ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 1980 By: Burrage and Lamb of the Senate

and

Peterson (Ron) and Morgan of the House

(insurance - Viatical Settlements Act of 2008 - codification - effective date)

AUTHOR: Add the following House Coauthor: Derby

AMENDMENT NO. 1. Strike the stricken title, enacting clause and entire bill and insert

"An Act relating to insurance; creating the Viatical Settlements Act of 2008; providing short title; defining terms; requiring licensing and providing procedures related thereto; providing for denial, revocation, suspension or nonrenewal of license; requiring approval of viatical settlement contracts and related forms by the Insurance Commissioner; requiring the filing of annual statements; specifying conditions when certain information is disclosed; authorizing the Insurance Commissioner to conduct an examination of a licensee; requiring

licensee to retain copies of certain information for certain time period; specifying procedures related to the examination; requiring certain disclosures; requiring a viatical settlement provider to obtain certain information prior to entering into a viatical settlement; requiring a refund provision; requiring payment of proceeds of settlement into an escrow or trust account; providing requirements for escrow or trust account; providing for transfer of proceeds to owner; specifying conditions for contacts with the insured for certain purposes; prohibiting entering into a viatical settlement contract under certain conditions; specifying what constitutes a fraudulent viatical settlement act; requiring certain viatical settlement promotional and marketing materials to have been filed with the Insurance Commission before a provider can enter into a viatical settlement contract; specifying manner of advertising of viatical settlement contracts and related products; prohibiting certain actions related to the Viatical Settlements Act of 2008; providing penalties related to violations of the Viatical Settlements Act of 2008; declaring certain acts to be unfair viatical settlement practices; granting power and authority to the Insurance Commissioner; prohibiting viatical settlement business after certain date unless in compliance with the Viatical Settlements Act of 2008; amending 36 O.S. 2001, Section 3604, which relates to insurable interests; providing that a trustee has an insurable interest in certain circumstances; repealing 36 O.S. 2001, Sections 4041, 4042, 4043, 4044, 4045, 4046, 4046.1, 4047, 4048, 4048.1, 4049, 4050, 4051, 4051.1, 4051.2 and 4052, which relate to the Viatical Settlement Act; repealing 36 O.S. 2001, Sections 4085, 4086, 4087, 4088, 4089, 4090, 4091, 4091.1, 4092, 4093, 4094, 4095, 4095.1, 4095.2 and 4096, which relate to the Life Settlement Act; providing for codification; and providing an effective date.

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 4055.1 of Title 36, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 17 of this act shall be known and may be cited as the "Viatical Settlements Act of 2008".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4055.2 of Title 36, unless there is created a duplication in numbering, reads as follows:

As used in the Viatical Settlements Act of 2008:

1. "Advertising" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet or similar communications media, including film strips, motion pictures and videos, published, disseminated, circulated or placed directly before the public, in this state, for the purpose of creating an interest in or inducing a person to sell, assign, devise, bequest or transfer the death benefit or ownership of a life insurance policy pursuant to a viatical settlement contract;

2. "Business of viatical settlements" means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating or in any other

manner acquiring an interest in a life insurance policy by means of a viatical settlement contract;

3. "Chronically ill" means:

a. being unable to perform at least two activities of daily living, including, but not limited to, eating, toileting, transferring, bathing, dressing or continence,

b. requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment, or

c. having a level of disability similar to that described in subparagraph a of this paragraph as determined by the Secretary of Human Services;

4. "Commissioner" means the Insurance Commissioner of the State of Oklahoma;

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

a. whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies, and

b. who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts.

Financing entity does not include a nonaccredited investor or a viatical settlement purchaser;

6. "Fraudulent viatical settlement act" includes:

a. acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in acts including:

(1) presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance producer or any other person, false material information, or concealing material information, as part of, in support of or concerning a fact material to one or more of the following:

(a) an application for the issuance of a viatical settlement contract or insurance policy,

(b) the underwriting of a viatical settlement contract or insurance policy,

(c) a claim for payment or benefit pursuant to a viatical settlement contract or insurance policy,

(d) premiums paid on an insurance policy,

(e) payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy,

(f) the reinstatement or conversion of an insurance policy,

(g) in the solicitation, offer, effectuation or sale of a viatical settlement contract or insurance policy,

(h) the issuance of written evidence of viatical settlement contract or insurance, or

(i) a financing transaction,

(2) failing to disclose to the insurer when requested by the insurer that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insured or its authorized representatives in connection with the issuance of the policy,

(3) in the solicitation, application or issuance of a life insurance policy, employing any device, scheme or artifice in violation of Section 3604 of Title 36 of the Oklahoma Statutes, and

(4) employing any plan, financial structure, device, scheme, or artifice to defraud related to viaticated policies,

b. in the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits its employees or its agents to:

(1) remove, conceal, alter, destroy or sequester from the Commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements,

(2) misrepresent or conceal the financial condition of a licensee, financing entity, insurer or other person,

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

(4) file with the Commissioner or the equivalent chief insurance regulatory official of another

jurisdiction a document containing false information or otherwise conceals information about a material fact from the Commissioner,

c. embezzlement, theft, misappropriation or conversion of monies, funds, premiums, credits or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner or any other person engaged in the business of viatical settlements or insurance,

d. recklessly entering into, negotiating, brokering, otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the person or the persons intended to defraud the policy's issuer, the viatical settlement provider or the viator. Recklessly means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct,

e. stranger-originated life insurance,

f. facilitating the change of state of ownership of a policy or certificate or the state of residency of a viator to a state or jurisdiction that does not have a law similar to this act for the express purposes of evading or avoiding the provisions of the Viatical Settlements Act of 2008, or

g. attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this paragraph;

7. "Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority for life insurance coverage or a life line of coverage pursuant to the Oklahoma Producer Licensing Act;

8. "Person" means a natural person or a legal entity, including, without limitation, an individual, partnership, limited liability company, association, trust, or corporation;

9. "Policy" means an individual or group policy, group certificate, contract or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state;

