

## LEGISLATIVE BILL 853

Approved by the Governor April 17, 2008

Introduced by Banking, Commerce and Insurance Committee: Pahls, 31, Chairperson; Carlson, 38; Christensen, 44; Gay, 14; Hansen, 42; Langemeier, 23; Pankonin, 2; Pirsch, 4.

FOR AN ACT relating to insurance; to amend sections 44-1101, 44-1103, 44-1105, 44-1106, 44-1107, 44-1108, 44-1109, 44-1110, 44-1111, 44-1112, 44-1113, 44-1114, and 44-1115, Reissue Revised Statutes of Nebraska, and sections 44-1102 and 44-1104, Revised Statutes Supplement, 2007; to change provisions relating to the Viatical Settlements Act; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 44-1101, Reissue Revised Statutes of Nebraska, is amended to read:

44-1101 Sections 44-1101 to 44-1116 and sections 9 and 12 of this act shall be known and may be cited as the Viatical Settlements Act.

Sec. 2. Section 44-1102, Revised Statutes Supplement, 2007, is amended to read:

44-1102 For purposes of the Viatical Settlements Act:

(1) 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, motion pictures, and videos, published, disseminated, circulated, or placed directly before the public, directly or indirectly, 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 life insurance policy pursuant to a viatical settlement contract;

(2) Business of viatical settlements means an activity involved in, but not limited to, the offering, ~~solicitation, negotiation, procurement, effectuation,~~ soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, or hypothecating ~~of~~ or in any manner acquiring an interest in a life insurance policy by means of a viatical settlement contracts or purchase agreements, contract;

(3) Chronically ill means (a) being unable to perform at least two activities of daily living, such as eating, toileting, transferring, bathing, dressing, or continence; (b) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or (c) having a level of disability similar to that described in subdivision (3)(a) of this section as determined by the Department of Health and Human Services;

(4) Department means the Department of Insurance;

(5) Director means the Director of Insurance;

(6) Financing entity means an underwriter, a placement agent, a lender, a purchaser of securities, a purchaser of a policy or certificate from a viatical settlement provider, a credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract (a) whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies and (b) who 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 a nonaccredited investor or viatical settlement purchaser;

(7) Fraudulent viatical settlement act means:

(a) An ~~an~~ act or omission committed by any person who, knowingly and with intent to defraud and for the purpose of depriving another of property or for pecuniary gain, commits, or permits his or her employees or agents to commit, any of the following acts:

~~(a)~~ (i) Presenting, causing to be presented, or preparing with the knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance broker, insurance agent, or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

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

~~(ii)~~ (B) The underwriting of a viatical settlement contract or

insurance policy;

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

~~(iv)~~ (D) Premiums paid on an insurance policy;

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

~~(vi)~~ (F) The reinstatement or conversion of an insurance policy;

~~(vii)~~ (G) The solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy;

~~(viii)~~ (H) The issuance of written evidence of a viatical settlement contract or insurance; or

~~(ix)~~ (I) A financing transaction; or

~~(x)~~ (ii) Employing any plan, financial structure, device, scheme, or artifice to defraud related to viaticated policies;

(b) In the furtherance of a fraud or to prevent the detection of a fraud:

(i) Removing, concealing, altering, destroying, or sequestering from the director the assets or records of a licensee or other person engaged in the business of viatical settlements;

(ii) Misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or other person;

(iii) Transacting 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

(iv) Filing with the director or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the director;

(c) Presenting, causing to be presented, or preparing with the knowledge or reason to believe that it will be presented, to or by a viatical settlement provider, viatical settlement broker, insurer, insurance agent, financing entity, viatical settlement purchaser, or any other person, in connection with a viatical settlement transaction or insurance transaction, an insurance policy, knowing the policy was fraudulently obtained by the insured, owner, or any agent thereof;

(d) Embezzlement, theft, misappropriation, or conversion of money, 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; ~~or~~

(e) Recklessly entering into, negotiating, brokering, or otherwise dealing 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, if the person or persons intended to defraud the policy's issuer, the viatical settlement provider, or the viator. Recklessly means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks and such disregard involves a gross deviation from acceptable standards of conduct;

(f) Facilitating the change of state of ownership of a policy or certificate or the state of residency of a viator to a state or jurisdiction that does not have a law similar to the Viatical Settlements Act for the express purposes of evading or avoiding the provisions of the act; or

~~(g)~~ (g) Attempting to commit, assisting, aiding, or abetting in the commission of, or conspiring to commit the acts or omissions specified in this subdivision;

(8) Life insurance producer means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority for life insurance coverage or a life line of coverage pursuant to subdivision (1)(a) of section 44-4054;

~~(9)~~ (9) Person means a natural person or a legal entity, including an individual, a partnership, a limited liability company, an association, a trust, or a corporation;

