



Sen. John J. Cullerton

Filed: 4/11/2005

09400SB0505sam002

LRB094 10764 LJB 44784 a

1 AMENDMENT TO SENATE BILL 505

2 AMENDMENT NO. _____. Amend Senate Bill 505 by replacing
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the
5 Viatical and Life Settlements Act of 2005.

6 Section 5. Definitions.

7 "Advertising" means any written, electronic, or printed
8 communication or any communication by means of recorded
9 telephone messages or transmitted on radio, television, the
10 Internet, or similar communications media, including film
11 strips, motion pictures, and videos published, disseminated,
12 circulated, or placed directly before the public in this State,
13 for the purpose of creating an interest in or inducing a person
14 to sell, assign, devise, bequest, or transfer the death benefit
15 or ownership of a policy pursuant to a viatical settlement
16 contract.

17 "Business of viatical settlements" means any activity
18 involved in the offering, solicitation, negotiation,
19 procurement, effectuation, purchasing, investing, financing,
20 monitoring, tracking, underwriting, selling, transferring,
21 assigning, pledging, or hypothecating of viatical settlement
22 contracts or any other action affecting viatical settlement
23 contracts.

24 "Chronically ill" means:

1 (1) having a level of disability as determined by the
2 Secretary of Health and Human Services or being unable to
3 perform at least 2 activities of daily living, such as
4 eating, toileting, transferring, bathing, dressing, or
5 continence; or

6 (2) requiring substantial supervision to protect the
7 individual from threats to health and safety due to severe
8 cognitive impairment.

9 "Department" means the Department of Financial and
10 Professional Regulation.

11 "Financing entity" means an underwriter, placement agent,
12 lender, purchaser of securities, purchaser of a policy or
13 certificate from a viatical settlement provider, credit
14 enhancer, or an entity that has a direct ownership in a policy
15 that is the subject of a viatical settlement contract and:

16 (1) whose principal activity related to the
17 transaction is providing funds to effect the viatical
18 settlement or purchase of one or more viaticated policies;
19 and

20 (2) who has an agreement in writing with one or more
21 licensed viatical settlement providers to finance the
22 acquisition of viatical settlement contracts or to provide
23 stop loss insurance.

24 "Financing entity" does not include a nonaccredited investor.

25 "Fraudulent viatical settlement act" includes:

26 (1) Acts or omissions committed by a person who,
27 knowingly or with intent to defraud for the purpose of
28 depriving another of property or for pecuniary gain,
29 commits or permits its employees or its agents to engage in
30 acts including:

31 (A) presenting, causing to be presented, or
32 preparing with knowledge or belief that it will be
33 presented to or by a viatical settlement provider,
34 financing entity, insurer, insurance producer, or

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

5 (i) an application for the issuance of a
6 viatical settlement contract or policy;

7 (ii) the underwriting of a viatical settlement
8 contract or policy;

9 (iii) a claim for payment or benefit pursuant
10 to a viatical settlement contract or policy;

11 (iv) premiums paid on a policy;

12 (v) payments and changes in ownership or
13 beneficiary made in accordance with the terms of a
14 viatical settlement contract or policy;

15 (vi) the reinstatement or conversion of a
16 policy;

17 (vii) in the solicitation, offer,
18 effectuation, or sale of a viatical settlement
19 contract or policy;

20 (viii) the issuance of written evidence of a
21 viatical settlement contract or policy; or

22 (ix) a financing transaction;

23 (B) employing any device, scheme, or artifice to
24 defraud related to viaticated policies.

25 (2) In the furtherance of a fraud or to prevent the
26 detection of a fraud a person commits or permits its
27 employees or its agents to:

28 (A) remove, conceal, alter, destroy, or sequester
29 from the Secretary the assets or records of a licensee
30 or other person engaged in the business of viatical
31 settlements;

32 (B) misrepresent or conceal the financial
33 condition of a licensee, financing entity, insurer, or
34 other person;

1 (C) transact the business of viatical settlements
2 in violation of laws requiring a license, certificate
3 of authority, or other legal authority for the
4 transaction of the business of viatical settlements;
5 or

6 (D) file with the Secretary or the chief insurance
7 regulatory official of another jurisdiction a document
8 containing false information or otherwise conceals
9 information about a material fact from the Secretary.

10 (3) Embezzlement, theft, misappropriation, or
11 conversion of monies, funds, premiums, credits, or other
12 property of a viatical settlement provider, life insurance
13 producer, insurer, insured, viator, policyowner, or
14 another person engaged in the business of viatical
15 settlements or insurance.

16 (4) Recklessly entering into, negotiating, or
17 otherwise dealing in a viatical settlement contract, the
18 subject of which is a policy that was obtained by
19 presenting false information concerning a fact material to
20 the policy, or by concealing, for the purpose of misleading
21 another, information concerning a fact material to the
22 policy, where the viator or the viator's agent intended to
23 defraud the insurance company that issued the policy.
24 "Recklessly" means engaging in the conduct in conscious and
25 clearly unjustifiable disregard of a substantial
26 likelihood of the existence of the relevant facts or risks,
27 this disregard involving a gross deviation from acceptable
28 standards of conduct.

29 (5) Attempting to commit, assist, aid, or abet in the
30 commission of or conspiracy to commit the acts or omissions
31 specified in this definition.

32 "Licensee" means any viatical settlement provider or
33 viatical settlement broker licensed in this State.

34 "Life insurance producer" means a person licensed as a

1 resident or nonresident insurance producer pursuant to Article
2 XXXI of the Illinois Insurance Code with a life line of
3 authority pursuant to Section 500-35 of the Illinois Insurance
4 Code.

5 "Person" means any natural or artificial entity including,
6 but not limited to, individuals, partnerships, limited
7 liability company, associations, trusts, or corporations.

8 "Policy" means an individual or group policy, group
9 certificate, contract, or arrangement of life insurance
10 affecting the rights of a resident of this State or bearing a
11 reasonable relation to this State, regardless of whether
12 delivered or issued for delivery in this State.

13 "Related provider trust" means a titling trust or other
14 trust established by a licensed viatical settlement provider or
15 a financing entity for the sole purpose of holding the
16 ownership or beneficial interest in purchased policies in
17 connection with a financing transaction. The trust shall have a
18 written agreement with the licensed viatical settlement
19 provider under which the licensed viatical settlement provider
20 is responsible for ensuring compliance with all statutory and
21 regulatory requirements and under which the trust agrees to
22 make all records and files related to viatical settlement
23 transactions available to the Secretary as if those records and
24 files were maintained directly by the licensed viatical
25 settlement provider.

26 "Secretary" means the Secretary of Financial and
27 Professional Regulation.

28 "Special purpose entity" means a corporation, partnership,
29 trust, limited liability company, or other similar entity
30 formed only to provide, directly or indirectly, access to
31 institutional capital markets for a financing entity or
32 licensed viatical settlement provider.

33 "Terminally ill" means having an illness or sickness that
34 reasonably is expected to result in death in 24 months or less.

1 "Viatical settlement contract" means a written agreement
2 establishing the terms under which the viatical settlement
3 provider will pay compensation or anything of value is paid,
4 which compensation or value is less than the expected death
5 benefit of the policy, in return for the viator's assignment,
6 transfer, sale, devise, or bequest of the death benefit or
7 ownership of any portion of the policy. A viatical settlement
8 contract also includes a contract for a loan or other financing
9 transaction with a viator secured primarily by an individual or
10 group life insurance policy, other than a loan by a life
11 insurance company pursuant to the terms of the policy, or a
12 loan secured by the cash value of a policy. A viatical
13 settlement contract includes an agreement with a viator to
14 transfer ownership or change the beneficiary designation at a
15 later date regardless of the date that compensation is paid to
16 the viator. A viatical settlement contract does not mean a
17 written agreement entered into between a viator and a person
18 having an insurable interest in the insured's life.

19 "Viatical settlement provider" means a person, other than a
20 viator, who enters into or effectuates a viatical settlement
21 contract. "Viatical settlement provider" does not include:

22 (1) a bank, savings and loan association, credit union,
23 or other licensed lending institution that takes an
24 assignment of a policy as collateral for a loan;

25 (2) the issuer of a policy providing accelerated
26 benefits under the policy;

27 (3) an authorized or eligible insurer that provides
28 stop loss coverage to a viatical settlement provider,
29 financing entity, special purpose entity, or related
30 provider trust;

31 (4) a natural person who enters into or effectuates no
32 more than one agreement in a calendar year for the transfer
33 of policies for any value less than the expected death
34 benefit;

- 1 (5) a financing entity;
- 2 (6) a special purpose entity;
- 3 (7) a related provider trust; or
- 4 (8) an accredited investor or qualified institutional
- 5 buyer as defined, respectively, in Regulation D, Rule 501
- 6 or Rule 144A of the Federal Securities Act of 1933, as
- 7 amended, and who purchases a purchased policy from a
- 8 viatical settlement provider.

9 "Viaticated policy" means a life insurance policy held by a

10 viatical settlement provider, directly or indirectly, that has

11 been acquired by a viatical settlement provider pursuant to a

12 viatical settlement contract.

13 "Viator" means the owner of a life insurance policy or a

14 life insurance certificate holder who is a resident of this

15 State, who enters or seeks to enter into a viatical settlement

16 contract. For the purposes of this Act, a viator is not limited

17 to an owner of a policy insuring the life of an individual with

18 a terminal or chronic illness or condition except where

19 specifically addressed. If there is more than one owner on a

20 single policy and the owners are residents of different states,

21 the transaction shall be governed by the law of the state in

22 which the owner having the largest percentage ownership resides

23 or, if the owners hold equal ownership, the state of residence

24 of one owner agreed upon in writing by all owners. Viator does

25 not include:

26 (1) a licensee under this Act, including a life

27 insurance producer;

28 (2) an accredited investor or qualified institutional

29 buyer as defined, respectively, in Regulation D, Rule 501

30 or Rule 144A of the Federal Securities Act of 1933, as

31 amended;

32 (3) a financing entity;

33 (4) a special purpose entity; or

34 (5) a related provider trust.

1 Section 10. License Requirements.

2 (a) A person shall not negotiate viatical settlement
3 contracts between a viator and one or more viatical settlement
4 providers or otherwise act on behalf of a viator unless the
5 person is a life insurance producer.

