

AN ACT concerning insurance.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 1. Short title. This Act may be cited as the Viatical Settlements Act of 2009.

Section 5. Definitions.

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

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

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

"Business of viatical settlements" means any activity

involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, or hypothecating or in any other manner acquiring an interest in a life insurance policy by means of a viatical settlement contract or other agreement.

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

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

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

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

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

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

"Division" means the Division of Insurance of the

Department of Financial and Professional Regulation.

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

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

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

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

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

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

"Financing transaction" means a transaction in which a

viatical settlement provider obtains financing from a financing entity, including, without limitation, any secured or unsecured financing, securitization transaction, or securities offering that either is registered or exempt from registration under federal and State securities law.

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

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

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

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

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

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

"NAIC" means the National Association of Insurance Commissioners.

"Person" means an individual or a legal entity, including,

without limitation, a partnership, limited liability company, limited liability partnership, association, trust, business trust, or corporation.

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

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

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

"Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity

formed only to provide, directly or indirectly, access to institutional capital markets (i) for a financing entity or licensed viatical settlement provider; or (ii) in connection with a transaction in which the securities in the special purposes entity are acquired by the viator or by qualified institutional buyers or the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

"Stranger-originated life insurance" or "STOLI" means an act, practice, or arrangement to initiate a life insurance policy for the benefit of a third-party investor who, at the time of policy origination, has no insurable interest in the insured. STOLI practices include, but are not limited to, cases in which life insurance is purchased with resources or guarantees from or through a person or entity who, at the time of policy inception, could not lawfully initiate the policy himself or itself and where, at the time of policy inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy or policy benefits to a third party. Trusts created to give the appearance of an insurable interest and used to initiate policies for investors violate insurance interest laws and the prohibition against wagering on life. STOLI arrangements do not include lawful viatical settlement contracts as permitted by this Act.

"Terminally ill" means certified by a physician as having

an illness or physical condition that reasonably is expected to result in death in 24 months or less.

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

"Viatical settlement contract" means any of the following:

(1) A written agreement between a viator and a viatical settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the viator's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy.

(2) A written agreement for a loan or other lending transaction, secured primarily by an individual life

insurance policy or an individual certificate of a group life insurance policy.

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

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

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

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

"Viatical settlement contract" does not include any of the following acts, practices, or arrangements listed below in subparagraphs (a) through (i) of this definition of "viatical settlement contract", unless part of a plan, scheme, device, or artifice to avoid application of this Act; provided, however, that the list of excluded items contained in subparagraphs (a) through (i) is not intended to be an exhaustive list and that an act, practice, or arrangement that is not described below in

subparagraphs (a) through (i) does not necessarily constitute a viatical settlement contract:

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

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

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

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

(e) An agreement in which all the parties (i) are closely related to the insured by blood or law or (ii) have a lawful substantial economic interest in the continued

life, health, and bodily safety of the person insured, or trusts established primarily for the benefit of such parties;

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

(g) A bona fide business succession planning arrangement: (i) between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders; (ii) between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or (iii) between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;

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

(i) Any other contract, transaction, or arrangement exempted from the definition of viatical settlement

contract by the Director based on the Director's determination that the contract, transaction, or arrangement is not of the type intended to be regulated by this Act.

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

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

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

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

- (3) the issuer of the life insurance policy;
- (4) an authorized or eligible insurer that provides stop loss coverage or financial guaranty insurance to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;
- (5) An individual person who enters into or effectuates no more than one viatical settlement contract in a calendar year for the transfer of policies for any value less than the expected death benefit;
- (6) a financing entity;
- (7) a special purpose entity;
- (8) a related provider trust;
- (9) a viatical settlement purchaser; or
- (10) any other person that the Director determines is consistent with the definition of viatical settlement provider.

"Viatical settlement purchaser" means a person who provides a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy, in each case where such policy has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit. "Viatical settlement purchaser" does not include: (i) a licensee under this Act; (ii) an accredited

investor or qualified institutional buyer; (iii) a financing entity; (iv) a special purpose entity; or (v) a related provider trust.

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

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

"Viator" does not include:

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

Section 10. License and bond requirements.

