



Executive Committee

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LRB096 11456 RPM 25149 a

1 AMENDMENT TO SENATE BILL 2091

2 AMENDMENT NO. _____. Amend Senate Bill 2091 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 Settlements Act of 2009.

6 Section 5. Definitions.

7 "Accredited investor" means an accredited investor as
8 defined in Rule 501(a) promulgated under the Securities Act of
9 1933 (15 U.S.C. 77 et seq.), as amended.

10 "Advertising" means any written, electronic, or printed
11 communication or any communication by means of recorded
12 telephone messages or transmitted on radio, television, the
13 Internet, or similar communications media, including film
14 strips, digital picture slides, motion pictures, and videos
15 published, disseminated, circulated, or placed before the
16 public in this State, for the purpose of creating an interest

1 in or inducing a person to sell, assign, devise, bequest, or
2 transfer the death benefit or ownership of a policy pursuant to
3 a viatical settlement contract.

4 "Alien licensee" means a licensee incorporated or
5 organized under the laws of any country other than the United
6 States.

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

14 "Chronically ill" means having been certified within the
15 preceding 12-month period by a licensed health professional as:

16 (1) being unable to perform, without substantial
17 assistance from another individual and for at least 90 days
18 due to a loss of functional capacity, at least 2 activities
19 of daily living, including, but not limited to, eating,
20 toileting, transferring, bathing, dressing, or continence;

21 (2) requiring substantial supervision to protect the
22 individual from threats to health and safety due to severe
23 cognitive impairment; or

24 (3) having a level of disability similar to that
25 described in paragraph (1) as determined by the Secretary
26 of Health and Human Services.

1 "Controlling person" means any person, firm, association,
2 or corporation that directly or indirectly has the power to
3 direct or cause to be directed the management, control, or
4 activities of the viatical settlement provider.

5 "Director" means the Director of the Division of Insurance
6 of the Department of Financial and Professional Regulation.

7 "Division" means the Division of Insurance of the
8 Department of Financial and Professional Regulation.

9 "Escrow agent" means an independent third-party person
10 who, pursuant to a written agreement signed by the viatical
11 settlement provider and viator, provides escrow services
12 related to the acquisition of a life insurance policy pursuant
13 to a viatical settlement contract. "Escrow agent" does not
14 include any person associated or affiliated with or under the
15 control of a licensee.

16 "Financial institution" means a financial institution as
17 defined by the Financial Institutions Insurance Sales Law in
18 Article XLIV of the Illinois Insurance Code.

19 "Financing entity" means an underwriter, placement agent,
20 lender, purchaser of securities, purchaser of a policy or
21 certificate from a viatical settlement provider, credit
22 enhancer, or an entity that has a direct ownership in a policy
23 that is the subject of a viatical settlement contract, and to
24 which both of the following apply:

- 25 (1) its principal activity related to the transaction
26 is providing funds to effect the viatical settlement or

1 purchase of one or more viaticated policies; and

2 (2) it has an agreement in writing with one or more
3 licensed viatical settlement providers to finance the
4 acquisition of viatical settlement contracts.

5 "Financing entity" does not include an investor that is not an
6 accredited investor.

7 "Financing transaction" means a transaction in which a
8 viatical settlement provider obtains financing from a
9 financing entity, including, without limitation, any secured
10 or unsecured financing, securitization transaction, or
11 securities offering that either is registered or exempt from
12 registration under federal and State securities law.

13 "Foreign licensee" means any viatical settlement provider
14 incorporated or organized under the laws of any state of the
15 United States other than this State.

16 "Insurance producer" means an insurance producer as
17 defined by Section 10 of Article XXXI of the Illinois Insurance
18 Code.

19 "Licensee" means a viatical settlement provider or
20 viatical settlement broker.

21 "Life expectancy provider" means a person who determines or
22 holds himself or herself out as determining life expectancies
23 or mortality ratings used to determine life expectancies on
24 behalf of or in connection with any of the following:

25 (1) A viatical settlement provider, viatical
26 settlement broker, or person engaged in the business of

1 viatical settlements.

2 (2) A viatical investment as defined by Section 2.33 of
3 the Illinois Securities Law of 1953 or a viatical
4 settlement contract.

5 "NAIC" means the National Association of Insurance
6 Commissioners.

7 "Person" means an individual or a legal entity, including,
8 without limitation, a partnership, limited liability company,
9 limited liability partnership, association, trust, business
10 trust, or corporation.

11 "Policy" means an individual or group policy, group
12 certificate, contract, or arrangement of insurance of the class
13 defined by subsection (a) of Section 4 of the Illinois
14 Insurance Code owned by or for the benefit of a resident of
15 this State, regardless of whether delivered or issued for
16 delivery in this State.

17 "Qualified institutional buyer" means a qualified
18 institutional buyer as defined in Rule 144 promulgated under
19 the Securities Act of 1933, as amended.

20 "Related provider trust" means a titling trust or other
21 trust established by a licensed viatical settlement provider or
22 a financing entity for the sole purpose of holding the
23 ownership or beneficial interest in purchased policies in
24 connection with a financing transaction. The trust shall have a
25 written agreement with the licensed viatical settlement
26 provider under which the licensed viatical settlement provider

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

7 "Special purpose entity" means a corporation, partnership,
8 trust, limited liability company, or other similar entity
9 formed only to provide, directly or indirectly, access to
10 institutional capital markets (i) for a financing entity or
11 licensed viatical settlement provider; or (ii) in connection
12 with a transaction in which the securities in the special
13 purposes entity are acquired by the viator or by qualified
14 institutional buyers or the securities pay a fixed rate of
15 return commensurate with established asset-backed
16 institutional capital markets.

17 "Stranger-originated life insurance" or "STOLI" means an
18 act, practice, or arrangement to initiate a life insurance
19 policy for the benefit of a third-party investor who, at the
20 time of policy origination, has no insurable interest in the
21 insured. STOLI practices include, but are not limited to, cases
22 in which life insurance is purchased with resources or
23 guarantees from or through a person or entity who, at the time
24 of policy inception, could not lawfully initiate the policy
25 himself or itself and where, at the time of policy inception,
26 there is an arrangement or agreement, whether verbal or

1 written, to directly or indirectly transfer the ownership of
2 the policy of policy benefits to a third party. Trusts created
3 to give the appearance of an insurable interest and used to
4 initiate policies for investors violate insurance interest
5 laws and the prohibition against wagering on life. STOLI
6 arrangements do not include lawful viatical settlement
7 contracts as permitted by this Act.

8 "Terminally ill" means certified by a physician as having
9 an illness or physical condition that reasonably is expected to
10 result in death in 24 months or less.

11 "Viatical settlement broker" means a licensed insurance
12 producer who has been issued a license pursuant to Section
13 500-35(a) (1) or 500-35(a) (2) of the Insurance Code who, working
14 exclusively on behalf of a viator and for a fee, commission, or
15 other valuable consideration, offers, solicits, promotes, or
16 attempts to negotiate viatical settlement contracts between a
17 viator and one or more viatical settlement providers or one or
18 more viatical settlement brokers. "Viatical settlement broker"
19 does not include an attorney, certified public accountant, or a
20 financial planner accredited by a nationally recognized
21 accreditation agency, who is retained to represent the viator
22 and whose compensation is not paid directly or indirectly by
23 the viatical settlement provider or purchaser.

24 "Viatical settlement contract" means any of the following:

25 (1) A written agreement between a viator and a viatical
26 settlement provider establishing the terms under which

1 compensation or anything of value is or will be paid, which
2 compensation or value is less than the expected death
3 benefits of the policy, in return for the viator's present
4 or future assignment, transfer, sale, devise, or bequest of
5 the death benefit or ownership of any portion of the
6 insurance policy.

7 (2) A written agreement for a loan or other lending
8 transaction, secured primarily by an individual life
9 insurance policy or an individual certificate of a group
10 life insurance policy.

11 (3) The transfer for compensation or value of ownership
12 of a beneficial interest in a trust or other entity that
13 owns such policy, if the trust or other entity was formed
14 or availed of for the principal purpose of acquiring one or
15 more life insurance contracts and the life insurance
16 contract insures the life of a person residing in this
17 State.

18 (4) A premium finance loan made for a life insurance
19 policy by a lender to a viator on, before, or after the
20 date of issuance of the policy in either of the following
21 situations:

22 (A) The viator or the insured receives a guarantee
23 of the viatical settlement value of the policy.

24 (B) The viator or the insured agrees to sell the
25 policy or any portion of the policy's death benefit on
26 any date before or after issuance of the policy.

1 "Viatical settlement contract" does not include any of the
2 following unless part of a plan, scheme, device, or artifice to
3 avoid application of this Act:

4 (a) A policy loan or accelerated death benefit made by
5 the insurer pursuant to the policy's terms;

6 (b) Loan proceeds that are used solely to pay: (i)
7 premiums for the policy and (ii) the costs of the loan,
8 including, without limitation interest, arrangement fees,
9 utilization fees and similar fees, closing costs, legal
10 fees and expenses, trustee fees and expenses, and third
11 party collateral provider fees and expenses, including
12 fees payable to letter of credit issuers;

13 (c) A loan made by a bank or other financial
14 institution in which the lender takes an interest in a life
15 insurance policy solely to secure repayment of a loan or,
16 if there is a default on the loan and the policy is
17 transferred, the transfer of such a policy by the lender,
18 provided that neither the default itself nor the transfer
19 of the policy in connection with the default is pursuant to
20 an agreement or understanding with any other person for the
21 purpose of evading regulation under this Act;

22 (d) A loan made by a lender that does not violate
23 Article XXXIIa of the Illinois Insurance Code, provided
24 that the premium finance loan is not described in this Act;

25 (e) An agreement in which all the parties (i) are
26 closely related to the insured by blood or law or (ii) have

1 a lawful substantial economic interest in the continued
2 life, health, and bodily safety of the person insured, or
3 trusts established primarily for the benefit of such
4 parties;

5 (f) Any designation, consent, or agreement by an
6 insured who is an employee of an employer in connection
7 with the purchase by the employer, or trust established by
8 the employer, of life insurance on the life of the
9 employee;

10 (g) A bona fide business succession planning
11 arrangement: (i) between one or more shareholders in a
12 corporation or between a corporation and one or more of its
13 shareholders or one or more trust established by its
14 shareholders; (ii) between one or more partners in a
15 partnership or between a partnership and one or more of its
16 partners or one or more trust established by its partners;
17 or (iii) between one or more members in a limited liability
18 company or between a limited liability company and one or
19 more of its members or one or more trust established by its
20 members;

21 (h) An agreement entered into by a service recipient,
22 or a trust established by the service recipient, and a
23 service provider, or a trust established by the service
24 provider, who performs significant services for the
25 service recipient's trade or business; or

26 (i) Any other contract, transaction, or arrangement

1 exempted from the definition of viatical settlement
2 contract by the Director based on the Director's
3 determination that the contract, transaction, or
4 arrangement is not of the type intended to be regulated by
5 this Act.

6 "Viatical settlement investment agent" means a person who
7 is an appointed or contracted agent of a licensed viatical
8 settlement provider who solicits or arranges the funding for
9 the purchase of a viatical settlement by a viatical settlement
10 purchaser and who is acting on behalf of a viatical settlement
11 provider. A viatical settlement investment agent is deemed to
12 represent the viatical settlement provider of whom the viatical
13 settlement investment agent is an appointed or contracted
14 agent.

15 "Viatical settlement provider" means a person, other than a
16 viator, who enters into or effectuates a viatical settlement
17 contract with a viator. "Viatical settlement provider" does not
18 include:

19 (1) a bank, savings bank, savings and loan association,
20 credit union, or other financial institution that takes an
21 assignment of a policy as collateral for a loan;

22 (2) a financial institution or premium finance company
23 making premium finance loans and exempted by the Director
24 from the licensing requirement under the premium finance
25 laws where the institution or company takes an assignment
26 of a life insurance policy solely as collateral for a

1 premium finance loan;

2 (3) the issuer of the life insurance policy;

3 (4) an authorized or eligible insurer that provides
4 stop loss coverage or financial guaranty insurance to a
5 viatical settlement provider, purchaser, financing entity,
6 special purpose entity, or related provider trust;

7 (5) An individual person who enters into or effectuates
8 no more than one viatical settlement contract in a calendar
9 year for the transfer of policies for any value less than
10 the expected death benefit;

11 (6) a financing entity;

12 (7) a special purpose entity;

13 (8) a related provider trust;

14 (9) a viatical settlement purchaser; or

15 (10) any other person that the Director determines is
16 consistent with the definition of viatical settlement
17 provider.

18 "Viatical settlement purchaser" means a person who
19 provides a sum of money as consideration for a life insurance
20 policy or an interest in the death benefits of a life insurance
21 policy, or a person who owns or acquires or is entitled to a
22 beneficial interest in a trust that owns a viatical settlement
23 contract or is the beneficiary of a life insurance policy, in
24 each case where such policy has been or will be the subject of
25 a viatical settlement contract, for the purpose of deriving an
26 economic benefit. "Viatical settlement purchaser" does not

1 include: (i) a licensee under this Act; (ii) an accredited
2 investor or qualified institutional buyer; (iii) a financing
3 entity; (iv) a special purpose entity; or (v) a related
4 provider trust.

5 "Viaticated policy" means a life insurance policy that has
6 been acquired by a viatical settlement provider pursuant to a
7 viatical settlement contract.

8 "Viator" means the owner of a life insurance policy or a
9 certificate holder under a group policy who enters or seeks to
10 enter into a viatical settlement contract. For the purposes of
11 this Act, a viator is not limited to an owner of a life
12 insurance policy or a certificate holder under a group policy
13 insuring the life of an individual with a terminal or chronic
14 illness or condition, except where specifically addressed.

