

1 ENGROSSED SENATE
2 BILL NO. 1980

By: Burrage and Lamb of the
Senate

3 and

4 Peterson (Ron) and Morgan
5 of the House

6
7 [insurance - Viatical Settlements Act of 2008 -
8 codification -

9 effective date]

10

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

12 SECTION 1. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 4055.1 of Title 36, unless there
14 is created a duplication in numbering, reads as follows:

15 Sections 1 through 18 of this act shall be known and may be
16 cited as the "Viatical Settlements Act of 2008".

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

20 As used in the Viatical Settlements Act of 2008:

21 1. "Advertising" means any written, electronic or printed
22 communication or any communication by means of recorded telephone
23 messages or transmitted on radio, television, the Internet or
24 similar communications media, including film strips, motion pictures

1 and videos, published, disseminated, circulated or placed directly
2 before the public, in this state, for the purpose of creating an
3 interest in or inducing a person to sell, assign, devise, bequest or
4 transfer the death benefit or ownership of a life insurance policy
5 pursuant to a viatical settlement contract;

6 2. "Business of viatical settlements" means an activity
7 involved in, but not limited to, the offering, soliciting,
8 negotiating, procuring, effectuating, purchasing, investing,
9 financing, monitoring, tracking, underwriting, selling,
10 transferring, assigning, pledging, hypothecating or in any other
11 manner, acquiring an interest in a life insurance policy by means of
12 a viatical settlement contract;

13 3. "Chronically ill" means:

- 14 a. being unable to perform at least two (2) activities of
15 daily living (i.e., eating, toileting, transferring,
16 bathing, dressing or continence),
- 17 b. requiring substantial supervision to protect the
18 individual from threats to health and safety due to
19 severe cognitive impairment, or
- 20 c. having a level of disability similar to that described
21 in subparagraph a of this paragraph as determined by
22 the Secretary of Human Services;

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

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

- 6 a. whose principal activity related to the transaction is
7 providing funds to effect the viatical settlement or
8 purchase of one or more viaticated policies, and
- 9 b. who has an agreement in writing with one or more
10 licensed viatical settlement providers to finance the
11 acquisition of viatical settlement contracts.

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

14 6. "Fraudulent viatical settlement act" includes:

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

- 20 (1) presenting, causing to be presented or preparing
21 with knowledge or belief that it will be
22 presented to or by a viatical settlement
23 provider, viatical settlement broker, viatical
24 settlement purchaser, financing entity, insurer,

1 insurance producer or any other person, false
2 material information, or concealing material
3 information, as part of, in support of or
4 concerning a fact material to one or more of the
5 following:

- 6 (a) an application for the issuance of a
7 viatical settlement contract or insurance
8 policy,
- 9 (b) the underwriting of a viatical settlement
10 contract or insurance policy,
- 11 (c) a claim for payment or benefit pursuant to a
12 viatical settlement contract or insurance
13 policy,
- 14 (d) premiums paid on an insurance policy,
- 15 (e) payments and changes in ownership or
16 beneficiary made in accordance with the
17 terms of a viatical settlement contract or
18 insurance policy,
- 19 (f) the reinstatement or conversion of an
20 insurance policy,
- 21 (g) in the solicitation, offer, effectuation or
22 sale of a viatical settlement contract,
23 insurance policy,

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

3 (i) a financing transaction, and

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

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

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

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

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

22 (4) file with the Commissioner or the equivalent
23 chief insurance regulatory official of another
24 jurisdiction a document containing false

1 information or otherwise conceals information
2 about a material fact from the Commissioner,
3 c. embezzlement, theft, misappropriation or conversion of
4 monies, funds, premiums, credits or other property of
5 a viatical settlement provider, insurer, insured,
6 viator, insurance policyowner or any other person
7 engaged in the business of viatical settlements or
8 insurance,
9 d. recklessly entering into, negotiating, brokering,
10 otherwise dealing in a viatical settlement contract,
11 the subject of which is a life insurance policy that
12 was obtained by presenting false information
13 concerning any fact material to the policy or by
14 concealing, for the purpose of misleading another,
15 information concerning any fact material to the
16 policy, where the person or the persons intended to
17 defraud the policy's issuer, the viatical settlement
18 provider or the viator. Recklessly means engaging in
19 the conduct in conscious and clearly unjustifiable
20 disregard of a substantial likelihood of the existence
21 of the relevant facts or risks, such disregard
22 involving a gross deviation from acceptable standards
23 of conduct,
24

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

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

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

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

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

22 10. "Related provider trust" means a titling trust or other
23 trust established by a licensed viatical settlement provider or a
24 financing entity for the sole purpose of holding the ownership or

1 beneficial interest in purchased policies in connection with a
2 financing transaction. The trust shall have a written agreement
3 with the licensed viatical settlement provider under which the
4 licensed viatical settlement provider is responsible for ensuring
5 compliance with all statutory and regulatory requirements and under
6 which the trust agrees to make all records and files related to
7 viatical settlement transactions available to the Commissioner as if
8 those records and files were maintained directly by the licensed
9 viatical settlement provider;

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

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

16 b. (1) in connection with a transaction in which the
17 securities in the special purposes entity are
18 acquired by the viator or by "qualified
19 institutional buyers" as defined in Rule 144
20 promulgated under the Federal Securities Act of
21 1933, as amended, or

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

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

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

20 14. "Viatical settlement contract" means a written agreement
21 between a viator and a viatical settlement provider or any affiliate
22 of the viatical settlement provider establishing the terms under
23 which compensation or anything of value is or will be paid, which
24 compensation or value is less than the expected death benefits of

1 the policy, in return for the viator's present or future assignment,
2 transfer, sale, devise or bequest of the death benefit or ownership
3 of any portion of the insurance policy or certificate of insurance.

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

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

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

15 b. Viatical settlement contract does not include:

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

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

19 (a) premiums for the policy,

20 (b) the costs of the loan, including, without

21 limitation, interest, arrangement fees,

22 utilization fees and similar fees, closing

23 costs, legal fees and expenses, trustee fees

24 and expenses, and third party collateral

1 provider fees and expenses, including fees
2 payable to letter of credit issuers,

3 (3) a loan made by a bank or other licensed financial
4 institution in which the lender takes an interest
5 in a life insurance policy solely to secure
6 repayment of a loan or, if there is a default on
7 the loan and the policy is transferred, the
8 transfer of such a policy by the lender, provided
9 that the default itself is not pursuant to an
10 agreement or understanding with any other person
11 for the purpose of evading regulation under this
12 act,

13 (4) a loan made by a lender that does not violate
14 Section 4-101 et seq. of Title 14A of the
15 Oklahoma Statutes, provided that the premium
16 finance loan is not described in subparagraph b
17 of this paragraph,

18 (5) an agreement where all the parties:

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

21 (b) have a lawful substantial economic interest
22 in the continued life, health and bodily
23 safety of the person insured, or are trusts
24

