

THE HOUSE OF REPRESENTATIVES
Tuesday, April 15, 2008

Committee Substitute for
ENGROSSED
Senate Bill No. 1980

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 1980 - By:
BURRAGE AND LAMB of the Senate and PETERSON (RON), MORGAN AND DERBY
of the House.

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

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

4 Sections 1 through 18 of this act shall be known and may be cited as the “Viatical
5 Settlements Act of 2008”.

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

9 As used in the Viatical Settlements Act of 2008:

10 1. “Advertising” means any written, electronic or printed communication or any
11 communication by means of recorded telephone messages or transmitted on radio,
12 television, the Internet or similar communications media, including film strips, motion

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

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

10 3. “Chronically ill” means:

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

17 4. “Commissioner” means the Insurance Commissioner of the State of Oklahoma;

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

- 1 a. whose principal activity related to the transaction is providing funds to
2 effect the viatical settlement or purchase of one or more viaticated
3 policies, and
4 b. who has an agreement in writing with one or more licensed viatical
5 settlement providers to finance the acquisition of viatical settlement
6 contracts.

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

9 6. "Fraudulent viatical settlement act" includes:

- 10 a. acts or omissions committed by any person who, knowingly or with
11 intent to defraud, for the purpose of depriving another of property or
12 for pecuniary gain, commits, or permits its employees or its agents to
13 engage in acts including:
14 (1) presenting, causing to be presented or preparing with knowledge
15 or belief that it will be presented to or by a viatical settlement
16 provider, viatical settlement broker, viatical settlement
17 purchaser, financing entity, insurer, insurance producer or any
18 other person, false material information, or concealing material
19 information, as part of, in support of or concerning a fact
20 material to one or more of the following:
21 (a) an application for the issuance of a viatical settlement
22 contract or insurance policy,

- 1 (b) the underwriting of a viatical settlement contract or
2 insurance policy,
- 3 (c) a claim for payment or benefit pursuant to a viatical
4 settlement contract or insurance policy,
- 5 (d) premiums paid on an insurance policy,
- 6 (e) payments and changes in ownership or beneficiary made
7 in accordance with the terms of a viatical settlement
8 contract or insurance policy,
- 9 (f) the reinstatement or conversion of an insurance policy,
- 10 (g) in the solicitation, offer, effectuation or sale of a viatical
11 settlement contract or insurance policy,
- 12 (h) the issuance of written evidence of viatical settlement
13 contract or insurance, or
- 14 (i) a financing transaction, and
- 15 (2) employing any plan, financial structure, device, scheme, or
16 artifice to defraud related to viaticated policies,
- 17 b. in the furtherance of a fraud or to prevent the detection of a fraud any
18 person commits or permits its employees or its agents to:
- 19 (1) remove, conceal, alter, destroy or sequester from the
20 Commissioner the assets or records of a licensee or other person
21 engaged in the business of viatical settlements,

- 1 (2) misrepresent or conceal the financial condition of a licensee,
2 financing entity, insurer or other person,
- 3 (3) transact the business of viatical settlements in violation of laws
4 requiring a license, certificate of authority or other legal
5 authority for the transaction of the business of viatical
6 settlements, or
- 7 (4) file with the Commissioner or the equivalent chief insurance
8 regulatory official of another jurisdiction a document containing
9 false information or otherwise conceals information about a
10 material fact from the Commissioner,
- 11 c. embezzlement, theft, misappropriation or conversion of monies, funds,
12 premiums, credits or other property of a viatical settlement provider,
13 insurer, insured, viator, insurance policyowner or any other person
14 engaged in the business of viatical settlements or insurance,
- 15 d. recklessly entering into, negotiating, brokering, otherwise dealing in a
16 viatical settlement contract, the subject of which is a life insurance
17 policy that was obtained by presenting false information concerning
18 any fact material to the policy or by concealing, for the purpose of
19 misleading another, information concerning any fact material to the
20 policy, where the person or the persons intended to defraud the policy's
21 issuer, the viatical settlement provider or the viator. Recklessly means
22 engaging in the conduct in conscious and clearly unjustifiable

1 disregard of a substantial likelihood of the existence of the relevant
2 facts or risks, such disregard involving a gross deviation from
3 acceptable standards of conduct,
4 e. facilitating the change of state of ownership of a policy or certificate or
5 the state of residency of a viator to a state or jurisdiction that does not
6 have a law similar to this act for the express purposes of evading or
7 avoiding the provisions of the Viatical Settlements Act of 2008, or
8 f. attempting to commit, assisting, aiding or abetting in the commission
9 of, or conspiracy to commit the acts or omissions specified in this
10 paragraph;

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

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

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

20 10. “Related provider trust” means a titling trust or other trust established by a
21 licensed viatical settlement provider or a financing entity for the sole purpose of holding
22 the ownership or beneficial interest in purchased policies in connection with a financing