~~(10)~~ (10) Policy means an individual or group policy, group certificate, contract, or arrangement of life insurance affecting the rights of owned by a resident of this state, or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state;

~~(11)~~ (11) 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;

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

(a) For ~~for~~ a financing entity or licensed viatical settlement provider; or

(b) (i) In connection with a transaction in which the securities in the special purpose entity are acquired by the viator or by qualified institutional buyers as defined in Rule 144A of the federal Securities Act of 1933, as such act existed on January 1, 2008; or

(ii) The securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets;

~~(12)~~ (13) Terminally ill means having an illness or sickness that can reasonably be expected to result in death in twenty-four months or less;

~~(13)~~ (14) Viatical settlement broker means a person, including a life insurance producer as provided in subdivision (1)(b) of section 44-1103, who, working exclusively ~~that~~ on behalf of a viator and for a fee, commission, or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or one or more viatical settlement brokers. 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. Viatical settlement broker includes a licensed life insurance producer that meets the requirements of section 44-1103. Viatical settlement broker does not include an attorney, a 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;

~~(14)~~ (15)(a) Viatical settlement contract means a written agreement between a viator and a viatical settlement provider or any affiliate of the viatical settlement provider establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the insurance policy, or certificate, in return for the viator's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership or any portion of the insurance policy or certificate of insurance. A viatical settlement contract also includes a contract for a loan or other financing transaction secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator;

(b) Viatical settlement contract includes 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 if:

(i) The viator or the insured receives on the date of the premium finance loan a guarantee of a future viatical settlement value of the policy; or

(ii) The viator or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

(c) Viatical settlement contract does not include:

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

(ii) A loan, the proceeds of which are used solely to pay:

(A) Premiums for the policy; or

(B) 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;

(iii) A loan made by a bank or other licensed 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, if the

default itself is not pursuant to an agreement or understanding with any other person for the purpose of evading regulation under the Viatical Settlements Act;

(iv) A premium finance loan not described in subdivision (15)(b) of this section;

(v) An agreement where all the parties (A) are closely related to the insured by blood or law, (B) have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or (C) are trusts established primarily for the benefit of such parties;

(vi) 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;

(vii) A bona fide business succession planning arrangement:

(A) 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;

(B) 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

(C) 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;

(viii) 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

(ix) Any other contract, transaction, or arrangement exempted from the definition of viatical settlement contract by the director based on a determination that the contract, transaction, or arrangement is not of the type intended to be regulated under the act;

~~(15)~~ (16)(a) Viatical settlement provider means a person, other than a viator, that enters into or effectuates a viatical settlement contract.

(b) Viatical settlement provider does not include:

~~(a)~~ (i) A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy solely as collateral for a loan;

(ii) A premium finance company making premium finance loans that takes an assignment of a life insurance policy solely as collateral for a loan;

~~(b)~~ (iii) The issuer of a the life insurance policy; providing accelerated benefits under and pursuant to the contract;

~~(e)~~ (iv) 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;

~~(d)~~ (v) A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;

~~(e)~~ (vi) A financing entity;

~~(f)~~ (vii) A special purpose entity;

~~(g)~~ (viii) A related provider trust;

~~(h)~~ (ix) A viatical settlement purchaser; or

~~(i)~~ An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501, or Rule 144A of the federal Securities Act of 1933, as the act existed on September 1, 2001, who purchases a viaticated policy from a viatical settlement provider;

(x) Any other person that the director exempts from the definition of viatical settlement provider;

~~(16)~~ (17)(a) Viatical settlement purchaser means a person who gives provides a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit.

(b) Viatical settlement purchaser does not include:

~~(a)~~ (i) A licensee under the Viatical Settlements Act;

~~(b)~~ (ii) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501, Rule 501(a) or Rule 144A of the federal Securities Act of 1933, as the act existed on September 1, 2001, January 1, 2008;

- ~~(e)~~ (iii) A financing entity;
- ~~(d)~~ (iv) A special purpose entity; or
- ~~(e)~~ (v) A related provider trust;

~~(17)~~ (18) Viaticated policy means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract; and

~~(18)~~ (19)(a) Viator means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and who enters or seeks to enter into a viatical settlement contract. For purposes of the Viatical Settlements 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 as specifically addressed. If there is more than one viator on a single policy and the viators are residents of different states, 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 of the viators agreed upon in writing by all the viators.

(b) Viator does not include:

~~(a)~~ (i) A licensee under the act;

~~(b)~~ An accredited investor or (ii) A qualified institutional buyer as defined respectively in Regulation D, Rule 501, or in Rule 144A of the federal Securities Act of 1933, as the act existed on September 1, 2001, January 1, 2008;

~~(e)~~ (iii) A financing entity;

~~(d)~~ (iv) A special purpose entity; or

~~(e)~~ (v) A related provider trust.