1 established primarily for the benefit of
2 such parties,

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

8 (7) a bona fide business succession planning
9 arrangement:

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

14 (b) between one or more partners in a
15 partnership or between a partnership and one
16 or more of its partners or one or more trust
17 established by its partners, or

18 (c) between one or more members in a limited
19 liability company or between a limited
20 liability company and one or more of its
21 members or one or more trusts established by
22 its members,

23 (8) an agreement entered into by a service recipient,
24 or a trust established by the service recipient,

1 and a service provider, or a trust established by
2 the service provider, who performs significant
3 services for the service recipient's trade or
4 business, or

5 (9) any other contract, transaction or arrangement
6 exempted from the definition of viatical
7 settlement contract by the Commissioner based on
8 a determination that the contract, transaction or
9 arrangement is not of the type intended to be
10 regulated by the Viatical Settlements Act of
11 2008;

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

- 16 a. a bank, savings bank, savings and loan association,
17 credit union or other licensed lending institution
18 that takes an assignment of a life insurance policy
19 solely as collateral for a loan,
- 20 b. a premium finance company making premium finance loans
21 and exempted by the Commissioner from the licensing
22 requirement under the premium finance laws that takes
23 an assignment of a life insurance policy solely as
24 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;

16. "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

1 deriving an economic benefit. Viatical settlement purchaser does
2 not include:

- 3 a. a licensee under the Viatical Settlements Act of 2008,
- 4 b. an accredited investor or qualified institutional
5 buyer as defined, respectively, in Rule 501(a) or Rule
6 144A promulgated under the Federal Securities Act of
7 1933, as amended,
- 8 c. a financing entity,
- 9 d. a special purpose entity, or
- 10 e. a related provider trust;

11 17. "Viaticated policy" means a life insurance policy or
12 certificate that has been acquired by a viatical settlement provider
13 pursuant to a viatical settlement contract;

14 18. "Viator" means the owner of a life insurance policy or a
15 certificate holder under a group policy who resides in this state
16 and enters or seeks to enter into a viatical settlement contract.
17 For the purposes of the Viatical Settlements Act of 2008, a viator
18 shall not be limited to an owner of a life insurance policy or a
19 certificate holder under a group policy insuring the life of an
20 individual with a terminal or chronic illness or condition except
21 where specifically addressed. If there is more than one viator on a
22 single policy and the viators are residents of different states, the
23 transaction shall be governed by the law of the state in which the
24 viator having the largest percentage ownership resides or, if the

1 viators hold equal ownership, the state of residence of one viator
2 agreed upon in writing by all the viators. Viator does not include:

- 3 a. a licensee under the Viatical Settlements Act of 2008,
4 including a life insurance producer acting as a
5 viatical settlement broker pursuant to the Viatical
6 Settlements Act of 2008,
- 7 b. qualified institutional buyer as defined,
8 respectively, in Rule 144A promulgated under the
9 Federal Securities Act of 1933, as amended,
- 10 c. a financing entity,
- 11 d. a special purpose entity, or
- 12 e. a related provider trust.

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

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

20 2. a. A life insurance producer who has been duly licensed
21 as a resident insurance producer with a life line of
22 authority in this state or his or her home state for
23 at least one year and is licensed as a nonresident
24 producer in this state shall be deemed to meet the

1 licensing requirements of this section and shall be
2 permitted to operate as a viatical settlement broker.

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

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

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

1 viator, whose compensation is not paid directly or indirectly by the
2 viatical settlement provider, may negotiate viatical settlement
3 contracts on behalf of the viator without having to obtain a license
4 as a viatical settlement broker.

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

9 C. Licenses may be renewed from year to year on the anniversary
10 date upon payment of the annual renewal fees of Five Hundred Dollars
11 (\$500.00). Failure to pay the fees by the renewal date results in
12 expiration of the license.

13 D. The applicant shall provide information on forms required by
14 the Commissioner. The Commissioner shall have authority, at any
15 time, to require the applicant to fully disclose the identity of all
16 stockholders, partners, officers, members and employees, and the
17 Commissioner may, in the exercise of the Commissioner's discretion,
18 refuse to issue a license in the name of a legal entity if not
19 satisfied that any officer, employee, stockholder, partner or member
20 thereof who may materially influence the applicant's conduct meets
21 the standards of the Viatical Settlements Act of 2008.

22 E. A license issued to a legal entity authorizes all partners,
23 officers, members and designated employees to act as viatical
24 settlement providers, viatical settlement brokers as applicable,

1 under the license, and all those persons shall be named in the
2 application and any supplements to the application.

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

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

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

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

14 4. a. If a viatical settlement provider, has demonstrated
15 evidence of financial responsibility in a format
16 prescribed by the Commissioner through either a surety
17 bond executed and issued by an insurer authorized to
18 issue surety bonds in this state or a deposit of cash,
19 certificates of deposit or securities or any
20 combination thereof in the amount of Two Hundred Fifty
21 Thousand Dollars (\$250,000.00).

22 b. If a viatical settlement broker, has demonstrated
23 evidence of financial responsibility in a format
24 prescribed by the Commissioner through either a surety

1 bond executed and issued by an insurer authorized to
2 issue surety bonds in this state or a deposit of cash,
3 certificates of deposit or securities or any
4 combination thereof in the amount of Two Hundred Fifty
5 Thousand Dollars (\$250,000.00).

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

9 d. Any surety bond issued pursuant to paragraph 4 of this
10 subsection shall be in the favor of this state and
11 shall specifically authorize recovery by the
12 Commissioner on behalf of any person in this state who
13 sustained damages as the result of erroneous acts,
14 failure to act, conviction of fraud or conviction of
15 unfair practices by the viatical settlement provider
16 or viatical settlement broker.

17 e. Notwithstanding any provision of this section to
18 contrary, the Commissioner shall accept, as evidence
19 of financial responsibility, proof that financial
20 instruments in accordance with the requirements in
21 this paragraph have been filed with one state where
22 the applicant is licensed as a viatical settlement
23 provider or viatical settlement broker;

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

3 6. If a viatical settlement provider or viatical settlement
4 broker, has provided an anti-fraud plan that meets the requirements
5 of subsection G of Section 14 of this act.

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

13 H. A viatical settlement provider, viatical settlement broker
14 or viatical settlement investment agent shall provide to the
15 Commissioner new or revised information about officers, ten percent
16 (10%) or more stockholders, partners, directors, members or
17 designated employees within thirty (30) days of the change.

18 I. An individual licensed as a viatical settlement broker shall
19 complete on a biennial basis fifteen (15) hours of training related
20 to viatical settlements and viatical settlement transactions, as
21 required by the Commissioner; provided, however, that a life
22 insurance producer who is operating as a viatical settlement broker
23 pursuant to paragraph 3 of subsection A of this section shall not be
24 subject to the requirements of this subsection. Any person failing

1 to meet the requirements of this subsection shall be subject to the
2 penalties imposed by the Commissioner.