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

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

- 10 a. for a financing entity or licensed viatical settlement provider, or
- 11 b. (1) in connection with a transaction in which the securities in the
12 special purposes entity are acquired by the viator or by
13 "qualified institutional buyers" as defined in Rule 144
14 promulgated under the Federal Securities Act of 1933, as
15 amended, or
- 16 (2) the securities pay a fixed rate of return commensurate with
17 established asset-backed institutional capital markets;

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

20 13. "Viatical settlement broker" means a person, including a life insurance
21 producer as provided for in Section 3 of this act, who working exclusively on behalf of a
22 viator and for a fee, commission or other valuable consideration, offers or attempts to

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1 negotiate viatical settlement contracts between a viator and one or more viatical
2 settlement providers or one or more viatical settlement brokers. Notwithstanding the
3 manner in which the viatical settlement broker is compensated, a viatical settlement
4 broker is deemed to represent only the viator, and not the insurer or the viatical
5 settlement provider, and owes a fiduciary duty to the viator to act according to the
6 viator's instructions and in the best interest of the viator. The term does not include an
7 attorney, certified public accountant or a financial planner accredited by a nationally
8 recognized accreditation agency, who is retained to represent the viator and whose
9 compensation is not paid directly or indirectly by the viatical settlement provider or
10 purchaser;

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

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

- 1 (1) the viator or the insured receives on the date of the premium
2 finance loan a guarantee of a future viatical settlement value of
3 the policy, or
4 (2) the viator or the insured agrees on the date of the premium
5 finance loan to sell the policy or any portion of its death benefit
6 on any date following the issuance of the policy.
- 7 b. Viatical settlement contract does not include:
- 8 (1) a policy loan or accelerated death benefit made by the insurer
9 pursuant to the policy's terms,
10 (2) loan proceeds that are used solely to pay:
11 (a) premiums for the policy, or
12 (b) the costs of the loan, including, without limitation,
13 interest, arrangement fees, utilization fees and similar
14 fees, closing costs, legal fees and expenses, trustee fees
15 and expenses, and third-party collateral provider fees and
16 expenses, including fees payable to letter of credit issuers,
17 (3) a loan made by a bank or other licensed financial institution in
18 which the lender takes an interest in a life insurance policy
19 solely to secure repayment of a loan or, if there is a default on
20 the loan and the policy is transferred, the transfer of such a
21 policy by the lender, provided that the default itself is not

- 1 pursuant to an agreement or understanding with any other
2 person for the purpose of evading regulation under this act,
3 (4) a loan made by a lender that does not violate Section 4-101 et
4 seq. of Title 14A of the Oklahoma Statutes, provided that the
5 premium finance loan is not described in this subparagraph,
6 (5) an agreement where all the parties:
7 (a) are closely related to the insured by blood or law, or
8 (b) have a lawful substantial economic interest in the
9 continued life, health and bodily safety of the person
10 insured, or are trusts established primarily for the benefit
11 of such parties,
12 (6) any designation, consent or agreement by an insured who is an
13 employee of an employer in connection with the purchase by the
14 employer, or trust established by the employer, of life insurance
15 on the life of the employee,
16 (7) a bona fide business succession planning arrangement:
17 (a) between one or more shareholders in a corporation or
18 between a corporation and one or more of its shareholders
19 or one or more trusts established by its shareholders,
20 (b) between one or more partners in a partnership or between
21 a partnership and one or more of its partners or one or
22 more trusts established by its partners, or

1 (c) between one or more members in a limited liability
2 company or between a limited liability company and one
3 or more of its members or one or more trusts established
4 by its members,

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

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

15 15. "Viatical settlement provider" means a person, other than a viator, that enters
16 into or effectuates a viatical settlement contract with a viator resident in this state.

17 Viatical settlement provider does not include:

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

- 1 the premium finance laws that takes an assignment of a life insurance
2 policy solely as collateral for a loan,
- 3 c. the issuer of the life insurance policy,
- 4 d. an authorized or eligible insurer that provides stop loss coverage or
5 financial guaranty insurance to a viatical settlement provider,
6 purchaser, financing entity, special purpose entity or related provider
7 trust,
- 8 e. a natural person who enters into or effectuates no more than one
9 agreement in a calendar year for the transfer of life insurance policies
10 for any value less than the expected death benefit,
- 11 f. a financing entity,
- 12 g. a special purpose entity,
- 13 h. a related provider trust,
- 14 i. a viatical settlement purchaser, or
- 15 j. any other person that the Commissioner determines is not the type of
16 person intended to be covered by the definition of viatical settlement
17 provider;

18 16. "Viatical settlement purchaser" means a person who provides a sum of money
19 as consideration for a life insurance policy or an interest in the death benefits of a life
20 insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in
21 a trust that owns a viatical settlement contract or is the beneficiary of a life insurance

1 policy that has been or will be the subject of a viatical settlement contract, for the
2 purpose of deriving an economic benefit. Viatical settlement purchaser does not include:

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

10 17. “Viaticated policy” means a life insurance policy or certificate that has been
11 acquired by a viatical settlement provider pursuant to a viatical settlement contract; and

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

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

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

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

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

21 b. Not later than thirty (30) days from the first day of operating as a
22 viatical settlement broker, the life insurance producer shall notify the

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1 Commissioner that he or she is acting as a viatical settlement broker
2 on a form prescribed by the Commissioner, and shall pay any
3 applicable fee to be determined by the Commissioner. Notification
4 shall include an acknowledgement by the life insurance producer that
5 he or she will operate as a viatical settlement broker in accordance
6 with the Viatical Settlements Act of 2008.