15 "Viator" does not include:

- 16 (1) a licensee;
- 17 (2) a qualified institutional buyer;
- 18 (3) a financing entity;
- 19 (4) a special purpose entity; or
- 20 (5) a related provider trust.

21 Section 10. License and bond requirements.

22 (a) A person shall not operate as a viatical settlement
23 provider or viatical settlement broker without first obtaining
24 a license from the chief insurance regulatory official of the
25 state of residence of the viator. A viatical settlement

1 provider transacting business in this State shall provide
2 written notice to the Director that it is engaged in such
3 business not less than 30 days prior to the effective date of
4 this Act. Viatical settlement providers shall apply for
5 licensing annually thereafter in a form and manner as
6 prescribed by this Act.

7 (b) A person shall not operate as a viatical settlement
8 broker without first obtaining an insurance producer license
9 from the Director and completing the viatical settlement broker
10 training requirements as provided by Section 11 of this Act.

11 (c) An insurance producer shall not operate as a viatical
12 settlement broker unless the producer has been duly licensed as
13 a resident insurance producer with a life line of authority in
14 this state or the insurance producer's home state for at least
15 one year.

16 (d) Before operating as a viatical settlement broker, the
17 insurance producer, including a business entity licensed in
18 this State as an insurance producer, shall notify the Director
19 that the insurance producer is acting as a viatical settlement
20 broker on a form prescribed by the Director, and shall pay a
21 \$500 registration fee which shall be deposited into the
22 Insurance Producer Administration Fund. Notification shall
23 include an acknowledgement by the insurance producer that he or
24 she will operate as a viatical settlement broker in accordance
25 with this Act.

26 If a business entity with an insurance producer license

1 registers as a viatical settlement broker, then that
2 registration authorizes all partners, officers, members, and
3 designated employees to act as viatical settlement brokers. All
4 persons acting as viatical settlement brokers pursuant to such
5 a registration shall be named in the application and any
6 supplements to the application.

7 (e) A duly licensed resident insurance producer with a life
8 product line or authority in this State or the insurance
9 producer's home state for at least one year, lawfully
10 transacting business as a viatical settlement broker prior to
11 the effective date of this Act may continue to do so, pending
12 receipt by the Director of the notice required by subsection
13 (d) of this Section, provided that the notice is received by
14 the Director no later than 30 days after the effective date of
15 this Act.

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

23 (g) A person shall not operate as a viatical settlement
24 provider without first obtaining a license from the Director.

25 (h) Application for a viatical settlement provider license
26 shall be made to the Director by the applicant on a form

1 prescribed by the Director. The applications shall be
2 accompanied by a \$3,000 fee, which shall be deposited into the
3 Insurance Producer Administration Fund.

4 (i) Viatical settlement provider licenses may be renewed
5 from year to year on the anniversary date upon payment of the
6 annual renewal fee of \$1,500. Failure to pay the fees by the
7 renewal date results in expiration of the license.

8 (j) The applicant for a viatical settlement provider
9 license shall provide information on forms required by the
10 Director. The Director shall have authority, at any time, to
11 require the applicant to fully disclose the identity of all
12 stockholders, partners, officers, members, and employees, and
13 the Director may, in the exercise of the Director's discretion,
14 refuse to issue a license in the name of a legal entity if not
15 satisfied that any officer, employee, stockholder, partner, or
16 member thereof who may materially influence the applicant's
17 conduct meets the standards of this Act.

18 A viatical settlement provider license issued to a legal
19 entity authorizes all partners, officers, members, and
20 designated employees to act as viatical settlement providers,
21 as applicable, under the license, and all those persons shall
22 be named in the application and any supplements to the
23 application.

24 (k) Upon the filing of a viatical settlement provider
25 license application and the payment of the license fee, the
26 Director shall make an investigation of each applicant and

1 issue a license if the Director finds that the applicant:

2 (1) has provided a detailed plan of operation;

3 (2) is competent and trustworthy and intends to act in
4 good faith in the capacity involved by the license applied
5 for;

6 (3) has a good business reputation and has had
7 experience, training, or education so as to be qualified in
8 the business for which the license is applied for;

9 (4) (A) has demonstrated evidence of financial
10 responsibility in a format prescribed by the Director
11 through either a surety bond executed and issued by an
12 insurer authorized to issue surety bonds in this State or a
13 deposit of cash, certificates of deposit or securities or
14 any combination thereof, or irrevocable letter of credit in
15 the amount of \$125,000;

16 (B) the Director may ask for evidence of financial
17 responsibility at any time the Director deems
18 necessary;

19 (C) any surety bond issued pursuant to this
20 subsection (k) shall be in the favor of this State and
21 shall specifically authorize recovery by the Director
22 on behalf of any person in this State who sustained
23 damages as the result of erroneous acts, failure to
24 act, conviction of fraud or conviction of unfair
25 practices by the viatical settlement provider;

26 (D) notwithstanding any other provision of this

1 Section to the contrary, the Director shall accept, as
2 evidence of financial responsibility, proof that
3 financial instruments in accordance with the
4 requirements in this subsection (k) have been filed
5 with one or more states where the applicant is licensed
6 as a viatical settlement provider;

7 (5) if a legal entity, provides a certificate of good
8 standing from the state of its domicile; and

9 (6) has provided an anti-fraud plan that meets the
10 requirements of Section 65 of this Act.

11 (1) The Director shall not issue a viatical settlement
12 provider license to a nonresident applicant unless a written
13 designation of an agent for service of process is filed and
14 maintained with the Director or the applicant has filed with
15 the Director the applicant's written irrevocable consent that
16 any action against the applicant may be commenced against the
17 applicant by service of process on the Director.

18 (m) An applicant for a viatical settlement provider license
19 shall provide all information requested by the Director. The
20 Director may, at any time, require the applicant to fully
21 disclose the identity of all stockholders, partners, officers,
22 members, and employees of the viatical settlement provider, and
23 the Director may refuse to issue a license to an applicant that
24 is not an individual if the Director is not satisfied that each
25 stockholder, partner, officer, member, and employee who may
26 materially influence the applicant's conduct meets the

1 standards set forth in this Act. The Director may also require
2 the applicant to disclose the method the applicant will use to
3 determine and receive life expectancies, the applicant's
4 intended use of life expectancies, and a written plan
5 containing policies and procedures to use when determining life
6 expectancies.

7 (n) A viatical settlement provider shall provide to the
8 Director new or revised information about officers, 10% or more
9 stockholders, partners, directors, members, or designated
10 employees within 30 days after the change.

11 (o) Viatical settlement providers licensed under the
12 Viatical Settlements Act shall be subject to the license
13 requirements of this Act. Not later than 30 days after the
14 effective date of this Act, such licensee shall submit the
15 additional materials or information required for licensure
16 under this Act but not previously required under the Viatical
17 Settlements Act. To the extent that this Act requires materials
18 or information for licensure previously submitted by the
19 licensee pursuant to the Viatical Settlements Act, those
20 materials need not be resubmitted with the initial application
21 for licensure pursuant to this Act.

22 Section 11. Viatical settlement broker training
23 requirements.

24 (a) Viatical settlement broker training shall be required
25 as follows:

1 (1) An individual may not sell, solicit, or negotiate
2 viatical settlement contracts unless the individual is
3 licensed as a life insurance producer or viatical
4 settlement broker and has completed a one-time training
5 course. The training shall meet the requirements set forth
6 in subsection (b) of this Section.

7 (2) An individual already licensed and selling,
8 soliciting, or negotiating viatical settlement contracts
9 on the effective date of this Act may not continue to sell,
10 solicit, or negotiate viatical settlement contracts unless
11 the individual has completed a one-time training course, as
12 set forth in subsection (b) of this Section, within 6
13 months after the effective date of this Act or within 6
14 months after availability of the training course,
15 whichever is later.

16 (3) In addition to the one-time training course
17 required under items (1) and (2) of this subsection (a), an
18 individual who sells, solicits, or negotiates viatical
19 settlement contracts shall complete ongoing training as
20 set forth in subsection (b) of this Section.

21 (4) The training requirements of subsection (b) of this
22 Section may be approved as continuing education courses
23 under Section 500-35(b)(1) of the Illinois Insurance Code.

24 (b) Minimum education and training shall be required as
25 follows:

26 (1) The one-time training required by this Section

1 shall be no less than 4 hours and the ongoing training
2 required by this Section shall be no less than 4 hours over
3 a 24-month period.

4 (2) The training required under item (1) of this
5 subsection (b) shall consist of topics related to viatical
6 settlement contracts, including, but not limited to:

7 (A) State and federal laws and regulations
8 regarding viatical settlement transactions;

9 (B) potential tax implications for participants in
10 viatical settlement contracts;

11 (C) potential impact on public benefits payments
12 to viatical settlement participants;

13 (D) alternatives to viatical settlement contracts;

14 and

15 (E) consumer suitability standards and guidelines.

16 (3) The training required by this Section shall not
17 include training that is specific to or that includes any
18 sales or marketing information, materials, or training of
19 any company, other than those required by State or federal
20 law.

21 (c) Viatical settlement providers shall provide
22 verification of training as follows:

23 (1) Viatical settlement providers subject to this Act
24 shall obtain verification that a producer receives
25 training required by subsection (a) of this Section before
26 a producer is permitted to sell, solicit, or negotiate

1 viatical settlement contracts. Viatical settlement
2 providers shall maintain records for verification subject
3 to the State's record retention requirements and make the
4 verification available to the Director upon request.

5 (2) Viatical settlement providers subject to this Act
6 shall maintain records with respect to the training of
7 viatical settlement brokers with whom the provider
8 contracts or otherwise engages in viatical settlement
9 transactions. These records shall be maintained in
10 accordance with the State's record retention requirements
11 and shall be made available to the Director upon request.

12 (d) The satisfaction of these training requirements in any
13 state shall be deemed to satisfy the training requirements in
14 this State.

15 Section 15. License revocation for viatical settlement
16 providers.

17 (a) The Director may refuse to issue or renew or may
18 suspend or revoke the license of any viatical settlement
19 provider if the Director finds any of the following:

20 (1) there was any material misrepresentation in the
21 application for the license;

22 (2) the viatical settlement provider or any officer,
23 partner, member, or controlling person uses fraudulent or
24 dishonest practices or is otherwise shown to be
25 untrustworthy, incompetent, or financially irresponsible

1 in this State or elsewhere;

2 (3) the viatical settlement provider demonstrates a
3 pattern of unreasonable payments to viators;

4 (4) the viatical settlement provider or any officer,
5 partner, member, or controlling person has violated any
6 insurance laws or any rule, subpoena, or order of the
7 Director or of another state's chief insurance regulatory
8 official or is subject to a final administrative action
9 brought by the Director or by the Illinois Secretary of
10 State or by another state's chief insurance regulatory
11 official or chief securities regulatory official;

12 (5) the viatical settlement provider has used a
13 viatical settlement contract that has not been approved
14 pursuant to this Act;

15 (6) the viatical settlement provider has failed to
16 honor contractual obligations set out in a viatical
17 settlement contract;

18 (7) the viatical settlement provider no longer meets
19 the requirements for initial licensure;

20 (8) the viatical settlement provider has assigned,
21 transferred, or pledged a purchased policy to a person
22 other than a viatical settlement provider licensed in this
23 State, a viatical settlement purchaser, a financing
24 entity, a special purpose entity, or a related provider
25 trust; or

26 (9) the viatical settlement provider or any officer,

1 partner, member, or controlling person of the viatical
2 settlement provider has violated any of the provisions of
3 this Act.

4 (b) If the Director denies a viatical settlement provider
5 license application or suspends, revokes, or refuses to renew
6 the license of a viatical settlement provider, the Director
7 shall notify the applicant or viatical settlement provider and
8 advise, in writing, the applicant or viatical settlement
9 provider of the reason for the suspension, revocation, denial,
10 or nonrenewal of the applicant's or licensee's license. The
11 applicant or viatical settlement provider may make a written
12 demand upon the Director within 30 days after the date of
13 mailing for a hearing before the Director to determine the
14 reasonableness of the Director's action. The hearing must be
15 held within not fewer than 20 days nor more than 30 days after
16 the mailing of the notice of hearing and shall be held in
17 accordance with the Illinois Administrative Procedure Act and
18 Section 2402 of Chapter 50 of the Illinois Administrative Code.

19 Section 17. License revocation and denial for viatical
20 settlement brokers. Insurance producers operating as viatical
21 settlement brokers shall be subject to the license denial,
22 nonrenewal, and revocation provisions established by Section
23 500-70 of the Illinois Insurance Code, in addition to any
24 monetary or criminal penalties as may be appropriate.

1 Section 20. Approval of viatical settlement contracts and
2 disclosure statements. A person shall not use a viatical
3 settlement contract form or provide to a viator a disclosure
4 statement form in this State unless first filed with and
5 approved by the Director. The Director shall disapprove a
6 viatical settlement contract form or disclosure statement form
7 if, in the Director's opinion, the contract or provisions
8 contained therein fail to meet the requirements of this Act or
9 are unreasonable, contrary to the interests of the public, or
10 otherwise misleading or unfair to the viator. At the Director's
11 discretion, the Director may require the submission of
12 advertising material. If the Director disapproves a viatical
13 settlement contract form or disclosure statement form, then the
14 Director shall notify the viatical settlement provider and
15 advise the viatical settlement provider, in writing, of the
16 reason for the disapproval. The viatical settlement provider
17 may make written demand upon the Director within 30 days after
18 the date of mailing for a hearing before the Director to
19 determine the reasonableness of the Director's action. The
20 hearing must be held within not fewer than 20 days nor more
21 than 30 days after the mailing of the notice of hearing and
22 shall be held in accordance with the Illinois Administrative
23 Procedure Act and 50 Ill. Admin. Code 2402.