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

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

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

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

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

18 4. The licensee or any officer, partner, member or key
19 management personnel has been found guilty of, or has pleaded guilty
20 or nolo contendere to, any felony, or to a misdemeanor involving
21 fraud or moral turpitude, regardless of whether a judgment of
22 conviction has been entered by the court;

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24

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

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

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

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

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

18 B. The Commissioner may suspend, revoke or refuse to renew the
19 license of a viatical settlement broker or a life insurance producer
20 operating as a viatical settlement broker pursuant to the Viatical
21 Settlements Act of 2008 if the Commissioner finds that the viatical
22 settlement broker or life insurance producer has violated the
23 provisions of the Viatical Settlements Act of 2008 or has otherwise
24 engaged in of bad faith conduct with one or more viators.

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

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

11 A person shall not use a viatical settlement contract form or
12 provide to a viator a disclosure statement form in this state unless
13 first filed with and approved by the Insurance Commissioner. The
14 Commissioner shall disapprove a viatical settlement contract form or
15 disclosure statement form if, in the Commissioner's opinion, the
16 contract or provisions contained therein fail to meet the
17 requirements of Sections 8, 10 and 13 and subsection B of Section 14
18 of this act or are unreasonable, contrary to the interests of the
19 public, or otherwise misleading or unfair to the viator. At the
20 Commissioner's discretion, the Commissioner may require the
21 submission of advertising material.

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

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

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

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

20 2. Is provided in response to an investigation or examination
21 by the Commissioner or any other governmental officer or agency or
22 pursuant to the requirements of subsection C of Section 14 of this
23 act;

24

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

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

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

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

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

16 A. 1. The Insurance Commissioner may conduct an examination
17 under the Viatical Settlements Act of 2008 of a licensee as often as
18 the Commissioner in his or her discretion deems appropriate after
19 considering the factors set forth in this paragraph. In scheduling
20 and determining the nature, scope, and frequency of the
21 examinations, the Commissioner shall consider such matters as the
22 consumer complaints, results of financial statement analyses and
23 ratios, changes in management or ownership, actuarial opinions,
24

1 report of independent certified public accountants, and other
2 relevant criteria as determined by the Commissioner.

3 2. For purposes of completing an examination of a licensee
4 under the Viatical Settlements Act of 2008, the Commissioner may
5 examine or investigate any person, or the business of any person, in
6 so far as the examination or investigation is, in the sole
7 discretion of the Commissioner, necessary or material to the
8 examination of the licensee.

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

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

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

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

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

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

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

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

14 C. 1. Upon determining that an examination should be
15 conducted, the Commissioner shall issue an examination warrant
16 appointing one or more examiners to perform the examination and
17 instructing them as to the scope of the examination. In conducting
18 the examination, the examiner shall observe those guidelines and
19 procedures set forth in the Examiners Handbook adopted by the
20 National Association of Insurance Commissioners (NAIC). The
21 Commissioner may also employ such other guidelines or procedures as
22 the Commissioner may deem appropriate.

23 2. Every licensee or person from whom information is sought,
24 its officers, directors and agents shall provide to the examiners

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

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

24

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

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

13 6. Nothing contained in the Viatical Settlements Act of 2008
14 shall be construed to limit the Commissioner's authority to use and,
15 if appropriate, to make public any final or preliminary examination
16 report, any examiner or licensee workpapers or other documents, or
17 any other information discovered or developed during the course of
18 any examination in the furtherance of any legal or regulatory action
19 which the Commissioner may, in his or her sole discretion, deem
20 appropriate.

21 D. 1. Examination reports shall be comprised of only facts
22 appearing upon the books, records or other documents of the
23 licensee, its agents or other persons examined, or as ascertained
24 from the testimony of its officers or agents or other persons

1 examined concerning its affairs, and such conclusions and
2 recommendations as the examiners find reasonably warranted from the
3 facts.

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

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

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

19 2. Except as otherwise provided in the Viatical Settlements Act
20 of 2008, all examination reports, working papers, recorded
21 information, documents and copies thereof produced by, obtained by
22 or disclosed to the Commissioner or any other person in the course
23 of an examination made under the Viatical Settlements Act of 2008,
24 or in the course of analysis or investigation by the Commissioner of

1 the financial condition or market conduct of a licensee shall be
2 confidential by law and privileged, shall not be subject to the
3 Oklahoma Open Records Act, shall not be subject to subpoena, and
4 shall not be subject to discovery or admissible in evidence in any
5 private civil action. The Commissioner is authorized to use the
6 documents, materials or other information in the furtherance of any
7 regulatory or legal action brought as part of the Commissioner's
8 official duties.

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

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

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

24

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

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

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

- 12 a. may share documents, materials or other information,
13 including the confidential and privileged documents,
14 materials or information subject to paragraph 1 of
15 this subsection, with other state, federal and
16 international regulatory agencies, with the NAIC and
17 its affiliates and subsidiaries, and with state,
18 federal and international law enforcement authorities,
19 provided that the recipient agrees to maintain the
20 confidentiality and privileged status of the document,
21 material, communication or other information, and
- 22 b. may receive documents, materials, communications or
23 information, including otherwise confidential and
24 privileged documents, materials or information, from

1 the NAIC and its affiliates and subsidiaries, and from
2 regulatory and law enforcement officials of other
3 foreign or domestic jurisdictions, and shall maintain
4 as confidential or privileged any document, material
5 or information received with notice or the
6 understanding that it is confidential or privileged
7 under the laws of the jurisdiction that is the source
8 of the document, material or information.

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

14 7. A privilege established under the law of any state or
15 jurisdiction that is substantially similar to the privilege
16 established under this subsection shall be available and enforced in
17 any proceeding in, and in any court of, this state.

18 8. Nothing contained in the Viatical Settlements Act of 2008
19 shall prevent or be construed as prohibiting the Commissioner from
20 disclosing the content of an examination report, preliminary
21 examination report or results, or any matter relating thereto, to
22 the Commissioner of any other state or country, or to law
23 enforcement officials of this or any other state or agency of the
24 federal government at any time or to the NAIC, so long as such

1 agency or office receiving the report or matters relating thereto
2 agrees in writing to hold it confidential and in a manner consistent
3 with the Viatical Settlements Act of 2008.

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

- 10 a. a viator,
- 11 b. an insured in a viaticated insurance policy, or
- 12 c. a beneficiary in an insurance policy that is proposed
13 to be viaticated.

14 2. Notwithstanding the requirements of this paragraph, the
15 Commissioner may retain from time to time, on an individual basis,
16 qualified actuaries, certified public accountants, or other similar
17 individuals who are independently practicing their professions, even
18 though these persons may from time to time be similarly employed or
19 retained by persons subject to examination under the Viatical
20 Settlements Act of 2008.

21 G. 1. No cause of action shall arise nor shall any liability
22 be imposed against the Commissioner, the Commissioner's authorized
23 representatives or any examiner appointed by the Commissioner for
24

1 any statements made or conduct performed in good faith while
2 carrying out the provisions of the Viatical Settlements Act of 2008.