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

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

19 B. Application for a viatical settlement provider or a viatical settlement broker
20 license shall be made to the Commissioner by the applicant on a form prescribed by the
21 Commissioner. The application shall be accompanied by a fee of Five Hundred Dollars
22 (\$500.00).

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

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

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

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

- 18 1. If a viatical settlement provider, has provided a detailed plan of operation;
- 19 2. Is competent and trustworthy and intends to act in good faith in the capacity
20 involved by the license applied for;
- 21 3. Has a good business reputation and has had experience, training or education so
22 as to be qualified in the business for which the license is applied for;

1 proof that financial instruments in accordance with the requirements
2 in this paragraph have been filed with one state where the applicant is
3 licensed as a viatical settlement provider or viatical settlement broker;

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

6 6. If a viatical settlement provider or viatical settlement broker, has provided an
7 antifraud plan that meets the requirements of subsection G of Section 14 of this act.

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

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

17 I. An individual licensed as a viatical settlement broker shall complete on a
18 biennial basis fifteen (15) hours of training related to viatical settlements and viatical
19 settlement transactions, as required by the Commissioner; provided, however, that a life
20 insurance producer who is operating as a viatical settlement broker pursuant to
21 paragraph 2 of subsection A of this section shall not be subject to the requirements of this

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

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

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

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

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

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

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

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

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

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

2 8. The viatical settlement provider has assigned, transferred or pledged a

3 viaticated policy to a person other than a viatical settlement provider licensed in this

4 state, viatical settlement purchaser, an accredited investor or qualified institutional

5 buyer as defined respectively in Rule 501(a) or Rule 144A promulgated under the Federal

6 Securities Act of 1933, as amended, financing entity, special purpose entity, or related

7 provider trust; or

8 9. The licensee or any officer, partner, member or key management personnel has

9 violated any provision of the Viatical Settlements Act of 2008.

10 B. The Commissioner may suspend, revoke or refuse to renew the license of a

11 viatical settlement broker or a life insurance producer operating as a viatical settlement

12 broker pursuant to the Viatical Settlements Act of 2008 if the Commissioner finds that

13 the viatical settlement broker or life insurance producer has violated the provisions of

14 the Viatical Settlements Act of 2008 or has otherwise engaged in bad-faith conduct with

15 one or more viators.

16 C. If the Commissioner denies a license application or suspends, revokes or refuses

17 to renew the license of a viatical settlement provider, viatical settlement broker or

18 suspends, revokes, or refuses to renew a license of a life insurance producer operating as

19 a viatical settlement broker pursuant to the Viatical Settlements Act of 2008 the

20 Commissioner shall conduct a hearing in accordance with the Administrative Procedures

21 Act.

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

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

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

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

1 B. Except as otherwise allowed or required by law, a viatical settlement provider,
2 viatical settlement broker, insurance company, insurance producer, information bureau,
3 rating agency or company, or any other person with actual knowledge of an insured's
4 identity, shall not disclose that identity as an insured, or the insured's financial or
5 medical information to any other person unless the disclosure:

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

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

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

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

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

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

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

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

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

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

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

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

- 3 a. proposed, offered or executed contracts, purchase agreements,
4 underwriting documents, policy forms, and applications from the date
5 of the proposal, offer or execution of the contract or purchase
6 agreement, whichever is later,
7 b. all checks, drafts or other evidence and documentation related to the
8 payment, transfer, deposit or release of funds from the date of the
9 transaction, and
10 c. all other records and documents related to the requirements of the
11 Viatical Settlements Act of 2008.

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

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

19 C. 1. Upon determining that an examination should be conducted, the
20 Commissioner shall issue an examination warrant appointing one or more examiners to
21 perform the examination and instructing them as to the scope of the examination. In
22 conducting the examination, the examiner shall observe those guidelines and procedures

1 set forth in the Examiners Handbook adopted by the National Association of Insurance
2 Commissioners (NAIC). The Commissioner may also employ such other guidelines or
3 procedures as the Commissioner may deem appropriate.