24 Section 25. Reporting requirements and privacy.

25 (a) Each viatical settlement provider shall file with the

1 Director on or before March 1 of each year a copy of its
2 audited annual statement for the immediately preceding year
3 ending December 31. The Director may require newly licensed
4 entities to file annual statements for additional years. The
5 annual statement must be verified by 2 officers of the licensed
6 entity on forms prescribed by the Director. The forms
7 prescribed by the Director shall contain all information
8 required by this Act and shall conform substantially to the
9 Viatical Settlement Provider Reports adopted by the NAIC
10 Viatical Settlements Model Regulation, as amended. The
11 approved annual statement for a viatical settlement provider
12 shall include all of the following information:

13 (1) A list of each life insurance policy, including
14 policy number, date of issue, unique internal identifier
15 maintained by the viatical settlement provider and
16 available upon examination, insurance company issuing the
17 policy, date the viatical settlement contract is signed by
18 viator, viatical settlement broker receiving compensation,
19 and any premium finance companies, if known.

20 (2) Addresses and contact information for those
21 persons listed in item (1) of this subsection (a).

22 (3) A list of all life expectancy providers who have
23 directly or indirectly provided life expectancies to the
24 viatical settlement provider for use in connection with a
25 viatical settlement contract.

26 (4) Any other information required by the Director.

1 (b) The audited annual financial statement required by
2 subsection (a) of this Section shall be completed by an
3 independent certified public accountant along with a letter
4 stating whether any significant deficiencies or material
5 weaknesses were detected during the audit pursuant to the
6 Auditing Standard Board's Statement on Auditing Standards
7 Number 112, as amended or superseded.

8 (c) A viatical settlement provider that willfully fails to
9 file the annual statements required by this Section, or
10 willfully fails to reply within 30 calendar days to a written
11 inquiry from the Director or Director's designee, shall, in
12 addition to other penalties provided by this Act, be subject to
13 a penalty of up to \$250 per day, not to exceed \$25,000 in the
14 aggregate for each such failure.

15 (d) The Director shall keep confidential and not a matter
16 of public record all individual transaction data regarding the
17 business of viatical settlements and data that could compromise
18 the privacy of personal, financial, and health information of
19 the viator or the insured. All proprietary information received
20 by the Director from a viatical settlement provider pursuant to
21 this Section must be given confidential treatment, is not
22 subject to subpoena, and may not be made public by the Director
23 or any other persons.

24 (e) Except as otherwise allowed or required by law, a
25 viatical settlement provider, viatical settlement broker,
26 insurance company, insurance producer, information bureau,

1 rating agency or company, or any other person with actual
2 knowledge of the identity of an insured under a viatical
3 settlement contract shall not disclose the identity of the
4 insured or the insured's financial or medical information to
5 any other person unless the disclosure 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 have provided prior written consent
9 to the disclosure;

10 (2) provided in response to an investigation or
11 examination by the Director or another governmental
12 officer or agency or pursuant to the requirements of
13 Section 65 of this Act;

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

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

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

26 (6) required to purchase stop loss coverage or

1 financial guaranty insurance.

2 (f) A viatical settlement investment agent shall not have
3 any contact directly or indirectly with the viator or the
4 insured or have knowledge of the identity of the viator or the
5 insured.

6 Section 30. Examination or investigation.

7 (a) The Director may when and as often as the Director
8 deems it reasonably necessary to protect the interests of the
9 public, examine the business affairs of any licensee.

10 In scheduling and determining the nature, scope, and
11 frequency of the examinations, the Director shall consider such
12 matters as consumer complaints, results of financial statement
13 analyses and ratios, changes in management or ownership,
14 actuarial opinions, report of independent certified public
15 accountants, and other relevant criteria as determined by the
16 Director.

17 (b) For purposes of completing an examination of a licensee
18 under this Act, the Director may examine or investigate any
19 person, or the business of any person, in so far as the
20 examination or investigation is, in the sole discretion of the
21 Director, necessary or material to the examination.

22 (c) In lieu of an examination under this Act of any foreign
23 licensee or alien licensee licensed in this State, the Director
24 may, at the Director's discretion, accept an examination report
25 on the licensee as prepared by the chief insurance regulatory

1 official for the licensee's state of domicile or port-of-entry
2 state.

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

7 (e) Licensees shall for 5 years retain copies of:

8 (1) all proposed, offered, or executed contracts,
9 purchase agreements, underwriting documents, policy forms,
10 and applications from the date of the proposal, offer, or
11 execution of the contract or purchase agreement, whichever
12 is later;

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

16 (3) all other records and documents in any format
17 related to the requirements of this Act, including a record
18 of complaints received against the licensee and agents
19 representing the licensee and a list of all life expectancy
20 providers that have provider services to the licensee.

21 This subsection (e) does not relieve a person of the
22 obligation to produce records required by this subsection to
23 the Director after the retention period has expired if the
24 person has retained the documents.

25 Records required to be retained by this subsection (e) must
26 be legible and complete and may be retained in paper,

1 photograph, microprocessor, magnetic, mechanical, or
2 electronic media, or by any process that accurately reproduces
3 or forms a durable medium for the reproduction of a record.

4 (f) Upon determining that an examination should be
5 conducted, the Director shall appoint one or more examiners to
6 perform the examination and instruct them as to the scope of
7 the examination. The Director may employ any guidelines or
8 procedures for purposes of this subsection (f) that the
9 Director deems appropriate.

10 Every licensee or person, including all officers,
11 partners, members, directors, employees, controlling persons,
12 and agents of any licensee or person, from whom information is
13 sought shall provide to the examiners timely, convenient, and
14 free access at all reasonable hours at the licensee's or
15 person's offices to all books, records, accounts, papers,
16 documents, assets, and computer or other recordings relating to
17 the property, assets, business, and affairs of the licensee
18 being examined. The officers, directors, employees, and agents
19 of the licensee or person shall facilitate the examination and
20 aid in the examination so far as it is in their power to do so.
21 The refusal of a licensee by its officers, directors,
22 employees, or agents to submit to examination or to comply with
23 any reasonable written request of the Director shall be grounds
24 for revocation, denial of issuance, or non-renewal of any
25 license or authority held by the licensee to engage in the
26 viatical settlement business or other business subject to the

1 Director's jurisdiction.

2 The Director shall have the power to issue subpoenas, to
3 administer oaths, and to examine under oath any person as to
4 any matter pertinent to the examination. Upon the failure or
5 refusal of a person to obey a subpoena, the Director may
6 petition a court of competent jurisdiction, and upon proper
7 showing, the court may enter an order compelling the witness to
8 appear and testify or produce documentary evidence. Failure to
9 obey the court order shall be punishable as contempt of court.
10 Subpoenas may be enforced pursuant to Section 403 of the
11 Illinois Insurance Code.

12 When making an examination under this Act, the Director may
13 retain attorneys, appraisers, independent actuaries,
14 independent certified public accountants, or other
15 professionals and specialists as examiners, the reasonable
16 cost of which shall be borne by the licensee that is the
17 subject of the examination.

18 (g) Nothing contained in this Act limits the Director's
19 authority to terminate or suspend an examination in order to
20 pursue other legal or regulatory action pursuant to the
21 insurance laws of this State. Findings of fact and conclusions
22 made pursuant to any examination shall be prima facie evidence
23 in any legal or regulatory action.

24 (h) Nothing contained in this Act shall be construed to
25 limit the Director's authority to use and, if appropriate, to
26 make public any final or preliminary examination report, any

1 examiner or licensee workpapers or other documents, or any
2 other information discovered or developed during the course of
3 any examination in the furtherance of any legal or regulatory
4 action that the Director may, in the Director's discretion,
5 deem appropriate.

6 (i) No later than 60 days following completion of the
7 examination, the examiner in charge shall file with the
8 Director a verified written report of examination under oath.
9 Upon receipt of the verified report, the Director shall
10 transmit the report to the licensee examined.

11 (j) 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 (k) The licensee may request a hearing within 10 days after
19 receipt of the examination report by giving the Director
20 written notice of that request, together with a statement of
21 its objections. The Director then must conduct a hearing in
22 conjunction with Sections 402 and 403 of the Illinois Insurance
23 Code. The Director must issue a written order based upon the
24 examination report and upon the hearing within 90 days after
25 the report is filed or within 90 days after the hearing. After
26 the hearing, the Director may make such order or orders as may

1 be reasonably necessary to correct, eliminate, or remedy
2 unlawful conduct.

3 (l) If the Director determines that regulatory action is
4 appropriate as a result of an examination, the Director may
5 initiate any proceedings or actions provided by law.

6 (m) Names and individual identification data for all
7 viators in the possession and control of the Director shall be
8 considered private and confidential and shall not be disclosed
9 by the Director unless required by law.

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

22 The Director is authorized to use the documents, materials,
23 or other information in the furtherance of any regulatory or
24 legal action brought as part of the Director's official duties.

25 Documents, materials, or other information, including, but
26 not limited to, all working papers and copies thereof, in the

1 possession or control of the NAIC and its affiliates and
2 subsidiaries are:

3 (1) confidential by law and privileged;

4 (2) not subject to subpoena; and

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

7 (A) created, produced or obtained by, or disclosed
8 to the NAIC and its affiliates and subsidiaries in the
9 course of assisting an examination made under this Act
10 or assisting the Director or the chief insurance
11 regulatory official in another state in the analysis or
12 investigation of the financial condition or market
13 conduct of a licensee; or

14 (B) disclosed under this subsection (m) by the
15 Director or disclosed under a comparable provision in
16 law of another state by that state's chief insurance
17 regulatory official to the NAIC and its affiliates and
18 subsidiaries.

19 Neither the Director nor any person that received the
20 documents, material, or other information while acting under
21 the authority of the Director, including the NAIC and its
22 affiliates and subsidiaries, shall be permitted to testify in
23 any private civil action concerning any confidential
24 documents, materials, or information subject to this
25 subsection (m).

26 (n) In order to assist in the performance of the Director's

1 duties, the Director may:

2 (1) share documents, materials, or other information,
3 including the confidential and privileged documents,
4 materials, or information subject to subsection (m) of this
5 Section, with other state, federal, and international
6 regulatory agencies, with the NAIC and its affiliates and
7 subsidiaries, and with state, federal, and international
8 law enforcement authorities, provided that the recipient
9 agrees to maintain the confidentiality and privileged
10 status of the document, material, communication, or other
11 information;

12 (2) receive documents, materials, communications, or
13 information, including otherwise confidential and
14 privileged documents, materials, or information, from the
15 NAIC and its affiliates and subsidiaries and from
16 regulatory and law enforcement officials of other foreign
17 or domestic jurisdictions, and shall maintain as
18 confidential or privileged any document, material, or
19 information received with notice or the understanding that
20 it is confidential or privileged under the laws of the
21 jurisdiction that is the source of the document, material,
22 or information; and

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

25 (o) No waiver of any applicable privilege or claim of
26 confidentiality in the documents, materials, or information

1 shall occur as a result of disclosure to the Director under
2 this Section or as a result of sharing as authorized in
3 subsection (n) of this Section.

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

8 (q) Nothing contained in this Act prevents or prohibits the
9 Director from disclosing the content of an examination report,
10 preliminary examination report or results, or any matter
11 relating to those reports or results, to the chief insurance
12 regulatory official of any other state or country, or to law
13 enforcement officials of this or any other state or agency of
14 the federal government at any time or to the NAIC, if the
15 agency or office receiving the report or matters relating to it
16 agrees in writing to hold it confidential and in a manner
17 consistent with this Act.

18 (r) The expenses incurred in conducting an examination
19 shall be paid by the licensee.

20 (s) No cause of action shall arise nor shall any liability
21 be imposed against the Director, the Director's authorized
22 representatives, or any examiner appointed by the Director for
23 any statements made or conduct performed in good faith while
24 carrying out the provisions of this Act.

25 No cause of action shall arise, nor shall any liability be
26 imposed against any person for the act of communicating or

1 delivering information or data to the Director or the
2 Director's authorized representative or examiner pursuant to
3 an examination made under this Section, if the act of
4 communication or delivery was performed in good faith and
5 without fraudulent intent or the intent to deceive. This
6 subsection (s) does not abrogate or modify in any way any
7 common law or statutory privilege or immunity heretofore
8 enjoyed by any person identified in this subsection (s).

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

18 (t) The Director may investigate suspected viatical
19 settlement fraud and persons engaged in the business of
20 viatical settlements.

21 Section 35. Disclosure to viator.

22 (a) With each application for a viatical settlement
23 contract, a viatical settlement provider or viatical
24 settlement broker shall provide the viator with at least the
25 following disclosures no later than the time the viatical

1 settlement contract is signed by all parties. The disclosures
2 shall include distribution of a brochure describing the process
3 of viatical settlements. The NAIC form for the brochure shall
4 be used unless another form is developed or approved by the
5 Director. Other disclosures required by this subsection (a)
6 shall be provided in a separate document that is signed by the
7 viator and the viatical settlement provider or viatical
8 settlement broker and shall provide the following information:

9 (1) If a viator enters into a viatical settlement
10 contract, then the beneficiaries of the life insurance
11 policy lose the life insurance policy's benefits, equity,
12 and protection. In addition, by entering into this viatical
13 settlement contract, the insured may not qualify for
14 another life insurance policy or may be required to pay
15 substantially higher premiums.