10. "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or a

financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the Commissioner as if those records and files were maintained directly by the licensed viatical settlement provider;

11. "Special purpose entity" means a corporation, partnership, trust, limited liability company or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets:

a. for a financing entity or licensed viatical settlement provider, or

b. (1) in connection with a transaction in which the securities in the special purposes entity are acquired by the viator or by "qualified institutional buyers" as defined in Rule 144 promulgated under the Federal Securities Act of 1933, as amended, or

(2) the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets;

12. "Stranger-originated life insurance" means a practice or plan to initiate a life insurance policy for the benefit of a third-party investor who, at the time of policy origination, has no insurable interest in the insured. Stranger-originated life insurance practices include, but are not limited to, cases in which life insurance is purchased with resources or guarantees from or through a person or entity who, at the time of policy inception, could not lawfully initiate the policy, and where, at the time of policy inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy or the policy benefits to a third party. Trusts that are created to give the appearance of insurable interest and are used to initiate policies for investors violate Section 3604 of Title 36 of the Oklahoma Statutes and the prohibition against wagering on human life. Stranger-originated life insurance arrangements do not include the practices provided in subparagraph b of paragraph 15 of this section;

13. "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in twenty-four (24) months or less;

14. “Viatical settlement broker” means a person, including a life insurance producer as provided for in Section 3 of this act, who working exclusively on behalf of a viator and for a fee, commission or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or one or more viatical settlement brokers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator to act according to the viator’s instructions and in the best interest of the viator. The term does not include an attorney, certified public accountant or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser;

15. “Viatical settlement contract” means a written agreement between a viator and a viatical settlement provider or any affiliate of the viatical settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the viator’s present or future assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance.

Viatical settlement contract also means the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contracts insure the life of a person residing in this state.

a. Viatical settlement contract includes a premium finance loan made for a life insurance policy by a lender to viator on, before or after the date of issuance of the policy where:

(1) the viator or the insured receives on the date of the premium finance loan a guarantee of a future viatical settlement value of the policy, or

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

b. Viatical settlement contract does not include:

(1) a policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms,

(2) loan proceeds that are used solely to pay:

(a) premiums for the policy, or

(b) the costs of the loan, including, without limitation, interest, arrangement fees,

utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third-party collateral provider fees and expenses, including fees payable to letter of credit issuers,

(3) a loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, provided that neither the default on the loan nor the transfer of the policy in connection with the default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this act,

(4) a loan made by a lender that does not violate Sections 4-101 through 4-304 of Title 14A of the Oklahoma Statutes, provided that the premium finance loan is not described in this subparagraph,

(5) an agreement where all the parties:

(a) are closely related to the insured by blood or law, or

(b) have a lawful substantial economic interest in the continued life, health and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties,

(6) any designation, consent or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee,

(7) a bona fide business succession planning arrangement:

(a) between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders,

(b) between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners, or

(c) between one or more members in a limited liability company or between a limited liability company and one or more of its

members or one or more trusts established by its members,

(8) an agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business, or

(9) any other contract, transaction or arrangement exempted from the definition of viatical settlement contract by the Commissioner based on a determination that the contract, transaction or arrangement is not of the type intended to be regulated by the Viatical Settlements Act of 2008;

16. "Viatical settlement provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract with a viator resident in this state. Viatical settlement provider does not include:

a. a bank, savings bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a life insurance policy solely as collateral for a loan,

b. a premium finance company making premium finance loans and exempted by the Commissioner from the licensing requirement under the premium finance laws that takes an assignment of a life insurance policy solely as collateral for a loan,

c. the issuer of the life insurance policy,

d. an authorized or eligible insurer that provides stop loss coverage or financial guaranty insurance to a viatical settlement provider, purchaser, financing entity, special purpose entity or related provider trust,

e. a natural person who enters into or effectuates 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,

f. a financing entity,

g. a special purpose entity,

h. a related provider trust,

i. a viatical settlement purchaser, or

j. any other person that the Commissioner determines is not the type of person intended to be covered by the definition of viatical settlement provider;

17. "Viatical settlement purchaser" means a person who provides a sum of money as consideration for a life insurance policy or an

interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit. Viatical settlement purchaser does not include:

a. a licensee under the Viatical Settlements Act of 2008,

b. an accredited investor or qualified institutional buyer as defined, respectively, in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended,

c. a financing entity,

d. a special purpose entity, or

e. a related provider trust;

18. "Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract; and

19. "Viator" means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and enters or seeks to enter into a viatical settlement contract. For the purposes of the Viatical Settlements Act of 2008, a viator shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an

individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one viator on a single policy and the viators are residents of different states, the transaction shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all the viators. Viator does not include:

a. a licensee under the Viatical Settlements Act of 2008, including a life insurance producer acting as a viatical settlement broker pursuant to the Viatical Settlements Act of 2008,

b. qualified institutional buyer as defined, respectively, in Rule 144A promulgated under the Federal Securities Act of 1933, as amended,

c. a financing entity,

d. a special purpose entity, or

e. a related provider trust.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4055.3 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 1. A person shall not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the Insurance Commissioner of the state of residence of the viator.

2. a. A life insurance producer who has been duly licensed as a resident insurance producer with a life line of authority in this state or his or her home state for at least one (1) year and is licensed as a nonresident producer in this state shall be deemed to meet the licensing requirements of this section and shall be permitted to operate as a viatical settlement broker.

b. Not later than thirty (30) days from the first day of operating as a viatical settlement broker, the life insurance producer shall notify the Commissioner that he or she is acting as a viatical settlement broker on a form prescribed by the Commissioner, and shall pay any applicable fee to be determined by the Commissioner. Notification shall include an acknowledgement by the life insurance producer that he or she will operate as a viatical settlement broker in accordance with the Viatical Settlements Act of 2008.

c. The insurer that issued the policy being viaticated shall not be responsible for any act or omission of a viatical settlement broker or viatical settlement provider arising out of or in connection with the viatical settlement transaction, unless the insurer receives compensation for the placement of a viatical settlement contract from the viatical settlement

provider or viatical settlement broker in connection with the viatical settlement contract.

