement brokers, viatical settlement investment agents, insurance producers, policies, services or methods of marketing.

I. The name of the viatical settlement licensee shall be clearly identified in all advertisements about the viatical settlement licensee or its viatical settlement contract, products or services, and if any specific viatical settlement contract is advertised, the viatical settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.

J. An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the viatical settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee, or to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a viatical settlement contract.

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

L. An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that competing viatical settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the Insurance Department to find out if the state

requires licensing and, if so, whether the viatical settlement provider, viatical settlement broker or viatical settlement investment agent is licensed.

M. An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims or the merits, desirability, or advisability of its viatical settlement contracts are recommended or endorsed by any government entity.

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

O. An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the United States government endorses, approves or favors:

1. Any viatical settlement licensee or its business practices or methods of operation;

2. The merits, desirability or advisability of any viatical settlement contract;

3. Any viatical settlement contract; or

4. Any life insurance policy or life insurance company.

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

Q. If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase

price as a percent of face value obtained by viators contracting with the licensee during the past six (6) months.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4051.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The following acts are prohibited:

1. Committing a fraudulent or unfair viatical settlement practice;

2. Knowingly presenting false information in an application for an insurance or viatical settlement contract;

3. Knowingly or intentionally interfering with the enforcement of the provisions of the Viatical Settlement Act or investigations of suspected or actual violations of the Viatical Settlement Act; or

4. Knowing or intentional permitting of any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements by a person in the business of viatical settlements.

B. 1. Viatical settlement contracts and applications for viatical settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

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

2. The lack of a statement as required in paragraph 1 of this subsection shall not constitute a defense in any prosecution for a fraudulent viatical settlement practice.

C. 1. Any person engaged in the business of viatical settlements having knowledge or a reasonable belief that a fraudulent or unfair viatical settlement practice is being, will be or has been committed shall provide to the Insurance Commissioner

the information required by, and in a manner prescribed by, the Commissioner.

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

D. 1. No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent or unfair viatical settlement practices or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

- a. the Commissioner or the Commissioner's employees, agents or representatives,
- b. federal, state or local law enforcement or regulatory officials or their employees, agents or representatives,
- c. a person involved in the prevention and detection of fraudulent or unfair viatical settlement practices or that person's agents, employees or representatives,
- d. the National Association of Insurance Commissioners (NAIC), the National Association of Securities Dealers (NASD), the North American Securities Administrators Association (NASAA), or their employees, agents or representatives or other regulatory body overseeing life insurance, viatical settlements, securities or investment fraud, or
- e. the life insurer that issued the life insurance policy covering the life of the insured.

2. Paragraph 1 of this subsection shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a

fraudulent or unfair viatical settlement practice or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that paragraph 1 of this subsection does not apply because the person filing the report or furnishing the information did so with actual malice.

3. A person identified in paragraph 1 of this subsection shall be entitled to an award of attorney fees and costs if the person is the prevailing party in a civil cause or action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of the Viatical Settlement Act and the party bringing the action was not substantially justified in doing so. For purposes of this paragraph, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

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

E. 1. The documents and evidence provided pursuant to subsection D of this section or obtained by the Commissioner in an investigation of suspected or actual fraudulent or unfair viatical settlement practices shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

2. Paragraph 1 of this subsection shall not prohibit release by the Commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent or unfair viatical settlement practices:

- a. in administrative or judicial proceedings to enforce laws administered by the Commissioner,
- b. to federal, state or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent

or unfair viatical settlement practices or to the National Association of Insurance Commissioners (NAIC), or

- c. at the discretion of the Commissioner, to a person in the business of viatical settlements that is aggrieved by fraudulent or unfair viatical settlement practices.

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

F. The Viatical Settlement Act shall not:

1. Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;

2. Prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud or unfair practices to a law enforcement or regulatory agency other than the Insurance Department; or

3. Limit the powers granted elsewhere by the laws of this state to the Commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

G. Viatical settlement providers and viatical settlement brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent viatical settlement acts. At the discretion of the Commissioner, the Commissioner may order, or a licensee may request and the Commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section. Antifraud initiatives shall include:

1. Fraud investigators, who may be viatical settlement provider or viatical settlement broker employees or independent contractors; and

2. An antifraud plan, which shall be submitted to the Commissioner. The antifraud plan shall include, but not be limited to:

- a. a description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications,
- b. a description of the procedures for reporting possible fraudulent viatical settlement acts to the Commissioner,
- c. a description of the plan for antifraud education and training of underwriters and other personnel, and
- d. a description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

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

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4051.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. In addition to the penalties and other enforcement provisions of the Viatical Settlement Act, if any person violates the Viatical Settlement Act or any rule implementing the Viatical

Settlement Act, the Insurance Commissioner may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the Commissioner determines are necessary to restrain the person from committing the violation.