16 (2) That there are possible alternatives to viatical
17 settlement contracts including any accelerated death
18 benefits or policy loans offered under the viator's life
19 insurance policy.

20 (3) That a viatical settlement broker represents only
21 the viator and not the insurer or the viatical settlement
22 provider and owes a fiduciary duty to the viator, including
23 a duty to act according to the viator's instructions and in
24 the best interest of the viator.

25 (4) That some or all of the proceeds of the viatical
26 settlement may be taxable under federal income tax and

1 state franchise and income taxes, and assistance may be
2 sought from a professional tax advisor.

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

5 (6) That receipt of the proceeds of a viatical
6 settlement may adversely affect the viator's eligibility
7 for Medicaid or other government benefits or entitlements
8 and advice should be obtained from the appropriate
9 government agencies.

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

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

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

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

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

15 (12) If the policy to be viaticated is group coverage,
16 the insured is advised to check with the manager of the
17 group about whether permission is required to sell the
18 policy or other conditions.

19 (13) Entering into a viatical settlement contract will
20 result in investors having a financial interest in the
21 insured's death.

22 (b) With each application for a viatical settlement, a
23 viatical settlement provider or viatical settlement broker
24 shall provide the prospective viator with a document titled
25 "Important Consumer Notices". The document must be provided to
26 the prospective viator and contain, in conspicuous type size

1 and format, the following:

2 "By entering into a viatical settlement contract:

3 (1) You are making a complex financial decision that
4 may or may not be in your or your family's financial best
5 interest. Seek independent advice from financial planning
6 experts and responsible government agencies.

7 (2) You may not be able to purchase another life
8 insurance policy.

9 (3) You could lose Medicaid and other valuable
10 government benefits.

11 (4) You will receive proceeds that may be subject
12 federal and state taxes and to the claims of creditors.

13 (5) You have sold your life insurance policy to
14 strangers who have a financial interest in the life and
15 death of the person whose life is insured by the policy.

16 (6) You or your residence may be contacted on a regular
17 basis to determine if you have died or if your health
18 status has deteriorated."

19 The disclosure document required by this subsection (b)
20 shall be the cover page of the viatical settlement contract and
21 shall be signed by the viator and the viatical settlement
22 provider or viatical settlement broker. The viator and viatical
23 settlement provider or viatical settlement broker shall sign
24 the disclosure prior to signing the viatical settlement
25 contract. A copy of the signed document must be provided to the
26 viator.

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

8 (1) The affiliation, if any, between the viatical
9 settlement provider and the issuer of the policy to be
10 acquired pursuant to a viatical settlement contract.

11 (2) The name, business address, and telephone number of
12 the viatical settlement provider.

13 (3) Whether any affiliations or contractual
14 arrangements exist between the viatical settlement
15 provider and the viatical settlement purchaser.

16 (4) 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 the viator's
23 insurance producer or the company issuing the policy for
24 advice on the proposed viatical settlement contract.

25 (5) The dollar amount of the current death benefit
26 payable to the viatical settlement provider under the

1 policy. If known, the viatical settlement provider also
2 shall disclose the availability of additional guaranteed
3 insurance benefits, the dollar amount of accidental death
4 and dismemberment benefits under the policy or
5 certificate, and the extent to which the viator's interest
6 in those benefits will be transferred as a result of the
7 viator's settlement contract.

8 (6) The name, business address, and telephone number of
9 the escrow agent, and that the viator may inspect or
10 receive copies of the relevant escrow or trust agreements
11 or documents. Also, that an escrow agent shall provide
12 escrow services to the parties pursuant to a written
13 agreement signed by the viatical settlement provider, the
14 escrow agent, and the viator. At the close of escrow, the
15 escrow agent must distribute the proceeds of the sale to
16 the viator, minus any compensation to be paid to any other
17 persons who provided services and to whom the viator has
18 agreed to compensate out of the gross amount offered by the
19 viatical settlement purchaser. All persons receiving any
20 form of compensation under the escrow agreement shall be
21 clearly identified, including name, business address,
22 telephone number, and tax identification number.

23 (7) The amount of compensation received by the escrow
24 agent.

25 (c) A viatical settlement broker shall provide the viator
26 with at least the following disclosures no later than the date

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

5 (1) the name, business address, and telephone number of
6 the viatical settlement broker;

7 (2) a full, complete, and accurate description of all
8 offers, counteroffers, acceptances, and rejections
9 relating to the proposed viatical settlement contract;

10 (3) any affiliations or contractual arrangements
11 between the viatical settlement broker and any person
12 making an offer in connection with the proposed viatical
13 settlement contracts;

14 (4) the amount and method of calculating the broker's
15 compensation, which term "compensation" includes anything
16 of value paid or given to a proposed settlement broker in
17 connection with the proposed viatical settlement contract;

18 (5) if any portion of the viatical settlement broker's
19 compensation, as defined in paragraph (3) of this
20 subsection (c), is taken from a proposed viatical
21 settlement offer, the broker shall disclose the total
22 amount of the viatical settlement offer and the percentage
23 of the viatical settlement offer comprised by the viatical
24 settlement broker's compensation; and

25 (6) the name of the legal owner and beneficiary of the
26 insurance policy after the policy is sold pursuant to the

1 viatical settlement contract and whether legal ownership
2 of the policy and the beneficiary's right to collect
3 benefits upon the viator's death can be sold.

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

9 Section 40. Disclosure to insurer. Prior to the initiation
10 of a plan, transaction, or series of transactions a viatical
11 settlement broker or viatical settlement provider shall fully
12 disclose to an insurer a plan, transaction, or series of
13 transactions to which the viatical settlement broker or
14 viatical settlement provider is a party to originate, renew,
15 continue, or finance a life insurance policy with the insurer
16 for the purpose of engaging in the business of viatical
17 settlements at anytime prior to or during the first 2 years
18 after issuance of the policy. The viatical settlement provider,
19 viatical settlement broker, viator, or applicant for a policy
20 shall, when requested, disclose that the prospective insured
21 has undergone a life expectancy evaluation in connection with
22 the issuance of a policy by a person or entity other than the
23 insurer or its authorized representative. Any disclosure
24 required under this Section must be made in writing.

1 Section 45. General rules.

2 (a) A viatical settlement provider entering into a viatical
3 settlement contract shall first obtain:

4 (1) if the viator is the insured, a written statement
5 from a licensed attending physician that the viator is of
6 sound mind and under no constraint or undue influence to
7 enter into a viatical settlement contract; as used in this
8 item (1), "physician" means a person licensed under the
9 Medical Practice Act of 1987 to practice medicine and
10 surgery or osteopathic medicine and surgery in all its
11 branches; and

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

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

26 (c) The viatical provider shall deliver a copy of the

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

10 (d) Prior to or at the time of execution of the viatical
11 settlement contract, the viatical settlement provider shall
12 obtain a witnessed document in which the viator consents to the
13 viatical settlement contract, represents that the viator has a
14 full and complete understanding of the viatical settlement
15 contract, that he or she has a full and complete understanding
16 of the benefits of the life insurance policy, acknowledges that
17 he or she is entering into the viatical settlement contract
18 freely and voluntarily and, for persons with a terminal or
19 chronic illness or condition, acknowledges that the insured has
20 a terminal or chronic illness and that the terminal or chronic
21 illness or condition was diagnosed after the life insurance
22 policy was issued.

23 (e) If a viatical settlement broker performs any of the
24 activities required of a viatical settlement provider as
25 described by subsection (a) through (d) of this Section, then
26 the viatical settlement provider is deemed to have fulfilled

1 that requirement.

2 (f) The insurer shall respond to a request for verification
3 of coverage submitted on an approved form by a viatical
4 settlement provider or viatical settlement broker within 30
5 calendar days after the date the request is received and shall
6 indicate whether, based on the medical evidence and documents
7 provided, the insurer intends to pursue an investigation at
8 this time regarding the validity of the insurance contract or
9 possible fraud. The insurer shall accept a request for
10 verification of coverage made on an NAIC form or any other form
11 approved by the Director. The insurer shall accept an original
12 or facsimile or electronic copy of such request and any
13 accompanying authorization signed by the viator. Failure by the
14 insurer to meet its obligations under this subsection shall be
15 a violation of subsection (b) of Section 50 and Section 75 of
16 this Act.

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

20 (h) All viatical settlement contracts entered into in this
21 State shall provide the viator with an absolute right to
22 rescind the contract before the earlier of 30 calendar days
23 after the date upon which the viatical settlement contract is
24 executed by all parties or 15 calendar days after the viatical
25 settlement proceeds have been sent to the viator as provided in
26 Section 45. Rescission by the viator may be conditioned upon

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

25 (i) If a viatical settlement contract is rescinded by the
26 viator pursuant to this Section, then ownership of the

1 insurance policy reverts to the viator or to the viator's
2 estate.

3 (j) The viatical settlement provider shall instruct the
4 viator to send the executed documents required to effect the
5 change in ownership, assignment, or change in beneficiary
6 directly to the escrow agent. Within 3 business days after the
7 date the escrow agent receives the document (or from the date
8 the viatical settlement provider receives the documents, if the
9 viator erroneously provides the documents directly to the
10 viatical settlement provider), the viatical settlement
11 provider shall pay or transfer the gross amount paid by the
12 viatical settlement purchaser to the escrow agent for deposit
13 in a trust account and set up for that purpose by the escrow
14 agent in a state or federally-chartered financial institution
15 whose deposits are insured by the Federal Deposit Insurance
16 Corporation (FDIC). Upon payment of the settlement proceeds
17 into the escrow or trust account, the escrow agent or trustee
18 shall deliver the original change in ownership, assignment, or
19 change in beneficiary forms to the viatical settlement
20 provider, a representative of the viatical settlement
21 provider, or related provider trust. Upon the escrow agent's
22 receipt of the acknowledgment of the properly completed
23 transfer of ownership, assignment, or designation of
24 beneficiary from the insurance company, the escrow agent shall
25 pay the settlement proceeds to the viator. Funds shall be
26 deemed sent by a viatical settlement provider to a viator as of

1 the date that the escrow agent either releases the funds for
2 wire transfer to the viator or places a check for delivery to
3 the viator via United States Postal Service or other nationally
4 recognized delivery service.

5 (k) Failure to transfer the proceeds to the viator for the
6 viatical settlement contract within the time set forth in the
7 disclosure pursuant to item (7) of subsection (a) of Section 35
8 of this Act renders the viatical settlement contract voidable
9 by the viator for lack of consideration until the time
10 consideration is tendered to and accepted by the viator. If a
11 viatical settlement contract is voided by the viator pursuant
12 to this subsection (k), then ownership of the policy reverts to
13 the viator or to the viator's estate.

14 (l) After the viatical settlement contract has been
15 effected, contacts with the insured for the purpose of
16 determining the health status of the insured shall be made only
17 by the viatical settlement provider or the authorized
18 representative of the viatical settlement provider. The
19 viatical settlement provider or authorized representative
20 shall not contact the insured with the purpose of determining
21 the insured's health status more than once every 3 months if
22 the insured has a life expectancy of more than one year or more
23 than once per month if the insured has a life expectancy of one
24 year or less. The viatical settlement provider shall explain
25 the procedure for making these contacts at the time the
26 viatical settlement contract is entered into. For purposes of

1 this Section, viatical settlement providers are responsible
2 for the actions of their authorized representatives.

3 (m) The insurer that issued the policy being settled
4 pursuant to a viatical settlement contract shall not be
5 responsible for any act or omission of a viatical settlement
6 broker or viatical settlement provider arising out of or in
7 connection with the viatical settlement transaction, unless
8 the insurer receives compensation for the placement of a
9 viatical settlement contract from the viatical settlement
10 provider or viatical settlement broker in connection with the
11 viatical settlement contract.

12 (n) If there is more than one viator on a single policy and
13 the viators are residents of different states, then the
14 transaction shall be governed by the law of the state in which
15 the viator having the largest percentage ownership resides or,
16 if the viators hold equal ownership, the state of residence of
17 one viator agreed upon in writing by all the viators.

18 Subject to the provisions of this subsection (n), if the
19 viator is a resident of this State, then all agreements to be
20 signed by the viator shall provide exclusive jurisdiction to
21 courts of this State and the laws of this State shall govern
22 the agreements. Nothing in the agreements shall abrogate the
23 viator's right to a trial by jury.

24 (o) Notwithstanding the manner in which the viatical
25 settlement broker is compensated, a viatical settlement broker
26 is deemed to represent only the viator and not the insurer or

1 the viatical settlement provider and owes a fiduciary duty to
2 the viator to act according to the viator's instructions and in
3 the best interest of the viator.

4 Section 50. Prohibited practices.

5 (a) It is a violation of this Act for any person to enter
6 into a viatical settlement contract prior to the application of
7 or issuance of a policy that is the subject of the viatical
8 settlement contract. It is a violation of this Act for any
9 person to enter into stranger-originated life insurance or
10 STOLI as defined by this Act.

11 (b) It is a violation of this Act for any person to enter
12 into a viatical settlement contract within a 2-year period
13 commencing with the date of issuance of the insurance policy
14 unless the viator certifies to the viatical settlement provider
15 that one or more of the following conditions have been met
16 within the 2-year period:

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

25 (2) The viator certifies and submits independent

1 evidence to the viatical settlement provider that one or
2 more of the following conditions have been met within the
3 2-year period:

4 (A) the viator or insured is terminally or
5 chronically ill;

6 (B) the viator's spouse dies;

7 (C) the viator divorces his or her spouse;

8 (D) the viator retires from full-time employment;

9 (E) the viator becomes physically or mentally
10 disabled and a physician determines that the
11 disability prevents the viator from maintaining
12 full-time employment;

13 (F) a court of competent jurisdiction enters a
14 final order, judgment, or decree on the application of
15 a creditor of the viator, adjudicating the viator
16 bankrupt or insolvent, or approving a petition seeking
17 reorganization of the viator or appointing a receiver,
18 trustee, or liquidator to all or a substantial part of
19 the viator's assets;

20 (G) the sole beneficiary of the policy is a family
21 member of the viator and the beneficiary dies; or

22 (H) any other condition that the Director may
23 determine by regulation to be an extraordinary
24 circumstance for the viator or the insured.