3. A person licensed as an attorney, certified public accountant or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator, whose compensation is not paid directly or indirectly by the viatical settlement provider, may negotiate viatical settlement contracts on behalf of the viator without having to obtain a license as a viatical settlement broker.

B. Application for a viatical settlement provider or a viatical settlement broker license shall be made to the Commissioner by the applicant on a form prescribed by the Commissioner. The application shall be accompanied by a fee of Five Hundred Dollars ($500.00).

C. Licenses may be renewed from year to year on the anniversary date upon payment of the annual renewal fees of Five Hundred Dollars ($500.00). Failure to pay the fees by the renewal date results in expiration of the license.

D. The applicant shall provide information on forms required 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, members and employees, and the Commissioner may, in the exercise of the Commissioner's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member

thereof who may materially influence the applicant's conduct meets the standards of the Viatical Settlements Act of 2008.

E. A license issued to a legal entity authorizes all partners, officers, members and designated employees to act as viatical settlement providers, viatical settlement brokers as applicable, under the license, and all those persons shall be named in the application and any supplements to the application.

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

1. If a viatical settlement provider, has provided a detailed plan of operation;

2. Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;

3. Has a good business reputation and has had experience, training or education so as to be qualified in the business for which the license is applied for;

4. a. If a viatical settlement provider, has demonstrated evidence of financial responsibility in a format prescribed by the Commissioner, or

b. If a viatical settlement broker, has demonstrated evidence of financial responsibility in a format prescribed by the Commissioner.

c. The Commissioner may ask for evidence of financial responsibility at any time the Commissioner deems necessary;

5. If a legal entity, provides a certificate of good standing from the state of its domicile; and

6. If a viatical settlement provider or viatical settlement broker, has provided an antifraud plan that meets the requirements of subsection G of Section 13 of this act.

G. The Commissioner shall not issue a license to a 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. A viatical settlement provider, viatical settlement broker or viatical settlement investment agent shall provide to the Commissioner new or revised information about officers, ten percent (10%) or more stockholders, partners, directors, members or designated employees within thirty (30) days of the change.

I. An individual licensed as a viatical settlement broker shall complete on a biennial basis eight (8) hours of training related to viatical settlements and viatical settlement transactions, as required by the Commissioner; provided, however, that a life

insurance producer who is operating as a viatical settlement broker pursuant to paragraph 2 of subsection A of this section shall not be subject to the requirements of this subsection. Any person failing to meet the requirements of this subsection shall be subject to the penalties imposed by the Commissioner.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4055.4 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Insurance Commissioner may refuse to issue, suspend, revoke or refuse to renew the license of a viatical settlement provider or viatical settlement broker if the Commissioner finds that:

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

2. The licensee or any officer, partner, member or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent;

3. The viatical settlement provider demonstrates a pattern of unreasonable payments to viators;

4. The licensee or any officer, partner, member or key management personnel has been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or to a misdemeanor involving

fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;

5. The viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to the Viatical Settlements Act of 2008;

6. The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;

7. The licensee no longer meets the requirements for initial licensure;

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

9. The licensee or any officer, partner, member or key management personnel has violated any provision of the Viatical Settlements Act of 2008.

B. The Commissioner may suspend, revoke or refuse to renew the license of a viatical settlement broker or a life insurance producer operating as a viatical settlement broker pursuant to the Viatical Settlements Act of 2008 if the Commissioner finds that the viatical settlement broker or life insurance producer has violated the

provisions of the Viatical Settlements Act of 2008 or has otherwise engaged in bad-faith conduct with one or more viators.

C. If the Commissioner denies a license application or suspends, revokes or refuses to renew the license of a viatical settlement provider, viatical settlement broker or suspends, revokes, or refuses to renew a license of a life insurance producer operating as a viatical settlement broker pursuant to the Viatical Settlements Act of 2008 the Commissioner shall conduct a hearing in accordance with the Administrative Procedures Act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4055.5 of Title 36, unless there is created a duplication in numbering, reads as follows:

A person shall not use a viatical settlement contract form or provide to a viator a disclosure statement form in this state unless first filed with and approved by the Insurance Commissioner. The Commissioner shall disapprove a viatical settlement contract form or disclosure statement form if, in the Commissioner's opinion, the contract or provisions contained therein fail to meet the requirements of Sections 8, 9 and 12 and subsection B of Section 13 of this act or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. At the Commissioner's discretion, the Commissioner may require the submission of advertising material.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4055.6 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Each viatical settlement provider shall file with the Insurance Commissioner on or before March 1 of each year an annual statement containing information as the Commissioner may prescribe by regulation. In addition to any other requirements, for any policy settled within five (5) years of the date of issuance of the policy, the annual statement shall specify the total number, aggregate face amount and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy-issue year. The information shall be limited to only those transactions where the viator is a resident of this state. Individual transaction data regarding the business of viatical settlements or data that could compromise the privacy of personal, financial and health information of the viator or insured shall be filed with the Commissioner on a confidential basis.

B. Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not disclose that identity as an insured, or the insured's

financial or medical information to any other person unless the disclosure:

1. Is necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

2. Is provided in response to an investigation or examination by the Commissioner or any other governmental officer or agency or pursuant to the requirements of subsection C of Section 13 of this act;

3. Is a term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider;

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

5. Is necessary to allow the viatical settlement provider or viatical settlement broker or their authorized representatives to make contacts for the purpose of determining health status; or

6. Is required to purchase stop loss coverage or financial guaranty insurance.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4055.7 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 1. The Insurance Commissioner may conduct an examination under the Viatical Settlements Act of 2008 of a licensee as often as the Commissioner in his or her discretion deems appropriate after considering the factors set forth in this paragraph. In scheduling and determining the nature, scope, and frequency of the examinations, the Commissioner shall consider such matters as the consumer complaints, results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, report of independent certified public accountants, and other relevant criteria as determined by the Commissioner.