B. Any person damaged by the acts of a person in violation of the Viatical Settlement Act may bring a civil action against the person committing the violation in a court of competent jurisdiction.

C. A violation of the Viatical Settlement Act attendant to the execution of a viatical settlement contract renders the viatical settlement contract voidable and subject to rescission by the viator, upon return of the policy received to the viatical settlement provider. Suit for rescission may be brought in a court of competent jurisdiction or where the alleged violator resides or has a principal place of business or where the alleged violation occurred.

D. The Commissioner may issue, in accordance with the Administrative Procedures Act, a cease and desist order upon a person that violates any provision of the Viatical Settlement Act, any rule promulgated by the Commissioner, or any written agreement entered into with the Commissioner.

E. When the Commissioner finds that an activity in violation of the Viatical Settlement Act presents an immediate danger to the public that requires an immediate final order, the Commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for ninety (90) days. If the Commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction pursuant to the Administrative Procedures Act.

F. In addition to the penalties and other enforcement provisions of the Viatical Settlement Act, any person who violates the Viatical Settlement Act is subject to civil penalties of up to Ten Thousand Dollars (\$10,000.00) per violation. Imposition of civil penalties shall be pursuant to an order of the Commissioner issued under Section 313 of Title 36 of the Oklahoma Statutes. Such fines 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. The Commissioner's order may require a person found to be in violation of the Viatical Settlement Act to make restitution to persons aggrieved by violations of the Viatical Settlement Act.

G. 1. A person convicted of a violation of the Viatical Settlement Act by a court of competent jurisdiction shall be guilty of a felony, punishable as follows:

- a. to imprisonment for not more than twenty (20) years or to payment of a fine of not more than One Hundred Thousand Dollars (\$100,000.00), or both, if the value of the viatical settlement contract is more than Thirty-five Thousand Dollars (\$35,000.00),
- b. to imprisonment for not more than ten (10) years or to payment of a fine of not more than Twenty Thousand Dollars (\$20,000.00), or both, if the value of the viatical settlement contract is more than Two Thousand Five Hundred Dollars (\$2,500.00) but not more than Thirty-five Thousand Dollars (\$35,000.00),
- c. to imprisonment for not more than five (5) years or to payment of a fine of not more than Ten Thousand Dollars (\$10,000.00), or both, if the value of the viatical settlement contract is more than Five Hundred Dollars (\$500.00) but not more than Two Thousand Five Hundred Dollars (\$2,500.00), or

d. to imprisonment for not more than one (1) year or to payment of a fine of not more than Three Thousand Dollars (\$3,000.00), or both, if the value of the viatical settlement contract is Five Hundred Dollars (\$500.00) or less.

2. A person convicted of a violation of the Viatical Settlement Act shall be ordered to pay restitution to persons aggrieved by the violation. Restitution shall be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment.

3. In any prosecution under this subsection, the value of the viatical settlement contracts within any six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this section; provided, that when two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the offenses was committed for all of the offenses aggregated under this section. The applicable statute of limitations provision under Section 93 of Title 12 of the Oklahoma Statutes shall not begin to run until the insurance company or law enforcement agency is aware of the fraud, but in no event may the prosecution be commenced later than seven (7) years after the act has occurred.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4091.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The purpose of this section is to provide prospective owners, as defined by Section 4086 of Title 36 of the Oklahoma Statutes, with clear and unambiguous statements in the advertisement of life settlements and to assure the clear, truthful, and adequate disclosure of the benefits, risks, limitations and exclusions of any life settlement contract bought or sold. This purpose is intended to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of life

settlements to assure that product descriptions are presented in a manner that prevents unfair, deceptive or misleading advertising and is conducive to accurate presentation and description of life settlements through the advertising media and material used by life settlement licensees.

B. This section shall apply to any advertising of life settlement contracts or related products or services intended for dissemination in this state, including Internet advertising viewed by persons located in this state. If disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

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

D. Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a life settlement contract, product or service shall be sufficiently complete and clear so as to avoid deception and any capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Insurance Commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of

average education or intelligence within the segment of the public to which it is directed.