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

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

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

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

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

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

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

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

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

14 2. Except as otherwise provided in the Viatical Settlements Act of 2008, all
15 examination reports, working papers, recorded information, documents and copies
16 thereof produced by, obtained by or disclosed to the Commissioner or any other person in
17 the course of an examination made under the Viatical Settlements Act of 2008, or in the
18 course of analysis or investigation by the Commissioner of the financial condition or
19 market conduct of a licensee shall be confidential by law and privileged, shall not be
20 subject to the Oklahoma Open Records Act, shall not be subject to subpoena, and shall
21 not be subject to discovery or admissible in evidence in any private civil action. The
22 Commissioner is authorized to use the documents, materials or other information in the

1 furtherance of any regulatory or legal action brought as part of the Commissioner’s
2 official duties.

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

- 8 a. created, produced or obtained by or disclosed to the NAIC and its
9 affiliates and subsidiaries in the course of assisting an examination
10 made under this act, or assisting a Commissioner in the analysis or
11 investigation of the financial condition or market conduct of a licensee,
12 or
- 13 b. disclosed to the NAIC and its affiliates and subsidiaries under
14 paragraph 4 of this subsection by a Commissioner.

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

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

1 5. In order to assist in the performance of the Commissioner’s duties, the
2 Commissioner:

- 3 a. may share documents, materials or other information, including the
4 confidential and privileged documents, materials or information
5 subject to paragraph 1 of this subsection, with other state, federal and
6 international regulatory agencies, with the NAIC and its affiliates and
7 subsidiaries, and with state, federal and international law enforcement
8 authorities, provided that the recipient agrees to maintain the
9 confidentiality and privileged status of the document, material,
10 communication or other information, and
- 11 b. may receive documents, materials, communications or information,
12 including otherwise confidential and privileged documents, materials
13 or information, from the NAIC and its affiliates and subsidiaries, and
14 from regulatory and law enforcement officials of other foreign or
15 domestic jurisdictions, and shall maintain as confidential or privileged
16 any document, material or information received with notice or the
17 understanding that it is confidential or privileged under the laws of the
18 jurisdiction that is the source of the document, material or
19 information.

20 6. No waiver of any applicable privilege or claim of confidentiality in the
21 documents, materials or information shall occur as a result of disclosure to the

1 Commissioner under this section or as a result of sharing as authorized in paragraph 5 of
2 this subsection.

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

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

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

- 18 a. a viator,
- 19 b. an insured in a viaticated insurance policy, or
- 20 c. a beneficiary in an insurance policy that is proposed to be viaticated.

21 2. Notwithstanding the requirements of this paragraph, the Commissioner may
22 retain from time to time, on an individual basis, qualified actuaries, certified public

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

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

8 2. No cause of action shall arise, nor shall any liability be imposed against any
9 person for the act of communicating or delivering information or data to the
10 Commissioner or the Commissioner's authorized representative or examiner pursuant to
11 an examination made under the Viatical Settlements Act, if the act of communication or
12 delivery was performed in good faith and without fraudulent intent or the intent to
13 deceive. This paragraph does not abrogate or modify in any way any common law or
14 statutory privilege or immunity heretofore enjoyed by any person identified in paragraph
15 1 of this subsection.

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

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

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

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

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

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

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

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

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

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

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

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

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

5 10. The disclosure document shall contain the following language: “All medical,
6 financial or personal information solicited or obtained by a viatical settlement provider or
7 viatical settlement broker about an insured, including the insured’s identity or the
8 identity of family members, a spouse or a significant other may be disclosed as necessary
9 to effect the viatical settlement between the viator and the viatical settlement provider.
10 If you are asked to provide this information, you will be asked to consent to the
11 disclosure. The information may be provided to someone who buys the policy or provides
12 funds for the purchase. You may be asked to renew your permission to share information
13 every two (2) years.”; and

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

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

- 5 1. The affiliation, if any, between the viatical settlement provider and the issuer of
6 the insurance policy to be viaticated;
- 7 2. The document shall include the name, business address and telephone number of
8 the viatical settlement provider;
- 9 3. Any affiliations or contractual arrangements between the viatical settlement
10 provider and the viatical settlement purchaser;
- 11 4. If an insurance policy to be viaticated has been issued as a joint policy or
12 involves family riders or any coverage of a life other than the insured under the policy to
13 be viaticated, the viator shall be informed of the possible loss of coverage on the other
14 lives under the policy and shall be advised to consult with his or her insurance producer
15 or the insurer issuing the policy for advice on the proposed viatical settlement;
- 16 5. State the dollar amount of the current death benefit payable to the viatical
17 settlement provider under the policy or certificate. If known, the viatical settlement
18 provider shall also disclose the availability of any additional guaranteed insurance
19 benefits, the dollar amount of any accidental death and dismemberment benefits under
20 the policy or certificate and the extent to which the viator's interest in those benefits will
21 be transferred as a result of the viatical settlement contract; and

1 6. State whether the funds will be escrowed with an independent third party
2 during the transfer process, and if so, provide the name, business address, and telephone
3 number of the independent third-party escrow agent, and the fact that the viator or
4 owner may inspect or receive copies of the relevant escrow or trust agreements or
5 documents.