25 (c) Copies of the independent evidence described in
26 paragraph (2) of subsection (b) of this Section and documents

1 required by Section 45 shall be submitted to the insurer when
2 the viatical settlement provider or any other party entering
3 into a viatical settlement contract with a viator submits a
4 request to the insurer for verification of coverage. The copies
5 shall be accompanied by a letter of attestation from the
6 viatical settlement provider that the copies are true and
7 correct copies of the documents received by the viatical
8 settlement provider.

9 (d) If the viatical settlement provider submits to the
10 insurer a copy of the owner or insured's certification
11 described in and the independent evidence required by paragraph
12 (2) of subsection (b) of this Section when the viatical
13 settlement provider submits a request to the insurer to effect
14 the transfer of the policy to the viatical settlement provider,
15 then the copy shall be deemed to conclusively establish that
16 the viatical settlement contract satisfies the requirements of
17 this Section, and the insurer shall timely respond to the
18 request.

19 (e) No insurer may, as a condition of responding to a
20 request for verification of coverage or effecting the transfer
21 of a policy pursuant to a viatical settlement contract, require
22 that the viator, insured, viatical settlement provider, or
23 viatical settlement broker sign any forms, disclosures,
24 consent, or waiver form that has not been expressly approved by
25 the Director for use in connection with viatical settlement
26 contracts in this State.

1 (f) Upon receipt of a properly completed request for change
2 of ownership or beneficiary of a policy, the insurer shall
3 respond in writing within 30 calendar days to confirm that the
4 change has been effected or specifying the reasons why the
5 requested change cannot be processed. No insurer shall
6 unreasonably delay effecting change of ownership or
7 beneficiary or seek to interfere with any viatical settlement
8 contract lawfully entered into in this State.

9 Section 55. Prohibited practices and conflicts of
10 interest.

11 (a) With respect to any viatical settlement contract or
12 insurance policy, no viatical settlement broker knowingly
13 shall solicit an offer from, effectuate a viatical settlement
14 with, or make a sale to any viatical settlement provider,
15 viatical settlement purchaser, financing entity, or related
16 provider that is controlling, controlled by, or under common
17 control with such viatical settlement broker, unless such
18 relationship is fully disclosed to the viator.

19 (b) With respect to any viatical settlement contract or
20 insurance policy, no viatical settlement provider knowingly
21 may enter into a viatical settlement contract with a viator,
22 if, in connection with such viatical settlement contract,
23 anything of value will be paid to a viatical settlement broker
24 that is controlling, controlled by, or under common control
25 with such viatical settlement provider or the viatical

1 settlement purchaser, financing entity, or related provider
2 trust that is involved in such viatical settlement contract,
3 unless such relationship is fully disclosed to the viator.

4 (c) Any disclosure provided pursuant to subsections (a) and
5 (b) of this Section must be provided along with the disclosures
6 required by subsection (a) of Section 35 and contain the
7 following language: "The financial relationship between your
8 viatical settlement broker and the provider of the viatical
9 settlement creates a potential conflict of interest between
10 your financial interests and the financial interests of the
11 viatical settlement broker and viatical settlement provider.
12 The individual brokering this viatical transaction owes you a
13 fiduciary duty or a duty of loyalty. Your viatical settlement
14 broker must advise you based exclusively upon your best
15 interests, not the best interests of the viatical settlement
16 broker or the viatical settlement provider.".

17 (d) A violation of subsection (a), subsection (b), or
18 subsection (c) shall be deemed viatical settlement fraud.

19 (e) No person shall issue, solicit, or market the purchase
20 of an insurance policy for the purpose of settling the policy.
21 Nothing in this subsection (e) shall prohibit persons from
22 using and discussing the written materials that the Director
23 shall approve prior to the effective date of this Act and that
24 inform consumers of their rights with respect to a life
25 insurance policy, including the option of entering into a
26 lawful viatical settlement contract. Nothing in this

1 subsection (e) limits or otherwise impairs the terms of a
2 contract between an insurer and its producers.

3 (f) A viatical settlement provider shall retain all copies
4 of a viatical settlement promotional, advertising, and
5 marketing materials and shall make these material available to
6 the Director on request. In no event shall any marketing
7 materials expressly reference that the insurance is "free" for
8 any period of time. The inclusion of any reference in the
9 marketing materials that would cause a viator to reasonably
10 believe that the insurance is free for any period of time shall
11 be considered a violation of this Act.

12 (g) No insurance producer, insurance company, viatical
13 settlement broker, or viatical settlement provider shall make
14 any statement or representation to a potential or actual
15 insured or potential or actual viator in connection with the
16 sale or financing of a life insurance policy to the effect that
17 the insurance is free or without cost to the policyholder for
18 any period of time unless provided in the policy.

19 Section 60. Advertising for viatical settlements.

20 (a) The purpose of this Section is to provide prospective
21 viators with clear and unambiguous statements in the
22 advertisement of viatical settlements and to assure the clear,
23 truthful, and adequate disclosure of the benefits, risks,
24 limitations, and exclusions of any viatical settlement
25 contract. All product descriptions must be presented in a

1 manner that prevents unfair, deceptive, or misleading
2 advertising and conducive to accurate presentation and
3 description of viatical settlements through the advertising
4 media and material used by licensees.

5 (b) This Section applies to any advertising of viatical
6 settlement contracts or related products or services
7 circulated or placed directly before the public, including
8 Internet advertising. Where disclosure requirements are
9 established pursuant to federal regulation, this Section shall
10 be interpreted so as to minimize or eliminate conflict with
11 federal regulation wherever possible.

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

24 (d) Advertisements shall be truthful and not misleading in
25 fact or by implication. The form and content of an
26 advertisement of a viatical settlement contract product or

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

9 (e) The information required to be disclosed under this
10 Section shall not be minimized, rendered obscure, or presented
11 in an ambiguous fashion or intermingled with the text of the
12 advertisement so as to be confusing or misleading.

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

25 An advertisement shall not use the name or title of an
26 insurance company or an insurance policy unless the

1 advertisement has been approved by the insurer.

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

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

13 Testimonials, appraisals, or analysis used in
14 advertisements must be genuine; represent the current opinion
15 of the author; be applicable to the viatical settlement
16 contract, product, or service advertised, if any; and be
17 accurately reproduced with sufficient completeness to avoid
18 misleading or deceiving prospective viators as to the nature or
19 scope of the testimonials, appraisal, analysis, or
20 endorsement. In using testimonials, appraisals, or analyses, a
21 licensee under this Act makes as its own all the statements
22 contained therein, and the statements are subject to all the
23 provisions of this Section.

24 If the individual making a testimonial, appraisal,
25 analysis, or endorsement has a financial interest in the
26 subject of the testimonial, appraisal, analysis, or

1 endorsement, either directly or indirectly as a stockholder,
2 director, officer, employee, or otherwise, or receives any
3 benefit directly or indirectly other than required union scale
4 wages, that fact shall be prominently disclosed in the
5 advertisement.

6 An advertisement shall not state or imply that a viatical
7 settlement contract, benefit, or service has been approved or
8 endorsed by a group of individuals, society, association, or
9 other organization unless that is the fact and unless any
10 relationship between the group of individuals, society,
11 association, or organization and the licensee is disclosed. If
12 the entity making the endorsement or testimonial is owned,
13 controlled, or managed by the licensee, or receives any payment
14 or other consideration from the viatical settlement licensee
15 for making an endorsement or testimonial, that fact shall be
16 prominently disclosed in the advertisement.

17 When an endorsement refers to benefits received under a
18 viatical settlement contract all pertinent information shall
19 be retained for a period of 5 years after its use.

20 (f) An advertisement shall not contain statistical
21 information unless the information accurately reflects recent
22 and relevant facts. The source of all statistics used in an
23 advertisement shall be identified.

24 (g) An advertisement shall not disparage insurers,
25 viatical settlement providers, viatical settlement brokers,
26 insurance producers, policies, services, or methods of

1 marketing.

2 (h) The name of the licensee shall be clearly identified in
3 all advertisements about the licensee or its viatical
4 settlement contract, products, or services, and if any specific
5 viatical settlement contract is advertised, the viatical
6 settlement contract shall be identified either by form number
7 or some other appropriate description. If an application is
8 part of the advertisement, the name of the viatical settlement
9 provider or providers shall be shown on the application.

10 (i) An advertisement shall not use a trade name, group
11 designation, name of the parent company of a licensee, name of
12 a particular division of the licensee, service mark, slogan,
13 symbol, or other device or reference without disclosing the
14 name of the licensee, if the advertisement would have the
15 capacity or tendency to mislead or deceive as to the true
16 identity of the licensee, or to create the impression that a
17 company other than the licensee would have any responsibility
18 for the financial obligation under a viatical settlement
19 contract.

20 (j) An advertisement shall not use any combination of
21 words, symbols, or physical materials that by their content,
22 phraseology, shape, color, or other characteristics are so
23 similar to a combination of words, symbols, or physical
24 materials used by a government program or agency or otherwise
25 appear to be of such a nature that they tend to mislead
26 prospective viators into believing that the solicitation is in

1 some manner connected with a government program or agency.

2 (k) An advertisement may state that a licensee is licensed
3 in the state where the advertisement appears, provided it does
4 not exaggerate that fact or suggest or imply that competing
5 licensees may not be so licensed. The advertisement may ask the
6 audience to consult the licensee's Internet website or contact
7 the Division to find out if the state requires licensing and,
8 if so, whether the viatical settlement provider, or viatical
9 settlement broker, is licensed.

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

15 (m) The name of the actual licensee shall be stated in all
16 of a licensee's advertisements. An advertisement shall not use
17 a trade name, any group designation, name of any affiliate or
18 controlling entity of the licensee, service mark, slogan,
19 symbol, or other device in a manner that would have the
20 capacity or tendency to mislead or deceive as to the true
21 identity of the actual licensee or create the false impression
22 that an affiliate or controlling entity would have any
23 responsibility for the financial obligation of the licensee.

24 (n) An advertisement shall not directly or indirectly
25 create the impression that any division or agency of the State
26 or of the U. S. government endorses, approves, or favors:

1 (1) any licensee or its business practices or methods
2 of operation;

3 (2) any viatical settlement contract; or

4 (3) any life insurance policy or life insurance
5 company.

6 (o) If the advertiser emphasizes the speed with which the
7 viatication will occur, the advertising must disclose the
8 average time frame from completed application to the date of
9 offer and from acceptance of the offer to receipt of the funds
10 by the viator.

11 (p) If the advertising emphasizes the dollar amounts
12 available to viators, the advertising shall disclose, using the
13 same type and font size as the dollar amount available to the
14 viator, the average purchase price as a percent of face value
15 obtained by viators contracting with the licensee during the
16 past 6 months.

17 Section 65. Fraud prevention and control.

18 (a) A person shall not commit the offense of viatical
19 settlement fraud.

20 A person shall not knowingly or intentionally interfere
21 with the enforcement of the provisions of this Act or
22 investigations of suspected or actual violations of this Act.

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

1 in the business of viatical settlements.

2 (b) Viatical settlements contracts and applications for
3 viatical settlements, regardless of the form of transmission,
4 shall contain the following statement: "Any person who
5 knowingly presents false information in an application for
6 insurance or a viatical settlement contract is guilty of a
7 crime and may be subject to fines and confinement in prison."

8 The lack of a statement as required in this subsection (b)
9 does not constitute a defense in any prosecution for the
10 offense of viatical settlement fraud.

11 (c) Any person engaged in the business of viatical
12 settlements having knowledge or a reasonable suspicion that a
13 viatical settlement fraud is being, will be, or has been
14 committed shall provide to the Director such information as
15 required by, and in a manner prescribed by, the Director.

16 Any other person having knowledge or a reasonable belief
17 that viatical settlement fraud is being, will be, or has been
18 committed may provide to the Director the information required
19 by, and in a manner prescribed by, the Director.

20 (d) No civil liability shall be imposed on and no cause of
21 action shall arise from a person's furnishing information
22 concerning suspected, anticipated, or completed viatical
23 settlement fraud or suspected or completed fraudulent
24 insurance acts, if the information is provided to or received
25 from:

26 (1) the Director or the Director's employees, agents,

1 or representatives;

2 (2) federal, State, or local law enforcement or
3 regulatory officials or their employees, agents, or
4 representatives;

5 (3) a person involved in the prevention and detection
6 of viatical settlement fraud or that person's agents,
7 employees, or representatives;

8 (4) the NAIC, the National Association of Securities
9 Dealers (NASD), the North American Securities
10 Administrators Association (NASAA), or their employees,
11 agents, or representatives, or other regulatory body
12 overseeing life insurance, viatical settlements,
13 securities, or investment fraud; or

14 (5) the life insurer that issued the life insurance
15 policy covering the life of the insured.

16 (e) The immunity provided by subsection (d) of this Section
17 shall not apply to statements made with actual malice. In an
18 action brought against a person for filing a report or
19 furnishing other information concerning viatical settlement
20 fraud, the party bringing the action shall plead specifically
21 any allegation that subsection (d) does not apply because the
22 person filing the report or furnishing the information did so
23 with actual malice.