(a) A person shall not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the chief insurance regulatory official of the state of residence of the viator. A viatical settlement provider transacting business in this State shall provide

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

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

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

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

If a business entity with an insurance producer license registers as a viatical settlement broker, then that

registration authorizes all partners, officers, members, and designated employees to act as viatical settlement brokers. All persons acting as viatical settlement brokers pursuant to such a registration shall be named in the application and any supplements to the application.

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

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

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

(h) Application for a viatical settlement provider license shall be made to the Director by the applicant on a form prescribed by the Director. The applications shall be

accompanied by a \$3,000 fee, which shall be deposited into the Insurance Producer Administration Fund.

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

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

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

(k) Upon the filing of a viatical settlement provider license application and the payment of the license fee, the Director shall make an investigation of each applicant and issue a license if the Director finds that the applicant:

(1) has provided a detailed plan of operation;

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

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

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

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

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

(D) notwithstanding any other provision of this Section to the contrary, the Director shall accept, as

evidence of financial responsibility, proof that financial instruments in accordance with the requirements in this subsection (k) have been filed with one or more states where the applicant is licensed as a viatical settlement provider;

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

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

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

(m) An applicant for a viatical settlement provider license shall provide all information requested by the Director. The Director may, at any time, require the applicant to fully disclose the identity of all stockholders, partners, officers, members, and employees of the viatical settlement provider, and the Director may refuse to issue a license to an applicant that is not an individual if the Director is not satisfied that each stockholder, partner, officer, member, and employee who may materially influence the applicant's conduct meets the standards set forth in this Act. The Director may also require

the applicant to disclose the method the applicant will use to determine and receive life expectancies, the applicant's intended use of life expectancies, and a written plan containing policies and procedures to use when determining life expectancies.

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

(o) Viatical settlement providers licensed under the Viatical Settlements Act as of the effective date of this amendatory Act of the 96th General Assembly shall be deemed licensed under this Act. All such providers are required to maintain or come into compliance with all of the license requirements of this Act and to provide evidence to the Director that they are in compliance with item (4) of subsection (k) of this Section, concerning financial responsibility; item (6) of subsection (k) of this Section, concerning an anti-fraud plan; and subsection (m) of this Section, concerning life expectancies no later than the effective date of this Act. Such providers shall not be exempt from the requirements for viatical settlement provider license renewal set forth in subsection (i) of this Section. The first anniversary date for the purpose of license renewal under subsection (i) shall be one year from the effective date of this amendatory Act of the 96th General Assembly.

Section 11. Viatical settlement broker training requirements.

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

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

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

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

(4) The training requirements of subsection (b) of this

Section may be approved as continuing education courses under Section 500-35(b)(1) of the Illinois Insurance Code.

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

(1) The one-time training required by this Section shall be no less than 4 hours and the ongoing training required by this Section shall be no less than 4 hours over a 24-month period.

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

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

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

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

(D) alternatives to viatical settlement contracts;
and

(E) consumer suitability standards and guidelines.

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

(c) Viatical settlement providers shall provide

verification of training as follows:

(1) Viatical settlement providers subject to this Act shall obtain verification that a producer receives training required by subsection (a) of this Section before a producer is permitted to sell, solicit, or negotiate viatical settlement contracts. Viatical settlement providers shall maintain records for verification subject to the State's record retention requirements and make the verification available to the Director upon request.

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

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

Section 15. License revocation for viatical settlement providers.

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

(1) there was any material misrepresentation in the

application for the license;

(2) the viatical settlement provider or any officer, partner, member, or controlling person uses fraudulent or dishonest practices or is otherwise shown to be untrustworthy, incompetent, or financially irresponsible in this State or elsewhere;

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

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

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

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

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

(8) the viatical settlement provider has assigned, transferred, or pledged a purchased policy to a person

other than a viatical settlement provider licensed in this State, a viatical settlement purchaser, a financing entity, a special purpose entity, or a related provider trust; or

(9) the viatical settlement provider or any officer, partner, member, or controlling person of the viatical settlement provider has violated any of the provisions of this Act.

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

Section 17. License revocation and denial for viatical settlement brokers. Insurance producers operating as viatical

settlement brokers shall be subject to the license denial, nonrenewal, and revocation provisions established by Section 500-70 of the Illinois Insurance Code, in addition to any monetary or criminal penalties as may be appropriate.