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

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

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

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

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

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

1 of the viatical settlement offer comprised by the viatical settlement broker's
2 compensation.

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

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

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

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

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

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- 1 4. The purchaser may lose all benefits or may receive substantially reduced
2 benefits if the insurer goes out of business during the term of the viatical investment;
- 3 5. The purchaser is responsible for payment of the insurance premium or other
4 costs related to the policy, if required by the terms of the viatical purchase agreement.
5 These payments may reduce the purchaser's return. If a party other than the purchaser
6 is responsible for the payment, the name and address of that party also shall be
7 disclosed;
- 8 6. The purchaser is responsible for payment of the insurance premiums or other
9 costs related to the policy if the insured returns to health. Disclose the amount of such
10 premiums, if applicable;
- 11 7. State the name, business address and telephone number of the independent
12 third party providing escrow services and the relationship to the broker;
- 13 8. The amount of any trust fees or other expenses to be charged to the viatical
14 settlement purchaser shall be disclosed;
- 15 9. State whether the purchaser is entitled to a refund of all or part of his or her
16 investment under the settlement contract if the policy is later determined to be null and
17 void;
- 18 10. Disclose that group policies may contain limitations or caps in the conversion
19 rights, additional premiums may have to be paid if the policy is converted, name the
20 party responsible for the payment of the additional premiums and, if a group policy is
21 terminated and replaced by another group policy, state that there may be no right to
22 convert the original coverage;

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

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

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

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

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

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

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

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

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

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

15 6. State whether the policy is contestable;

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

20 8. State the name and address of the person responsible for monitoring the
21 insured's condition. Describe how often the monitoring of the insured's condition is done,

1 how the date of death is determined, and how and when this information will be
2 transmitted to the purchaser.

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

6 Prior to the initiation of a plan, transaction or series of transactions, a viatical
7 settlement broker or viatical settlement provider shall fully disclose to an insurer a plan,
8 transaction or series of transactions, to which the viatical settlement broker or viatical
9 settlement provider is a party, to originate, renew, continue or finance a life insurance
10 policy with the insurer for the purpose of engaging in the business of viatical settlements
11 at any time prior to, or during the first five (5) years after, issuance of the policy.

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

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

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

21 b. a document in which the insured consents to the release of his or her
22 medical records to a licensed viatical settlement provider, viatical

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1 settlement broker and the insurance company that issued the life
2 insurance policy covering the life of the insured.

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

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

17 4. The insurer shall respond to a request for verification of coverage submitted on
18 an approved form by a viatical settlement provider or viatical settlement broker within
19 thirty (30) calendar days of the date the request is received and shall indicate whether,
20 based on the medical evidence and documents provided, the insurer intends to pursue an
21 investigation at this time regarding the validity of the insurance contract or possible
22 fraud. The insurer shall accept a request for verification of coverage made on an NAIC

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1 form or any other form approved by the Commissioner. The insurer shall accept an
2 original or facsimile or electronic copy of such request and any accompanying
3 authorization signed by the viator. Failure by the insurer to meet its obligations under
4 this subsection shall be a violation of subsection C of Section 11 and Section 16 of this
5 act.

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

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

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

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

1 all parties or thirty (30) calendar days after the viatical settlement proceeds have been
2 sent to the viator. Rescission by the viator may be conditioned upon the viator both
3 giving notice and repaying to the viatical settlement provider within the rescission period
4 all proceeds of the settlement and any premiums, loans and loan interest paid by or on
5 behalf of the viatical settlement provider in connection with or as a consequence of the
6 viatical settlement. If the insured dies during the rescission period, the viatical
7 settlement contract shall be deemed to have been rescinded, subject to repayment to the
8 viatical settlement provider or purchaser of all viatical settlement proceeds, and any
9 premiums, loans and loan interest that have been paid by the viatical settlement
10 provider or purchaser, which shall be paid within sixty (60) calendar days of the death of
11 the insured. In the event of any rescission, if the viatical settlement provider has paid
12 commissions or other compensation to a viatical settlement broker in connection with the
13 rescinded transaction, the viatical settlement broker shall refund all such commissions
14 and compensation to the viatical settlement provider within five (5) business days
15 following receipt of written demand from the viatical settlement provider, which demand
16 shall be accompanied by either the viator's notice of rescission if rescinded at the election
17 of the viator, or notice of the death of the insured if rescinded by reason of the death of
18 the insured within the applicable rescission period.