6 (b) A life insurance producer, as defined in this Act, who
7 has been licensed for at least one year, shall be permitted to
8 negotiate, as defined in Section 500-10 of the Illinois
9 Insurance Code, viatical settlement contracts between a viator
10 and one or more viatical settlement providers. For purposes of
11 this Section, the one year requirement is deemed to be
12 satisfied if the person has been licensed as a resident life
13 insurance producer in his or her home state for at least one
14 year. Not later than 30 days from the first day of negotiating
15 a viatical settlement contract on behalf of a viator, the life
16 insurance producer shall notify the Secretary of the activity
17 on a form prescribed by the Secretary, and shall pay any
18 applicable fees as determined by the Secretary. Notification
19 must include an acknowledgment by the producer that he or she
20 will operate in accordance with this Act.

21 (c) Notwithstanding any other provision of this Section, a
22 person licensed as an attorney, certified public accountant, or
23 financial planner accredited by a nationally recognized
24 accreditation agency who is retained to represent the viator
25 and whose compensation is not paid directly or indirectly by
26 the viatical settlement provider may negotiate viatical
27 settlement contracts without having to obtain a license as a
28 life insurance producer.

29 (d) A person shall not operate as a viatical settlement
30 provider from within this State or for persons residing in this
31 State without first having obtained a viatical settlement
32 provider license from the Secretary.

33 (e) Application for a viatical settlement provider license

1 shall be made to the Secretary by the applicant on a form
2 prescribed by the Secretary. The application shall be
3 accompanied by a fee of \$1,500, which shall be deposited into
4 the Insurance Producer Administration Fund.

5 Viatical settlement providers' licenses may be renewed
6 from year to year on the anniversary date of the license upon
7 (i) submission of renewal forms prescribed by the Secretary and
8 (ii) payment of the annual renewal fee of \$750, which shall be
9 deposited into the Insurance Producer Administration Fund.
10 Failure to pay the fee within the terms prescribed by the
11 Secretary shall result in the expiration of the license.

12 (f) Applicants for a viatical settlement provider's
13 license shall provide information prescribed by the Secretary
14 on forms prescribed by the Secretary. The Secretary shall have
15 authority, at any time, to require the applicant to fully
16 disclose the identity of all stockholders, partners, officers,
17 members, and employees, except stockholders owning fewer than
18 5% of the shares of an applicant whose shares are publicly
19 traded. The Secretary may, in the exercise of discretion,
20 refuse to issue a license in the name of a legal entity, if not
21 satisfied that an officer, employee, stockholder, member, or
22 partner thereof who may materially influence the applicant's
23 conduct meets the standards of this Act.

24 (g) A viatical settlement provider's license issued to a
25 legal entity authorizes all partners, members, officers, and
26 designated employees to act as viatical settlement providers,
27 as applicable, under the license. All those persons must be
28 named in the application and any supplements thereto.

29 (h) Upon the filing of an application for a viatical
30 settlement provider's license and the payment of the license
31 fee, the Secretary may request information from the applicant
32 relating to the applicant's qualifications to be licensed as a
33 viatical settlement provider and shall issue a license if the
34 Secretary finds that the applicant:

- 1 (1) has provided a detailed plan of operation;
- 2 (2) is competent and trustworthy and intends to act in
3 good faith in the capacity authorized by the license
4 applied for;
- 5 (3) has a good business reputation and has had
6 experience, training, or education so as to be qualified in
7 the business for which the license is applied for;
- 8 (4) provides a certificate of good standing from the
9 state of its domicile if the applicant is a legal entity;
10 and
- 11 (5) has provided an anti-fraud plan that meets the
12 requirements of this Act.

13 The Secretary may not issue a license to a nonresident
14 applicant unless a written designation of an agent for service
15 of process is filed and maintained with the Secretary or the
16 applicant has filed with the Secretary the applicant's written
17 irrevocable consent that any action against the applicant may
18 be commenced against the applicant by service of process on the
19 Secretary.

20 A viatical settlement provider shall provide to the
21 Secretary new or revised information about officers, 10% or
22 more stockholders, partners, directors, members, or designated
23 employees within 30 days of a change.

24 Section 15. License suspension, denial, nonrenewal, and
25 revocation.

26 (a) The Secretary may refuse to issue or renew or may
27 suspend or revoke the license of any viatical settlement
28 provider if the Secretary finds any of the following:

- 29 (1) there was material misrepresentation in the
30 application for the license;
- 31 (2) the licensee or any officer, partner, member, or
32 key management personnel has been convicted of fraudulent
33 or dishonest practices, is subject to a final

1 administrative action, or is otherwise shown to be
2 untrustworthy or incompetent;

3 (3) the licensee demonstrates a pattern of
4 unreasonable payments to viators;

5 (4) the licensee or any officer, partner, member, or
6 key management personnel has been found guilty of, or
7 pleaded guilty or nolo contendere to, any felony or
8 misdemeanor involving fraud or moral turpitude, regardless
9 of whether a judgment or conviction has been entered by the
10 court;

11 (5) the licensee has entered into any viatical
12 settlement contract that has not been approved pursuant to
13 this Act;

14 (6) the licensee has failed to honor contractual
15 obligations set out in a viatical settlement contract;

16 (7) the licensee no longer meets the requirements for
17 initial licensure;

18 (8) the licensee has assigned, transferred, or pledged
19 a purchased policy to a person other than a viatical
20 settlement provider licensed in this State, an accredited
21 investor or qualified institutional buyer as defined,
22 respectively, in Regulation D, Rule 501 or Rule 144A of the
23 Federal Securities Act of 1933, as amended, a financing
24 entity, a special purpose entity, or a related provider
25 trust; or

26 (9) the licensee or any officer, partner, member, or
27 key management personnel has violated any of the provision
28 of this Act.

29 (b) The Secretary may suspend, revoke, or refuse to renew
30 the license of a life insurance producer if the Secretary finds
31 that the life insurance producer has violated the provisions of
32 this Act.

33 (c) Before the Secretary denies a license application or
34 suspends, revokes, or refuses to renew the license of a

1 viatical settlement provider or life insurance producer the
2 Secretary shall conduct a hearing in accordance with the
3 Illinois Administrative Procedure Act.

4 Section 20. Approval of viatical settlement contracts. No
5 viatical settlement provider may use a viatical settlement
6 contract or provide to a viator a disclosure statement form in
7 this State unless it has been filed with and approved by the
8 Secretary. A viatical settlement contract form filed with the
9 Secretary shall be deemed approved if it has not been
10 disapproved within 60 days of the filing. The Secretary shall
11 disapprove a viatical settlement contract form or a disclosure
12 statement form if, in the Secretary's opinion, the contract or
13 provisions contained therein are unreasonable, contrary to the
14 interests of the public, or otherwise misleading or unfair to
15 the viator. At the Secretary's discretion, the Secretary may
16 require the viatical settlement provider to submit copies of
17 its advertising material.

18 Section 25. Reporting requirements.

19 (a) Each viatical settlement provider shall file with the
20 Secretary on or before March 1 of each year an annual statement
21 containing information that the Secretary may prescribe by
22 rule. This information shall not include individual
23 transaction data regarding the business of viatical
24 settlements or data that compromises the privacy of personal,
25 financial, and health information of the viator or insured.

26 (b) Any information relating to the identity of an insured
27 individual and an insured individual's financial or medical
28 information collected, received, or maintained by any entity
29 directly or indirectly involved with a viatical settlement
30 transaction, including a viatical settlement provider, life
31 insurance producer, information bureau, rating agency or
32 company, or any other person with actual knowledge of a

1 viator's or insured's identity, shall be subject to the
2 requirements of Article XL of the Illinois Insurance Code,
3 except as provided below or otherwise allowed or required by
4 law. The information may not be disclosed unless the disclosure
5 is:

6 (1) necessary to effect a viatical settlement contract
7 between the viator and a viatical settlement provider and
8 the viator or insured or both, as may be required, have
9 provided prior written consent to the disclosure;

10 (2) provided in response to an investigation or
11 examination by the Secretary or another governmental
12 officer or agency;

13 (3) a term of or condition to the transfer of a policy
14 by one viatical settlement provider to another viatical
15 settlement provider;

16 (4) necessary to permit a financing entity, related
17 provider trust, or special purpose entity to finance the
18 purchase of policies by a viatical settlement provider and
19 the viator and insured have provided prior written consent
20 to the disclosure;

21 (5) necessary to allow the viatical settlement
22 provider or their authorized representatives to make
23 contacts for the purpose of determining health status; or

24 (6) required to purchase stop loss coverage.

25 Section 30. Examination of applicants and licensees.

26 (a) The Secretary may conduct an examination of a licensee
27 as often as the Secretary in his or her sole discretion deems
28 appropriate. The Secretary has the authority to order a
29 licensee or applicant to produce any records, books, files, or
30 other information reasonably necessary to ascertain whether or
31 not the licensee or applicant is acting or has acted in
32 violation of the law or otherwise contrary to the interests of
33 the public.

1 For purposes of completing an examination of a licensee
2 under this Act, the Secretary may examine or investigate any
3 person, or the business of any person, insofar as the
4 examination or investigation is, in the sole discretion of the
5 Secretary, necessary or material to the examination of the
6 licensee.

7 In lieu of an examination under this Act of any foreign or
8 alien licensee licensed in this State, the Secretary may, at
9 the Secretary's discretion, accept an examination report on the
10 licensee as prepared by the chief insurance regulatory official
11 for the licensee's state of domicile or port-of-entry state.

12 (b) A person required to be licensed by this Act shall for
13 5 years retain copies of:

14 (1) proposed, offered, or executed contracts,
15 underwriting documents, policy forms, and applications
16 from the date of the proposal, offer, or execution of the
17 contract, which ever is later;

18 (2) all checks, drafts, or other evidence and
19 documentation related to the payment, transfer, deposit,
20 or release of funds from the date of the transaction;

21 (3) all complaints received against the licensee and
22 those viatical settlement agents representing the
23 licensee; and

24 (4) all other records and documents related to the
25 requirements of this Act.

26 This subsection (b) does not relieve a person of the
27 obligation to produce these documents to the Secretary after
28 the retention period has expired if the person has retained the
29 documents.

30 Records required to be retained by this subsection (b) must
31 be legible and complete and may be retained in paper,
32 photograph, micro process, magnetic, mechanical, or electronic
33 media, or by any process that accurately reproduces or forms a
34 durable medium for the reproduction of a record.

1 The Secretary may adopt rules to prescribe the minimum
2 records that must be maintained by licensees.

3 (c) Upon determining that an examination should be
4 conducted, the Secretary shall issue an examination warrant
5 appointing one or more examiners to perform the examination and
6 instructing them as to the scope of the examination. In
7 conducting the examination, the examiner may employ guidelines
8 or procedures that the Secretary may deem appropriate.