E. Certain life settlement advertisements are deemed false and misleading on their face and are prohibited. False and misleading life settlement advertisements include, but are not limited to, the following representations:

1. "Guaranteed", "fully secured", "one hundred percent (100%) secured", "fully insured", "secure", "safe", "backed by rated insurance companies", "backed by federal law", "backed by state law", or "state guaranty funds", or similar representations;

2. "No risk", "minimal risk", "low risk", "no speculation", "no fluctuation", or similar representations;

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

4. Utilization of the word "guaranteed" to describe the fixed return, annual return, principal, earnings, profits, investment, or similar representations;

5. "No sales charges or fees" or similar representations;

6. "High yield", "superior return", "excellent return", "high return", "quick profit", or similar representations; and

7. Purported favorable representations or testimonials about the benefits of life settlement contracts as an investment, taken out of context from newspapers, trade papers, journals, radio and television programs, and all other forms of print and electronic media.

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

2. An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or use has the capacity, tendency or effect of misleading or deceiving owners, purchasers or prospective purchasers as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the life settlement contract offered is made available for inspection prior to consummation of the sale, or an offer is made to refund the payment if the owner is not satisfied or that the life settlement contract includes a "free look" period that satisfies or exceeds legal requirements, does not remedy misleading statements.

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

4. An advertisement shall not represent that premium payments will not be required to be paid on the life insurance policy that is the subject of a life settlement contract in order to maintain that policy, unless that is the fact.

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

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

7. Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the life settlement contract, product or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective owners or

purchasers as to the nature or scope of the testimonials, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, the life settlement licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

- a. If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the life settlement provider or related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.
- b. An advertisement shall not state or imply that a life settlement contract, benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the life settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the life settlement licensee, or receives any payment or other consideration from the life settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.
- c. If an endorsement refers to benefits received under a life settlement contract, all pertinent information shall be retained by the life settlement licensee for a period of five (5) years after its use.

G. An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

H. An advertisement shall not disparage insurers, life settlement providers, life settlement brokers, life settlement investment agents, insurance producers, policies, services or methods of marketing.

I. The name of the life settlement licensee shall be clearly identified in all advertisements about the licensee or its life settlement contract, products or services, and if any specific life settlement contract is advertised, the life settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the life settlement provider shall be shown on the application.

J. An advertisement shall not use a trade name, group designation, name of the parent company of a life settlement licensee, name of a particular division of the life settlement licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the life settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the life settlement licensee, or to create the impression that a company other than the life settlement licensee would have any responsibility for the financial obligation under a life settlement contract.

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

L. An advertisement may state that a life settlement licensee is licensed in the state where the advertisement appears, provided

it does not exaggerate that fact or suggest or imply that competing life settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the Insurance Department to find out if the state requires licensing and, if so, whether the life settlement provider, life settlement broker or life settlement investment agent is licensed.

M. An advertisement shall not create the impression that the life settlement provider, its financial condition or status, the payment of its claims or the merits, desirability, or advisability of its life settlement contracts are recommended or endorsed by any government entity.

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

O. An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the United States government endorses, approves or favors:

1. Any life settlement licensee or its business practices or methods of operation;
2. The merits, desirability or advisability of any life settlement contract;
3. Any life settlement contract; or
4. Any life insurance policy or life insurance company.

P. If the advertiser emphasizes the speed with which the compensation will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the owner.

Q. If the advertising emphasizes the dollar amounts available to owners, the advertising shall disclose the average purchase price as a percent of face value obtained by owners contracting with the licensee during the past six (6) months.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4095.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The following acts are prohibited:

1. Committing a fraudulent or unfair life settlement practice;
2. Knowingly presenting false information in an application for an insurance or life settlement contract;
3. Knowingly or intentionally interfering with the enforcement of the provisions of the Life Settlement Act or investigations of suspected or actual violations of the Life Settlement Act; or
4. Knowing or intentional permitting of any person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements by a person in the business of life settlements.

B. 1. Life settlement contracts and applications for life settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

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

2. The lack of a statement as required in paragraph 1 of this subsection shall not constitute a defense in any prosecution for a fraudulent settlement practice.

C. 1. Any person engaged in the business of life settlements having knowledge or a reasonable belief that a fraudulent or unfair life settlement practice is being, will be or has been committed

shall provide to the Insurance Commissioner the information required by, and in a manner prescribed by, the Commissioner.

2. Any other person having knowledge or a reasonable belief that a fraudulent or unfair life settlement practice is being, will be or has been committed may provide to the Commissioner the information required by, and in a manner prescribed by, the Commissioner.