3 2. No cause of action shall arise, nor shall any liability be
4 imposed against any person for the act of communicating or
5 delivering information or data to the Commissioner or the
6 Commissioner's authorized representative or examiner pursuant to an
7 examination made under the Viatical Settlements Act, if the act of
8 communication or delivery was performed in good faith and without
9 fraudulent intent or the intent to deceive. This paragraph does not
10 abrogate or modify in any way any common law or statutory privilege
11 or immunity heretofore enjoyed by any person identified in paragraph
12 1 of this subsection.

13 3. A person identified in paragraph 1 or 2 of this subsection
14 shall be entitled to an award of attorney's fees and costs if he or
15 she is the prevailing party in a civil cause of action for libel,
16 slander or any other relevant tort arising out of activities in
17 carrying out the provisions of this act and the party bringing the
18 action was not substantially justified in doing so. For purposes of
19 this section a proceeding is "substantially justified" if it had a
20 reasonable basis in law or fact at the time that it was initiated.

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

24

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

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

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

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

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

24

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

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

7 6. The viator has the right to rescind a viatical settlement
8 contract before the earlier of sixty (60) calendar days after the
9 date upon which the viatical settlement contract is executed by all
10 parties or thirty (30) calendar days after the viatical settlement
11 proceeds have been paid to the viator. Rescission, if exercised by
12 the viator, is effective only if both notice of the rescission is
13 given, and the viator repays all proceeds and any premiums, loans
14 and loan interest paid on account of the viatical settlement within
15 the rescission period. If the insured dies during the rescission
16 period, the viatical settlement contract shall be deemed to have
17 been rescinded, subject to repayment by the viator or the viator's
18 estate of all viatical settlement proceeds and any premiums, loans
19 and loan interest the viatical settlement within sixty (60) days of
20 the insured's death;

21 7. Funds will be sent to the viator within three (3) business
22 days after the viatical settlement provider has received the insurer
23 or group administrator's written acknowledgment that ownership of
24

1 the policy or interest in the certificate has been transferred and
2 the beneficiary has been designated;

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

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

13 10. The disclosure document shall contain the following
14 language: "All medical, financial or personal information solicited
15 or obtained by a viatical settlement provider or viatical settlement
16 broker about an insured, including the insured's identity or the
17 identity of family members, a spouse or a significant other may be
18 disclosed as necessary to effect the viatical settlement between the
19 viator and the viatical settlement provider. If you are asked to
20 provide this information, you will be asked to consent to the
21 disclosure. The information may be provided to someone who buys the
22 policy or provides funds for the purchase. You may be asked to
23 renew your permission to share information every two (2) years.";
24 and

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

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

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

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

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

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

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

16 6. State whether the funds will be escrowed with an independent
17 third party during the transfer process, and if so, provide the
18 name, business address, and telephone number of the independent
19 third party escrow agent, and the fact that the viator or owner may
20 inspect or receive copies of the relevant escrow or trust agreements
21 or documents.

22 C. A viatical settlement broker shall provide the viator with
23 at least the following disclosures no later than the date the
24 viatical settlement contract is signed by all parties. The

1 disclosures shall be conspicuously displayed in the viatical
2 settlement contract or in a separate document signed by the viator
3 and provide the following information:

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

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

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

13 4. The amount and method of calculating the broker's
14 compensation. For purposes of this paragraph, "compensation" means
15 anything of value paid or given to a viatical settlement broker for
16 the placement of a policy; and

17 5. Where any portion of the viatical settlement broker's
18 compensation, as defined in paragraph 4 of this subsection, is taken
19 from a proposed viatical settlement offer, the broker shall disclose
20 the total amount of the viatical settlement offer and the percentage
21 of the viatical settlement offer comprised by the viatical
22 settlement broker's compensation.

23 D. If the viatical settlement provider transfers ownership or
24 changes the beneficiary of the insurance policy, the provider shall

1 communicate in writing the change in ownership or beneficiary to the
2 insured within twenty (20) days after the change.

3 E. A viatical settlement provider or its viatical settlement
4 investment agent shall provide the viatical settlement purchaser
5 with at least the following disclosures prior to the date the
6 viatical settlement purchase agreement is signed by all parties.
7 The disclosures shall be conspicuously displayed in any viatical
8 purchase contract or in a separate document signed by the viatical
9 settlement purchaser and viatical settlement provider or viatical
10 settlement investment agent, and shall make the following disclosure
11 to the viatical settlement purchaser:

12 1. The purchaser will receive no returns i.e., dividends and
13 interest until the insured dies and a death claim payment is made;

14 2. The actual annual rate of return on a viatical settlement
15 contract is dependent upon an accurate projection of the insured's
16 life expectancy, and the actual date of the insured's death. An
17 annual "guaranteed" rate of return is not determinable;

18 3. The viaticated life insurance contract should not be
19 considered a liquid purchase since it is impossible to predict the
20 exact timing of its maturity and the funds probably are not
21 available until the death of the insured. There is no established
22 secondary market for resale of these products by the purchaser;

23

24

1 4. The purchaser may lose all benefits or may receive
2 substantially reduced benefits if the insurer goes out of business
3 during the term of the viatical investment;

4 5. The purchaser is responsible for payment of the insurance
5 premium or other costs related to the policy, if required by the
6 terms of the viatical purchase agreement. These payments may reduce
7 the purchaser's return. If a party other than the purchaser is
8 responsible for the payment, the name and address of that party also
9 shall be disclosed;

10 6. The purchaser is responsible for payment of the insurance
11 premiums or other costs related to the policy if the insured returns
12 to health. Disclose the amount of such premiums, if applicable;

13 7. State the name, business address and telephone number of the
14 independent third party providing escrow services and the
15 relationship to the broker;

16 8. The amount of any trust fees or other expenses to be charged
17 to the viatical settlement purchaser shall be disclosed;

18 9. State whether the purchaser is entitled to a refund of all
19 or part of his or her investment under the settlement contract if
20 the policy is later determined to be null and void;

21 10. Disclose that group policies may contain limitations or
22 caps in the conversion rights, additional premiums may have to be
23 paid if the policy is converted, name the party responsible for the
24 payment of the additional premiums and, if a group policy is

1 terminated and replaced by another group policy, state that there
2 may be no right to convert the original coverage;

3 11. Disclose the risks associated with policy contestability
4 including, but not limited to, the risk that the purchaser will have
5 no claim or only a partial claim to death benefits should the
6 insurer rescind the policy within the contestability period;

7 12. Disclose whether the purchaser will be the owner of the
8 policy in addition to being the beneficiary, and if the purchaser is
9 the beneficiary only and not also the owner, the special risks
10 associated with that status, including, but not limited to, the risk
11 that the beneficiary may be changed or the premium may not be paid;

12 13. Describe the experience and qualifications of the person
13 who determines the life expectancy of the insured, i.e., in-house
14 staff, independent physicians and specialty firms that weigh medical
15 and actuarial data, the information this projection is based on, and
16 the relationship of the projection maker to the viatical settlement
17 provider, if any; and

18 14. Disclosure to an investor shall include distribution of a
19 brochure describing the process of investment in viatical
20 settlements. The NAIC's form for the brochure shall be used unless
21 one is developed by the Commissioner.