2. For purposes of completing an examination of a licensee under the Viatical Settlements Act of 2008, the Commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the Commissioner, necessary or material to the examination of the licensee.

3. In lieu of an examination under the Viatical Settlements Act of 2008 of any foreign or alien licensee licensed in this state, the Commissioner may, at the Commissioner's discretion, accept an examination report on the licensee as prepared by the Commissioner for the licensee's state of domicile or port-of-entry state.

4. As far as practical, the examination of a foreign or alien licensee shall be made in cooperation with the insurance supervisory officials of other states in which the licensee transacts business.

B. 1. A person required to be licensed by the Viatical Settlements Act of 2008 shall for five (5) years retain copies of all:

a. proposed, offered or executed contracts, purchase agreements, underwriting documents, policy forms, and applications from the date of the proposal, offer or execution of the contract or purchase agreement, whichever is later,

b. all checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of funds from the date of the transaction, and

c. all other records and documents related to the requirements of the Viatical Settlements Act of 2008.

2. This subsection does not relieve a person of the obligation to produce these documents to the Commissioner after the retention period has expired if the person has retained the documents.

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

C. 1. Upon determining that an examination should be conducted, the Commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and

instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners Handbook adopted by the National Association of Insurance Commissioners (NAIC). The Commissioner may also employ such other guidelines or procedures as the Commissioner may deem appropriate.

2. Every licensee or person from whom information is sought, its officers, directors and agents shall provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets and computer or other recordings relating to the property, assets, business and affairs of the licensee being examined. The officers, directors, employees and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the Commissioner shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the licensee to engage in the viatical settlement business or other business subject to the Commissioner's jurisdiction. Any proceedings for suspension, revocation or refusal of any license or authority shall be conducted in accordance with the Administrative Procedures Act.

3. The Commissioner shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the Commissioner may petition a court of competent jurisdiction, and upon proper showing, the Court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

4. When making an examination under the Viatical Settlements Act of 2008, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the licensee that is the subject of the examination.

5. Nothing contained in the Viatical Settlements Act of 2008 shall be construed to limit the Commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

6. Nothing contained in the Viatical Settlements Act of 2008 shall be construed to limit the Commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee workpapers or other documents, or

any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the Commissioner may, in his or her sole discretion, deem appropriate.

D. 1. Examination reports shall be comprised of only facts appearing upon the books, records or other documents of the licensee, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

2. No later than sixty (60) days following completion of the examination, the examiner in charge shall file with the Commissioner a verified written report of examination under oath. Upon receipt of the verified report, the Commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty (30) days to make a written submission or rebuttal with respect to any matters contained in the examination report.

3. In the event the Commissioner determines that regulatory action is appropriate as a result of an examination, the Commissioner may initiate any proceedings or actions provided by law.

E. 1. Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the Commissioner, unless required by law.

2. Except as otherwise provided in the Viatical Settlements Act of 2008, all examination reports, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the Commissioner or any other person in the course of an examination made under the Viatical Settlements Act of 2008, or in the course of analysis or investigation by the Commissioner of the financial condition or market conduct of a licensee shall be confidential by law and privileged, shall not be subject to the Oklahoma Open Records Act, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The Commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

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

a. created, produced or obtained by or disclosed to the NAIC and its affiliates and subsidiaries in the course of assisting an examination made under this act, or assisting a Commissioner in the analysis or investigation of the financial condition or market conduct of a licensee, or

b. disclosed to the NAIC and its affiliates and subsidiaries under paragraph 4 of this subsection by a Commissioner.

For the purposes of paragraph 2 of this subsection, "act" means the law of another state or jurisdiction that is substantially similar to the Viatical Settlements Act of 2008.

4. Neither the Commissioner nor any person that received the documents, material or other information while acting under the authority of the Commissioner, including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to paragraph 1 of this subsection.

5. In order to assist in the performance of the Commissioner's duties, the Commissioner:

a. may share documents, materials or other information, including the confidential and privileged documents, materials or information subject to paragraph 1 of this subsection, with other state, federal and

international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication or other information, and

b. may receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

6. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in paragraph 5 of this subsection.

7. A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege

established under this subsection shall be available and enforced in any proceeding in, and in any court of, this state.

8. Nothing contained in the Viatical Settlements Act of 2008 shall prevent or be construed as prohibiting the Commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the Commissioner of any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time or to the NAIC, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with the Viatical Settlements Act of 2008.

F. 1. An examiner may not be appointed by the Commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under the Viatical Settlements Act of 2008. This section shall not be construed to automatically preclude an examiner from being:

a. a viator,

b. an insured in a viaticated insurance policy, or

c. a beneficiary in an insurance policy that is proposed to be viaticated.

2. Notwithstanding the requirements of this paragraph, the Commissioner may retain from time to time, on an individual basis,

qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under the Viatical Settlements Act of 2008.

G. 1. No cause of action shall arise nor shall any liability be imposed against the Commissioner, the Commissioner's authorized representatives or any examiner appointed by the Commissioner for any statements made or conduct performed in good faith while carrying out the provisions of the Viatical Settlements Act of 2008.

2. No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the Commissioner or the Commissioner's authorized representative or examiner pursuant to an examination made under the Viatical Settlements Act of 2008, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This paragraph does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in paragraph 1 of this subsection.