Section 20. Approval of viatical settlement contracts and disclosure statements. A person shall not use a viatical settlement contract form or provide to a viator a disclosure statement form in this State unless first filed with and approved by the Director. The Director shall disapprove a viatical settlement contract form or disclosure statement form if, in the Director's opinion, the contract or provisions contained therein fail to meet the requirements of this Act or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. At the Director's discretion, the Director may require the submission of advertising material. If the Director disapproves a viatical settlement contract form or disclosure statement form, then the Director shall notify the viatical settlement provider and advise the viatical settlement provider, in writing, of the reason for the disapproval. The viatical settlement provider may make written demand upon the Director within 30 days after the date of mailing for a hearing before the Director to determine the reasonableness of the Director's action. The hearing must be held within not fewer than 20 days nor more than 30 days after the mailing of the notice of hearing and

shall be held in accordance with the Illinois Administrative Procedure Act and 50 Ill. Admin. Code 2402.

Section 25. Reporting requirements and privacy.

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

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

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

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

(4) Any other information required by the Director.

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

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

(d) The Director shall keep confidential and not a matter of public record all individual transaction data regarding the business of viatical settlements and data that could compromise the privacy of personal, financial, and health information of the viator or the insured. All proprietary information received by the Director from a viatical settlement provider pursuant to this Section must be given confidential treatment, is not

subject to subpoena, and may not be made public by the Director or any other persons.

(e) Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of the identity of an insured under a viatical settlement contract shall not disclose the identity of the insured or the insured's financial or medical information to any other person unless the disclosure is:

(1) necessary to effect a viatical settlement contract between the viator and a viatical settlement provider and the viator or insured have provided prior written consent to the disclosure;

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

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

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

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

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

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

Section 30. Examination or investigation.

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

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

(b) For purposes of completing an examination of a licensee under this Act, the Director may examine or investigate any person, or the business of any person, in so far as the examination or investigation is, in the sole discretion of the

Director, necessary or material to the examination.

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

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

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

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

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

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

This subsection (e) does not relieve a person of the

obligation to produce records required by this subsection to the Director after the retention period has expired if the person has retained the documents.

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

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

Every licensee or person, including all officers, partners, members, directors, employees, controlling persons, and agents of any licensee or person, from whom information is sought shall provide to the examiners timely, convenient, and free access at all reasonable hours at the licensee's or person's offices to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs of the licensee being examined. The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee by its officers, directors,

employees, or agents to submit to examination or to comply with any reasonable written request of the Director shall be grounds for revocation, denial of issuance, or non-renewal of any license or authority held by the licensee to engage in the viatical settlement business or other business subject to the Director's jurisdiction.

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

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

(g) Nothing contained in this Act limits the Director's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this State. Findings of fact and conclusions

made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(h) Nothing contained in this Act shall be construed to limit the Director's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the Director may, in the Director's discretion, deem appropriate.

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

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

(k) The licensee may request a hearing within 10 days after receipt of the examination report by giving the Director written notice of that request, together with a statement of its objections. The Director then must conduct a hearing in

conjunction with Sections 402 and 403 of the Illinois Insurance Code. The Director must issue a written order based upon the examination report and upon the hearing within 90 days after the report is filed or within 90 days after the hearing. After the hearing, the Director may make such order or orders as may be reasonably necessary to correct, eliminate, or remedy unlawful conduct.

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

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

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

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

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

- (1) confidential by law and privileged;
- (2) not subject to subpoena; and
- (3) not subject to discovery or admissible in evidence in any private civil action if they are:

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

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

Neither the Director nor any person that received the documents, material, or other information while acting under the authority of the Director, including the NAIC and its

affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials, or information subject to this subsection (m).

(n) In order to assist in the performance of the Director's duties, the Director may:

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

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

or information; and

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

(o) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Director under this Section or as a result of sharing as authorized in subsection (n) of this Section.

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

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

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

(s) No cause of action shall arise nor shall any liability be imposed against the Director, the Director's authorized

representatives, or any examiner appointed by the Director for any statements made or conduct performed in good faith while carrying out the provisions of this Act.

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

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

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

Section 35. Disclosure to viator.