22 F. A viatical settlement provider or its viatical settlement
23 investment agent shall provide the viatical settlement purchaser
24 with at least the following disclosures no later than at the time of

1 the assignment, transfer or sale of all or a portion of an insurance
2 policy. The disclosures shall be contained in a document signed by
3 the viatical settlement purchaser and viatical settlement provider
4 or viatical settlement investment agent, and shall make the
5 following disclosures to the viatical settlement purchaser:

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

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

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

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

23 5. If the policy is term insurance, disclose the special risks
24 associated with term insurance including, but not limited to, the

1 purchaser's responsibility for additional premiums if the viator
2 continues the term policy at the end of the current term;

3 6. State whether the policy is contestable;

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

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

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

17 Prior to the initiation of a plan, transaction or series of
18 transactions, a viatical settlement broker or viatical settlement
19 provider shall fully disclose to an insurer a plan, transaction or
20 series of transactions, to which the viatical settlement broker or
21 viatical settlement provider is a party, to originate, renew,
22 continue or finance a life insurance policy with the insurer for the
23 purpose of engaging in the business of viatical settlements at
24

1 anytime prior to, or during the first five (5) years after, issuance
2 of the policy.

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

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

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

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

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

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

11 4. The insurer shall respond to a request for verification of
12 coverage submitted on an approved form by a viatical settlement
13 provider or viatical settlement broker within thirty (30) calendar
14 days of the date the request is received and shall indicate whether,
15 based on the medical evidence and documents provided, the insurer
16 intends to pursue an investigation at this time regarding the
17 validity of the insurance contract or possible fraud. The insurer
18 shall accept a request for verification of coverage made on an NAIC
19 form or any other form approved by the Commissioner. The insurer
20 shall accept an original or facsimile or electronic copy of such
21 request and any accompanying authorization signed by the viator.
22 Failure by the insurer to meet its obligations under this subsection
23 shall be a violation of subsection C of Section 11 and Section 16 of
24 this act.

1 5. Prior to or at the time of execution of the viatical
2 settlement contract, the viatical settlement provider shall obtain a
3 witnessed document in which the viator consents to the viatical
4 settlement contract, represents that the viator has a full and
5 complete understanding of the viatical settlement contract, that he
6 or she has a full and complete understanding of the benefits of the
7 life insurance policy, acknowledges that he or she is entering into
8 the viatical settlement contract freely and voluntarily and, for
9 persons with a terminal or chronic illness or condition,
10 acknowledges that the insured has a terminal or chronic illness and
11 that the terminal or chronic illness or condition was diagnosed
12 after the life insurance policy was issued.

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

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

20 C. All viatical settlement contracts entered into in this state
21 shall provide the viator with an absolute right to rescind the
22 contract before the earlier of sixty (60) calendar days after the
23 date upon which the viatical settlement contract is executed by all
24 parties or thirty (30) calendar days after the viatical settlement

1 proceeds have been sent to the viator. Rescission by the viator may
2 be conditioned upon the viator both giving notice and repaying to
3 the viatical settlement provider within the rescission period all
4 proceeds of the settlement and any premiums, loans and loan interest
5 paid by or on behalf of the viatical settlement provider in
6 connection with or as a consequence of the viatical settlement. If
7 the insured dies during the rescission period, the viatical
8 settlement contract shall be deemed to have been rescinded, subject
9 to repayment to the viatical settlement provider or purchaser of all
10 viatical settlement proceeds, and any premiums, loans and loan
11 interest that have been paid by the viatical settlement provider or
12 purchaser, which shall be paid within sixty (60) calendar days of
13 the death of the insured. In the event of any rescission, if the
14 viatical settlement provider has paid commissions or other
15 compensation to a viatical settlement broker in connection with the
16 rescinded transaction, the viatical settlement broker shall refund
17 all such commissions and compensation to the viatical settlement
18 provider within five (5) business days following receipt of written
19 demand from the viatical settlement provider, which demand shall be
20 accompanied by either the viator's notice of rescission if rescinded
21 at the election of the viator, or notice of the death of the insured
22 if rescinded by reason of the death of the insured within the
23 applicable rescission period.

24

1 D. The viatical settlement provider shall instruct the viator
2 to send the executed documents required to effect the change in
3 ownership, assignment or change in beneficiary directly to the
4 independent escrow agent. Within three (3) business days after the
5 date the escrow agent receives the document or from the date the
6 viatical settlement provider receives the documents, if the viator
7 erroneously provides the documents directly to the provider, the
8 provider shall pay or transfer the proceeds of the viatical
9 settlement into an escrow or trust account maintained in a state or
10 federally-chartered financial institution whose deposits are insured
11 by the Federal Deposit Insurance Corporation (FDIC). Upon payment
12 of the settlement proceeds into the escrow account, the escrow agent
13 shall deliver the original change in ownership, assignment or change
14 in beneficiary forms to the viatical settlement provider or related
15 provider trust or other designated representative of the viatical
16 settlement provider. Upon the escrow agent's receipt of the
17 acknowledgment of the properly completed transfer of ownership,
18 assignment or designation of beneficiary from the insurance company,
19 the escrow agent shall pay the settlement proceeds to the viator.

20 E. Failure to tender consideration to the viator for the
21 viatical settlement contract within the time set forth in the
22 disclosure pursuant to paragraph 7 of subsection A of Section 8 of
23 this act renders the viatical settlement contract voidable by the
24 viator for lack of consideration until the time consideration is

1 tendered to and accepted by the viator. Funds shall be deemed sent
2 by a viatical settlement provider to a viator as of the date that
3 the escrow agent either releases funds for wire transfer to the
4 viator or places a check for delivery to the viator via United
5 States Postal Service or other nationally recognized delivery
6 service.