3. A person identified in paragraph 1 or 2 of this subsection shall be entitled to an award of attorney fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in

carrying out the provisions of this act and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

H. The Commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4055.8 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. With each application for a viatical settlement, a viatical settlement provider or viatical settlement broker shall provide the viator with at least the following disclosures no later than the time the application for the viatical settlement contract is signed by all parties. The disclosures shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker, and shall provide the following information:

1. There are possible alternatives to viatical settlement contracts including any accelerated death benefits or policy loans offered under the viator's life insurance policy;

2. That a viatical settlement broker represents exclusively the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator, including a duty to act

according to the viator's instructions and in the best interest of the viator;

3. Some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor;

4. Proceeds of the viatical settlement could be subject to the claims of creditors;

5. Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies;

6. The viator has the right to rescind a viatical settlement contract before the earlier of thirty (30) calendar days after the date upon which the viatical settlement contract is executed by all parties or fifteen (15) calendar days after the viatical settlement proceeds have been paid to the viator. Rescission, if exercised by the viator, is effective only if both notice of the rescission is given, and the viator repays all proceeds and any premiums, loans and loan interest paid on account of the viatical settlement within the rescission period. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment by the viator or the viator's estate of all viatical settlement proceeds and any premiums, loans

and loan interest on the viatical settlement within sixty (60) days of the insured's death;

7. Funds will be sent to the viator within three (3) business days after the viatical settlement provider has received the insurer's or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated;

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

9. Disclosure to a viator shall include distribution of a brochure describing the process of viatical settlements. The National Association of Insurance Commissioner's (NAIC's) form for the brochure shall be used unless another form is developed or approved by the Insurance Commissioner;

10. The disclosure document shall contain the following language: "All medical, financial or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to

provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two (2) years."; and

11. Following execution of a viatical contract, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number, or as otherwise provided in the Viatical Settlements Act of 2008. This contact shall be limited to once every three (3) months if the insured has a life expectancy of more than one (1) year, and no more than once per month if the insured has a life expectancy of one (1) year or less. All such contracts shall be made only by a viatical settlement provider licensed in the state in which the viator resided at the time of the viatical settlement, or by the authorized representative of a duly licensed viatical settlement provider.

B. A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide the following information:

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

2. The document shall include the name, business address and telephone number of the viatical settlement provider;

3. Any affiliations or contractual arrangements between the viatical settlement provider and the viatical settlement purchaser;

4. If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement;

5. State the dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. If known, the viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the extent to which the viator's interest in those benefits will be transferred as a result of the viatical settlement contract; and

6. State whether the funds will be escrowed with an independent third party during the transfer process, and if so, provide the name, business address, and telephone number of the independent

third-party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

C. A viatical settlement broker shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide the following information:

1. The name, business address and telephone number of the viatical settlement broker;

2. A full, complete and accurate description of all offers, counter-offers, acceptances and rejections relating to the proposed viatical settlement contract; and

3. A written disclosure of any affiliations or contractual arrangements between the viatical settlement broker and any person making an offer in connection with the proposed viatical settlement contracts.

D. If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within twenty (20) days after the change.

E. A viatical settlement provider or its viatical settlement investment agent shall provide the viatical settlement purchaser

with at least the following disclosures no later than at the time of the assignment, transfer or sale of all or a portion of an insurance policy. The disclosures shall be contained in a document signed by the viatical settlement purchaser and viatical settlement provider or viatical settlement investment agent, and shall make the following disclosures to the viatical settlement purchaser:

1. Disclose all the life expectancy certifications obtained by the provider in the process of determining the price paid to the viator;

2. State whether premium payments or other costs related to the policy have been escrowed. If escrowed, state the date upon which the escrowed funds will be depleted and whether the purchaser will be responsible for payment of premiums thereafter and, if so, the amount of the premiums;

3. State whether premium payments or other costs related to the policy have been waived. If waived, disclose whether the investor will be responsible for payment of the premiums if the insurer that wrote the policy terminates the waiver after purchase and the amount of those premiums;

4. Disclose the type of policy offered or sold, i.e., whole life, term life, universal life or a group policy certificate, any additional benefits contained in the policy, and the current status of the policy;

5. If the policy is term insurance, disclose the special risks associated with term insurance including, but not limited to, the purchaser's responsibility for additional premiums if the viator continues the term policy at the end of the current term;

6. State whether the policy is contestable;

7. State whether the insurer that wrote the policy has any additional rights that could negatively affect or extinguish the purchaser's rights under the viatical settlement contract, what these rights are, and under what conditions these rights are activated; and

8. State the name and address of the person responsible for monitoring the insured's condition. Describe how often the monitoring of the insured's condition is done, how the date of death is determined, and how and when this information will be transmitted to the purchaser.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4055.9 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 1. A viatical settlement provider entering into a viatical settlement contract shall first obtain:

a. if the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract, and

b. a document in which the insured consents to the release of his or her medical records to a licensed viatical settlement provider, viatical settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.

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

3. The viatical provider shall deliver a copy of the medical release required under subparagraph b of paragraph 1 of this subsection, a copy of the viator's application for the viatical settlement contract, the notice required under paragraph 2 of this subsection and a request for verification of coverage to the insurer that issued the life policy that is the subject of the viatical transaction. The National Association of Insurance Commissioner's (NAIC's) form for verification of coverage shall be used unless another form is developed and approved by the Insurance Commissioner.

4. The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider or viatical settlement broker within thirty (30) calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible fraud. The insurer shall accept a request for verification of coverage made on an NAIC form or any other form approved by the Commissioner. The insurer shall accept an original or facsimile or electronic copy of such request and any accompanying authorization signed by the viator. Failure by the insurer to meet its obligations under this subsection shall be a violation of subsection C of Section 10 and Section 15 of this act.

5. Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, that he or she has a full and complete understanding of the benefits of the life insurance policy, acknowledges that he or she is entering into the viatical settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and

that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

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

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 provide the viator with an absolute right to rescind the contract before the earlier of thirty (30) calendar days after the date upon which the viatical settlement contract is executed by all parties or fifteen (15) calendar days after the viatical settlement proceeds have been sent to the viator. Rescission by the viator may be conditioned upon the viator both giving notice and repaying to the viatical settlement provider within the rescission period all proceeds of the settlement and any premiums, loans and loan interest paid by or on behalf of the viatical settlement provider in connection with or as a consequence of the viatical settlement. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or purchaser of all viatical settlement proceeds, and any premiums, loans and loan

interest that have been paid by the viatical settlement provider or purchaser, which shall be paid within sixty (60) calendar days of the death of the insured. In the event of any rescission, if the viatical settlement provider has paid commissions or other compensation to a viatical settlement broker in connection with the rescinded transaction, the viatical settlement broker shall refund all such commissions and compensation to the viatical settlement provider within five (5) business days following receipt of written demand from the viatical settlement provider, which demand shall be accompanied by either the viator's notice of rescission if rescinded at the election of the viator, or notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period.