D. 1. No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent or unfair life settlement practices or suspected or completed fraudulent insurance acts, if the information is provided to or received from:

- a. the Commissioner or the Commissioner's employees, agents or representatives,
- b. federal, state or local law enforcement or regulatory officials or their employees, agents or representatives,
- c. a person involved in the prevention and detection of fraudulent or unfair life settlement acts or that person's agents, employees or representatives,
- d. the National Association of Insurance Commissioners (NAIC), the National Association of Securities Dealers (NASD), the North American Securities Administrators Association (NASAA), or their employees, agents or representatives or other regulatory body overseeing life insurance, life settlements, securities or investment fraud, or
- e. the life insurer that issued the life insurance policy covering the life of the insured.

2. Paragraph 1 of this subsection shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a

fraudulent or unfair life settlement practice or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that paragraph 1 of this subsection does not apply because the person filing the report or furnishing the information did so with actual malice.

3. A person identified in paragraph 1 of this subsection shall be entitled to an award of attorney fees and costs if the person is the prevailing party in a civil cause or action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of the Life Settlement Act and the party bringing the action was not substantially justified in doing so. For purposes of this paragraph, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

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

E. 1. The documents and evidence provided pursuant to subsection D of this section or obtained by the Commissioner in an investigation of suspected or actual fraudulent or unfair life settlement practices shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

2. Paragraph 1 of this subsection shall not prohibit release by the Commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent or unfair life settlement practices:

- a. in administrative or judicial proceedings to enforce laws administered by the Commissioner,
- b. to federal, state or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent

or unfair life settlement practices or to the National Association of Insurance Commissioners (NAIC), or

- c. at the discretion of the Commissioner, to a person in the business of life settlements that is aggrieved by fraudulent or unfair life settlement practices.

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

F. The Life Settlement Act shall not:

1. Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;

2. Prevent or prohibit a person from disclosing voluntarily information concerning life settlement fraud or unfair practices to a law enforcement or regulatory agency other than the Insurance Department; or

3. Limit the powers granted elsewhere by the laws of this state to the Commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

G. Life settlement providers and life settlement brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent life settlement acts. At the discretion of the Commissioner, the Commissioner may order, or a licensee may request and the Commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section. Antifraud initiatives shall include:

1. Fraud investigators, who may be life settlement provider or life settlement broker employees or independent contractors; and

2. An antifraud plan, which shall be submitted to the Commissioner. The antifraud plan shall include, but not be limited to:

- a. a description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications,
- b. a description of the procedures for reporting possible fraudulent life settlement acts to the Commissioner,
- c. a description of the plan for antifraud education and training of underwriters and other personnel, and
- d. a description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

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

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4095.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. In addition to the penalties and other enforcement provisions of the Life Settlement Act, if any person violates the Life Settlement Act or any rule implementing the Life Settlement Act, the Insurance Commissioner may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the Commissioner determines are necessary to restrain the person from committing the violation.

B. Any person damaged by the acts of a person in violation of the Life Settlement Act may bring a civil action against the person committing the violation in a court of competent jurisdiction.

C. A violation of the Life Settlement Act attendant to the execution of a life settlement contract renders the life settlement contract voidable and subject to rescission by the purchaser, upon return of the policy received to the life settlement provider. Suit for rescission may be brought in a court of competent jurisdiction or where the alleged violator resides or has a principal place of business or where the alleged violation occurred.

D. The Commissioner may issue, in accordance with the Administrative Procedures Act, a cease and desist order upon a person that violates any provision of the Life Settlement Act, any rule promulgated by the Commissioner, or any written agreement entered into with the Commissioner.

E. When the Commissioner finds that an activity in violation of the Life Settlement Act presents an immediate danger to the public that requires an immediate final order, the Commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for ninety (90) days. If the Commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction pursuant to the Administrative Procedures Act.

F. In addition to the penalties and other enforcement provisions of the Life Settlement Act, any person who violates the Life Settlement Act is subject to civil penalties of up to Ten Thousand Dollars (\$10,000.00) per violation. Imposition of civil penalties shall be pursuant to an order of the Commissioner issued under Section 313 of Title 36 of the Oklahoma Statutes. Such fines

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. The Commissioner's order may require a person found to be in violation of the Life Settlement Act to make restitution to persons aggrieved by violations of the Life Settlement Act.

G. 1. A person convicted of a violation of the Life Settlement Act by a court of competent jurisdiction shall be guilty of a felony, punishable as follows:

- a. to imprisonment for not more than twenty (20) years or to payment of a fine of not more than One Hundred Thousand Dollars (\$100,000.00), or both, if the value of the life settlement contract is more than Thirty-five Thousand Dollars (\$35,000.00),
- b. to imprisonment for not more than ten (10) years or to payment of a fine of not more than Twenty Thousand Dollars (\$20,000.00), or both, if the value of the life settlement contract is more than Two Thousand Five Hundred Dollars (\$2,500.00) but not more than Thirty-five Thousand Dollars (\$35,000.00),
- c. to imprisonment for not more than five (5) years or to payment of a fine of not more than Ten Thousand Dollars (\$10,000.00), or both, if the value of the life settlement contract is more than Five Hundred Dollars (\$500.00) but not more than Two Thousand Five Hundred Dollars (\$2,500.00), or
- d. to imprisonment for not more than one (1) year or to payment of a fine of not more than Three Thousand Dollars (\$3,000.00), or both, if the value of the life settlement contract is Five Hundred Dollars (\$500.00) or less.