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

Insured's Life Expectancy	Minimum Percentage of Face 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%
Twenty-four (24) months or more	50%

22 G. Contacts with the insured for the purpose of determining the
23 health status of the insured by the viatical settlement provider or
24 viatical settlement broker after the viatical settlement has

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

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

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

24

1 1. The policy was issued upon the viator's exercise of
2 conversion rights arising out of a group or individual policy,
3 provided the total of the time covered under the conversion policy
4 plus the time covered under the prior policy is at least sixty (60)
5 months. The time covered under a group policy shall be calculated
6 without regard to any change in insurance carriers, provided the
7 coverage has been continuous and under the same group sponsorship;

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

- 11 a. the viator or insured is terminally or chronically
12 ill,
- 13 b. the viator's spouse dies,
- 14 c. the viator divorces his or her spouse,
- 15 d. the viator retires from full-time employment,
- 16 e. the viator becomes physically or mentally disabled and
17 a physician determines that the disability prevents
18 the viator from maintaining full-time employment, or
- 19 f. a final order, judgment or decree is entered by a
20 court of competent jurisdiction, on the application of
21 a creditor of the viator, adjudicating the viator
22 bankrupt or insolvent, or approving a petition seeking
23 reorganization of the viator or appointing a receiver,

1 trustee or liquidator to all or a substantial part of
2 the viator's assets; or

3 3. The viator enters into a viatical settlement contract more
4 than two (2) years after the date of issuance of a policy and, with
5 respect to the policy, at all times prior to the date that is two
6 (2) years after policy issuance, the following conditions are met:

- 7 a. policy premiums have been funded exclusively with
8 unencumbered assets, including an interest in the life
9 insurance policy being financed only to the extent of
10 its net cash surrender value, provided by, or fully
11 recourse liability incurred by, the insured or a
12 person described in division 5 of subparagraph b of
13 paragraph 14 of Section 2 of this act,
14 b. there is no agreement or understanding with any other
15 person to guarantee any such liability or to purchase,
16 or stand ready to purchase, the policy, including
17 through an assumption or forgiveness of the loan, and
18 c. neither the insured nor the policy has been evaluated
19 for settlement.

20 B. Copies of the independent evidence described in paragraph 2
21 of subsection A of this section and documents required by subsection
22 A of Section 10 of this act shall be submitted to the insurer when
23 the viatical settlement provider or other party entering into a
24 viatical settlement contract with a viator submits a request to the

1 insurer for verification of coverage. The copies shall be
2 accompanied by a letter of attestation from the viatical settlement
3 provider that the copies are true and correct copies of the
4 documents received by the viatical settlement provider.

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

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

20 E. Upon receipt of a properly completed request for change of
21 ownership or beneficiary of a policy, the insurer shall respond in
22 writing within thirty (30) calendar days with written
23 acknowledgement confirming that the change has been effected or
24 specifying the reasons why the requested change cannot be processed.

1 The insurer shall not unreasonably delay effecting change of
2 ownership or beneficiary and shall not otherwise seek to interfere
3 with any viatical settlement contract lawfully entered into in this
4 state.

5 SECTION 12. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 4055.12 of Title 36, unless
7 there is created a duplication in numbering, reads as follows:

8 A. With respect to any viatical settlement contract or
9 insurance policy, no viatical settlement broker knowingly shall
10 solicit an offer from, effectuate a viatical settlement with or make
11 a sale to any viatical settlement provider, viatical settlement
12 purchaser, financing entity or related provider trust that is
13 controlling, controlled by, or under common control with such
14 viatical settlement broker.

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

24

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

3 D. No viatical settlement provider shall enter into a viatical
4 settlement contract unless the viatical settlement promotional,
5 advertising and marketing materials, as may be prescribed by
6 regulation, have been filed with the Insurance Commissioner. In no
7 event shall any marketing materials expressly reference that the
8 insurance is "free" for any period of time. The inclusion of any
9 reference in the marketing materials that would cause a viator to
10 reasonably believe that the insurance is free for any period of time
11 shall be considered a violation of the Viatical Settlements Act of
12 2008.

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

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

23 A. The purpose of this section is to provide prospective
24 viators with clear and unambiguous statements in the advertisement

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

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

19 C. Every viatical settlement licensee shall establish and at
20 all times maintain a system of control over the content, form and
21 method of dissemination of all advertisements of its contracts,
22 products and services. All advertisements, regardless of by whom
23 written, created, designed or presented, shall be the responsibility
24 of the viatical settlement licensees, as well as the individual who

1 created or presented the advertisement. A system of control shall
2 include regular routine notification, at least once a year, to
3 agents and others authorized by the viatical settlement licensee who
4 disseminate advertisements of the requirements and procedures for
5 approval prior to the use of any advertisements not furnished by the
6 viatical settlement licensee.

7 D. Advertisements shall be truthful and not misleading in fact
8 or by implication. The form and content of an advertisement of a
9 viatical settlement contract shall be sufficiently complete and
10 clear so as to avoid deception. It shall not have the capacity or
11 tendency to mislead or deceive. Whether an advertisement has the
12 capacity or tendency to mislead or deceive shall be determined by
13 the Insurance Commissioner from the overall impression that the
14 advertisement may be reasonably expected to create upon a person of
15 average education or intelligence within the segment of the public
16 to which it is directed.

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

21 1. An advertisement shall not omit material information or use
22 words, phrases, statements, references or illustrations if the
23 omission or use has the capacity, tendency or effect of misleading
24 or deceiving viators as to the nature or extent of any benefit, loss

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

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

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

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

20 5. Testimonials, appraisals or analysis used in advertisements
21 must be genuine; represent the current opinion of the author; be
22 applicable to the viatical settlement contract, product or service
23 advertised, if any; and be accurately reproduced with sufficient
24 completeness to avoid misleading or deceiving prospective viators

1 as to the nature or scope of the testimonials, appraisal, analysis
2 or endorsement. In using testimonials, appraisals or analysis, a
3 licensee under the Viatical Settlements Act of 2008 makes as its own
4 all the statements contained therein, and the statements are subject
5 to all the provisions of this section.

6 a. If the individual making a testimonial, appraisal,
7 analysis or an endorsement has a financial interest in
8 the party making use of the testimonial, appraisal,
9 analysis or endorsement, either directly or through a
10 related entity as a stockholder, director, officer,
11 employee or otherwise, or receives any benefit
12 directly or indirectly other than required union scale
13 wages, that fact shall be prominently disclosed in the
14 advertisement.

15 b. An advertisement shall not state or imply that a
16 viatical settlement contract, benefit or service has
17 been approved or endorsed by a group of individuals,
18 society, association or other organization unless that
19 is the fact and unless any relationship between an
20 organization and the viatical settlement licensee is
21 disclosed. If the entity making the endorsement or
22 testimonial is owned, controlled or managed by the
23 viatical settlement licensee, or receives any payment
24 or other consideration from the viatical settlement

1 licensee for making an endorsement or testimonial,
2 that fact shall be disclosed in the advertisement.

3 c. When an endorsement refers to benefits received under
4 a viatical settlement contract all pertinent
5 information shall be retained for a period of five (5)
6 years after its use.

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

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

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

22 I. An advertisement shall not use a trade name, group
23 designation, name of the parent company of a viatical settlement
24 licensee, name of a particular division of the viatical settlement

1 licensee, service mark, slogan, symbol or other device or reference
2 without disclosing the name of the viatical settlement licensee, if
3 the advertisement would have the capacity or tendency to mislead or
4 deceive as to the true identity of the viatical settlement licensee,
5 or to create the impression that a company other than the viatical
6 settlement licensee would have any responsibility for the financial
7 obligation under a viatical settlement contract.