Sec. 3. Section 44-1103, Reissue Revised Statutes of Nebraska, is amended to read:

44-1103 (1)(a) A person shall not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the director or the chief insurance regulatory official of the state of residence of the viator. ~~If there is more than one viator on a single policy and the viators are residents of different states, the viatical settlement 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 viators.~~

~~(b)(i) A licensed insurance producer who has received qualification for a license in life insurance shall be exempt from the requirements of subdivision (1)(a) of this section if:~~

~~(A) The insurance producer is involved in no more than five viatical settlements per year;~~

~~(B) The insurance producer registers as a licensed insurance producer involved in no more than five viatical settlements per year;~~

~~(C) The insurance producer makes such registration no later than three days following the referral of a potential settlement to a viatical settlement provider; and~~

~~(D) The insurance producer meets the requirements set forth in subsections (4) through (7) of this section.~~

~~(ii) A registration application made pursuant to this subdivision shall be accompanied by a registration fee as set forth in subsection (2) of this section.~~

~~(iii) The director may suspend, revoke, or refuse to issue or renew a registration of an insurance producer pursuant to this subdivision for any of the grounds set forth in section 44-1104.~~

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

(ii) No later than thirty days after the first day of operating as a viatical settlement broker, the life insurance producer shall notify the director that he or she is acting as a viatical settlement broker on a form prescribed by the director and shall pay any applicable fee to be determined by the director. Notification shall include an acknowledgment by the life insurance producer that he or she will operate as a viatical settlement broker in accordance with the Viatical Settlements Act.

(iii) The insurer that issued the policy being viaticated 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.

(c) A licensed attorney, a 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 may negotiate viatical settlement contracts on behalf of the viator without having to obtain a license as a viatical settlement broker.

(2) Application for a viatical settlement provider or viatical settlement broker license shall be made to the director by the applicant on a form prescribed by the director. The viatical settlement broker application shall be accompanied by a fee established by the director of not to exceed forty dollars. The viatical settlement provider application shall be accompanied by a fee established by the director of not to exceed one thousand five hundred dollars.

(3) All viatical settlement broker licenses shall expire on the last day of the month of the licensed person's birthday in the first year after issuance in which his or her age is divisible by two and may be renewed upon payment of a fee established by the director not to exceed forty dollars. All viatical settlement provider licenses shall expire on the last day of April in each year and may be renewed upon payment of a renewal fee established by the director not to exceed one hundred dollars. Failure to pay the fee by the renewal date results in expiration of the license.

(4) The applicant 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 stockholder, partner, officer, member, or employee thereof who may materially influence the applicant's conduct meets the standards of the Viatical Settlements Act.

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

(6) Upon the filing of an 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:

(a) If a viatical settlement provider, provides a detailed plan of operation;

(b) Is competent and trustworthy and intends to act in good faith in the capacity for which application for a license is made;

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

(d) If a viatical settlement broker or viatical settlement provider, 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 in the amount of two hundred fifty thousand dollars;

(i) The director may ask for evidence of financial responsibility at any time the director deems necessary;

(ii) Any surety bond issued pursuant to subdivision (d) of this subsection 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 has sustained damages as a result of an erroneous act, failure to act, conviction of fraud, or conviction of unfair practices of the viatical settlement provider or viatical settlement broker; and

(iii) Notwithstanding any 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 of subdivision (d) of this subsection have been filed with a state where the applicant is licensed as a viatical settlement provider or viatical settlement broker;

~~(e)~~ (e) If a legal entity, provides a certificate of good standing from the state of its domicile; and

~~(e)~~ (f) If a viatical settlement provider or viatical settlement broker, provides an antifraud plan that meets the requirements of subsection (7) of section 44-1112.

(7) A licensee shall provide to the director new or revised

information about officers, ten-percent or more stockholders, partners, directors, members, or designated employees within thirty days after the change.

(8) An individual licensed as a viatical settlement broker shall complete on a biennial basis fifteen hours of training related to viatical settlements and viatical settlement transactions, except that a life insurance producer who is operating as a viatical settlement broker pursuant to subsection (1) of this section shall not be subject to the requirements of this subsection.