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

28 The Secretary or any of his or her examiners shall have the
29 power to issue subpoenas, to administer oaths, and to examine
30 under oath any person as to any matter pertinent to the
31 examination. Upon the failure or refusal of a person to obey a
32 subpoena, the Secretary may petition a court of competent
33 jurisdiction, and upon proper showing, the court may enter an
34 order compelling the witness to appear and testify or produce

1 documentary evidence. Failure to obey the court order shall be
2 punishable as contempt of court.

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

9 (d) Nothing contained in this Act shall be construed to
10 limit the Secretary's authority to terminate or suspend an
11 examination in order to pursue other legal or regulatory action
12 pursuant to the insurance laws of this State. Findings of fact
13 and conclusions made pursuant to any examination shall be prima
14 facie evidence in any legal or regulatory action.

15 (e) Nothing contained in this Act shall be construed to
16 limit the Secretary's authority to use and, if appropriate, to
17 make public any final report.

18 (f) The Secretary may charge the expenses incurred in any
19 examination authorized by this Section to the person being
20 examined. The charge shall be reasonably related to the cost of
21 the examination, including, but not limited to, a per diem
22 charge of \$300 per examiner, electronic data processing costs,
23 supervision and preparation of an examination report, and
24 lodging and travel expenses. All lodging and travel expenses
25 shall be in accord with the applicable travel regulations
26 published by the Department of Central Management Services and
27 approved by the Governor's Travel Control Board, except that
28 out-of-state lodging and travel expenses shall be in accordance
29 with travel rates prescribed under 41 C.F.R. 301 for
30 reimbursement of subsistence expenses incurred during official
31 travel. All lodging and travel expenses may be reimbursed
32 directly upon authorization by the Secretary. All electronic
33 data processing costs incurred by the Department in the
34 performance of any examination shall be billed directly to the

1 person being examined for payment to the Statistical Services
2 Revolving Fund. With the exception of the direct reimbursements
3 authorized by the Secretary, all other examination charges
4 collected by the Department shall be paid to the Insurance
5 Producers Administration Fund.

6 The payment of fees or charges shall be made by separate
7 check, or other payment method approved by the Secretary, for
8 each invoice issued by the Department.

9 Any fee or charge assessed pursuant to this Part, in which
10 a payment due date has not been established, must be paid
11 within 30 days after the date of the Department's invoice.

12 Any company, person, or entity failing to make any payment
13 of \$100 or more as required under this subsection (f) is
14 liable, in addition to the tax and any penalties, for interest
15 on the deficiency at the rate of 12% per annum, or at higher
16 adjusted rates as are or may be established under subsection
17 (b) of Section 6621 of the Internal Revenue Code, from the date
18 that payment was due, determined without regard to any
19 extensions, to the date of payment of the amount.

20 When a licensee fails to pay the full amount of any fee of
21 \$200 or more due under this subsection (f), there shall be
22 added to the amount due, as a penalty, the greater of \$100 or
23 an amount equal to 10% of the deficiency for each month or part
24 of a month that the deficiency remains unpaid.

25 When a licensee fails to timely pay the full amount of any
26 fee or charge of \$100 or more due under this subsection (f),
27 there may be added to the amount due, as a penalty, the greater
28 of \$50 or an amount equal to 5% of the deficiency for each
29 month or part of a month that the deficiency remains unpaid. In
30 addition to the fee or charge, interest on the deficiency shall
31 be assessed at the rate of 12% per annum, or at higher adjusted
32 rates as are or may be established under subsection (b) of
33 Section 6621 of the Internal Revenue Code, from the date that
34 payment of the fee or charge was due to the date of payment of

1 the amount.

2 Any person or company required to pay a fee or charge
3 pursuant to this Section may request a hearing to be held for
4 the purposes of determining if the assessed fee or charge is
5 appropriate. The hearing request shall be made pursuant to 50
6 Ill. Admin. Code 2500.50 and shall be based only on (i) the
7 grounds set forth in Section 412 of the Illinois Insurance
8 Code, (ii) a mistake of fact, (iii) an error in calculation, or
9 (iv) an erroneous interpretation of a statute of this or any
10 other state.

11 (g) Examination reports shall be comprised only of facts
12 appearing upon the books, records, or other documents of the
13 licensee, its agents, or other persons examined, or as
14 ascertained from the testimony of its officers or agents or
15 other persons examined concerning its affairs and the
16 conclusions and recommendations that the examiners find
17 reasonably warranted from the facts.

18 (h) No later than 60 days following completion of the
19 examination, the examiner in charge shall file with the
20 Secretary a verified written report of examination under oath.
21 Upon receipt of the verified report, the Secretary shall
22 transmit the report to the licensee examined, together with a
23 notice that shall afford the licensee examined a reasonable
24 opportunity of not more than 30 days to make a written
25 submission or rebuttal with respect to any matters contained in
26 the examination report.

27 Within 30 days after the end of the period allowed for the
28 receipt of written submissions or rebuttals the Secretary shall
29 fully consider and review the report, together with any written
30 submissions or rebuttals and any relevant portions of the
31 examiner's workpapers and enter an order doing one of the
32 following:

33 (1) Adopting the examination report as filed or with
34 modification or corrections. If the examination report

1 reveals that the company is operating in violation of any
2 law, rule, or prior order of the Secretary, the Secretary
3 may order the company to take any action the Secretary
4 considers necessary and appropriate to cure the violation.

5 (2) Rejecting the examination report with directions
6 to the examiners to reopen the examination for purposes of
7 obtaining additional data, documentation, or information
8 and refiling.

9 (3) Calling for an investigatory hearing with no less
10 than 20 days notice to the company for purposes of
11 obtaining additional documentation, data, information, and
12 testimony.

13 All orders entered pursuant to this subsection (h) shall be
14 accompanied by findings and conclusions resulting from the
15 Secretary's consideration and review of the examination
16 report, relevant examiner workpapers, and any written
17 submissions or rebuttals. Any order issued pursuant to
18 paragraph (3) of this subsection (h) shall be considered a
19 final administrative decision and may be appealed pursuant to
20 the Administrative Review Law and shall be served upon the
21 company by certified mail, together with a copy of the adopted
22 examination report. Within 30 days of the issuance of the
23 adopted report the company shall file affidavits executed by
24 each of its directors stating under oath that they have
25 received a copy of the adopted report and related orders.

26 (i) Hearings conducted pursuant to this Section shall be
27 subject to the following requirements:

28 (1) Any hearing conducted pursuant to this Section by
29 the Secretary or the Secretary's authorized representative
30 shall be conducted as a nonadversarial confidential
31 investigatory proceeding as necessary for the resolution
32 of any inconsistencies, discrepancies, or disputed issues
33 apparent upon the face of the filed examination report or
34 raised by or as a result of the Secretary's review of

1 relevant workpapers or by the written submission or
2 rebuttal of the company. Within 20 days of the conclusion
3 of any hearing, the Secretary shall enter an order pursuant
4 to paragraph (1) of subsection (h) of this Section.

5 (2) The Secretary may appoint an authorized
6 representative to conduct the hearing, except that the
7 authorized representative may not be an examiner. The
8 hearing shall proceed expeditiously with discovery by the
9 company limited to the examiner's workpapers that tend to
10 substantiate any assertions set forth in any written
11 submission or rebuttal. The Secretary or the Secretary's
12 representative may issue subpoenas for the attendance of
13 any witnesses or the production of any documents considered
14 relevant to the investigation whether under the control of
15 the Secretary, the company, or other persons. The documents
16 produced shall be included in the record and testimony
17 taken by the Secretary or the Secretary's representative
18 shall be under oath and preserved for the record. Nothing
19 contained in this Section shall require the Secretary to
20 disclose any information or records that would indicate or
21 show the existence or content of any investigation or
22 activity of a criminal justice agency.

23 (3) The hearing shall proceed with the Secretary or the
24 Secretary's representative posing questions to the persons
25 subpoenaed. Thereafter, the company and the Secretary may
26 present testimony relevant to the investigation.
27 Cross-examination may be conducted only by the Secretary or
28 the Secretary's representative. The company and the
29 Secretary shall be permitted to make closing statements and
30 may be represented by the counsel of their choice.

31 (j) In the event the Secretary determines that regulatory
32 action is appropriate as a result of an examination, the
33 Secretary may initiate any proceedings or actions provided by
34 law.

1 (k) Names and individual identification data for all
2 viators shall be considered private and confidential
3 information and shall not be disclosed by the Secretary unless
4 required by law.

5 Except as otherwise provided in this Act, all examination
6 reports, working papers, recorded information, documents and
7 copies thereof produced by, obtained by or disclosed to the
8 Secretary or any other person in the course of an examination
9 made under this Act or the law of another state or jurisdiction
10 that is substantially similar to this Act, or in the course of
11 analysis or investigation by the Secretary of the financial
12 condition or market conduct of a licensee are (i) confidential
13 by law and privileged, (ii) not subject to the Freedom of
14 Information Act, (iii) not subject to subpoena, and (iv) not
15 subject to discovery or admissible in evidence in any private
16 civil action.

17 The Secretary is authorized to use the documents,
18 materials, or other information in the furtherance of any
19 regulatory or legal action brought as part of the Secretary's
20 official duties.

21 Documents, materials, or other information, including, but
22 not limited to, all working papers and copies thereof, in the
23 possession or control of the NAIC and its affiliates and
24 subsidiaries are:

25 (1) confidential by law and privileged;

26 (2) not subject to subpoena; and

27 (3) not subject to discovery or admissible in evidence
28 in any private civil action if they are:

29 (A) created, produced or obtained by or disclosed
30 to the NAIC and its affiliates and subsidiaries in the
31 course of assisting an examination made under this Act
32 or assisting the Secretary in the analysis or
33 investigation of the financial condition or market
34 conduct of a licensee; or

1 (B) disclosed to the NAIC and its affiliates and
2 subsidiaries under this subsection (k) by the
3 Secretary.

4 The Secretary or any person that received the documents,
5 material, or other information while acting under the authority
6 of the Secretary, including, but not limited to, the NAIC and
7 its affiliates and subsidiaries, is permitted to testify in any
8 private civil action concerning any confidential documents,
9 materials, or information subject to this subsection (k).