24 (f) A person furnishing information as identified in
25 subsection (d) of this Section shall be entitled to an award of
26 attorney's fees and costs if the person is the prevailing party

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

10 (g) This Section does not abrogate or modify common law or
11 statutory privileges or immunities enjoyed by a person
12 described in subsection (d) of this Section.

13 Subsection (d) of this Section does not apply to a person
14 furnishing information concerning that person's own suspected,
15 anticipated, or completed viatical settlement fraud or
16 suspected, anticipated, or completed fraudulent insurance
17 acts.

18 (h) The documents and evidence provided pursuant to
19 subsection (d) of this Section or obtained by the Director in
20 an investigation of suspected or actual viatical settlement
21 fraud shall be privileged and confidential and shall not be a
22 public record and shall not be subject to discovery or subpoena
23 in a civil or criminal action. This subsection (h) does not
24 prohibit release by the Director of documents and evidence
25 obtained in an investigation of suspected or actual viatical
26 settlement fraud: (1) in administrative or judicial

1 proceedings to enforce laws administered by the Director; (2)
2 to federal, State, or local law enforcement or regulatory
3 agencies, to an organization established for the purpose of
4 detecting and preventing viatical settlement fraud or to the
5 NAIC; or (3) at the discretion of the Director, to a person in
6 the business of viatical settlements that is aggrieved by a
7 viatical settlement fraud. Release of documents and evidence
8 under this subsection (h) does not abrogate or modify the
9 privilege granted in this subsection.

10 (i) This Act shall not do any of the following:

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 viatical settlement
16 fraud to a law enforcement or regulatory agency other than
17 the Division.

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

22 (i) Viatical settlement providers and viatical settlement
23 brokers shall have in place antifraud initiatives reasonably
24 calculated to detect, prosecute, and prevent viatical
25 settlement fraud. At the discretion of the Director, the
26 Director may order, or a licensee may request and the Director

1 may grant, such modifications of the following required
2 initiatives as necessary to ensure an effective antifraud
3 program. The modifications may be more or less restrictive than
4 the required initiatives so long as the modifications may
5 reasonably be expected to accomplish the purpose of this
6 Section.

7 Antifraud initiatives shall include the following:

8 (1) fraud investigators, who may be viatical
9 settlement providers or viatical settlement broker
10 employees or independent contractors; and

11 (2) an antifraud plan, which shall be submitted to the
12 Director. The antifraud plan shall include, but not be
13 limited to:

14 (A) a description of the procedures for detecting
15 and investigating possible viatical settlement fraud
16 and procedures for resolving material inconsistencies
17 between medical records and insurance applications;

18 (B) a description of the procedures for reporting
19 possible viatical settlement fraud to the Director;

20 (C) a description of the plan for antifraud
21 education and training of underwriters and other
22 personnel;

23 (D) a description or chart outlining the
24 organizational arrangement of the antifraud personnel
25 who are responsible for the investigation and
26 reporting of possible viatical settlement fraud and

1 investigating unresolved material inconsistencies
2 between medical records and insurance applications;
3 and

4 (E) a description of the procedures used to perform
5 initial and continuing review of the accuracy of life
6 expectancies used in connection with a viatical
7 settlement contract.

8 Antifraud plans submitted to the Director shall be
9 privileged and confidential and are not public record and are
10 not subject to discovery or subpoena in a civil or criminal
11 action.

12 Section 70. Injunctions; civil remedies; cease and desist.

13 (a) In addition to the penalties and other enforcement
14 provisions of this Act, if any person violates this Act or any
15 rules implementing this Act, the Director may seek an
16 injunction in a court of competent jurisdiction and may apply
17 for temporary and permanent orders that the Director determines
18 are necessary to restrain the person from committing the
19 violation.

20 (b) Any person damaged by the acts of a person in violation
21 of this Act may bring a civil action against the person
22 committing the violation in a court of competent jurisdiction.

23 (c) The Director may issue, in accordance with Section
24 401.1 of the Illinois Insurance Code and the Illinois
25 Administrative Procedure Act, a cease and desist order upon a

1 person that violates any provision of this Act, any regulation
2 or order adopted by the Director, or any written agreement
3 entered into with the Director.

4 (d) In addition to the penalties and other enforcement
5 provisions of this Act, any person who violates this Act is
6 subject to civil penalties of up to \$50,000 per violation. Each
7 separate violation of this Act shall be a separate offense. If
8 a person is subject to an order of the Director for violations
9 of this Act and continually fails to obey or neglects to obey
10 the order, then each day of such failure or neglect shall be
11 deemed a separate offense. Imposition of civil penalties shall
12 be pursuant to an order of the Director. The Director's order
13 may require a person found to be in violation of this Act to
14 make restitution to persons aggrieved by violations of this
15 Act.

16 Section 72. Crimes and offenses.

17 (a) A person acting in this State as a viatical settlement
18 provider without having been licensed pursuant to Section 10 of
19 this Act who willfully violates any provision of this Act or
20 any rule adopted or order issued under this Act is guilty of a
21 Class A misdemeanor and may be subject to a fine of not more
22 than \$3,000. When such violation results in a loss of more than
23 \$10,000, the person shall be guilty of a Class 3 felony and may
24 be subject to a fine of not more than \$10,000.

25 (b) A person acting in this State as a viatical settlement

1 broker without having met the licensure and notification
2 requirements established by Section 10 of this Act who
3 willfully violates any provision of this Act or any rule
4 adopted or order issued under this Act is guilty of a Class A
5 misdemeanor and may be subject to a fine of not more than
6 \$3,000. When such violation results in a loss of more than
7 \$10,000, the person shall be guilty of a Class 3 felony and may
8 be subject to a fine of not more than \$10,000.

9 (c) The Director may refer such evidence as is available
10 concerning violations of this Act or any rule adopted or order
11 issued under this Act or of the failure of the a person to
12 comply with the licensing requirements of this Act to the
13 Attorney General or the proper county attorney who may, with or
14 without such reference, institute the appropriate criminal
15 proceedings under this Act.

16 (d) A person commits the offense of viatical settlement
17 fraud when:

18 (1) For the purpose of depriving another of property or
19 for pecuniary gain any person knowingly:

20 (A) presents, causes to be presented, or prepares
21 with knowledge or belief that it will be presented to
22 or by a viatical settlement provider, viatical
23 settlement broker, life expectancy provider, viatical
24 settlement purchaser, financing entity, insurer,
25 insurance producer, or any other person, false
26 material information, or conceals material

1 information, as part of, in support of or concerning a
2 fact material to one or more of the following:

3 (i) an application for the issuance of a
4 viatical settlement contract or insurance policy;

5 (ii) the underwriting of a viatical settlement
6 contract or insurance policy;

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

10 (iv) premiums paid on an insurance policy;

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

14 (vi) the reinstatement or conversion of an
15 insurance policy;

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

19 (viii) the issuance of written evidence of
20 viatical settlement contract, or insurance; or

21 (ix) a financing transaction; or

22 (B) employs any plan, financial structure, device,
23 scheme, or artifice to defraud related to viaticated
24 policies; or

25 (C) enters into any act, practice, or arrangement
26 which involves stranger-originated life insurance.

1 (2) In furtherance of a scheme to defraud, to further a
2 fraud, or to prevent or hinder the detection of a scheme to
3 defraud any person knowingly does or permits his employees
4 or agents to do any of the following:

5 (A) remove, conceal, alter, destroy, or sequester
6 from the Director the assets or records of a licensee
7 or other person engaged in the business of viatical
8 settlements;

9 (B) misrepresent or conceal the financial
10 condition of a licensee, financing entity, insurer, or
11 other person;

12 (C) transact the business of viatical settlements
13 in violation of laws requiring a license, certificate
14 of authority, or other legal authority for the
15 transaction of the business of viatical settlements;
16 or

17 (D) file with the Director or the equivalent chief
18 insurance regulatory official of another jurisdiction
19 a document containing false information or otherwise
20 conceals information about a material fact from the
21 Director;

22 (3) Any person knowingly steals, misappropriates, or
23 converts monies, funds, premiums, credits, or other
24 property of a viatical settlement provider, insurer,
25 insured, viator, insurance policyowner, or any other
26 person engaged in the business of viatical settlements or

1 insurance;

2 (4) Any person recklessly enters into, negotiates,
3 brokers, or otherwise deals in a viatical settlement
4 contract, the subject of which is a life insurance policy
5 that was obtained by presenting false information
6 concerning any fact material to the policy or by
7 concealing, for the purpose of misleading another,
8 information concerning any fact material to the policy,
9 where the person or the persons intended to defraud the
10 policy's issuer, the viatical settlement provider or the
11 viator; or

12 (5) Any person facilitates the change of state of
13 ownership of a policy or the state of residency of a viator
14 to a state or jurisdiction that does not have a law similar
15 to this Act for the express purposes of evading or avoiding
16 the provisions of this Act.

17 (c) For purposes of this Section, "person" means (i) an
18 individual, (ii) a corporation, (iii) an officer, agent, or
19 employee of a corporation, (iv) a member, agent, or employee of
20 a partnership, or (v) a member, manager, employee, officer,
21 director, or agent of a limited liability company who, in any
22 such capacity described by this subsection (c), commits
23 viatical settlement fraud.

24 Section 75. Unfair trade practices. A violation of this
25 Act, including the commission of viatical settlement fraud,

1 shall be considered an unfair trade practice under Article XXVI
2 of the Illinois Insurance Code.

3 Section 85. Additional powers. In addition to any other
4 hearing, examination, or investigation specifically provided
5 for by this Act, the Director may conduct such hearings,
6 examinations, and investigations as are provided for by
7 Sections 402 and 403 of the Illinois Insurance Code.

8 Section 90. Insurance Code Provisions. Insurance
9 producers operating as viatical settlement brokers shall be
10 subject to Article XXXI of the Illinois Insurance Code.

11 Section 95. Applicability of securities laws. Nothing in
12 this Act shall preempt or otherwise limit the provisions of the
13 Illinois Securities Law of 1953 or any regulations, bulletins,
14 or other interpretations issued by or through the Division
15 acting pursuant to the Illinois Securities Law of 1953.
16 Compliance with the provisions of this Act shall not constitute
17 compliance with any applicable provision of the Illinois
18 Securities Law of 1953 and any amendments thereto or any
19 regulations, notices, bulletins, or other interpretations
20 issued by or through the Division acting pursuant to the
21 Illinois Securities Law of 1953.

22 Section 100. Viatical settlement provider application. A

1 viatical settlement provider lawfully transacting business in
2 this State may continue to do so pending approval or
3 disapproval of the provider's application for a license as long
4 as the application is filed with the Director not later than 30
5 days after the effective date of this Act.

6 Section 105. Application of this Act. Notwithstanding any
7 other provisions of this Act, nothing in this Act shall apply
8 in the following instances:

9 (i) The purchase of the cash value of a life insurance
10 policy and rights impacting the cash value, including death
11 benefits, for an amount approximately equal to the cash
12 value, but only to the extent that such death benefits
13 include cash value or its monetary equivalent.

14 (ii) The collateral assignment of a life insurance
15 policy or an interest in a life insurance policy by an
16 owner of such a policy or an interest in such a policy if
17 such collateral assignment is effected for the sole purpose
18 of financing or refinancing the purchase described in item
19 (i).

20 To be eligible for regulatory treatment pursuant to this
21 Section 105, the individual or entity seeking such treatment
22 must first provide written notice to the Director that the
23 individual or entity engages in a business practice as
24 described in items (i) or (ii). Such notice shall be in a form
25 and manner and at a fee as prescribed by the Director and

1 renewed 2 years from the date on which the prior notice is
2 received by the Director. To the extent that an individual or
3 entity is exempted pursuant to this Section and is then later
4 determined to have been engaged in STOLI and to have
5 circumvented the application of this Act through this Section,
6 the Director shall take appropriate remedial action,
7 including, but not limited to, license revocation, appropriate
8 monetary penalties, or both, or other penalties as provided in
9 Section 72 of this Act and subsections (a) through (g) of
10 Section 500-70 the Illinois Insurance Code.

11 Section 900. The Freedom of Information Act is amended by
12 changing Section 7 as follows:

13 (5 ILCS 140/7) (from Ch. 116, par. 207)

14 (Text of Section before amendment by P.A. 95-988)

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

1 that bears on the public duties of public employees and
2 officials shall not be considered an invasion of personal
3 privacy. Information exempted under this subsection (b)
4 shall include but is not limited to:

5 (i) files and personal information maintained with
6 respect to clients, patients, residents, students or
7 other individuals receiving social, medical,
8 educational, vocational, financial, supervisory or
9 custodial care or services directly or indirectly from
10 federal agencies or public bodies;

11 (ii) personnel files and personal information
12 maintained with respect to employees, appointees or
13 elected officials of any public body or applicants for
14 those positions;

15 (iii) files and personal information maintained
16 with respect to any applicant, registrant or licensee
17 by any public body cooperating with or engaged in
18 professional or occupational registration, licensure
19 or discipline;

20 (iv) information required of any taxpayer in
21 connection with the assessment or collection of any tax
22 unless disclosure is otherwise required by State
23 statute;

24 (v) information revealing the identity of persons
25 who file complaints with or provide information to
26 administrative, investigative, law enforcement or

1 penal agencies; provided, however, that identification
2 of witnesses to traffic accidents, traffic accident
3 reports, and rescue reports may be provided by agencies
4 of local government, except in a case for which a
5 criminal investigation is ongoing, without
6 constituting a clearly unwarranted per se invasion of
7 personal privacy under this subsection; and

8 (vi) the names, addresses, or other personal
9 information of participants and registrants in park
10 district, forest preserve district, and conservation
11 district programs.