D. The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment or change in beneficiary directly to the independent escrow agent. Within three (3) business days after the date the escrow agent receives the document or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the provider, the provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a state- or federally-chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). Upon payment

of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the viatical settlement provider or related provider trust or other designated representative of the viatical settlement provider. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator.

E. Failure to tender consideration to the viator for the viatical settlement contract within the time set forth in the disclosure pursuant to paragraph 7 of subsection A of Section 8 of this act renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator. Funds shall be deemed sent by a viatical settlement provider to a viator as of the date that the escrow agent either releases funds for wire transfer to the viator or places a check for delivery to the viator via United States Postal Service or other nationally recognized delivery service.

F. In order to assure that a viator, at the time of the viatical settlement has a life expectancy of less than two (2) years, receives reasonable return for viaticating an insurance policy, the following shall be minimum discounts:

Minimum Percentage of Face

Insured's Life Expectancy	Value Less Outstanding Loans Received By Viator
Less than six (6) months	80%
At least six (6) but less than twelve (12) months	70%
At least twelve (12) but less than eighteen (18) months	65%
At least eighteen (18) months but less than twenty-four (24) months	60%

G. Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or broker licensed in this state or its authorized representatives and shall be limited to once every three (3) months for insureds with a life expectancy of more than one (1) year, and to no more than once per month for insureds with a life expectancy of one (1) year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4055.10 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. It is a violation of the Viatical Settlements Act of 2008 for any person to enter into a viatical settlement contract at any time prior to the application or issuance of a policy which is the subject of viatical settlement contract or within a two-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:

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

2. The viator submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:

a. the viator or insured is terminally or chronically ill,

b. the viator's spouse dies,

c. the viator divorces his or her spouse,

d. the viator retires from full-time employment,

e. the viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment,

f. a final order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee or liquidator to all or a substantial part of the viator's assets, or

g. the viator involuntarily experiences a significant decrease in income that is unexpected and that also reasonably impairs the reasonable ability of the viator to pay the policy premiums.

B. Copies of the independent evidence described in paragraph 2 of subsection A of this section and documents required by subsection A of Section 9 of this act shall be submitted to the insurer when the viatical settlement provider or other party entering into a viatical settlement contract with a viator submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement

provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

C. If the viatical settlement provider submits to the insurer a copy of the owner or insured's certification described in and the independent evidence required by paragraph 2 of subsection A of this section when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this section and the insurer shall timely respond to the request.

D. No insurer may, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a viatical settlement contract, require that the viator, insured, viatical settlement provider or viatical settlement broker sign any forms, disclosures, consent or waiver form that has not been expressly approved by the Insurance Commissioner for use in connection with viatical settlement contracts in this state.

E. Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within thirty (30) calendar days with written acknowledgement confirming that the change has been effected or specifying the reasons why the requested change cannot be processed. The insurer shall not unreasonably delay effecting change of ownership or beneficiary and shall not otherwise seek to interfere

with any viatical settlement contract lawfully entered into in this state.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4055.11 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. With respect to any viatical settlement contract or insurance policy, no viatical settlement broker knowingly shall solicit an offer from, effectuate a viatical settlement with or make a sale to any viatical settlement provider, viatical settlement purchaser, financing entity or related provider trust that is controlling, controlled by, or under common control with such viatical settlement broker unless the relationship is disclosed to the viator.

B. With respect to any viatical settlement contract or insurance policy, no viatical settlement provider knowingly may enter into a viatical settlement contract with a viator, if, in connection with such viatical settlement contract, anything of value will be paid to a viatical settlement broker that is controlling, controlled by, or under common control with such viatical settlement provider or the viatical settlement purchaser, financing entity or related provider trust that is involved in such viatical settlement contract unless the relationship is disclosed to the viator.

C. A violation of subsection A or B of this section shall be deemed a fraudulent viatical settlement act.

D. No viatical settlement provider shall enter into a viatical settlement contract unless the viatical settlement promotional, advertising and marketing materials, as may be prescribed by regulation, have been filed with the Insurance Commissioner. In no event shall any marketing materials expressly reference that the insurance is "free" for any period of time. The inclusion of any reference in the marketing materials that would cause a viator to reasonably believe that the insurance is free for any period of time shall be considered a violation of the Viatical Settlements Act of 2008.

E. No life insurance producer, insurance company, viatical settlement broker, viatical settlement provider or viatical settlement investment agent shall make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

F. No person providing premium financing shall receive any proceeds, fees or other consideration from the policy or owner of the policy that is in addition to the amounts required to pay principal, interest, and any other costs or expenses incurred by the lender or borrower in connection with the premium finance agreement, except for the event of a default, unless either the default on the loan or transfer of the policy in connection with the default occurs

pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this act. Any payments, charges, fees or other amounts received by a person providing premium financing in violation of this subsection shall be remitted to the original owner of the policy or to the estate of the owner if the owner is deceased at the time of the determination of the overpayment.

G. No person shall issue, solicit, market or otherwise promote the purchase of an insurance policy for the purpose of, or with an emphasis on, settling the policy.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4055.12 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. 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. Where 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 licensees, 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 shall be sufficiently complete and

clear so as to avoid deception. It shall not have the 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. 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.

1. 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 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.

2. 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.

3. 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.

4. 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.

5. 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, a licensee under the Viatical Settlements Act of 2008 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 party making use of the testimonial, appraisal, analysis or endorsement, either directly or through a 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. When an endorsement refers to benefits received under a viatical settlement contract all pertinent information shall be retained for a period of five (5) years after its use.

F. 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.

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

H. The name of the viatical settlement licensee shall be clearly identified in all advertisements about the 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.

I. 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.

J. 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 into believing that the solicitation is in some manner connected with a government program or agency.

K. 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 licensees may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the department of insurance to find out if the state requires licensing and, if so, whether the viatical settlement provider, viatical settlement broker is licensed.