10 (1) In order to assist in the performance of the
11 Secretary's duties, the Secretary may:

12 (1) share documents, materials, or other information,
13 including the confidential and privileged documents,
14 materials, or information subject to subsection (k) of this
15 Section, with other state, federal, and international
16 regulatory agencies, with the NAIC and its affiliates and
17 subsidiaries, and with state, federal, and international
18 law enforcement authorities, provided that the recipient
19 agrees to maintain the confidentiality and privileged
20 status of the document, material, communication, or other
21 information;

22 (2) receive documents, materials, communications, or
23 information, including otherwise confidential and
24 privileged documents, materials, or information, from the
25 NAIC and its affiliates and subsidiaries and from
26 regulatory and law enforcement officials of other foreign
27 or domestic jurisdictions, and shall maintain as
28 confidential or privileged any document, material, or
29 information received with notice or the understanding that
30 it is confidential or privileged under the laws of the
31 jurisdiction that is the source of the document, material,
32 or information; and

33 (3) enter into agreements governing sharing and use of
34 information consistent with this Section.

1 (m) No waiver of any applicable privilege or claim of
2 confidentiality in the documents, materials, or information
3 shall occur as a result of disclosure to the Secretary under
4 this Section or as a result of sharing as authorized in
5 subsection (l) of this Section.

6 (n) A privilege established under the law of any state or
7 jurisdiction that is substantially similar to the privilege
8 established under this Section shall be available and enforced
9 in any proceeding in and in any court of this State.

10 (o) Nothing contained in this Act shall prevent or be
11 construed as prohibiting the Secretary from disclosing the
12 content of an examination report, preliminary examination
13 report or results, or any matter relating thereto, to the chief
14 insurance regulatory official of any other state or country, or
15 to law enforcement officials of this or any other state or
16 agency of the federal government at any time or to the NAIC, so
17 long as the agency or office receiving the report or matters
18 relating thereto agrees in writing to hold it confidential and
19 in a manner consistent with this Act.

20 (p) An examiner may not be appointed by the Secretary if
21 the examiner, either directly or indirectly, has a conflict of
22 interest or is affiliated with the management of or owns a
23 pecuniary interest in any person subject to examination under
24 this Act. This Section shall not be construed to automatically
25 preclude an examiner from being:

26 (1) a viator;

27 (2) an insured in a purchased policy; or

28 (3) a beneficiary in an insurance policy that is
29 proposed to be the subject of a viatical settlement
30 contract.

31 Notwithstanding the requirements of this subsection (p),
32 the Secretary may retain from time to time, on an individual
33 basis, qualified actuaries, certified public accountants, or
34 other similar individuals who are independently practicing

1 their professions, even though these persons may from time to
2 time be similarly employed or retained by persons subject to
3 examination under provisions of this Act.

4 (q) The expenses incurred in conducting any examination
5 shall be paid by the licensee or applicant.

6 (r) No cause of action shall arise nor shall any liability
7 be imposed against the Secretary, the Secretary's authorized
8 representatives, or any examiner appointed by the Secretary for
9 any statements made or conduct performed in good faith while
10 carrying out the provisions of this Section.

11 No cause of action shall arise, nor shall any liability be
12 imposed against any person for the act of communicating or
13 delivering information or data to the Secretary or the
14 Secretary's authorized representative or examiner pursuant to
15 an examination made under this Section, if the act of
16 communication or delivery was performed in good faith and
17 without fraudulent intent or the intent to deceive. This
18 subsection (r) does not abrogate or modify in any way any
19 common law or statutory privilege or immunity heretofore
20 enjoyed by any person identified in this subsection (r).

21 A person identified in this subsection (r) shall be
22 entitled to an award of attorney's fees and costs if he or she
23 is the prevailing party in a civil cause of action for libel,
24 slander, or any other relevant tort arising out of activities
25 in carrying out the provisions of this Section and the party
26 bringing the action was not substantially justified in doing
27 so. For purposes of this Section, a proceeding is
28 "substantially justified" if it had a reasonable basis in law
29 or fact at the time that it was initiated.

30 (s) The Secretary may investigate suspected fraudulent
31 viatical settlement acts and persons engaged in the business of
32 viatical settlements.

33 Section 35. Disclosure.

1 (a) With each application for a viatical settlement
2 contract, a viatical settlement provider or life insurance
3 producer shall provide the viator with at least the following
4 disclosures no later than the time the viatical settlement
5 contract is signed by all parties. The disclosures must be
6 provided in a separate document that is signed by the viator
7 and the viatical settlement provider or life insurance
8 producer, and shall provide the following information:

9 (1) That there exist possible alternatives to a
10 viatical settlement contract including any accelerated
11 death benefits or policy loans offered under the viator's
12 life insurance policy.

13 (2) That some or all of the proceeds of the viatical
14 settlement contract may be taxable under federal income tax
15 and state franchise and income taxes, and assistance may be
16 sought from a professional tax advisor.

17 (3) That proceeds of the viatical settlement contract
18 may be subject to the claims of creditors.

19 (4) That receipt of the proceeds of a viatical
20 settlement contract may adversely affect the viator's
21 eligibility for Medicaid or other government benefits or
22 entitlements, and advice may be obtained from the
23 appropriate government agencies.

24 (5) That the viator has the right to rescind a viatical
25 settlement contract before the earlier of 30 calendar days
26 after the date the viatical settlement contract is executed
27 by all parties or for 15 calendar days after the receipt of
28 the viatical settlement proceeds by the viator.
29 Rescission, if exercised by the viator, is effective only
30 if both notice of the rescission is given and repayment of
31 all proceeds and any premiums, loans, and loan interest to
32 the viatical settlement provider is made within the
33 rescission period. If the insured dies during the
34 rescission period, the viatical settlement contract is

1 deemed to have been rescinded, subject to repayment being
2 made to the viatical settlement provider of all viatical
3 settlement proceeds and any premiums, loans, and loan
4 interest within 90 days after the death of the insured.

5 (6) That funds must be sent to the viator within 3
6 business days after the viatical settlement provider has
7 received the insurer or group administrator's
8 acknowledgment that ownership of the purchased policy has
9 been transferred and the beneficiary has been designated.

10 (7) That entering into a viatical settlement contract
11 may cause other rights or benefits, including conversion
12 rights and waiver of premium benefits that may exist under
13 the policy, to be forfeited by the viator. Assistance may
14 be sought from a financial adviser.

15 (8) That the disclosure to a viator must include
16 distribution of a brochure, approved by the Secretary,
17 describing the process of viatical settlements.

18 (9) That the disclosure document must contain the
19 following language: "All medical, financial, or personal
20 information solicited or obtained by a viatical settlement
21 provider or a life insurance producer about an insured,
22 including the insured's identity or the identity of family
23 members, a spouse, or a significant other may be disclosed
24 as necessary to effect the viatical settlement contract
25 between the viator and the viatical settlement provider. If
26 you are asked to provide this information, you will be
27 asked to consent to the disclosure. The information may be
28 provided to someone who buys the policy or provides funds
29 for the purchase. You may be asked to renew your permission
30 to share information every 2 years.".

31 (10) That the insured may be contacted by either the
32 viatical settlement provider or its authorized
33 representative for the purpose of determining the
34 insured's health status. This contact is limited to once

1 every 3 months if the insured has a life expectancy of more
2 than one year, and no more than once each month if the
3 insured has a life expectancy of one year or less.

4 (b) A viatical settlement provider shall provide the viator
5 with at least the following disclosures no later than the date
6 the viatical settlement contract is signed by all parties. The
7 disclosures must be displayed conspicuously in the viatical
8 settlement contract or in a separate document signed by the
9 viator and the viatical settlement provider, and provide the
10 following information:

11 (1) The affiliation, if any, between the viatical
12 settlement provider and the issuer of the insurance policy
13 to be acquired pursuant to a viatical settlement contract.

14 (2) The name, address, and telephone number of the
15 viatical settlement provider.

16 (3) If a policy to be acquired pursuant to a viatical
17 settlement contract has been issued as a joint policy or
18 involves family riders or any coverage of a life other than
19 the insured under the policy to be acquired pursuant to a
20 viatical settlement contract, the viator must be informed
21 of the possible loss of coverage on the other lives under
22 the policy and must be advised to consult with his or her
23 insurance producer or the insurer issuing the policy for
24 advice on the proposed viatical settlement contract.

25 (4) The dollar amount of the current death benefit
26 payable to the viatical settlement provider under the
27 policy. If known, the viatical settlement provider also
28 shall disclose the availability of additional guaranteed
29 insurance benefits, the dollar amount of accidental death
30 and dismemberment benefits under the policy or
31 certificate, and the viatical settlement provider's
32 interest in those benefits.

33 (5) The name, business address, and telephone number of
34 the independent third party escrow agent, and the fact that

1 the viator may inspect or receive copies of the relevant
2 escrow or trust agreements or documents.

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

8 Section 40. General rules.

9 (a) A viatical settlement provider entering into a viatical
10 settlement contract shall first obtain:

11 (1) if the viator is the insured, a written statement
12 from a licensed attending physician that the viator is of
13 sound mind and under no constraint or undue influence to
14 enter into a viatical settlement contract; and

15 (2) a document in which the insured consents to the
16 release of his or her medical records to a viatical
17 settlement provider or insurance producer and, if the
18 policy was issued less than 2 years from the date of
19 application for a viatical settlement contract, to the
20 insurance company that issued the policy.

21 (b) The insurer shall respond to a request for verification
22 of coverage submitted by a viatical settlement provider or life
23 insurance producer not later than 30 calendar days after the
24 date the request is received. The request for verification of
25 coverage must be made on a form approved by the Secretary. The
26 insurer shall complete and issue the verification of coverage
27 or indicate in which respects it is unable to respond. In its
28 response, the insurer shall indicate whether, based on the
29 medical evidence and documents provided, the insurer intends to
30 pursue an investigation regarding the validity of the insurance
31 contract or possible fraud, and shall provide sufficient detail
32 of all reasons for the investigation to the viatical settlement
33 provider or life insurance producer.

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

13 (d) If a life insurance producer performs any of these
14 activities required of the viatical settlement provider, the
15 viatical settlement provider is deemed to have fulfilled the
16 requirements of this Section.

17 (e) All medical information solicited or obtained by any
18 licensee shall be subject to the requirements of Article XL of
19 the Illinois Insurance Code.