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

16 K. An advertisement may state that a viatical settlement
17 licensee is licensed in the state where the advertisement appears,
18 provided it does not exaggerate that fact or suggest or imply that
19 competing viatical settlement licensee may not be so licensed. The
20 advertisement may ask the audience to consult the licensee's web
21 site or contact the department of insurance to find out if the state
22 requires licensing and, if so, whether the viatical settlement
23 provider, viatical settlement broker is licensed.

24

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

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

14 N. An advertisement shall not directly or indirectly create the
15 impression that any division or agency of the state or of the
16 federal government endorses, approves or favors:

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

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

21 3. Any viatical settlement contract; or

22 4. Any life insurance policy or life insurance company.

23 O. If the advertiser emphasizes the speed with which the
24 viatication will occur, the advertising must disclose the average

1 time frame from completed application to the date of offer and from
2 acceptance of the offer to receipt of the funds by the viator.

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

7 SECTION 14. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 4055.14 of Title 36, unless
9 there is created a duplication in numbering, reads as follows:

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

12 2. A person shall not knowingly or intentionally interfere with
13 the enforcement of the provisions of the Viatical Settlements Act of
14 2008 or investigations of suspected or actual violations of the
15 Viatical Settlements Act of 2008.

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

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

24

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

4 2. The lack of a statement as required in paragraph 1 of this
5 subsection does not constitute a defense in any prosecution for a
6 fraudulent viatical settlement act.

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

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

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

- 22 a. the Commissioner or the Commissioner's employees,
23 agents or representatives,
24

- 1 b. federal, state or local law enforcement or regulatory
2 officials or their employees, agents or
3 representatives,
4 c. a person involved in the prevention and detection of
5 fraudulent viatical settlement acts or that person's
6 agents, employees or representatives,
7 d. the National Association of Insurance Commissioners
8 (NAIC), National Association of Securities Dealers
9 (NASD), the North American Securities Administrators
10 Association (NASAA), or their employees, agents or
11 representatives, or other regulatory body overseeing
12 life insurance, viatical settlements, securities or
13 investment fraud, or
14 e. the life insurer that issued the life insurance policy
15 covering the life of the insured.

16 2. Paragraph 1 of this subsection shall not apply to statements
17 made with actual malice. In an action brought against a person for
18 filing a report or furnishing other information concerning a
19 fraudulent viatical settlement act, the party bringing the action
20 shall plead specifically any allegation that paragraph 1 of this
21 subsection does not apply because the person filing the report or
22 furnishing the information did so with actual malice.

23 3. A person furnishing information as identified in paragraph 1
24 of this subsection shall be entitled to an award of attorney's fees

1 and costs if he or she is the prevailing party in a civil cause of
2 action for libel, slander or any other relevant tort arising out of
3 activities in carrying out the provisions of this act and the party
4 bringing the action was not substantially justified in doing so.
5 For purposes of this section a proceeding is "substantially
6 justified" if it had a reasonable basis in law or fact at the time
7 that it was initiated. However, such an award does not apply to any
8 person furnishing information concerning his or her own fraudulent
9 viatical settlement acts.

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

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

19 2. Paragraph 1 of this subsection does not prohibit release by
20 the Commissioner of documents and evidence obtained in an
21 investigation of suspected or actual fraudulent viatical settlement
22 acts:

23 a. in administrative or judicial proceedings to enforce
24 laws administered by the Commissioner,

1 b. to federal, state or local law enforcement or
2 regulatory agencies, to an organization established
3 for the purpose of detecting and preventing fraudulent
4 viatical settlement acts or to the NAIC, or

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

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

11 F. This act shall not:

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

15 2. Prevent or prohibit a person from disclosing voluntarily
16 information concerning viatical settlement fraud to a law
17 enforcement or regulatory agency other than the insurance
18 department; or

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

23 G. 1. Viatical settlement providers and viatical settlement
24 brokers shall have in place antifraud initiatives reasonably

1 calculated to detect, prosecute and prevent fraudulent viatical
2 settlement acts. At the discretion of the Commissioner, the
3 Commissioner may order, or a licensee may request and the
4 Commissioner may grant, such modifications of the following required
5 initiatives as necessary to ensure an effective antifraud program.
6 The modifications may be more or less restrictive than the required
7 initiatives so long as the modifications may reasonably be expected
8 to accomplish the purpose of this section.

9 2. Antifraud initiatives shall include:

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

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

16 (1) a description of the procedures for detecting and
17 investigating possible fraudulent viatical
18 settlement acts and procedures for resolving
19 material inconsistencies between medical records
20 and insurance applications,

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

24

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

4 (4) a description or chart outlining the
5 organizational arrangement of the antifraud
6 personnel who are responsible for the
7 investigation and reporting of possible
8 fraudulent viatical settlement acts and
9 investigating unresolved material inconsistencies
10 between medical records and insurance
11 applications.

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

16 SECTION 15. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 4055.15 of Title 36, unless
18 there is created a duplication in numbering, reads as follows:

19 A. In addition to the penalties and other enforcement
20 provisions of the Viaticals Settlements Act of 2008, if any person
21 violates the Viatical Settlements Act of 2008 or any regulation
22 implementing the Viatical Settlements Act of 2008, the Insurance
23 Commissioner may seek an injunction in a court of competent
24 jurisdiction and may apply for temporary and permanent orders that

1 the Commissioner determines are necessary to restrain the person
2 from committing the violation.

3 B. Any person damaged by the acts of a person in violation of
4 the Viatical Settlements Act of 2008 may bring a civil action
5 against the person committing the violation in a court of competent
6 jurisdiction.

7 C. The Commissioner may issue, in accordance with the
8 Administrative Procedures Act, a cease and desist order upon a
9 person that violates any provision of the Viatical Settlements Act
10 of 2008, any regulation or order adopted by the Commissioner, or any
11 written agreement entered into with the Commissioner.

12 D. When the Commissioner finds that an activity in violation of
13 the Viatical Settlements Act of 2008 presents an immediate danger to
14 the public that requires an immediate final order, the Commissioner
15 may issue an emergency cease and desist order reciting with
16 particularity the facts underlying the findings. The emergency
17 cease and desist order is effective immediately upon service of a
18 copy of the order on the respondent and remains effective for ninety
19 (90) days. If the Commissioner begins nonemergency cease and desist
20 proceedings, the emergency cease and desist order remains effective,
21 absent an order by a court of competent jurisdiction pursuant to the
22 Administrative Procedures Act.

23 E. In addition to the penalties and other enforcement
24 provisions of the Viatical Settlements Act of 2008, any person who

1 violates the Viatical Settlements Act of 2008 is subject to civil
2 penalties of up to Ten Thousand Dollars (\$10,000.00) per violation.
3 Imposition of civil penalties shall be pursuant to an order of the
4 Commissioner issued under Section 313 of Title 36 of the Oklahoma
5 Statutes. The Commissioner's order may require a person found to be
6 in violation of the Viatical Settlements Act of 2008 to make
7 restitution to persons aggrieved by violations of the Viatical
8 Settlements Act of 2008.