L. 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.

M. 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.

N. An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the federal 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.

O. 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.

P. 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 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4055.13 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. 1. A person shall not commit a fraudulent viatical settlement act.

2. A person shall not knowingly or intentionally interfere with the enforcement of the provisions of the Viatical Settlements Act of 2008 or investigations of suspected or actual violations of the Viatical Settlements Act of 2008.

3. A person in the business of viatical settlements shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.

B. 1. Viatical settlements 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 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 does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

C. 1. Any person engaged in the business of viatical settlements having knowledge or a reasonable suspicion that a fraudulent viatical settlement act is being, will be or has been committed shall provide to the Insurance Commissioner such information as required by, and in a manner prescribed by, the Commissioner.

2. Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act 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 viatical settlement acts 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 viatical settlement acts or that person's agents, employees or representatives,

d. the National Association of Insurance Commissioners (NAIC), 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 viatical settlement 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 furnishing information as identified in paragraph 1 of this subsection shall be entitled to an award of attorney fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this act and the party

bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated. However, such an award does not apply to any person furnishing information concerning his or her own fraudulent viatical settlement acts.

4. This section 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 viatical settlement acts 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 does not prohibit release by the Commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:

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 viatical settlement acts or to the NAIC, or

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

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. This 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 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. 1. 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.

2. Antifraud initiatives shall include:

a. fraud investigators, who may be viatical settlement provider or viatical settlement broker employees or independent contractors, and

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

(1) 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,

(2) a description of the procedures for reporting possible fraudulent viatical settlement acts to the Commissioner,

(3) a description of the plan for antifraud education and training of underwriters and other personnel, and

(4) 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 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4055.14 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 Settlements Act of 2008, if any person violates the Viatical Settlements Act of 2008 or any regulation implementing the Viatical Settlements Act of 2008, 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 Settlements Act of 2008 may bring a civil action against the person committing the violation in a court of competent jurisdiction.

C. 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 Settlements Act of 2008, any regulation or order adopted by the Commissioner, or any written agreement entered into with the Commissioner.

D. When the Commissioner finds that an activity in violation of the Viatical Settlements Act of 2008 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.

E. In addition to the penalties and other enforcement provisions of the Viatical Settlements Act of 2008, any person who violates the Viatical Settlements Act of 2008 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. The Commissioner's order may require a person found to be in violation of the Viatical Settlements Act of 2008 to make restitution to persons aggrieved by violations of the Viatical Settlements Act of 2008.

F. A person convicted of a violation of the Viatical Settlements 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.

A person convicted of a violation of the Viatical Settlements Act of 2008 shall be ordered to pay restitution to persons aggrieved by the violation of the Viatical Settlements Act of 2008. Restitution shall be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment.

G. Except for a fraudulent viatical settlement act committed by a viator, the enforcement provisions and penalties of this section shall not apply to a viator. A person convicted of a violation of the Viatical Settlements Act of 2008 by a court of competent jurisdiction may be sentenced in accordance with paragraph 1, 2, 3 or 4 of this subsection based on the greater of (i) the value of property, services, or other benefit wrongfully obtained or attempted to obtain, or (ii) the aggregate economic loss suffered by any person as a result of the violation. A person convicted of a fraudulent viatical settlement act must be ordered to pay restitution to persons aggrieved by the fraudulent viatical

settlement act. Restitution must be ordered in addition to a fine or imprisonment but not in lieu of a fine or imprisonment:

1. 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 viatical settlement contract is more than Thirty-five Thousand Dollars ($35,000.00);

2. 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 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);

3. 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 viatical settlement contract is more than Five Hundred Dollars ($500.00) but not more than Two Thousand Five Hundred Dollars ($2,500.00); or

4. 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 viatical settlement contract is Five Hundred Dollars ($500.00) or less.

In any prosecution under this section under paragraphs 1, 2, 3 and 4 of 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. 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 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4055.15 of Title 36, unless there is created a duplication in numbering, reads as follows:

A violation of the Viatical Settlements Act of 2008, including the commission of a fraudulent viatical settlement act, shall be considered a deceptive trade practice under Sections 1201 through 1219 of Title 36 of the Oklahoma Statutes subject to the penalties contained in those sections.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4055.16 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Insurance Commissioner shall have the authority to:

1. Promulgate regulations implementing the Viatical Settlements Act of 2008;

2. Establish standards for evaluating reasonableness of payments under viatical settlement contracts for persons who are terminally or chronically ill. 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 insuring the life of a person that is chronically or terminally ill;

3. Establish appropriate licensing requirements, fees and standards for continued licensure for viatical settlement providers and brokers;

4. Require a bond or other mechanism for financial accountability for viatical settlement providers and brokers; and

5. Adopt rules governing the relationship and responsibilities of both insurers and viatical settlement providers and viatical settlement brokers during the viatication of a life insurance policy or certificate.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4055.17 of Title 36, unless there is created a duplication in numbering, reads as follows:

No viatical settlement provider or viatical settlement broker transacting business in this state may continue to do so after November 1, 2008, unless the provider, broker or agent is in compliance with the Viatical Settlements Act of 2008.

SECTION 18. AMENDATORY 36 O.S. 2001, Section 3604, is amended to read as follows:

Section 3604. A. 1. Any individual of competent legal capacity may procure or effect an insurance contract upon his or her own life or body for the benefit of any person. Except as provided in subsection D of this section, no person shall procure or cause to be procured any insurance contract upon the life or body of another individual unless the benefits under the contract are payable to the individual insured or a personal representatives, or to a person having, at the time when the contract was made, an insurable interest in the individual insured.

2. In the absence of an agreement to the contrary, a policy procured and owned by a corporation, partnership, association, limited liability company, or other legal entity on the life or body of an officer, director, manager, member, or employee, other than a sole proprietor, upon the termination of the insurable interest, the owner of the policy shall, if permitted by the terms of the policy, offer to sell, transfer, or assign the policy to the insured in exchange for the cash surrender value of the policy or, if there is no cash value, in exchange for an amount equal to the total of any premiums paid for the policy, minus any dividends received, plus interest. This offer shall be made in writing to the insured after termination of the insurable interest. The offer shall state the time for acceptance which shall not be less than thirty (30) days

after receipt of the offer by the insured. If the insured rejects the offer or fails to accept the offer in the time provided, the owner of the policy may continue to own the policy subject to its terms.