20 (f) A viatical settlement contract entered into in this
21 State shall provide the viator with an unconditional right to
22 rescind the contract before the earlier of 30 calendar days
23 after the date the viatical settlement contract is executed by
24 all parties or 15 calendar days from the receipt of the
25 viatical settlement proceeds by the viator. Rescission, if
26 exercised by the viator, is effective only if both notice of
27 the rescission is given and repayment of all proceeds and any
28 premiums, loans, and loan interest to the viatical settlement
29 provider is made within the rescission period. If the insured
30 dies during the rescission period, the viatical settlement
31 contract shall be deemed to have been rescinded, subject to
32 repayment being made to the viatical settlement provider of all
33 viatical settlement proceeds and any premiums, loans, and loan
34 interest within 90 days after the death of the insured.

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

22 (h) Failure to tender consideration to the viator for the
23 viatical settlement by contract within the time disclosed
24 pursuant to this Code renders the viatical settlement contract
25 voidable by the viator for lack of consideration until the time
26 consideration is tendered to and accepted by the viator.

27 (i) contact with the insured, for the purpose of
28 determining the health status of the insured by the viatical
29 settlement provider after the viatical settlement contract has
30 been executed, may only be made by the licensed viatical
31 settlement provider or its authorized representatives and is
32 limited to once every 3 months for insureds with a life
33 expectancy of more than one year, and not more than once each
34 month for insureds with a life expectancy of one year or less.

1 The viatical settlement provider shall explain the procedure
2 for these contacts at the time the viatical settlement contract
3 is entered into. The limitations provided for in this
4 subsection (i) do not apply to a contact with an insured for
5 reasons other than determining the insured's health status. A
6 viatical settlement provider is responsible for the actions of
7 its authorized representatives.

8 Section 45. Authority to adopt rules.

9 (a) The Secretary shall have the authority to do all the
10 following:

11 (1) Issue rules implementing this Act.

12 (2) Establish standards for evaluating reasonableness
13 of payments under a viatical settlement contract for a
14 person who is terminally or chronically ill. This authority
15 includes, but is not limited to, regulation of discount
16 rates used to determine the amount paid in exchange for
17 assignment, transfer, sale, devise, or bequest of a benefit
18 under a policy. A viatical settlement provider, where the
19 insured is not terminally or chronically ill, shall pay an
20 amount greater than the cash surrender value or accelerated
21 death benefit then available.

22 (3) Establish appropriate licensing requirements,
23 fees, and standards for continued licensure for a viatical
24 settlement provider and a fee for life insurance producers.

25 (4) Require a bond or other mechanism for financial
26 accountability for a viatical settlement provider.

27 (5) Adopt rules governing the relationship and
28 responsibilities of an insurer and a viatical settlement
29 provider, life insurance producer, and others in the
30 business of viatical settlements during the period of
31 consideration or effectuation of a viatical settlement
32 contract.

33 (b) Any rules adopted pursuant to the authority granted in

1 the Viatical Settlements Act shall remain in effect until
2 repealed or modified by rules adopted by the Secretary pursuant
3 to this Act.

4 Section 50. Application.

5 (a) A viatical settlement provider lawfully transacting
6 business in this State may continue to do so pending approval
7 or disapproval of the viatical settlement provider's
8 application for a license under this Act as long as the
9 application is filed with the Secretary not later than 30 days
10 after the effective date of this Act. A viatical settlement
11 provider currently licensed in this State may continue to
12 transact business under that license, but must revise any
13 licensing information at the time of the license renewal, if
14 applicable.

15 (b) A person who has lawfully negotiated viatical
16 settlement contracts between a viator and one or more viatical
17 settlement providers in this State for at least one year
18 immediately prior to the effective date of this Act may
19 continue to negotiate viatical settlements in this State for a
20 period of 60 days after the effective date of this Act, at
21 which time the person must either become a licensed life
22 insurance producer or cease negotiating viatical settlement
23 contracts.

24 Section 55. Violations. It is a violation of this Act for a
25 person to enter into a viatical settlement contract within a
26 2-year period commencing with the date of issuance of the
27 policy unless the viator certifies to the viatical settlement
28 provider that one or more of the following conditions have been
29 met within the 2-year period:

30 (1) The policy was issued upon the viator's exercise of
31 conversion rights arising out of a group or individual
32 policy, provided the total of the time covered under the

1 conversion policy plus the time covered under the prior
2 policy is at least 24 months. The time covered under a
3 group policy must be calculated without regard to a change
4 in insurance carriers, provided the coverage has been
5 continuous and under the same group sponsorship.

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

10 (A) the viator or insured is terminally or
11 chronically ill; or

12 (B) the viator or insured disposes of his ownership
13 interests in a closely held corporation, pursuant to
14 the terms of a buyout or other similar agreement in
15 effect at the time the insurance policy was initially
16 issued.

17 Copies of the independent evidence described in paragraph
18 (2) of this Section and documents required by this Act must be
19 submitted to the insurer when the viatical settlement provider
20 submits a request to the insurer for verification of coverage.
21 The copies must be accompanied by a letter of attestation from
22 the viatical settlement provider that the copies are true and
23 correct copies of the documents received by the viatical
24 settlement provider.

25 If the viatical settlement provider submits to the insurer
26 a copy of independent evidence provided for in paragraph (2) of
27 this Section when the viatical settlement provider submits a
28 request to the insurer to effect the transfer of the policy to
29 the viatical settlement provider, the copy is deemed to
30 conclusively establish that the viatical settlement contract
31 satisfies the requirements of this Section and the insurer
32 shall respond timely to the request.

33 Section 60. Advertisements.

1 (a) The purpose of this Section is to provide a prospective
2 viator with clear and unambiguous statements in the
3 advertisement of a viatical settlement contract and to assure
4 the clear, truthful, and adequate disclosure of the benefits,
5 risks, limitations, and exclusions of a viatical settlement
6 contract. This purpose is to be accomplished by the
7 establishment of guidelines and standards of permissible and
8 impermissible conduct in the advertising of a viatical
9 settlement contract to assure that a product description is
10 presented in a manner that prevents unfair, deceptive, or
11 misleading advertising and is conducive to accurate
12 presentation and description of a viatical settlement contract
13 through the advertising media and material used by a licensee.

14 (b) This Section applies to an advertising of a viatical
15 settlement contract or a related product or service intended
16 for dissemination in this State, including Internet
17 advertising viewed by a person located in this State. Where
18 disclosure requirements are established pursuant to federal
19 regulation, this Section must be interpreted so as to minimize
20 or eliminate conflict with federal regulation wherever
21 possible.

22 (c) Each viatical settlement licensee shall establish and
23 at all times maintain a system of control over the content,
24 form, and method of dissemination of an advertisement of its
25 contracts, products, and services. An advertisement,
26 regardless of who wrote, created, designed, or presented, is
27 the responsibility of the licensee, as well as the individual
28 who created or presented the advertisement. A system of control
29 by the licensee must include regular routine notification at
30 least once a year to agents and others authorized to
31 disseminate advertisements of the requirements and procedures
32 for approval before the use of an advertisement not furnished
33 by the licensee.

34 (d) An advertisement must be truthful and not misleading in

1 fact or by implication. The form and content of an
2 advertisement of a viatical settlement contract must be
3 sufficiently complete and clear so as to avoid deception. It
4 shall not have the capacity or tendency to mislead or deceive.
5 Whether an advertisement has the capacity or tendency to
6 mislead or deceive shall be determined by the Secretary from
7 the overall impression that the advertisement may be reasonably
8 expected to create upon a person of average education or
9 intelligence within the segment of the public to which it is
10 directed.

11 (e) The information required to be disclosed pursuant to
12 the provisions of this Section may not be minimized, rendered
13 obscure, or presented in an ambiguous fashion or intermingled
14 with the text of the advertisement so as to be confusing or
15 misleading.

16 (1) An advertisement may not omit material information
17 or use words, phrases, statements, references, or
18 illustrations if the omission or use has the capacity,
19 tendency, or effect of misleading or deceiving the public
20 as to the nature or extent of any benefit, loss covered, or
21 State or federal tax consequence. The fact that the
22 viatical settlement contract offered is made available for
23 inspection before consummation of the sale, or an offer is
24 made to refund the payment if the viator is not satisfied,
25 or that the viatical settlement contract includes a "free
26 look" period that satisfies or exceeds legal requirements
27 does not remedy misleading statements.

28 (2) An advertisement may not use the name or title of a
29 life insurance company or a life insurance policy unless
30 the advertisement has been approved by the insurer.

31 (3) An advertisement may not state or imply that
32 interest charged on an accelerated death benefit or a
33 policy loan is unfair, inequitable, or in any manner an
34 incorrect or improper practice.

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

7 (5) Any testimonial, appraisal, or analysis used in an
8 advertisement must:

9 (A) be genuine;

10 (B) represent the current opinion of the author;

11 (C) be applicable to the viatical settlement
12 contract, product, or service advertised, if any; and

13 (D) be accurately reproduced with sufficient
14 completeness to avoid misleading or deceiving
15 prospective viators as to the nature or scope of any
16 testimonial, appraisal, analysis, or endorsement.

17 In using any testimonial, appraisal, or analysis, the
18 viatical settlement licensee makes as its own all the
19 statements contained in them, and the statements are
20 subject to all the provisions of this Section.

21 If the individual making a testimonial, appraisal,
22 analysis, or an endorsement has a financial interest in the
23 viatical settlement provider or related entity as a
24 stockholder, director, officer, employee, or otherwise or
25 receives a benefit, directly or indirectly, other than
26 required union scale wages, that fact must be disclosed
27 prominently in the advertisement.

28 An advertisement may not state or imply that a viatical
29 settlement contract, benefit, or service has been approved
30 or endorsed by a group of individuals, society,
31 association, or other organization, unless that is the fact
32 and unless any relationship between an organization and the
33 licensee is disclosed. If the entity making the endorsement
34 or testimonial is owned, controlled, or managed by the

1 licensee or receives payment or other consideration from
2 the licensee for making an endorsement or testimonial, that
3 fact must be disclosed in the advertisement.

4 If an endorsement refers to benefits received under a
5 viatical settlement contract, all pertinent information
6 must be retained for a period of 5 years after its use.

7 (f) An advertisement may not contain statistical
8 information unless it accurately reflects recent and relevant
9 facts. The source of all statistics used in an advertisement
10 must be identified.

11 (g) An advertisement may not disparage insurers, viatical
12 settlement providers, insurance producers, policies, services,
13 or methods of marketing.