12 (c) Records compiled by any public body for
13 administrative enforcement proceedings and any law
14 enforcement or correctional agency for law enforcement
15 purposes or for internal matters of a public body, but only
16 to the extent that disclosure would:

17 (i) interfere with pending or actually and
18 reasonably contemplated law enforcement proceedings
19 conducted by any law enforcement or correctional
20 agency;

21 (ii) interfere with pending administrative
22 enforcement proceedings conducted by any public body;

23 (iii) deprive a person of a fair trial or an
24 impartial hearing;

25 (iv) unavoidably disclose the identity of a
26 confidential source or confidential information

1 furnished only by the confidential source;

2 (v) disclose unique or specialized investigative
3 techniques other than those generally used and known or
4 disclose internal documents of correctional agencies
5 related to detection, observation or investigation of
6 incidents of crime or misconduct;

7 (vi) constitute an invasion of personal privacy
8 under subsection (b) of this Section;

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

11 (viii) obstruct an ongoing criminal investigation.

12 (d) Criminal history record information maintained by
13 State or local criminal justice agencies, except the
14 following which shall be open for public inspection and
15 copying:

16 (i) chronologically maintained arrest information,
17 such as traditional arrest logs or blotters;

18 (ii) the name of a person in the custody of a law
19 enforcement agency and the charges for which that
20 person is being held;

21 (iii) court records that are public;

22 (iv) records that are otherwise available under
23 State or local law; or

24 (v) records in which the requesting party is the
25 individual identified, except as provided under part
26 (vii) of paragraph (c) of subsection (1) of this

1 Section.

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

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

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

1 (g) Trade secrets and commercial or financial
2 information obtained from a person or business where the
3 trade secrets or information are proprietary, privileged
4 or confidential, or where disclosure of the trade secrets
5 or information may cause competitive harm, including:

6 (i) All information determined to be confidential
7 under Section 4002 of the Technology Advancement and
8 Development Act.

9 (ii) All trade secrets and commercial or financial
10 information obtained by a public body, including a
11 public pension fund, from a private equity fund or a
12 privately held company within the investment portfolio
13 of a private equity fund as a result of either
14 investing or evaluating a potential investment of
15 public funds in a private equity fund. The exemption
16 contained in this item does not apply to the aggregate
17 financial performance information of a private equity
18 fund, nor to the identity of the fund's managers or
19 general partners. The exemption contained in this item
20 does not apply to the identity of a privately held
21 company within the investment portfolio of a private
22 equity fund, unless the disclosure of the identity of a
23 privately held company may cause competitive harm.

24 Nothing contained in this paragraph (g) shall be construed
25 to prevent a person or business from consenting to disclosure.

26 (h) Proposals and bids for any contract, grant, or

1 agreement, including information which if it were
2 disclosed would frustrate procurement or give an advantage
3 to any person proposing to enter into a contractor
4 agreement with the body, until an award or final selection
5 is made. Information prepared by or for the body in
6 preparation of a bid solicitation shall be exempt until an
7 award or final selection is made.

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

19 (j) Test questions, scoring keys and other examination
20 data used to administer an academic examination or
21 determined the qualifications of an applicant for a license
22 or employment.

23 (k) Architects' plans, engineers' technical
24 submissions, and other construction related technical
25 documents for projects not constructed or developed in
26 whole or in part with public funds and the same for

1 projects constructed or developed with public funds, but
2 only to the extent that disclosure would compromise
3 security, including but not limited to water treatment
4 facilities, airport facilities, sport stadiums, convention
5 centers, and all government owned, operated, or occupied
6 buildings.

7 (l) Library circulation and order records identifying
8 library users with specific materials.

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

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

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

24 (p) Administrative or technical information associated
25 with automated data processing operations, including but
26 not limited to software, operating protocols, computer

1 program abstracts, file layouts, source listings, object
2 modules, load modules, user guides, documentation
3 pertaining to all logical and physical design of
4 computerized systems, employee manuals, and any other
5 information that, if disclosed, would jeopardize the
6 security of the system or its data or the security of
7 materials exempt under this Section.

8 (q) Documents or materials relating to collective
9 negotiating matters between public bodies and their
10 employees or representatives, except that any final
11 contract or agreement shall be subject to inspection and
12 copying.

13 (r) Drafts, notes, recommendations and memoranda
14 pertaining to the financing and marketing transactions of
15 the public body. The records of ownership, registration,
16 transfer, and exchange of municipal debt obligations, and
17 of persons to whom payment with respect to these
18 obligations is made.

19 (s) The records, documents and information relating to
20 real estate purchase negotiations until those negotiations
21 have been completed or otherwise terminated. With regard to
22 a parcel involved in a pending or actually and reasonably
23 contemplated eminent domain proceeding under the Eminent
24 Domain Act, records, documents and information relating to
25 that parcel shall be exempt except as may be allowed under
26 discovery rules adopted by the Illinois Supreme Court. The

1 records, documents and information relating to a real
2 estate sale shall be exempt until a sale is consummated.

3 (t) Any and all proprietary information and records
4 related to the operation of an intergovernmental risk
5 management association or self-insurance pool or jointly
6 self-administered health and accident cooperative or pool.

7 (u) Information concerning a university's adjudication
8 of student or employee grievance or disciplinary cases, to
9 the extent that disclosure would reveal the identity of the
10 student or employee and information concerning any public
11 body's adjudication of student or employee grievances or
12 disciplinary cases, except for the final outcome of the
13 cases.

14 (v) Course materials or research materials used by
15 faculty members.

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

18 (x) Information contained in or related to
19 examination, operating, or condition reports prepared by,
20 on behalf of, or for the use of a public body responsible
21 for the regulation or supervision of financial
22 institutions or insurance companies, unless disclosure is
23 otherwise required by State law.

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

26 (z) Manuals or instruction to staff that relate to

1 establishment or collection of liability for any State tax
2 or that relate to investigations by a public body to
3 determine violation of any criminal law.

4 (aa) Applications, related documents, and medical
5 records received by the Experimental Organ Transplantation
6 Procedures Board and any and all documents or other records
7 prepared by the Experimental Organ Transplantation
8 Procedures Board or its staff relating to applications it
9 has received.

10 (bb) Insurance or self insurance (including any
11 intergovernmental risk management association or self
12 insurance pool) claims, loss or risk management
13 information, records, data, advice or communications.

14 (cc) Information and records held by the Department of
15 Public Health and its authorized representatives relating
16 to known or suspected cases of sexually transmissible
17 disease or any information the disclosure of which is
18 restricted under the Illinois Sexually Transmissible
19 Disease Control Act.

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

22 (ee) Firm performance evaluations under Section 55 of
23 the Architectural, Engineering, and Land Surveying
24 Qualifications Based Selection Act.

25 (ff) Security portions of system safety program plans,
26 investigation reports, surveys, schedules, lists, data, or

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

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

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

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

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

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

25 (ll) Vulnerability assessments, security measures, and
26 response policies or plans that are designed to identify,

1 prevent, or respond to potential attacks upon a community's
2 population or systems, facilities, or installations, the
3 destruction or contamination of which would constitute a
4 clear and present danger to the health or safety of the
5 community, but only to the extent that disclosure could
6 reasonably be expected to jeopardize the effectiveness of
7 the measures or the safety of the personnel who implement
8 them or the public. Information exempt under this item may
9 include such things as details pertaining to the
10 mobilization or deployment of personnel or equipment, to
11 the operation of communication systems or protocols, or to
12 tactical operations.

13 (mm) Maps and other records regarding the location or
14 security of generation, transmission, distribution,
15 storage, gathering, treatment, or switching facilities
16 owned by a utility or by the Illinois Power Agency.

17 (nn) Law enforcement officer identification
18 information or driver identification information compiled
19 by a law enforcement agency or the Department of
20 Transportation under Section 11-212 of the Illinois
21 Vehicle Code.

22 (oo) Records and information provided to a residential
23 health care facility resident sexual assault and death
24 review team or the Executive Council under the Abuse
25 Prevention Review Team Act.

26 (pp) Information provided to the predatory lending

1 database created pursuant to Article 3 of the Residential
2 Real Property Disclosure Act, except to the extent
3 authorized under that Article.

4 (qq) Defense budgets and petitions for certification
5 of compensation and expenses for court appointed trial
6 counsel as provided under Sections 10 and 15 of the Capital
7 Crimes Litigation Act. This subsection (qq) shall apply
8 until the conclusion of the trial of the case, even if the
9 prosecution chooses not to pursue the death penalty prior
10 to trial or sentencing.

11 (rr) Information contained in or related to proposals,
12 bids, or negotiations related to electric power
13 procurement under Section 1-75 of the Illinois Power Agency
14 Act and Section 16-111.5 of the Public Utilities Act that
15 is determined to be confidential and proprietary by the
16 Illinois Power Agency or by the Illinois Commerce
17 Commission.

18 (ss) Information that is prohibited from being
19 disclosed under Section 4 of the Illinois Health and
20 Hazardous Substances Registry Act.

21 (tt) Information the disclosure of which is exempted
22 under the Viatical Settlements Act of 2009.

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.

1 (Source: P.A. 94-280, eff. 1-1-06; 94-508, eff. 1-1-06; 94-664,
2 eff. 1-1-06; 94-931, eff. 6-26-06; 94-953, eff. 6-27-06;
3 94-1055, eff. 1-1-07; 95-331, eff. 8-21-07; 95-481, eff.
4 8-28-07; 95-941, eff. 8-29-08.)

5 (Text of Section after amendment by P.A. 95-988)

6 Sec. 7. Exemptions.

7 (1) The following shall be exempt from inspection and
8 copying:

9 (a) Information specifically prohibited from
10 disclosure by federal or State law or rules and regulations
11 adopted under federal or State law.

12 (b) Information that, if disclosed, would constitute a
13 clearly unwarranted invasion of personal privacy, unless
14 the disclosure is consented to in writing by the individual
15 subjects of the information. The disclosure of information
16 that bears on the public duties of public employees and
17 officials shall not be considered an invasion of personal
18 privacy. Information exempted under this subsection (b)
19 shall include but is not limited to:

20 (i) files and personal information maintained with
21 respect to clients, patients, residents, students or
22 other individuals receiving social, medical,
23 educational, vocational, financial, supervisory or
24 custodial care or services directly or indirectly from
25 federal agencies or public bodies;

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

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

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

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

24 (vi) the names, addresses, or other personal
25 information of participants and registrants in park
26 district, forest preserve district, and conservation

1 district programs; and

2 (vii) the Notarial Record or other medium
3 containing the thumbprint or fingerprint required by
4 Section 3-102(c)(6) of the Illinois Notary Public Act.

5 (c) Records compiled by any public body for
6 administrative enforcement proceedings and any law
7 enforcement or correctional agency for law enforcement
8 purposes or for internal matters of a public body, but only
9 to the extent that disclosure would:

10 (i) interfere with pending or actually and
11 reasonably contemplated law enforcement proceedings
12 conducted by any law enforcement or correctional
13 agency;

14 (ii) interfere with pending administrative
15 enforcement proceedings conducted by any public body;

16 (iii) deprive a person of a fair trial or an
17 impartial hearing;

18 (iv) unavoidably disclose the identity of a
19 confidential source or confidential information
20 furnished only by the confidential source;

21 (v) disclose unique or specialized investigative
22 techniques other than those generally used and known or
23 disclose internal documents of correctional agencies
24 related to detection, observation or investigation of
25 incidents of crime or misconduct;

26 (vi) constitute an invasion of personal privacy

1 under subsection (b) of this Section;

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

4 (viii) obstruct an ongoing criminal investigation.

5 (d) Criminal history record information maintained by
6 State or local criminal justice agencies, except the
7 following which shall be open for public inspection and
8 copying:

9 (i) chronologically maintained arrest information,
10 such as traditional arrest logs or blotters;

11 (ii) the name of a person in the custody of a law
12 enforcement agency and the charges for which that
13 person is being held;

14 (iii) court records that are public;

15 (iv) records that are otherwise available under
16 State or local law; or

17 (v) records in which the requesting party is the
18 individual identified, except as provided under part
19 (vii) of paragraph (c) of subsection (1) of this
20 Section.

21 "Criminal history record information" means data
22 identifiable to an individual and consisting of
23 descriptions or notations of arrests, detentions,
24 indictments, informations, pre-trial proceedings, trials,
25 or other formal events in the criminal justice system or
26 descriptions or notations of criminal charges (including

1 criminal violations of local municipal ordinances) and the
2 nature of any disposition arising therefrom, including
3 sentencing, court or correctional supervision,
4 rehabilitation and release. The term does not apply to
5 statistical records and reports in which individuals are
6 not identified and from which their identities are not
7 ascertainable, or to information that is for criminal
8 investigative or intelligence purposes.

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

11 (f) Preliminary drafts, notes, recommendations,
12 memoranda and other records in which opinions are
13 expressed, or policies or actions are formulated, except
14 that a specific record or relevant portion of a record
15 shall not be exempt when the record is publicly cited and
16 identified by the head of the public body. The exemption
17 provided in this paragraph (f) extends to all those records
18 of officers and agencies of the General Assembly that
19 pertain to the preparation of legislative documents.