19 D. The viatical settlement provider shall instruct the viator to send the executed
20 documents required to effect the change in ownership, assignment or change in
21 beneficiary directly to the independent escrow agent. Within three (3) business days
22 after the date the escrow agent receives the document or from the date the viatical

1 settlement provider receives the documents, if the viator erroneously provides the
2 documents directly to the provider, the provider shall pay or transfer the proceeds of the
3 viatical settlement into an escrow or trust account maintained in a state- or federally-
4 chartered financial institution whose deposits are insured by the Federal Deposit
5 Insurance Corporation (FDIC). Upon payment of the settlement proceeds into the escrow
6 account, the escrow agent shall deliver the original change in ownership, assignment or
7 change in beneficiary forms to the viatical settlement provider or related provider trust
8 or other designated representative of the viatical settlement provider. Upon the escrow
9 agent's receipt of the acknowledgment of the properly completed transfer of ownership,
10 assignment or designation of beneficiary from the insurance company, the escrow agent
11 shall pay the settlement proceeds to the viator.

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

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

1		Minimum Percentage of Face
2	Insured's Life	Value Less Outstanding Loans
3	Expectancy	Received By Viator
4	Less than six (6) months	80%
5	At least six (6) but less than twelve	
6	(12) months	70%
7	At least twelve (12) but less than	
8	eighteen (18) months	65%
9	At least eighteen (18) months but less than	
10	twenty-four (24) months	60%
11	Twenty-four (24) months or more	50%

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

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

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

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

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

- 18 a. the viator or insured is terminally or chronically ill,
19 b. the viator's spouse dies,
20 c. the viator divorces his or her spouse,
21 d. the viator retires from full-time employment,

- 1 e. the viator becomes physically or mentally disabled and a physician
2 determines that the disability prevents the viator from maintaining
3 full-time employment, or
4 f. a final order, judgment or decree is entered by a court of competent
5 jurisdiction, on the application of a creditor of the viator, adjudicating
6 the viator bankrupt or insolvent, or approving a petition seeking
7 reorganization of the viator or appointing a receiver, trustee or
8 liquidator to all or a substantial part of the viator's assets; or

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

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

1 B. Copies of the independent evidence described in paragraph 2 of subsection A of
2 this section and documents required by subsection A of Section 10 of this act shall be
3 submitted to the insurer when the viatical settlement provider or other party entering
4 into a viatical settlement contract with a viator submits a request to the insurer for
5 verification of coverage. The copies shall be accompanied by a letter of attestation from
6 the viatical settlement provider that the copies are true and correct copies of the
7 documents received by the viatical settlement provider.

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

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

20 E. Upon receipt of a properly completed request for change of ownership or
21 beneficiary of a policy, the insurer shall respond in writing within thirty (30) calendar
22 days with written acknowledgement confirming that the change has been effected or

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

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

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

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

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

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

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

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

16 A. The purpose of this section is to provide prospective viators with clear and
17 unambiguous statements in the advertisement of viatical settlements and to assure the
18 clear, truthful and adequate disclosure of the benefits, risks, limitations and exclusions
19 of any viatical settlement contract. This purpose is intended to be accomplished by the
20 establishment of guidelines and standards of permissible and impermissible conduct in
21 the advertising of viatical settlements to assure that product descriptions are presented
22 in a manner that prevents unfair, deceptive or misleading advertising and is conducive to

1 accurate presentation and description of viatical settlements through the advertising
2 media and material used by viatical settlement licensees.

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

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

17 D. Advertisements shall be truthful and not misleading in fact or by implication.
18 The form and content of an advertisement of a viatical settlement contract shall be
19 sufficiently complete and clear so as to avoid deception. It shall not have the capacity or
20 tendency to mislead or deceive. Whether an advertisement has the capacity or tendency
21 to mislead or deceive shall be determined by the Insurance Commissioner from the
22 overall impression that the advertisement may be reasonably expected to create upon a

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

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

6 1. An advertisement shall not omit material information or use words, phrases,
7 statements, references or illustrations if the omission or use has the capacity, tendency
8 or effect of misleading or deceiving viators as to the nature or extent of any benefit, loss
9 covered, premium payable, or state or federal tax consequence. The fact that the viatical
10 settlement contract offered is made available for inspection prior to consummation of the
11 sale, or an offer is made to refund the payment if the viator is not satisfied or that the
12 viatical settlement contract includes a “free look” period that satisfies or exceeds legal
13 requirements, does not remedy misleading statements.

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

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

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

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~~Strike thru~~ language denotes deletion from present Statutes.

1 5. Testimonials, appraisals or analysis used in advertisements must be genuine;
2 represent the current opinion of the author; be applicable to the viatical settlement
3 contract, product or service advertised, if any; and be accurately reproduced with
4 sufficient completeness to avoid misleading or deceiving prospective viators as to the
5 nature or scope of the testimonials, appraisal, analysis or endorsement. In using
6 testimonials, appraisals or analysis, a licensee under the Viatical Settlements Act of
7 2008 makes as its own all the statements contained therein, and the statements are
8 subject to all the provisions of this section.

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

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

1 consideration from the viatical settlement licensee for making an
2 endorsement or testimonial, that fact shall be disclosed in the
3 advertisement.