9 F. A person convicted of a violation of the Viatical
10 Settlements Act by a court of competent jurisdiction shall be guilty
11 of a felony punishable as follows:

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

1 Dollars (\$10,000.00), or both, if the value of the
2 viatical settlement contract is more than Five Hundred
3 Dollars (\$500.00) but not more than Two Thousand Five
4 Hundred Dollars (\$2,500.00), or

- 5 d. to imprisonment for not more than one (1) year or to
6 payment of a fine of not more than Three Thousand
7 Dollars (\$3,000.00), or both, if the value of the
8 viatical settlement contract is Five Hundred Dollars
9 (\$500.00) or less.

10 A person convicted of a violation of the Viatical Settlements
11 Act of 2008 shall be ordered to pay restitution to persons aggrieved
12 by the violation of the Viatical Settlements Act of 2008.

13 Restitution shall be ordered in addition to a fine or imprisonment,
14 but not in lieu of a fine or imprisonment.

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

1 restitution to persons aggrieved by the fraudulent viatical
2 settlement act. Restitution must be ordered in addition to a fine
3 or imprisonment but not in lieu of a fine or imprisonment.

4 1. To imprisonment for not more than twenty (20) years or to
5 payment of a fine of not more than One Hundred Thousand Dollars
6 (\$100,000.00), or both, if the value of viatical settlement contract
7 is more than Thirty-five Thousand Dollars (\$35,000.00);

8 2. To imprisonment for not more than ten (10) years or to
9 payment of a fine of not more than Twenty Thousand Dollars
10 (\$20,000.00), or both, if the value of viatical settlement contract
11 is more than Two Thousand Five Hundred Dollars (\$2,500.00) but not
12 more than Thirty-five Thousand Dollars (\$35,000.00);

13 3. To imprisonment for not more than five (5) years or to
14 payment of a fine of not more than Ten Thousand Dollars
15 (\$10,000.00), or both, if the value of viatical settlement contract
16 is more than Five Hundred Dollars (\$500.00) but not more than Two
17 Thousand Five Hundred Dollars (\$2,500.00); or

18 4. To imprisonment for not more than one year or to payment of
19 a fine of not more than Three Thousand Dollars (\$3,000.00), or both,
20 if the value of viatical settlement contract is Five Hundred Dollars
21 (\$500.00) or less.

22 In any prosecution under this section under paragraphs 1, 2, 3
23 and 4 of this subsection the value of the viatical settlement
24 contracts within any six-month period may be aggregated and the

1 defendant charged accordingly in applying the provisions of this
2 section. When two or more offenses are committed by the same person
3 in two or more counties, the accused may be prosecuted in any county
4 in which one of the offenses was committed for all of the offenses
5 aggregated under this section. The applicable statute of
6 limitations provision under Section 93 of Title 12 of the Oklahoma
7 Statutes shall not begin to run until the insurance company or law
8 enforcement agency is aware of the fraud, but in no event may the
9 prosecution be commenced later than seven (7) years after the act
10 has occurred.

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

14 A violation of the Viatical Settlements Act of 2008, including
15 the commission of a fraudulent viatical settlement act, shall be
16 considered a deceptive trade practice under Sections 1201 through
17 1219 of Title 36 of the Oklahoma Statutes subject to the penalties
18 contained in those sections.

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

22 The Insurance Commissioner shall have the authority to:

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

1 2. Establish standards for evaluating reasonableness of
2 payments under viatical settlement contracts for persons who are
3 terminally or chronically ill. This authority includes, but is not
4 limited to, regulation of discount rates used to determine the
5 amount paid in exchange for assignment, transfer, sale, devise or
6 bequest of a benefit under a life insurance policy insuring the life
7 of a person that is chronically or terminally ill;

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

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

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

17 SECTION 18. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 4055.18 of Title 36, unless
19 there is created a duplication in numbering, reads as follows:

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

24

1 SECTION 19. AMENDATORY 36 O.S. 2001, Section 3604, is
2 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

5 a. the individual insured who established the trust,

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

9 c. each individual in whose life a beneficiary of the
10 trust has an insurable interest; and

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

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

24

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

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

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

13 d. The insurable interest of the employer or trust in
14 nonmanagement and retired employees shall be limited
15 to an amount agreed to by the employee or, in the
16 absence of an agreement, an amount of aggregate
17 projected death benefits commensurate with the
18 aggregate projected liabilities to the employee under
19 all employee welfare benefit plans, as defined in
20 Section 1002(1) of Title 29 of the United States Code.
21 Calculations of life insurance benefits and welfare
22 benefit liabilities shall be made in accordance with
23 generally accepted actuarial principles. Matching of
24 life insurance benefits and welfare benefit

1 liabilities may be done on cash flow, present value,
2 or other appropriate basis.

3 e. For purposes of this section:

4 (1) "employer" means any individual, sole
5 proprietorship, partnership, limited liability
6 company, corporation, or other legal entity that
7 is legally doing business in this state; the term
8 shall also include all entities or persons which
9 are controlled by or affiliated with any of the
10 foregoing. The determination of whether any
11 entity or person is controlled by or affiliated
12 with another shall be made by applying the
13 principles set forth in subsection (b) or (c) of
14 Section 414 of Title 26 of the United States
15 Code, as in effect on January 1, 1993, except
16 that all references therein to eighty percent
17 (80%) shall be changed to fifty-one percent
18 (51%), and

19 (2) "employee" means any common law employee of an
20 employer.

21 f. This section shall not be interpreted to limit other
22 insurable interests which may exist by statute or at
23 common law.
24

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

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

21 E. Life insurance contracts may be entered into in which the
22 members of an alumni association of an institution of higher
23 education accredited by the Oklahoma State Regents for Higher
24 Education are insured under a group insurance policy and either the

1 institution is the designated beneficiary thereof or the association
2 is the designated beneficiary with the stipulation that the
3 association will use the proceeds of the policies for direct grants
4 to the institution or for scholarships for students of such
5 institutions. In no event shall an individual be named as a
6 beneficiary to such a policy. In making such contracts, the person
7 paying the premium shall make and sign the application therefor as
8 owner and shall designate an institution or alumni association as
9 the beneficiary or beneficiaries of such contract. The application
10 or any subsequent change of beneficiary designation shall be signed
11 also by the individual whose life is to be insured. These contracts
12 shall be valid and binding among the parties thereto,
13 notwithstanding the absence of an insurable interest in the life of
14 the individual insured.

15 SECTION 20. REPEALER 36 O.S. 2001, Sections 4041, 4042,
16 4043, 4044, 4045, 4046, 4046.1, 4047, 4048, 4048.1, 4049, 4050,
17 4051, 4051.1, 4051.2 and 4052, are hereby repealed.

18 SECTION 21. REPEALER 36 O.S. 2001, Sections 4085, 4086,
19 4087, 4088, 4089, 4090, 4091, 4091.1, 4092, 4093, 4094, 4095,
20 4095.1, 4095.2 and 4096, are hereby repealed.

21 SECTION 22. This act shall become effective November 1, 2008.
22
23
24