B. If the beneficiary, assignee, or other payee under any contract made in violation of this section receives from the insurer any benefits thereunder accruing upon the death, disability, or injury of the individual insured, the individual insured or an executor or administrator, as the case may be, may maintain an action to recover such benefits from the person receiving them.

C. "Insurable interest" with reference to personal insurance includes only interests as follows:

1. In the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection;

2. In the case of other persons, a lawful and substantial economic interest in having the life, health, or bodily safety of the individual insured continue, as distinguished from an interest which would arise only by, or would be enhanced in value by, the death, disability, or injury of the individual insured;

3. An individual heretofore or hereafter party to a contract or option for the purchase or sale of an interest in a business partnership or firm, or of shares of stock of a closed corporation or of an interest in such shares, has an insurable interest in the life of each individual party to the contract and for the purposes

of the contract only, in addition to any insurable interest which may otherwise exist as to the life of the individual; ~~and~~

4. A trustee of a trust, whenever established, shall be deemed to have an insurable interest in:

a. the individual insured who established the trust,

b. each individual in whose life the owner of the trust for federal income tax purposes has an insurable interest, and

c. each individual in whose life a beneficiary of the trust has an insurable interest; and the proceeds of the life insurance policy are primarily for the benefit of the trust beneficiaries having an insurable interest in the life of the individual insured; and

5. a. An employer, or a trust which is sponsored by an employer for the benefit of its employees, shall have an insurable interest in each of the lives of the employees, directors, or retired employees of the employer. Notwithstanding paragraph 2 of subsection C of this section or Section 4101 of this title, and amendments thereto, the employer or trust may insure the life of any employee, director, or retired employee for the benefit of the employer or trust on an individual or group basis only with the written consent of the insured.

b. The consent requirement of Section 3607 of this title shall be accomplished as follows:

(1) the employer shall notify the employee, director, or retired employee by a written notice that the employer or trust would like to obtain life insurance coverage with respect to the person's life, and

(2) if the employee, director, or retired employee fails to provide written consent to the employer or trust, the employer or trust shall not purchase or obtain such insurance.

c. It shall be unlawful for the employer or trust to retaliate against any person for refusing to consent to the issuance of insurance on the person.

d. The insurable interest of the employer or trust in nonmanagement and retired employees shall be limited to an amount agreed to by the employee or, in the absence of an agreement, an amount of aggregate projected death benefits commensurate with the aggregate projected liabilities to the employee under all employee welfare benefit plans, as defined in Section 1002(1) of Title 29 of the United States Code. Calculations of life insurance benefits and welfare benefit liabilities shall be made in accordance with

generally accepted actuarial principles. Matching of life insurance benefits and welfare benefit liabilities may be done on cash flow, present value, or other appropriate basis.

e. For purposes of this section:

(1) "employer" means any individual, sole proprietorship, partnership, limited liability company, corporation, or other legal entity that is legally doing business in this state; the term shall also include all entities or persons which are controlled by or affiliated with any of the foregoing. The determination of whether any entity or person is controlled by or affiliated with another shall be made by applying the principles set forth in subsection (b) or (c) of Section 414 of Title 26 of the United States Code, as in effect on January 1, 1993, except that all references therein to eighty percent (80%) shall be changed to fifty-one percent (51%), and

(2) “employee” means any common law employee of an employer.

f. This section shall not be interpreted to limit other insurable interests which may exist by statute or at common law.

g. Determination of the existence and extent of the insurable interest under any life insurance policy shall be made at the time the contract of insurance becomes effective, provided however, the insurable interest need not exist at the time the loss occurs.

D. Life insurance contracts may be entered into in which the person paying the consideration for the insurance has no insurable interest in the life of the individual insured, where charitable, benevolent, educational or religious institutions, or their agencies, are designated as the beneficiaries thereof. In no event shall an individual be named as a beneficiary. In making these contracts, the person paying the premium shall make and sign the application therefor as owner and shall designate a charitable, benevolent, educational, or religious institution, or an agency thereof, as the beneficiary or beneficiaries of the contract. The application or any subsequent change of beneficiary designation shall be signed by the individual whose life is to be insured. These contracts shall be valid and binding among the parties, notwithstanding the absence otherwise of an insurable interest in the life of the individual insured.

E. Life insurance contracts may be entered into in which the members of an alumni association of an institution of higher education accredited by the Oklahoma State Regents for Higher Education are insured under a group insurance policy and either the institution is the designated beneficiary thereof or the association is the designated beneficiary with the stipulation that the association will use the proceeds of the policies for direct grants to the institution or for scholarships for students of such institutions. In no event shall an individual be named as a beneficiary to such a policy. In making such contracts, the person paying the premium shall make and sign the application therefor as owner and shall designate an institution or alumni association as the beneficiary or beneficiaries of such contract. The application or any subsequent change of beneficiary designation shall be signed also by the individual whose life is to be insured. These contracts shall be valid and binding among the parties thereto, notwithstanding the absence of an insurable interest in the life of the individual insured.

SECTION 19. REPEALER 36 O.S. 2001, Sections 4041, 4042, 4043, 4044, 4045, 4046, 4046.1, 4047, 4048, 4048.1, 4049, 4050, 4051, 4051.1, 4051.2 and 4052, are hereby repealed.

SECTION 20. REPEALER 36 O.S. 2001, Sections 4085, 4086, 4087, 4088, 4089, 4090, 4091, 4091.1, 4092, 4093, 4094, 4095, 4095.1, 4095.2 and 4096, are hereby repealed.

SECTION 21. This act shall become effective November 1, 2008."

Passed the House of Representatives the 23rd day of April, 2008.

_____
Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2008.

_____
Presiding Officer of the Senate