(a) With each application for a viatical settlement contract, a viatical settlement provider or viatical settlement broker shall provide the viator with at least the following disclosures no later than the time the viatical settlement contract is signed by all parties. The disclosures shall include distribution of a brochure describing the process of viatical settlements. The NAIC form for the brochure shall be used unless another form is developed or approved by the Director. Other disclosures required by this subsection (a) shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker and shall provide the following information:

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

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

(3) That a viatical settlement broker represents only the viator and not the insurer or the viatical settlement

provider and owes a fiduciary duty to the viator, including a duty to act according to the viator's instructions and in the best interest of the viator.

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

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

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

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

viator or the viator's estate to the viatical settlement provider of all viatical settlement proceeds and any premiums, loans, and loan interest paid on the account of the viatical settlement within 60 days after the insured's death.

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

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

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

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

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

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

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

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

"By entering into a viatical settlement contract:

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

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

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

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

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

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

The disclosure document required by this subsection (b) shall be the cover page of the viatical settlement contract and shall be signed by the viator and the viatical settlement

provider or viatical settlement broker. The viator and viatical settlement provider or viatical settlement broker shall sign the disclosure prior to signing the viatical settlement contract. A copy of the signed document must be provided to the viator.

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

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

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

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

(4) If a policy to be acquired pursuant to a viatical settlement contract has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be acquired pursuant to a viatical settlement contract, the viator must be informed of the possible loss of coverage on the other lives under

the policy and must be advised to consult with the viator's insurance producer or the company issuing the policy for advice on the proposed viatical settlement contract.

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

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

telephone number, and tax identification number.

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

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

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

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

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

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

settlement broker's compensation; and

(6) the name of the legal owner and beneficiary of the insurance policy after the policy is sold pursuant to the viatical settlement contract and whether legal ownership of the policy and the beneficiary's right to collect benefits upon the viator's death can be sold.

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

Section 40. Disclosure to insurer. Prior to the initiation of a plan, transaction, or series of transactions a viatical settlement broker or viatical settlement provider shall fully disclose to an insurer a plan, transaction, or series of transactions to which the viatical settlement broker or viatical settlement provider is a party to originate, renew, continue, or finance a life insurance policy with the insurer for the purpose of engaging in the business of viatical settlements at any time prior to or during the first 2 years after issuance of the policy. The viatical settlement provider, viatical settlement broker, viator, or applicant for a policy shall, when requested, disclose that the prospective insured has undergone a life expectancy evaluation in connection with the issuance of a policy by a person or entity other than the

insurer or its authorized representative. Any disclosure required under this Section must be made in writing.

Section 45. General rules.

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

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

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

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

The notice shall be accompanied by the documents required by subsection (c) of this Section.

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

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

(e) If a viatical settlement broker performs any of the

activities required of a viatical settlement provider as described by subsection (a) through (d) of this Section, then the viatical settlement provider is deemed to have fulfilled that requirement.

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

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

(h) All viatical settlement contracts entered into in this State shall provide the viator with an absolute right to rescind the contract before the earlier of 30 calendar days after the date upon which the viatical settlement contract is

executed by all parties or 15 calendar days after the viatical settlement proceeds have been sent to the viator as provided in Section 45. Rescission by the viator may be conditioned upon the viator both giving notice and repaying to the viatical settlement provider within the rescission period all proceeds of the settlement and any premiums, loans and loan interest paid by or on behalf of the viatical settlement provider in connection with or as a consequence of the viatical settlement. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or purchaser of all viatical settlement proceeds, and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or viatical settlement purchaser, which shall be paid within 60 calendar days of the death of the insured. In the event of any rescission, if the viatical settlement provider has paid commissions or other compensation to a viatical settlement broker in connection with the rescinded transaction, the viatical settlement broker shall refund all such commissions and compensation to the viatical settlement provider within 5 business days following receipt of written demand from the viatical settlement provider, which demand shall be accompanied by either the viator's notice of rescission if rescinded at the election of the viator, or notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission

period.

(i) If a viatical settlement contract is rescinded by the viator pursuant to this Section, then ownership of the insurance policy reverts to the viator or to the viator's estate.

(j) The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary directly to the escrow agent. Within 3 business days after the date the escrow agent receives the document (or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the viatical settlement provider), the viatical settlement provider shall pay or transfer the gross amount paid by the viatical settlement purchaser to the escrow agent for deposit in a trust account and set up for that purpose by the escrow agent in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). Upon payment of the settlement proceeds into the escrow or trust account, the escrow agent or trustee shall deliver the original change in ownership, assignment, or change in beneficiary forms to the viatical settlement provider, a representative of the viatical settlement provider, or related provider trust. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of

beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator. Funds shall be deemed sent by a viatical settlement provider to a viator as of the date that the escrow agent either releases the funds for wire transfer to the viator or places a check for delivery to the viator via United States Postal Service or other nationally recognized delivery service.