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

22 (i) An advertisement shall not use a trade name, group
23 designation, name of the parent company of a licensee, name of
24 a particular division of the licensee, service mark, slogan,
25 symbol, or other device or reference without disclosing the
26 name of the licensee if the advertisement has the capacity or
27 tendency to mislead or deceive as to the true identity of the
28 licensee or to create the impression that a company other than
29 the licensee has any responsibility for the financial
30 obligation under a viatical settlement contract.

31 (j) An advertisement shall not use any combination of
32 words, symbols, or physical materials that by their content,
33 phraseology, shape, color, or other characteristics are so
34 similar to a combination of words, symbols, or physical

1 materials used by a government program or agency or otherwise
2 appear to be of such a nature that they tend to mislead
3 prospective viators into believing that the solicitation is in
4 some manner connected with a government program or agency.

5 (k) An advertisement may state that a licensee is licensed
6 in the state where the advertisement appears, provided it does
7 not exaggerate that fact or suggest or imply that the competing
8 licensee may not be so licensed. The advertisement may ask the
9 audience to consult the licensee's web site or contact that
10 state's department of insurance to find out if that state
11 requires licensing and, if so, whether the licensee or any
12 other company is licensed.

13 (l) An advertisement may not create the impression that the
14 viatical settlement provider, its financial condition or
15 status, the payment of its claims, or the merits, desirability,
16 or advisability of its viatical settlement contracts are
17 recommended or endorsed by any government entity.

18 (m) The name of the actual licensee must be stated in all
19 of its advertisements. An advertisement may not use a trade
20 name, any group designation, name of any affiliate or
21 controlling entity of the licensee, service mark, slogan,
22 symbol, or other device in a manner that has the capacity or
23 tendency to mislead or deceive as to the true identity of the
24 actual licensee or create the false impression that an
25 affiliate or controlling entity has any responsibility for the
26 financial obligation of the licensee.

27 (n) An advertisement may not, directly or indirectly,
28 create the impression that any division or agency of the State
29 or of the United States government endorses, approves, or
30 favors:

31 (1) a licensee or its business practices or methods of
32 operation;

33 (2) the merits, desirability, or advisability of a
34 viatical settlement contract;

1 (3) any viatical settlement contract; or

2 (4) any policy or life insurance company.

3 (o) If the advertiser emphasizes the speed with which the
4 viatical settlement contract occurs, the advertising must
5 disclose the average time frame from completed application to
6 the date of offer and from acceptance of the offer to receipt
7 of the funds by the viator.

8 (p) If the advertising emphasizes the dollar amounts
9 available to viators, the advertising shall disclose the
10 average purchase price as a percent of face value obtained by
11 viators contracting with the licensee during the past 6 months.

12 (q) Certain viatical settlement advertisements are deemed
13 false and misleading on their face and are prohibited. False
14 and misleading viatical settlement advertisements include, but
15 are not limited to, the following representations:

16 (1) "guaranteed", "fully secured", "100 percent
17 secured", "fully insured", "secure", "safe", "backed by
18 rated insurance companies", "backed by federal law",
19 "backed by state law", "state guaranty funds", or similar
20 representations;

21 (2) "no risk", "minimal risk", "low risk", "no
22 speculation", "no fluctuation", or similar
23 representations;

24 (3) "qualified or approved for individual retirement
25 accounts (IRAs), Roth IRAs, 401(k) plans, simplified
26 employee pensions (SEP), 403(b), Keogh plans, TSA, and
27 other retirement account rollovers", "tax deferred", or
28 similar representations;

29 (4) use of the word "guaranteed" to describe the fixed
30 return, annual return, principal, earnings, profits,
31 investment, or similar representations;

32 (5) "no sales charges or fees" or similar
33 representations;

34 (6) "high yield", "superior return", "excellent

1 return", "high return", "quick profit", or similar
2 representations; and

3 (7) purported favorable representations or
4 testimonials about the benefits of viatical settlement
5 contracts or viatical settlement purchase agreements as an
6 investment taken out of context from newspapers, trade
7 papers, journals, radio and television programs, and all
8 other forms of print and electronic media.

9 Section 65. Fraudulent viatical settlement acts.

10 (a) A person may not commit a fraudulent viatical
11 settlement act.

12 (b) A person, knowingly or intentionally, may not interfere
13 with the enforcement of the provisions of this Act or
14 investigations of suspected or actual violations of this
15 chapter.

16 (c) A person in the business of viatical settlements may
17 not knowingly or intentionally permit a person convicted of a
18 felony involving dishonesty or breach of trust to participate
19 in the business of viatical settlements.

20 (d) A viatical settlement contract and an application for a
21 viatical settlement contract, regardless of the form of
22 transmission, must contain the following statement or a
23 substantially similar statement: "Any person who knowingly
24 presents false information in an application for insurance or
25 viatical settlement contract is guilty of a crime and, upon
26 conviction, may be subject to fines or confinement in prison or
27 both."

28 The lack of a statement as provided for in in this
29 subsection (d) does not constitute a defense in any prosecution
30 for a fraudulent viatical settlement act.

31 (e) A person engaged in the business of viatical
32 settlements having knowledge or a reasonable belief that a
33 fraudulent viatical settlement act is being, will be, or has

1 been committed shall provide to the Secretary the information
2 required by the Secretary in a manner prescribed by the
3 Secretary.

4 Another person having knowledge or a reasonable belief that
5 a fraudulent viatical settlement act is being, will be, or has
6 been committed may provide to the Secretary the information
7 required by the Secretary in a manner prescribed by the
8 Secretary.

9 (f) Civil liability may not be imposed on and a cause of
10 action may not arise from a person's furnishing information
11 concerning suspected, anticipated, or completed fraudulent
12 viatical settlement acts, or suspected or completed fraudulent
13 insurance acts, if the information is provided to or received
14 from:

15 (A) the Secretary or the Secretary's employees,
16 agents, or representatives;

17 (B) federal, state, or local law enforcement or
18 regulatory officials or their employees, agents, or
19 representatives;

20 (C) a person involved in the prevention and
21 detection of fraudulent viatical settlement acts or
22 that person's agents, employees, or representatives;

23 (D) the National Association of Insurance
24 Commissioners (NAIC), National Association of
25 Securities Dealers (NASD), the North American
26 Securities Administrators Association (NASAA), or
27 their employees, agents, or representatives, or other
28 regulatory body overseeing life insurance or viatical
29 settlement contracts; or

30 (E) the insurer that issued the policy covering the
31 life of the insured.

32 This subsection (f) does not apply to a statement made with
33 actual malice. In an action brought against a person for filing
34 a report or furnishing other information concerning a

1 fraudulent viatical settlement act or a fraudulent insurance
2 act, the party bringing the action shall plead specifically any
3 allegation that this subsection (f) does not apply because the
4 person filing the report or furnishing the information did so
5 with actual malice.

6 A person identified in this subsection (f) is entitled to
7 an award of attorney's fees and costs if he or she is the
8 prevailing party in a civil cause of action for libel, slander,
9 or another relevant tort arising out of activities in carrying
10 out the provisions of this Act and the party bringing the
11 action was not substantially justified in doing so. For
12 purposes of this Section, a proceeding is "substantially
13 justified" if it had a reasonable basis in law or fact at the
14 time that it was initiated.

15 This Section does not abrogate or modify common law or
16 statutory privileges or immunities enjoyed by a person
17 described in this subsection (f).

18 This subsection (f) does not apply to a person's furnishing
19 information concerning his own suspected, anticipated, or
20 completed fraudulent viatical settlement acts or suspected,
21 anticipated, or completed fraudulent insurance acts.

22 (g) The documents and evidence provided pursuant to
23 subsection (f) of this Section or obtained by the Secretary in
24 an investigation of suspected or actual fraudulent viatical
25 settlement acts are privileged and confidential and are not a
26 public record and are not subject to discovery or subpoena in a
27 civil or criminal action.

28 The provisions of this subsection (g) do not prohibit
29 release by the Secretary of documents and evidence obtained in
30 an investigation of suspected or actual fraudulent viatical
31 settlement acts:

32 (1) in administrative or judicial proceedings to
33 enforce laws administered by the Secretary;

34 (2) to federal, state, or local law enforcement or

1 regulatory agencies, to an organization established for
2 the purpose of detecting and preventing fraudulent
3 viatical settlement acts, or to the NAIC; or

4 (3) at the discretion of the Secretary, to a person in
5 the business of viatical settlements that is aggrieved by a
6 fraudulent viatical settlement act.

7 Release of documents and evidence provided by this
8 subsection (g) does not abrogate or modify the privilege
9 granted in this subsection (g).

10 (h) This Act does not:

11 (1) preempt the authority or relieve the duty of other
12 law enforcement or regulatory agencies to investigate,
13 examine, and prosecute suspected violations of law;

14 (2) prevent or prohibit a person from disclosing
15 voluntarily information concerning fraudulent viatical
16 settlement acts to a law enforcement or regulatory agency
17 other than the Department of Financial and Professional
18 Regulation; or

19 (3) limit the powers granted elsewhere by the laws of
20 this State to the Secretary or an insurance fraud unit to
21 investigate and examine possible violations of law and to
22 take appropriate action against wrongdoers.

23 (i) A viatical settlement provider shall adopt anti-fraud
24 initiatives reasonably calculated to detect, assist in the
25 prosecution of, and prevent fraudulent viatical settlement
26 acts. The Secretary may order or, if a licensee requests, may
27 grant these modifications of the following required
28 initiatives as necessary to ensure an effective anti-fraud
29 program. The modifications may be more or less restrictive than
30 the required initiatives so long as the modifications
31 reasonably may be expected to accomplish the purpose of this
32 Section. Anti-fraud initiatives include, but are not limited
33 to:

34 (1) Fraud investigators, who may be a viatical

1 settlement provider or employees or independent
2 contractors of those viatical settlement providers.

3 (2) An anti-fraud plan that shall always be available
4 to the Secretary. The anti-fraud plan must include, but is
5 not limited to:

6 (A) a description of the procedures for detecting
7 and investigating possible fraudulent viatical
8 settlement acts and procedures for resolving material
9 inconsistencies between medical records and insurance
10 applications;

11 (B) a description of the procedures for reporting
12 possible fraudulent viatical settlement acts to the
13 Secretary;

14 (C) a description of the plan for anti-fraud
15 education and training of underwriters and other
16 personnel; and

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

23 Anti-fraud plans submitted to the Secretary are privileged
24 and confidential and are not a public record pursuant to the
25 provisions of the Freedom of Information Act and are not
26 subject to discovery or subpoena in a civil or criminal action.