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

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

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

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

19 I. An advertisement shall not use a trade name, group designation, name of the
20 parent company of a viatical settlement licensee, name of a particular division of the
21 viatical settlement licensee, service mark, slogan, symbol or other device or reference
22 without disclosing the name of the viatical settlement licensee, if the advertisement

1 would have the capacity or tendency to mislead or deceive as to the true identity of the
2 viatical settlement licensee, or to create the impression that a company other than the
3 viatical settlement licensee would have any responsibility for the financial obligation
4 under a viatical settlement contract.

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

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

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

21 M. The name of the actual licensee shall be stated in all of its advertisements. An
22 advertisement shall not use a trade name, any group designation, name of any affiliate

1 or controlling entity of the licensee, service mark, slogan, symbol or other device in a
2 manner that would have the capacity or tendency to mislead or deceive as to the true
3 identity of the actual licensee or create the false impression that an affiliate or
4 controlling entity would have any responsibility for the financial obligation of the
5 licensee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 because the person filing the report or furnishing the information did so with actual
2 malice.

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

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

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

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

21 a. in administrative or judicial proceedings to enforce laws administered
22 by the Commissioner,

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1 effective antifraud program. The modifications may be more or less restrictive than the
2 required initiatives so long as the modifications may reasonably be expected to
3 accomplish the purpose of this section.

4 2. Antifraud initiatives shall include:

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

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

9 (1) a description of the procedures for detecting and investigating
10 possible fraudulent viatical settlement acts and procedures for
11 resolving material inconsistencies between medical records and
12 insurance applications,

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

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

17 (4) a description or chart outlining the organizational arrangement
18 of the antifraud personnel who are responsible for the
19 investigation and reporting of possible fraudulent viatical
20 settlement acts and investigating unresolved material
21 inconsistencies between medical records and insurance
22 applications.

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

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

7 A. In addition to the penalties and other enforcement provisions of the Viaticals
8 Settlements Act of 2008, if any person violates the Viatical Settlements Act of 2008 or
9 any regulation implementing the Viatical Settlements Act of 2008, the Insurance
10 Commissioner may seek an injunction in a court of competent jurisdiction and may apply
11 for temporary and permanent orders that the Commissioner determines are necessary to
12 restrain the person from committing the violation.

13 B. Any person damaged by the acts of a person in violation of the Viatical
14 Settlements Act of 2008 may bring a civil action against the person committing the
15 violation in a court of competent jurisdiction.

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

20 D. When the Commissioner finds that an activity in violation of the Viatical
21 Settlements Act of 2008 presents an immediate danger to the public that requires an
22 immediate final order, the Commissioner may issue an emergency cease and desist order

1 reciting with particularity the facts underlying the findings. The emergency cease and
2 desist order is effective immediately upon service of a copy of the order on the respondent
3 and remains effective for ninety (90) days. If the Commissioner begins nonemergency
4 cease and desist proceedings, the emergency cease and desist order remains effective,
5 absent an order by a court of competent jurisdiction pursuant to the Administrative
6 Procedures Act.

7 E. In addition to the penalties and other enforcement provisions of the Viatical
8 Settlements Act of 2008, any person who violates the Viatical Settlements Act of 2008 is
9 subject to civil penalties of up to Ten Thousand Dollars (\$10,000.00) per violation.
10 Imposition of civil penalties shall be pursuant to an order of the Commissioner issued
11 under Section 313 of Title 36 of the Oklahoma Statutes. The Commissioner's order may
12 require a person found to be in violation of the Viatical Settlements Act of 2008 to make
13 restitution to persons aggrieved by violations of the Viatical Settlements Act of 2008.

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

- 16 a. to imprisonment for not more than twenty (20) years or to payment of
17 a fine of not more than One Hundred Thousand Dollars (\$100,000.00),
18 or both, if the value of the viatical settlement contract is more than
19 Thirty-five Thousand Dollars (\$35,000.00),
20 b. to imprisonment for not more than ten (10) years or to payment of a
21 fine of not more than Twenty Thousand Dollars (\$20,000.00), or both, if
22 the value of the viatical settlement contract is more than Two

- 1 Thousand Five Hundred Dollars (\$2,500.00) but not more than Thirty-
- 2 five Thousand Dollars (\$35,000.00),
- 3 c. to imprisonment for not more than five (5) years or to payment of a
- 4 fine of not more than Ten Thousand Dollars (\$10,000.00), or both, if
- 5 the value of the viatical settlement contract is more than Five
- 6 Hundred Dollars (\$500.00) but not more than Two Thousand Five
- 7 Hundred Dollars (\$2,500.00), or
- 8 d. to imprisonment for not more than one (1) year or to payment of a fine
- 9 of not more than Three Thousand Dollars (\$3,000.00), or both, if the
- 10 value of the viatical settlement contract is Five Hundred Dollars
- 11 (\$500.00) or less.

12 A person convicted of a violation of the Viatical Settlements Act of 2008 shall be

13 ordered to pay restitution to persons aggrieved by the violation of the Viatical

14 Settlements Act of 2008. Restitution shall be ordered in addition to a fine or

15 imprisonment, but not in lieu of a fine or imprisonment.