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

(l) After the viatical settlement contract has been effected, contacts with the insured for the purpose of determining the health status of the insured shall be made only by the viatical settlement provider or the authorized representative of the viatical settlement provider. The viatical settlement provider or authorized representative shall not contact the insured with the purpose of determining the insured's health status more than once every 3 months if the insured has a life expectancy of more than one year or more than once per month if the insured has a life expectancy of one

year or less. The viatical settlement provider shall explain the procedure for making these contacts at the time the viatical settlement contract is entered into. For purposes of this Section, viatical settlement providers are responsible for the actions of their authorized representatives.

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

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

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

(o) Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and not the insurer or the viatical settlement provider and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator.

Section 50. Prohibited practices.

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

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

(1) The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 24 months. The time covered under a group policy shall be calculated without regard to any

change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship.

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

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

(B) the viator's spouse dies;

(C) the viator divorces his or her spouse;

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

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

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

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

(H) any other condition that the Director may determine by regulation to be an extraordinary

circumstance for the viator or the insured.

(c) Copies of the independent evidence described in paragraph (2) of subsection (b) of this Section and documents required by Section 45 shall be submitted to the insurer when the viatical settlement provider or any other party entering into a viatical settlement contract with a viator submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

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

(e) No insurer may, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a viatical settlement contract, require that the viator, insured, viatical settlement provider, or viatical settlement broker sign any forms, disclosures,

consent, or waiver form that has not been expressly approved by the Director for use in connection with viatical settlement contracts in this State.

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

Section 55. Prohibited practices and conflicts of interest.

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

(b) With respect to any viatical settlement contract or insurance policy, no viatical settlement provider knowingly may enter into a viatical settlement contract with a viator, if, in connection with such viatical settlement contract,

anything of value will be paid to a viatical settlement broker that is controlling, controlled by, or under common control with such viatical settlement provider or the viatical settlement purchaser, financing entity, or related provider trust that is involved in such viatical settlement contract, unless such relationship is fully disclosed to the viator.

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

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

(e) No person shall issue, solicit, or market the purchase of an insurance policy for the purpose of settling the policy. Nothing in this subsection (e) shall prohibit persons from using and discussing the written materials that the Director shall approve prior to the effective date of this Act and that

inform consumers of their rights with respect to a life insurance policy, including the option of entering into a lawful viatical settlement contract. Nothing in this subsection (e) limits or otherwise impairs the terms of a contract between an insurer and its producers.

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

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

Section 60. Advertising for viatical settlements.

(a) The purpose of this Section is to provide prospective viators with clear and unambiguous statements in the advertisement of viatical settlements and to assure the clear,

truthful, and adequate disclosure of the benefits, risks, limitations, and exclusions of any viatical settlement contract. All product descriptions must be presented in a manner that prevents unfair, deceptive, or misleading advertising and conducive to accurate presentation and description of viatical settlements through the advertising media and material used by licensees.

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

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

(d) Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract product or service shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Director from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

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

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

statements.

An advertisement shall not use the name or title of an insurance company or an insurance policy unless the advertisement has been approved by the insurer.

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

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

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

If the individual making a testimonial, appraisal, analysis, or endorsement has a financial interest in the subject of the testimonial, appraisal, analysis, or endorsement, either directly or indirectly as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) any viatical settlement contract; or

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

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

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

Section 65. Fraud prevention and control.

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

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

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

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

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

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

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

(d) No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated, or completed viatical settlement fraud or suspected or completed fraudulent

insurance acts, if the information is provided to or received from:

(1) the Director or the Director's employees, agents, or representatives;

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

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

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

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

(e) The immunity provided by subsection (d) of this Section shall not apply to false statements made willfully or wantonly. In an action brought against a person for filing a report or furnishing other information concerning viatical settlement fraud, the party bringing the action shall plead specifically any allegation that subsection (d) does not apply.