20 (g) Trade secrets and commercial or financial
21 information obtained from a person or business where the
22 trade secrets or information are proprietary, privileged
23 or confidential, or where disclosure of the trade secrets
24 or information may cause competitive harm, including:

25 (i) All information determined to be confidential
26 under Section 4002 of the Technology Advancement and

1 Development Act.

2 (ii) All trade secrets and commercial or financial
3 information obtained by a public body, including a
4 public pension fund, from a private equity fund or a
5 privately held company within the investment portfolio
6 of a private equity fund as a result of either
7 investing or evaluating a potential investment of
8 public funds in a private equity fund. The exemption
9 contained in this item does not apply to the aggregate
10 financial performance information of a private equity
11 fund, nor to the identity of the fund's managers or
12 general partners. The exemption contained in this item
13 does not apply to the identity of a privately held
14 company within the investment portfolio of a private
15 equity fund, unless the disclosure of the identity of a
16 privately held company may cause competitive harm.

17 Nothing contained in this paragraph (g) shall be construed
18 to prevent a person or business from consenting to disclosure.

19 (h) Proposals and bids for any contract, grant, or
20 agreement, including information which if it were
21 disclosed would frustrate procurement or give an advantage
22 to any person proposing to enter into a contractor
23 agreement with the body, until an award or final selection
24 is made. Information prepared by or for the body in
25 preparation of a bid solicitation shall be exempt until an
26 award or final selection is made.

1 (i) Valuable formulae, computer geographic systems,
2 designs, drawings and research data obtained or produced by
3 any public body when disclosure could reasonably be
4 expected to produce private gain or public loss. The
5 exemption for "computer geographic systems" provided in
6 this paragraph (i) does not extend to requests made by news
7 media as defined in Section 2 of this Act when the
8 requested information is not otherwise exempt and the only
9 purpose of the request is to access and disseminate
10 information regarding the health, safety, welfare, or
11 legal rights of the general public.

12 (j) Test questions, scoring keys and other examination
13 data used to administer an academic examination or
14 determined the qualifications of an applicant for a license
15 or employment.

16 (k) Architects' plans, engineers' technical
17 submissions, and other construction related technical
18 documents for projects not constructed or developed in
19 whole or in part with public funds and the same for
20 projects constructed or developed with public funds, but
21 only to the extent that disclosure would compromise
22 security, including but not limited to water treatment
23 facilities, airport facilities, sport stadiums, convention
24 centers, and all government owned, operated, or occupied
25 buildings.

26 (l) Library circulation and order records identifying

1 library users with specific materials.

2 (m) Minutes of meetings of public bodies closed to the
3 public as provided in the Open Meetings Act until the
4 public body makes the minutes available to the public under
5 Section 2.06 of the Open Meetings Act.

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

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

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

1 (q) Documents or materials relating to collective
2 negotiating matters between public bodies and their
3 employees or representatives, except that any final
4 contract or agreement shall be subject to inspection and
5 copying.

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

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

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

26 (u) Information concerning a university's adjudication

1 of student or employee grievance or disciplinary cases, to
2 the extent that disclosure would reveal the identity of the
3 student or employee and information concerning any public
4 body's adjudication of student or employee grievances or
5 disciplinary cases, except for the final outcome of the
6 cases.

7 (v) Course materials or research materials used by
8 faculty members.

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

11 (x) Information contained in or related to
12 examination, operating, or condition reports prepared by,
13 on behalf of, or for the use of a public body responsible
14 for the regulation or supervision of financial
15 institutions or insurance companies, unless disclosure is
16 otherwise required by State law.

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

19 (z) Manuals or instruction to staff that relate to
20 establishment or collection of liability for any State tax
21 or that relate to investigations by a public body to
22 determine violation of any criminal law.

23 (aa) Applications, related documents, and medical
24 records received by the Experimental Organ Transplantation
25 Procedures Board and any and all documents or other records
26 prepared by the Experimental Organ Transplantation

1 Procedures Board or its staff relating to applications it
2 has received.

3 (bb) Insurance or self insurance (including any
4 intergovernmental risk management association or self
5 insurance pool) claims, loss or risk management
6 information, records, data, advice or communications.

7 (cc) Information and records held by the Department of
8 Public Health and its authorized representatives relating
9 to known or suspected cases of sexually transmissible
10 disease or any information the disclosure of which is
11 restricted under the Illinois Sexually Transmissible
12 Disease Control Act.

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

15 (ee) Firm performance evaluations under Section 55 of
16 the Architectural, Engineering, and Land Surveying
17 Qualifications Based Selection Act.

18 (ff) Security portions of system safety program plans,
19 investigation reports, surveys, schedules, lists, data, or
20 information compiled, collected, or prepared by or for the
21 Regional Transportation Authority under Section 2.11 of
22 the Regional Transportation Authority Act or the St. Clair
23 County Transit District under the Bi-State Transit Safety
24 Act.

25 (gg) Information the disclosure of which is restricted
26 and exempted under Section 50 of the Illinois Prepaid

1 Tuition Act.

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

4 (ii) Beginning July 1, 1999, information that would
5 disclose or might lead to the disclosure of secret or
6 confidential information, codes, algorithms, programs, or
7 private keys intended to be used to create electronic or
8 digital signatures under the Electronic Commerce Security
9 Act.

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

14 (kk) Information and data concerning the distribution
15 of surcharge moneys collected and remitted by wireless
16 carriers under the Wireless Emergency Telephone Safety
17 Act.

18 (ll) Vulnerability assessments, security measures, and
19 response policies or plans that are designed to identify,
20 prevent, or respond to potential attacks upon a community's
21 population or systems, facilities, or installations, the
22 destruction or contamination of which would constitute a
23 clear and present danger to the health or safety of the
24 community, but only to the extent that disclosure could
25 reasonably be expected to jeopardize the effectiveness of
26 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 generation, transmission, distribution,
8 storage, gathering, treatment, or switching facilities
9 owned by a utility or by the Illinois Power Agency.

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 Executive Council under the Abuse
18 Prevention Review Team Act.

19 (pp) Information provided to the predatory lending
20 database created pursuant to Article 3 of the Residential
21 Real Property Disclosure Act, except to the extent
22 authorized under that Article.

23 (qq) Defense budgets and petitions for certification
24 of compensation and expenses for court appointed trial
25 counsel as provided under Sections 10 and 15 of the Capital
26 Crimes Litigation Act. This subsection (qq) shall apply

1 until the conclusion of the trial of the case, even if the
2 prosecution chooses not to pursue the death penalty prior
3 to trial or sentencing.

4 (rr) Information contained in or related to proposals,
5 bids, or negotiations related to electric power
6 procurement under Section 1-75 of the Illinois Power Agency
7 Act and Section 16-111.5 of the Public Utilities Act that
8 is determined to be confidential and proprietary by the
9 Illinois Power Agency or by the Illinois Commerce
10 Commission.

11 (ss) Information that is prohibited from being
12 disclosed under Section 4 of the Illinois Health and
13 Hazardous Substances Registry Act.

14 (tt) Information the disclosure of which is exempted
15 under the Viatical Settlements Act of 2009.

16 (2) This Section does not authorize withholding of
17 information or limit the availability of records to the public,
18 except as stated in this Section or otherwise provided in this
19 Act.

20 (Source: P.A. 94-280, eff. 1-1-06; 94-508, eff. 1-1-06; 94-664,
21 eff. 1-1-06; 94-931, eff. 6-26-06; 94-953, eff. 6-27-06;
22 94-1055, eff. 1-1-07; 95-331, eff. 8-21-07; 95-481, eff.
23 8-28-07; 95-941, eff. 8-29-08; 95-988, eff. 6-1-09; revised
24 10-20-08.)

25 Section 905. The Illinois Insurance Code is amended by

1 changing Section 500-70 as follows:

2 (215 ILCS 5/500-70)

3 (Section scheduled to be repealed on January 1, 2017)

4 Sec. 500-70. License denial, nonrenewal, or revocation.

5 (a) The Director may place on probation, suspend, revoke,
6 or refuse to issue or renew an insurance producer's license or
7 may levy a civil penalty in accordance with this Section or
8 take any combination of actions, for any one or more of the
9 following causes:

10 (1) providing incorrect, misleading, incomplete, or
11 materially untrue information in the license application;

12 (2) violating any insurance laws, or violating any
13 rule, subpoena, or order of the Director or of another
14 state's insurance commissioner;

15 (3) obtaining or attempting to obtain a license through
16 misrepresentation or fraud;

17 (4) improperly withholding, misappropriating or
18 converting any moneys or properties received in the course
19 of doing insurance business;

20 (5) intentionally misrepresenting the terms of an
21 actual or proposed insurance contract or application for
22 insurance;

23 (6) having been convicted of a felony;

24 (7) having admitted or been found to have committed any
25 insurance unfair trade practice or fraud;

1 (8) using fraudulent, coercive, or dishonest
2 practices, or demonstrating incompetence,
3 untrustworthiness or financial irresponsibility in the
4 conduct of business in this State or elsewhere;

5 (9) having an insurance producer license, or its
6 equivalent, denied, suspended, or revoked in any other
7 state, province, district or territory;

8 (10) forging a name to an application for insurance or
9 to a document related to an insurance transaction;

10 (11) improperly using notes or any other reference
11 material to complete an examination for an insurance
12 license;

13 (12) knowingly accepting insurance business from an
14 individual who is not licensed;

15 (13) failing to comply with an administrative or court
16 order imposing a child support obligation;

17 (14) failing to pay state income tax or penalty or
18 interest or comply with any administrative or court order
19 directing payment of state income tax or failed to file a
20 return or to pay any final assessment of any tax due to the
21 Department of Revenue; ~~or~~

22 (15) failing to make satisfactory repayment to the
23 Illinois Student Assistance Commission for a delinquent or
24 defaulted student loan; or

25 (16) failing to comply with any provision of the
26 Viatical Settlements Act of 2009.

1 (b) If the action by the Director is to nonrenew, suspend,
2 or revoke a license or to deny an application for a license,
3 the Director shall notify the applicant or licensee and advise,
4 in writing, the applicant or licensee of the reason for the
5 suspension, revocation, denial or nonrenewal of the
6 applicant's or licensee's license. The applicant or licensee
7 may make written demand upon the Director within 30 days after
8 the date of mailing for a hearing before the Director to
9 determine the reasonableness of the Director's action. The
10 hearing must be held within not fewer than 20 days nor more
11 than 30 days after the mailing of the notice of hearing and
12 shall be held pursuant to 50 Ill. Adm. Code 2402.

13 (c) The license of a business entity may be suspended,
14 revoked, or refused if the Director finds, after hearing, that
15 an individual licensee's violation was known or should have
16 been known by one or more of the partners, officers, or
17 managers acting on behalf of the partnership, corporation,
18 limited liability company, or limited liability partnership
19 and the violation was neither reported to the Director nor
20 corrective action taken.

21 (d) In addition to or instead of any applicable denial,
22 suspension, or revocation of a license, a person may, after
23 hearing, be subject to a civil penalty of up to \$10,000 for
24 each cause for denial, suspension, or revocation, however, the
25 civil penalty may total no more than \$100,000.

26 (e) The Director has the authority to enforce the

1 provisions of and impose any penalty or remedy authorized by
2 this Article against any person who is under investigation for
3 or charged with a violation of this Code or rules even if the
4 person's license or registration has been surrendered or has
5 lapsed by operation of law.

6 (f) Upon the suspension, denial, or revocation of a
7 license, the licensee or other person having possession or
8 custody of the license shall promptly deliver it to the
9 Director in person or by mail. The Director shall publish all
10 suspensions, denials, or revocations after the suspensions,
11 denials, or revocations become final in a manner designed to
12 notify interested insurance companies and other persons.

13 (g) A person whose license is revoked or whose application
14 is denied pursuant to this Section is ineligible to apply for
15 any license for 3 years after the revocation or denial. A
16 person whose license as an insurance producer has been revoked,
17 suspended, or denied may not be employed, contracted, or
18 engaged in any insurance related capacity during the time the
19 revocation, suspension, or denial is in effect.

20 (Source: P.A. 92-386, eff. 1-1-02; 93-32, eff. 7-1-03.)

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

23 (815 ILCS 5/2.1) (from Ch. 121 1/2, par. 137.2-1)

24 Sec. 2.1. Security. "Security" means any note, stock,

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

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

23 (815 ILCS 5/2.33 new)

24 Sec. 2.33. Viatical investment. "Viatical investment"
25 means the contractual right to receive any portion of the death

1 benefit or ownership of a life insurance policy or certificate
2 for consideration that is less than the expected death benefit
3 of the life insurance policy or certificate. "Viatical
4 investment" does not include:

5 (1) any transaction between a viator and a viatical
6 settlement provider, as defined in the Viatical
7 Settlements Act of 2009;

8 (2) any transfer of ownership or beneficial interest in
9 a life insurance policy from a viatical settlement provider
10 to another viatical settlement provider, as defined in the
11 Viatical Settlements Act of 2009, or to any legal entity
12 formed solely for the purpose of holding ownership or
13 beneficial interest in a life insurance policy or policies;

14 (3) the bona fide assignment of a life insurance policy
15 to a bank, savings bank, savings and loan association,
16 credit union, or financial institution as collateral for a
17 loan; for the purposes of this item (3), "financial
18 institution" means financial institution as defined by
19 Viatical Settlements Act of 2009; or

20 (4) a policy loan by a life insurance company or the
21 exercise of accelerated benefits pursuant to the terms of a
22 life insurance policy issued in accordance with the
23 Illinois Insurance Code.

24 (215 ILCS 158/Act rep.)

25 Section 950. The Viatical Settlements Act is repealed.

1 Section 995. No acceleration or delay. Where this Act makes
2 changes in a statute that is represented in this Act by text
3 that is not yet or no longer in effect (for example, a Section
4 represented by multiple versions), the use of that text does
5 not accelerate or delay the taking effect of (i) the changes
6 made by this Act or (ii) provisions derived from any other
7 Public Act.

8 Section 999. Effective date. This Act takes effect July 1,
9 2010.".