16 G. Except for a fraudulent viatical settlement act committed by a viator, the

17 enforcement provisions and penalties of this section shall not apply to a viator. A person

18 convicted of a violation of the Viatical Settlements Act of 2008 by a court of competent

19 jurisdiction may be sentenced in accordance with paragraph 1, 2, 3 or 4 of this subsection

20 based on the greater of (i) the value of property, services, or other benefit wrongfully

21 obtained or attempted to obtain, or (ii) the aggregate economic loss suffered by any

22 person as a result of the violation. A person convicted of a fraudulent viatical settlement

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

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

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

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

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

18 In any prosecution under this section under paragraphs 1, 2, 3 and 4 of this
19 subsection the value of the viatical settlement contracts within any six-month period
20 may be aggregated and the defendant charged accordingly in applying the provisions of
21 this section. When two or more offenses are committed by the same person in two or
22 more counties, the accused may be prosecuted in any county in which one of the offenses

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1 was committed for all of the offenses aggregated under this section. The applicable
2 statute of limitations provision under Section 93 of Title 12 of the Oklahoma Statutes
3 shall not begin to run until the insurance company or law enforcement agency is aware of
4 the fraud, but in no event may the prosecution be commenced later than seven (7) years
5 after the act has occurred.

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

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

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

16 The Insurance Commissioner shall have the authority to:

- 17 1. Promulgate regulations implementing the Viatical Settlements Act of 2008;
- 18 2. Establish standards for evaluating reasonableness of payments under viatical
19 settlement contracts for persons who are terminally or chronically ill. This authority
20 includes, but is not limited to, regulation of discount rates used to determine the amount
21 paid in exchange for assignment, transfer, sale, devise or bequest of a benefit under a life
22 insurance policy insuring the life of a person that is chronically or terminally ill;

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~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

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

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

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

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

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

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

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

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

5 3. An individual heretofore or hereafter party to a contract or option for the
6 purchase or sale of an interest in a business partnership or firm, or of shares of stock of a
7 closed corporation or of an interest in such shares, has an insurable interest in the life of
8 each individual party to the contract and for the purposes of the contract only, in
9 addition to any insurable interest which may otherwise exist as to the life of the
10 individual; ~~and~~

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

13 a. the individual insured who established the trust,

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

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

18 5. a. An employer, or a trust which is sponsored by an employer for the
19 benefit of its employees, shall have an insurable interest in each of the
20 lives of the employees, directors, or retired employees of the employer.
21 Notwithstanding paragraph 2 of subsection C of this section or Section
22 4101 of this title, and amendments thereto, the employer or trust may

1 insure the life of any employee, director, or retired employee for the
2 benefit of the employer or trust on an individual or group basis only
3 with the written consent of the insured.

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 shall be made in accordance with generally accepted actuarial
2 principles. Matching of life insurance benefits and welfare benefit
3 liabilities may be done on cash flow, present value, or other
4 appropriate basis.

5 e. For purposes of this section:

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

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

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

20 g. Determination of the existence and extent of the insurable interest
21 under any life insurance policy shall be made at the time the contract

1 of insurance becomes effective, provided however, the insurable
2 interest need not exist at the time the loss occurs.

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

14 E. Life insurance contracts may be entered into in which the members of an alumni
15 association of an institution of higher education accredited by the Oklahoma State
16 Regents for Higher Education are insured under a group insurance policy and either the
17 institution is the designated beneficiary thereof or the association is the designated
18 beneficiary with the stipulation that the association will use the proceeds of the policies
19 for direct grants to the institution or for scholarships for students of such institutions. In
20 no event shall an individual be named as a beneficiary to such a policy. In making such
21 contracts, the person paying the premium shall make and sign the application therefor
22 as owner and shall designate an institution or alumni association as the beneficiary or

1 beneficiaries of such contract. The application or any subsequent change of beneficiary
2 designation shall be signed also by the individual whose life is to be insured. These
3 contracts shall be valid and binding among the parties thereto, notwithstanding the
4 absence of an insurable interest in the life of the individual insured.

5 SECTION 20. REPEALER 36 O.S. 2001, Sections 4041, 4042, 4043, 4044,
6 4045, 4046, 4046.1, 4047, 4048, 4048.1, 4049, 4050, 4051, 4051.1, 4051.2 and 4052, are
7 hereby repealed.

8 SECTION 21. REPEALER 36 O.S. 2001, Sections 4085, 4086, 4087, 4088,
9 4089, 4090, 4091, 4091.1, 4092, 4093, 4094, 4095, 4095.1, 4095.2 and 4096, are hereby
10 repealed.

11 SECTION 22. This act shall become effective November 1, 2008.

12 COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND
13 FINANCIAL SERVICES, dated 04-14-08 - DO PASS, As Amended and Coauthored.