(f) A person furnishing information as identified in subsection (d) of this Section shall be entitled to an award of

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

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

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

(h) The documents and evidence provided pursuant to subsection (d) of this Section or obtained by the Director in an investigation of suspected or actual viatical settlement fraud shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action. This subsection (h) does not prohibit release by the Director of documents and evidence obtained in an investigation of suspected or actual viatical

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

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

(1) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law.

(2) Prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the Division.

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

(j) Viatical settlement providers and viatical settlement brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent viatical settlement fraud. At the discretion of the Director, the

Director may order, or a licensee may request and the Director may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this Section.

Antifraud initiatives shall include the following:

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

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

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

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

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

(D) a description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and

reporting of possible viatical settlement fraud and investigating unresolved material inconsistencies between medical records and insurance applications; and

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

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

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

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

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

(c) The Director may issue, in accordance with Section 401.1 of the Illinois Insurance Code and the Illinois

Administrative Procedure Act, a cease and desist order upon a person that violates any provision of this Act, any regulation or order adopted by the Director, or any written agreement entered into with the Director.

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

Section 72. Crimes and offenses.

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

(b) A person acting in this State as a viatical settlement broker without having met the licensure and notification requirements established by Section 10 of this Act who willfully violates any provision of this Act or any rule adopted or order issued under this Act is guilty of a Class A misdemeanor and may be subject to a fine of not more than \$3,000. When such violation results in a loss of more than \$10,000, the person shall be guilty of a Class 3 felony and may be subject to a fine of not more than \$10,000.

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

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

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

(A) presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, life expectancy provider, viatical settlement purchaser, financing entity, insurer, insurance producer, or any other person, false

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

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

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

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

(iv) premiums paid on an insurance policy;

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

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

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

(viii) the issuance of written evidence of a viatical settlement contract or insurance; or

(ix) a financing transaction; or

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

(C) enters into any act, practice, or arrangement

which involves stranger-originated life insurance.

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

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

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

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

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

(3) Any person knowingly steals, misappropriates, or converts monies, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner, or any other

person engaged in the business of viatical settlements or insurance;

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

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

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

Section 75. Unfair trade practices. A violation of this

Act, including the commission of viatical settlement fraud, shall be considered an unfair trade practice under Article XXVI of the Illinois Insurance Code.

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

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

Section 95. Applicability of securities laws. Nothing in this Act shall preempt or otherwise limit the provisions of the Illinois Securities Law of 1953 or any regulations, bulletins, or other interpretations issued by or through the Secretary of State acting pursuant to the Illinois Securities Law of 1953. Compliance with the provisions of this Act shall not constitute compliance with any applicable provision of the Illinois Securities Law of 1953 and any amendments thereto or any regulations, notices, bulletins, or other interpretations issued by or through the Secretary of State acting pursuant to the Illinois Securities Law of 1953.

Section 100. Viatical settlement provider application. A viatical settlement provider lawfully transacting business in this State may continue to do so pending approval or disapproval of the provider's application for a license as long as the application is filed with the Director not later than 30 days after the effective date of this Act.

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

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

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

To be eligible for regulatory treatment pursuant to this Section 105, the individual or entity seeking such treatment must first provide written notice to the Director that the individual or entity engages in a business practice as described in items (i) or (ii). Such notice shall be in a form

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

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

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

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

Sec. 7. Exemptions.

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

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

(b) Information that, if disclosed, would constitute a clearly unwarranted invasion of personal privacy, unless the disclosure is consented to in writing by the individual

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

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

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

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

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

(v) information revealing the identity of persons who file complaints with or provide information to

administrative, investigative, law enforcement or penal agencies; provided, however, that identification of witnesses to traffic accidents, traffic accident reports, and rescue reports may be provided by agencies of local government, except in a case for which a criminal investigation is ongoing, without constituting a clearly unwarranted per se invasion of personal privacy under this subsection; and

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

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

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

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

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

(iv) unavoidably disclose the identity of a

confidential source or confidential information furnished only by the confidential source;

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

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

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

(viii) obstruct an ongoing criminal investigation.

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

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

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

(iii) court records that are public;

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

(v) records in which the requesting party is the individual identified, except as provided under part

(vii) of paragraph (c) of subsection (1) of this Section.

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

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

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

pertain to the preparation of legislative documents.