27 Section 70. Additional penalties.

28 (a) In addition to the penalties and other enforcement
29 provisions of this Act, if a person violates the provisions of
30 this Act or any rule implementing this Act, the Secretary may
31 seek an injunction in a court of competent jurisdiction and may
32 apply for temporary and permanent orders as the Secretary
33 determines are necessary to restrain the person from committing

1 the violation.

2 (b) A person damaged by the acts of a person in violation
3 of this Act may bring a civil action against the person
4 committing the violation in a court of competent jurisdiction.

5 (c) The Secretary may issue a cease and desist order upon a
6 person that violates any provision of this Act, any rule or
7 order adopted by the Secretary, or any written agreement
8 entered into with the Secretary.

9 (d) When the Secretary finds that an activity in violation
10 of this Act presents an immediate danger to the public that
11 requires an immediate final order, the Secretary may issue an
12 emergency cease and desist order reciting with particularity
13 the facts underlying the findings. The emergency cease and
14 desist order is effective immediately upon service of a copy of
15 the order on the respondent and remains effective for 90 days.
16 If the Secretary begins nonemergency cease and desist
17 proceedings, the emergency cease and desist order remains
18 effective absent an order by a court of competent jurisdiction.

19 (e) In addition to the penalties and other enforcement
20 provisions of this Act, a person who violates this Act is
21 subject to civil penalties of up to \$10,000 for each violation.
22 Imposition of civil penalties is pursuant to an order of the
23 Secretary. The Secretary's order may require a person found to
24 be in violation of this Act to make restitution to a person
25 aggrieved by violations of this Act.

26 (f) A person who violates a provision of this Act, upon
27 conviction, must be ordered to pay restitution to a person
28 aggrieved by the violation of this Act. Restitution must be
29 ordered in addition to a fine or imprisonment and not instead
30 of a fine or imprisonment.

31 (g) A person who violates a provision of this Act, upon
32 conviction, must be sentenced based on the greater of the value
33 of property, services, or other benefits wrongfully obtained or
34 attempted to be obtained, or the aggregate economic loss

1 suffered by any person as a result of the violation. A person
2 convicted of theft of property through a viatical settlement
3 transaction in which the value of viatical settlement contract:

4 (1) exceeds \$500,000 is guilty of a Class 1
5 non-probationable felony;

6 (2) exceeds \$100,000 but does not exceed \$500,000 is
7 guilty of a Class 1 felony;

8 (3) exceeds \$10,000 but does not exceed \$100,000 is
9 guilty of a Class 2 felony; or

10 (4) exceeds \$300 but does not exceed \$10,000 is guilty
11 of a Class 3 felony.

12 (h) A person convicted of a fraudulent viatical settlement
13 act must be ordered to pay restitution to a person aggrieved by
14 the fraudulent viatical settlement act. Restitution must be
15 ordered in addition to a fine or imprisonment but not instead
16 of a fine or imprisonment.

17 (i) In a prosecution provided under subsection (h) of this
18 Section, the value of a viatical settlement contract within a
19 6-month period may be aggregated and the defendant charged
20 accordingly in applying the provisions of subsection (g) of
21 this Section. If 2 or more offenses are committed by the same
22 person in 2 or more counties, the accused may be prosecuted in
23 a county in which one of the offenses was committed for all of
24 the offenses aggregated as provided by this Section. The
25 statute of limitations does not begin to run until the
26 insurance company or law enforcement agency is aware of the
27 fraud, but the prosecution may not be commenced later than 7
28 years after the act has occurred.

29 Section 75. Illinois Securities Law of 1953. Nothing in
30 this Act preempts or otherwise limits the provisions of the
31 Illinois Securities Law of 1953, as amended, or any
32 regulations, orders, policy statements, notices, bulletins, or
33 other interpretations issued by or through the Secretary of

1 State or his or her designee acting pursuant to the Illinois
2 Securities Law of 1953, as amended. Compliance with the
3 provisions of this Act does not constitute compliance with any
4 applicable provision of the Illinois Securities Law of 1953, as
5 amended, and any amendments thereto or any regulations, orders,
6 policy statements, notices, bulletins, or other
7 interpretations issued by or through the Secretary of State or
8 his or her designee acting pursuant to the Illinois Securities
9 Law of 1953, as amended.

10 (215 ILCS 158/Act rep.)

11 Section 900. The Viatical Settlements Act is repealed.

12 Section 905. The Freedom of Information Act is amended by
13 changing Section 7 as follows:

14 (5 ILCS 140/7) (from Ch. 116, par. 207)

15 Sec. 7. Exemptions.

16 (1) The following shall be exempt from inspection and
17 copying:

18 (a) Information specifically prohibited from
19 disclosure by federal or State law or rules and regulations
20 adopted under federal or State law.

21 (b) Information that, if disclosed, would constitute a
22 clearly unwarranted invasion of personal privacy, unless
23 the disclosure is consented to in writing by the individual
24 subjects of the information. The disclosure of information
25 that bears on the public duties of public employees and
26 officials shall not be considered an invasion of personal
27 privacy. Information exempted under this subsection (b)
28 shall include but is not limited to:

29 (i) files and personal information maintained with
30 respect to clients, patients, residents, students or
31 other individuals receiving social, medical,

1 educational, vocational, financial, supervisory or
2 custodial care or services directly or indirectly from
3 federal agencies or public bodies;

4 (ii) personnel files and personal information
5 maintained with respect to employees, appointees or
6 elected officials of any public body or applicants for
7 those positions;

8 (iii) files and personal information maintained
9 with respect to any applicant, registrant or licensee
10 by any public body cooperating with or engaged in
11 professional or occupational registration, licensure
12 or discipline;

13 (iv) information required of any taxpayer in
14 connection with the assessment or collection of any tax
15 unless disclosure is otherwise required by State
16 statute;

17 (v) information revealing the identity of persons
18 who file complaints with or provide information to
19 administrative, investigative, law enforcement or
20 penal agencies; provided, however, that identification
21 of witnesses to traffic accidents, traffic accident
22 reports, and rescue reports may be provided by agencies
23 of local government, except in a case for which a
24 criminal investigation is ongoing, without
25 constituting a clearly unwarranted per se invasion of
26 personal privacy under this subsection; and

27 (vi) the names, addresses, or other personal
28 information of participants and registrants in park
29 district, forest preserve district, and conservation
30 district programs.

31 (c) Records compiled by any public body for
32 administrative enforcement proceedings and any law
33 enforcement or correctional agency for law enforcement
34 purposes or for internal matters of a public body, but only

1 to the extent that disclosure would:

2 (i) interfere with pending or actually and
3 reasonably contemplated law enforcement proceedings
4 conducted by any law enforcement or correctional
5 agency;

6 (ii) interfere with pending administrative
7 enforcement proceedings conducted by any public body;

8 (iii) deprive a person of a fair trial or an
9 impartial hearing;

10 (iv) unavoidably disclose the identity of a
11 confidential source or confidential information
12 furnished only by the confidential source;

13 (v) disclose unique or specialized investigative
14 techniques other than those generally used and known or
15 disclose internal documents of correctional agencies
16 related to detection, observation or investigation of
17 incidents of crime or misconduct;

18 (vi) constitute an invasion of personal privacy
19 under subsection (b) of this Section;

20 (vii) endanger the life or physical safety of law
21 enforcement personnel or any other person; or

22 (viii) obstruct an ongoing criminal investigation.

23 (d) Criminal history record information maintained by
24 State or local criminal justice agencies, except the
25 following which shall be open for public inspection and
26 copying:

27 (i) chronologically maintained arrest information,
28 such as traditional arrest logs or blotters;

29 (ii) the name of a person in the custody of a law
30 enforcement agency and the charges for which that
31 person is being held;

32 (iii) court records that are public;

33 (iv) records that are otherwise available under
34 State or local law; or

1 (v) records in which the requesting party is the
2 individual identified, except as provided under part
3 (vii) of paragraph (c) of subsection (1) of this
4 Section.

5 "Criminal history record information" means data
6 identifiable to an individual and consisting of
7 descriptions or notations of arrests, detentions,
8 indictments, informations, pre-trial proceedings, trials,
9 or other formal events in the criminal justice system or
10 descriptions or notations of criminal charges (including
11 criminal violations of local municipal ordinances) and the
12 nature of any disposition arising therefrom, including
13 sentencing, court or correctional supervision,
14 rehabilitation and release. The term does not apply to
15 statistical records and reports in which individuals are
16 not identified and from which their identities are not
17 ascertainable, or to information that is for criminal
18 investigative or intelligence purposes.

19 (e) Records that relate to or affect the security of
20 correctional institutions and detention facilities.

21 (f) Preliminary drafts, notes, recommendations,
22 memoranda and other records in which opinions are
23 expressed, or policies or actions are formulated, except
24 that a specific record or relevant portion of a record
25 shall not be exempt when the record is publicly cited and
26 identified by the head of the public body. The exemption
27 provided in this paragraph (f) extends to all those records
28 of officers and agencies of the General Assembly that
29 pertain to the preparation of legislative documents.

30 (g) Trade secrets and commercial or financial
31 information obtained from a person or business where the
32 trade secrets or information are proprietary, privileged
33 or confidential, or where disclosure of the trade secrets
34 or information may cause competitive harm, including all

1 information determined to be confidential under Section
2 4002 of the Technology Advancement and Development Act.
3 Nothing contained in this paragraph (g) shall be construed
4 to prevent a person or business from consenting to
5 disclosure.

6 (h) Proposals and bids for any contract, grant, or
7 agreement, including information which if it were
8 disclosed would frustrate procurement or give an advantage
9 to any person proposing to enter into a contractor
10 agreement with the body, until an award or final selection
11 is made. Information prepared by or for the body in
12 preparation of a bid solicitation shall be exempt until an
13 award or final selection is made.

14 (i) Valuable formulae, computer geographic systems,
15 designs, drawings and research data obtained or produced by
16 any public body when disclosure could reasonably be
17 expected to produce private gain or public loss. The
18 exemption for "computer geographic systems" provided in
19 this paragraph (i) does not extend to requests made by news
20 media as defined in Section 2 of this Act when the
21 requested information is not otherwise exempt and the only
22 purpose of the request is to access and disseminate
23 information regarding the health, safety, welfare, or
24 legal rights of the general public.

25 (j) Test questions, scoring keys and other examination
26 data used to administer an academic examination or
27 determined the qualifications of an applicant for a license
28 or employment.