2. A person convicted of a violation of the Life Settlement Act shall be ordered to pay restitution to persons aggrieved by the violation. Restitution shall be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment.

3. In any prosecution under this subsection, the value of the life settlement contracts within any six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this section; provided, that when two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the offenses was committed for all of the offenses aggregated under this section. The applicable statute of limitations provision under Section 93 of Title 12 of the Oklahoma Statutes shall not begin to run until the insurance company or law enforcement agency is aware of the fraud, but in no event may the prosecution be commenced later than seven (7) years after the act has occurred.

SECTION 7. AMENDATORY Section 11, Chapter 248, O.S.L. 1998 (36 O.S. Supp. 2000, Section 4051), is amended to read as follows:

Section 4051. ~~A.~~ Any of the following acts by ~~an~~ 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 loss or claim under a specified coverage which contain language which releases an insurer or its insured from its total liability;

7. Compelling, without just cause, a policyowner to institute a suit to recover an amount due under his or her insurance policy or insurance contract by offering substantially less than the amount ultimately recovered in a suit brought by him or her, when such policyholder has made claims for an amount reasonably similar to the amount 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; or

10. Offering or advertising the availability of viatical settlements or negotiating a viatical settlement contract with policyowners or certificate holders 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 8. AMENDATORY Section 30, Chapter 353, O.S.L. 2000 (36 O.S. Supp. 2000, Section 4085), is amended to read as follows:

Section 4085. Sections ~~30~~ 4085 through ~~41~~ 4096 of this ~~act~~ title shall constitute a part of the Insurance Code and shall be known and may be cited as the "Life Settlement Act".

SECTION 9. AMENDATORY Section 37, Chapter 353, O.S.L. 2000 (36 O.S. Supp. 2000, Section 4092), is amended to read as follows:

Section 4092. ~~In order to assure reasonable return for selling an insurance policy to a life settlement provider or negotiating a settlement with a life settlement provider or broker, the following shall be the minimum percentage of face value less outstanding loans, based on attained age of the insured:~~

Attained Age	Minimum Percentage
60-64 years of age	50%
65-69 years of age	60%
70-74 years of age	65%
75-79 years of age	70%
80-84 years of age	80%
85 years and over	85%

A minimum of fifty percent (50%) of face value less outstanding loans shall be paid by the life settlement provider or broker.

A life settlement broker or provider shall not, without the written agreement of the owner obtained prior to performing any

services in connection with a life settlement, seek or obtain any compensation from the owner.

SECTION 10. AMENDATORY Section 40, Chapter 353, O.S.L. 2000 (36 O.S. Supp. 2000, Section 4095), is amended to read as follows:

Section 4095. ~~A.~~ Any of the following acts by a life settlement provider or broker constitutes an unfair life settlement practice:

1. Failing to fully disclose to an owner, benefits, coverages, or other provisions of any life settlement contract when such benefits, coverages or other provisions are pertinent to the contract;

2. Knowingly misrepresenting to an owner pertinent facts relating to the life settlement contract at issue;

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

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

5. Requesting an owner to sign a release that extends beyond the subject matter that gave rise to the life settlement contract;

6. Issuing checks or drafts in partial settlement of a loss or claim under a specified coverage which contains language which releases an insurer or its insured from its total liability;

7. Compelling, without just cause, a policyowner to institute a suit to recover an amount due under his or her insurance policy or insurance contract by offering substantially less than the amount ultimately recovered in a suit brought by him or her, when such policyholder has made claims for an amount reasonably similar to the amount ultimately recovered;

8. Failing to maintain a complete record of all complaints which the broker or provider has received during the preceding three (3) years or since the date of the 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 purpose of this paragraph, "complaint" means any written communication primarily expressing a grievance;

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

10. Offering or advertising the availability of life settlements or negotiating a life settlement contract with policyowners or certificate holders issued by the principal life settlement provider.

~~B. For any violation of this section, the Insurance Commissioner may, after notice and hearing, subject a life 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 11. 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.

Passed the House of Representatives the 5th day of March, 2001.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2001.

Presiding Officer of the Senate