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

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

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

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

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

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

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

(k) Architects' plans, engineers' technical submissions, and other construction related technical documents for projects not constructed or developed in

whole or in part with public funds and the same for projects constructed or developed with public funds, but only to the extent that disclosure would compromise security, including but not limited to water treatment facilities, airport facilities, sport stadiums, convention centers, and all government owned, operated, or occupied buildings.

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

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

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

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

(p) Administrative or technical information associated with automated data processing operations, including but

not limited to software, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of materials exempt under this Section.

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

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

(s) The records, documents and information relating to real estate purchase negotiations until those negotiations have been completed or otherwise terminated. With regard to a parcel involved in a pending or actually and reasonably contemplated eminent domain proceeding under the Eminent Domain Act, records, documents and information relating to that parcel shall be exempt except as may be allowed under

discovery rules adopted by the Illinois Supreme Court. The records, documents and information relating to a real estate sale shall be exempt until a sale is consummated.

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

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

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

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

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

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

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

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

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

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

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

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

(ff) Security portions of system safety program plans,

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

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

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

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

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

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

(ll) Vulnerability assessments, security measures, and

response policies or plans that are designed to identify, prevent, or respond to potential attacks upon a community's population or systems, facilities, or installations, the destruction or contamination of which would constitute a clear and present danger to the health or safety of the community, but only to the extent that disclosure could reasonably be expected to jeopardize the effectiveness of the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

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

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

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

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

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

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

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

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

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

Act.

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

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

Sec. 7. Exemptions.

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

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

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

(i) files and personal information maintained with respect to clients, patients, residents, students or other individuals receiving social, medical, educational, vocational, financial, supervisory or custodial care or services directly or indirectly from

federal agencies or public bodies;

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

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

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

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

(vi) the names, addresses, or other personal information of participants and registrants in park

district, forest preserve district, and conservation district programs; and

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

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

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

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

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

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

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

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

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

(viii) obstruct an ongoing criminal investigation.

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

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

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

(iii) court records that are public;

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

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

"Criminal history record information" means data identifiable to an individual and consisting of descriptions or notations of arrests, detentions, indictments, informations, pre-trial proceedings, trials, or other formal events in the criminal justice system or

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

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

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

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

(i) All information determined to be confidential

under Section 4002 of the Technology Advancement and Development Act.

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

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

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

award or final selection is made.

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

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

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

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

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

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

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

(p) Administrative or technical information associated with automated data processing operations, including but not limited to software, operating protocols, computer program abstracts, file layouts, source listings, object modules, load modules, user guides, documentation pertaining to all logical and physical design of computerized systems, employee manuals, and any other information that, if disclosed, would jeopardize the security of the system or its data or the security of

materials exempt under this Section.

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

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

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

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

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

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

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

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

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

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

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

prepared by the Experimental Organ Transplantation Procedures Board or its staff relating to applications it has received.

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

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

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

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

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

(gg) Information the disclosure of which is restricted

and exempted under Section 50 of the Illinois Prepaid Tuition Act.

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

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

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

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

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

the measures or the safety of the personnel who implement them or the public. Information exempt under this item may include such things as details pertaining to the mobilization or deployment of personnel or equipment, to the operation of communication systems or protocols, or to tactical operations.

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

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

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

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

(qq) Defense budgets and petitions for certification of compensation and expenses for court appointed trial counsel as provided under Sections 10 and 15 of the Capital

Crimes Litigation Act. This subsection (qq) shall apply until the conclusion of the trial of the case, even if the prosecution chooses not to pursue the death penalty prior to trial or sentencing.

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

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

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

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

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

Section 905. The Illinois Insurance Code is amended by changing Section 500-70 as follows:

(215 ILCS 5/500-70)

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

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

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

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

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

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

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

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

(6) having been convicted of a felony;

(7) having admitted or been found to have committed any

insurance unfair trade practice or fraud;

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

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

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

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

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

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

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

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

(16) failing to comply with any provision of the

Viatical Settlements Act of 2009.

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

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

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

(e) The Director has the authority to enforce the provisions of and impose any penalty or remedy authorized by this Article against any person who is under investigation for or charged with a violation of this Code or rules even if the person's license or registration has been surrendered or has lapsed by operation of law.

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

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

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

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

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

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

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

(815 ILCS 5/2.33 new)

Sec. 2.33. Viatical investment. "Viatical investment"

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

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

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

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

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

Section 950. The Viatical Settlements Act is repealed.

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

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