29 (k) Architects' plans, engineers' technical
30 submissions, and other construction related technical
31 documents for projects not constructed or developed in
32 whole or in part with public funds and the same for
33 projects constructed or developed with public funds, but
34 only to the extent that disclosure would compromise

1 security, including but not limited to water treatment
2 facilities, airport facilities, sport stadiums, convention
3 centers, and all government owned, operated, or occupied
4 buildings.

5 (l) Library circulation and order records identifying
6 library users with specific materials.

7 (m) Minutes of meetings of public bodies closed to the
8 public as provided in the Open Meetings Act until the
9 public body makes the minutes available to the public under
10 Section 2.06 of the Open Meetings Act.

11 (n) Communications between a public body and an
12 attorney or auditor representing the public body that would
13 not be subject to discovery in litigation, and materials
14 prepared or compiled by or for a public body in
15 anticipation of a criminal, civil or administrative
16 proceeding upon the request of an attorney advising the
17 public body, and materials prepared or compiled with
18 respect to internal audits of public bodies.

19 (o) Information received by a primary or secondary
20 school, college or university under its procedures for the
21 evaluation of faculty members by their academic peers.

22 (p) Administrative or technical information associated
23 with automated data processing operations, including but
24 not limited to software, operating protocols, computer
25 program abstracts, file layouts, source listings, object
26 modules, load modules, user guides, documentation
27 pertaining to all logical and physical design of
28 computerized systems, employee manuals, and any other
29 information that, if disclosed, would jeopardize the
30 security of the system or its data or the security of
31 materials exempt under this Section.

32 (q) Documents or materials relating to collective
33 negotiating matters between public bodies and their
34 employees or representatives, except that any final

1 contract or agreement shall be subject to inspection and
2 copying.

3 (r) Drafts, notes, recommendations and memoranda
4 pertaining to the financing and marketing transactions of
5 the public body. The records of ownership, registration,
6 transfer, and exchange of municipal debt obligations, and
7 of persons to whom payment with respect to these
8 obligations is made.

9 (s) The records, documents and information relating to
10 real estate purchase negotiations until those negotiations
11 have been completed or otherwise terminated. With regard to
12 a parcel involved in a pending or actually and reasonably
13 contemplated eminent domain proceeding under Article VII
14 of the Code of Civil Procedure, records, documents and
15 information relating to that parcel shall be exempt except
16 as may be allowed under discovery rules adopted by the
17 Illinois Supreme Court. The records, documents and
18 information relating to a real estate sale shall be exempt
19 until a sale is consummated.

20 (t) Any and all proprietary information and records
21 related to the operation of an intergovernmental risk
22 management association or self-insurance pool or jointly
23 self-administered health and accident cooperative or pool.

24 (u) Information concerning a university's adjudication
25 of student or employee grievance or disciplinary cases, to
26 the extent that disclosure would reveal the identity of the
27 student or employee and information concerning any public
28 body's adjudication of student or employee grievances or
29 disciplinary cases, except for the final outcome of the
30 cases.

31 (v) Course materials or research materials used by
32 faculty members.

33 (w) Information related solely to the internal
34 personnel rules and practices of a public body.

1 (x) Information contained in or related to
2 examination, operating, or condition reports prepared by,
3 on behalf of, or for the use of a public body responsible
4 for the regulation or supervision of financial
5 institutions or insurance companies, unless disclosure is
6 otherwise required by State law.

7 (y) Information the disclosure of which is restricted
8 under Section 5-108 of the Public Utilities Act.

9 (z) Manuals or instruction to staff that relate to
10 establishment or collection of liability for any State tax
11 or that relate to investigations by a public body to
12 determine violation of any criminal law.

13 (aa) Applications, related documents, and medical
14 records received by the Experimental Organ Transplantation
15 Procedures Board and any and all documents or other records
16 prepared by the Experimental Organ Transplantation
17 Procedures Board or its staff relating to applications it
18 has received.

19 (bb) Insurance or self insurance (including any
20 intergovernmental risk management association or self
21 insurance pool) claims, loss or risk management
22 information, records, data, advice or communications.

23 (cc) Information and records held by the Department of
24 Public Health and its authorized representatives relating
25 to known or suspected cases of sexually transmissible
26 disease or any information the disclosure of which is
27 restricted under the Illinois Sexually Transmissible
28 Disease Control Act.

29 (dd) Information the disclosure of which is exempted
30 under Section 30 of the Radon Industry Licensing Act.

31 (ee) Firm performance evaluations under Section 55 of
32 the Architectural, Engineering, and Land Surveying
33 Qualifications Based Selection Act.

34 (ff) Security portions of system safety program plans,

1 investigation reports, surveys, schedules, lists, data, or
2 information compiled, collected, or prepared by or for the
3 Regional Transportation Authority under Section 2.11 of
4 the Regional Transportation Authority Act or the St. Clair
5 County Transit District under the Bi-State Transit Safety
6 Act.

7 (gg) Information the disclosure of which is restricted
8 and exempted under Section 50 of the Illinois Prepaid
9 Tuition Act.

10 (hh) Information the disclosure of which is exempted
11 under the State Officials and Employees Ethics Act.

12 (ii) Beginning July 1, 1999, information that would
13 disclose or might lead to the disclosure of secret or
14 confidential information, codes, algorithms, programs, or
15 private keys intended to be used to create electronic or
16 digital signatures under the Electronic Commerce Security
17 Act.

18 (jj) Information contained in a local emergency energy
19 plan submitted to a municipality in accordance with a local
20 emergency energy plan ordinance that is adopted under
21 Section 11-21.5-5 of the Illinois Municipal Code.

22 (kk) Information and data concerning the distribution
23 of surcharge moneys collected and remitted by wireless
24 carriers under the Wireless Emergency Telephone Safety
25 Act.

26 (ll) Vulnerability assessments, security measures, and
27 response policies or plans that are designed to identify,
28 prevent, or respond to potential attacks upon a community's
29 population or systems, facilities, or installations, the
30 destruction or contamination of which would constitute a
31 clear and present danger to the health or safety of the
32 community, but only to the extent that disclosure could
33 reasonably be expected to jeopardize the effectiveness of
34 the measures or the safety of the personnel who implement

1 them or the public. Information exempt under this item may
2 include such things as details pertaining to the
3 mobilization or deployment of personnel or equipment, to
4 the operation of communication systems or protocols, or to
5 tactical operations.

6 (mm) Maps and other records regarding the location or
7 security of a utility's generation, transmission,
8 distribution, storage, gathering, treatment, or switching
9 facilities.

10 (nn) Law enforcement officer identification
11 information or driver identification information compiled
12 by a law enforcement agency or the Department of
13 Transportation under Section 11-212 of the Illinois
14 Vehicle Code.

15 (oo) Records and information provided to a residential
16 health care facility resident sexual assault and death
17 review team or the Residential Health Care Facility
18 Resident Sexual Assault and Death Review Teams Executive
19 Council under the Residential Health Care Facility
20 Resident Sexual Assault and Death Review Team Act.

21 (pp) Information the disclosure of which is exempted
22 under the Viatical and Life Settlements Act of 2005.

23 (2) This Section does not authorize withholding of
24 information or limit the availability of records to the public,
25 except as stated in this Section or otherwise provided in this
26 Act.

27 (Source: P.A. 92-16, eff. 6-28-01; 92-241, eff. 8-3-01; 92-281,
28 eff. 8-7-01; 92-645, eff. 7-11-02; 92-651, eff. 7-11-02; 93-43,
29 eff. 7-1-03; 93-209, eff. 7-18-03; 93-237, eff. 7-22-03;
30 93-325, eff. 7-23-03, 93-422, eff. 8-5-03; 93-577, eff.
31 8-21-03; 93-617, eff. 12-9-03.)

32 Section 910. The Illinois Securities Law of 1953 is amended
33 by changing Section 2.1 and by adding Section 2.33 as follows:

1 (815 ILCS 5/2.1) (from Ch. 121 1/2, par. 137.2-1)

2 Sec. 2.1. Security. "Security" means any note, stock,
3 treasury stock, bond, debenture, evidence of indebtedness,
4 certificate of interest or participation in any profit-sharing
5 agreement, collateral-trust certificate, preorganization
6 certificate or subscription, transferable share, investment
7 contract, viatical investment, investment fund share,
8 face-amount certificate, voting-trust certificate, certificate
9 of deposit for a security, fractional undivided interest in
10 oil, gas or other mineral lease, right or royalty, any put,
11 call, straddle, option, or privilege on any security,
12 certificate of deposit, or group or index of securities
13 (including any interest therein or based on the value thereof),
14 or any put, call, straddle, option, or privilege entered into,
15 relating to foreign currency, or, in general, any interest or
16 instrument commonly known as a "security", or any certificate
17 of interest or participation in, temporary or interim
18 certificate for, receipt for, guarantee of, or warrant or right
19 to subscribe to or purchase, any of the foregoing. "Security"
20 does not mean a mineral investment contract or a mineral
21 deferred delivery contract; provided, however, the Department
22 shall have the authority to regulate these contracts as
23 hereinafter provided.

24 (Source: P.A. 92-308, eff. 1-1-02; 93-927, eff. 8-12-04.)

25 (815 ILCS 5/2.33 new)

26 Sec. 2.33. Viatical investment. "Viatical investment"
27 means the contractual right to receive any portion of the death
28 benefit or ownership of a life insurance policy or certificate
29 for consideration that is less than the expected death benefit
30 of the life insurance policy or certificate. "Viatical
31 investment" does not include:

32 (1) any transaction between a viator and a viatical

1 settlement provider as defined in the Viatical and Life
2 Settlements Act of 2005;

3 (2) any transfer of ownership or beneficial interest in
4 a life insurance policy from a viatical settlement provider
5 to another viatical settlement provider, as defined in the
6 Viatical and Life Settlements Act of 2005, or to any legal
7 entity formed solely for the purpose of holding ownership
8 or beneficial interest in a life insurance policy or
9 policies;

10 (3) the bona fide assignment of a life insurance policy
11 to a bank, savings bank, savings and loan association,
12 credit union, or other licensed lending institution as
13 collateral for a loan; or

14 (4) the exercise of accelerated benefits pursuant to
15 the terms of a life insurance policy issued in accordance
16 with the Illinois Insurance Code.

17 Section 997. Severability. The provisions of this Act are
18 severable under Section 1.31 of the Statute on Statutes.

19 Section 999. Effective date. This Act takes effect upon
20 becoming law."