Sec. 4. Section 44-1104, Revised Statutes Supplement, 2007, is amended to read:

44-1104 (1) The director may suspend, revoke, or refuse to issue or renew a license issued under the Viatical Settlements Act or that of a life insurance producer operating as a viatical settlement broker under subdivision (1) (b) of section 44-1103 if the director finds that:

(a) There was any material misrepresentation in the application for the license;

(b) The applicant or licensee or any officer, partner, member, or key management personnel is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent;

(c) The viatical settlement provider demonstrates a pattern of unreasonable payments to viators;

(d) The applicant or licensee or any officer, partner, member, or key management personnel has been found guilty of, or has pleaded guilty or nolo contendere to, any felony or a Class I, II, or III misdemeanor, regardless of whether a judgment of conviction has been entered by the court;

(e) The viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to the Viatical Settlements Act;

(f) The viatical settlement broker or viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;

(g) The licensee no longer meets the requirements for initial licensure;

(h) The viatical settlement provider has assigned, transferred, or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, a viatical settlement purchaser, an accredited investor or qualified institutional buyer as defined ~~respectively in Regulation D, Rule 501, or in~~ Rule 144A of the federal Securities Act of 1933, as the act existed on ~~September 1, 2001,~~ January 1, 2008, a financing entity, a special purpose entity, or a related provider trust;

(i) The applicant or licensee or any officer, partner, member, or key management personnel has violated any provision of the Viatical Settlements Act or has otherwise engaged in bad faith conduct with one or more viators; or

(j) The licensee has failed to respond to the department within fifteen working days after receipt of an inquiry from the department.

(2) The director may suspend or revoke a license pursuant to subsection (1) of this section after notice and a hearing held in accordance with the Administrative Procedure Act.

(3) If the director denies a license application or refuses to renew a license pursuant to subsection (1) of this section, he or she shall notify the applicant or licensee of the reason for such denial or refusal of renewal. The applicant or licensee has thirty days after receipt of such notification to demand a hearing. The hearing shall be held within thirty days after receipt of such demand by the director and shall be held in accordance with the Administrative Procedure Act.

Sec. 5. Section 44-1105, Reissue Revised Statutes of Nebraska, is amended to read:

44-1105 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 sections 44-1108, 44-1109, and 44-1111 and subsection (2) of section 44-1112 or are unreasonable, contrary to the interest 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.

Sec. 6. Section 44-1106, Reissue Revised Statutes of Nebraska, is amended to read:

44-1106 (1) Each viatical settlement provider shall file with the director on or before March 1 of each year an annual statement containing

such information as the director may prescribe by rule and regulation. Such information shall be limited to only those transactions where the viator is a resident of this state. Individual transaction data regarding the business of viatical settlements or data that could compromise the privacy of personal, financial, or health information of the viator or insured shall be filed with the director on a confidential basis.

(2) 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 an insured's identity shall not disclose that identity as an insured or the insured's financial or medical information to any other person unless the disclosure:

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

(b) Is provided in response to an investigation or examination by the director or any other governmental officer or agency or pursuant to the requirements of subsection (3) of section 44-1112;

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

(d) Is 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;

(e) Is necessary to allow the viatical settlement provider or viatical settlement broker or his or her authorized representative to make contacts for the purpose of determining health status; or

(f) Is required to purchase stop-loss or financial guaranty coverage.

Sec. 7. Section 44-1107, Reissue Revised Statutes of Nebraska, is amended to read:

44-1107 (1) (a) The director may conduct an examination of a licensee under the Viatical Settlements Act as often as the director, in his or her sole discretion, deems appropriate. In scheduling and determining the nature, scope, and frequency of examination, the director shall consider such matters as consumer complaints, results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports 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 the act, the director may examine or investigate any person or the business of any person, insofar as the examination or investigation is, in the sole discretion of the director, necessary or material to the examination of the licensee.

(c) In lieu of an examination under the act of any foreign or alien licensee licensed in this state, the director may, in his or her sole discretion, accept an examination report on the licensee as prepared by the director for the licensee's state of domicile or port-of-entry state.

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

(2) (a) A person required to be licensed under the act shall for five years retain copies of all:

(i) 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, purchase agreement, underwriting document, policy form, or application, whichever is later;

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

(iii) Other records and documents related to the requirements of the act.

(b) This section does not relieve a person of the obligation to produce documents under subdivision (a) of this subsection to the director after the retention period has expired if the person has retained the documents.

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

(3) (a) 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. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The director may also employ such other guidelines or procedures as he or she deems appropriate.

(b) Every licensee or person from whom information is sought and its officers, directors, employees, and agents shall provide to the examiner timely, convenient, and free access at all reasonable hours at its 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 the suspension, refusal, or nonrenewal 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. Any proceedings for the suspension, revocation, or refusal of any license or authority shall be conducted pursuant to the Administrative Procedure Act.

(c) The director may issue subpoenas, administer oaths, and 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. A person who is subpoenaed shall attend as a witness at the place specified in the subpoena anywhere within the state. He or she shall be entitled to the same fees and mileage, if claimed, as a witness in the district court, with mileage to be computed at the rate provided in section 81-1176, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized, charged against, and paid by the licensee being examined.

(d) When making an examination under the Viatical Settlements Act, the director may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which will be borne by the licensee that is the subject of the examination.

(e) Nothing contained in the act shall be construed to limit 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 of law made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(f) Nothing contained in the 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 which the director may, in his or her sole discretion, deem appropriate.

(4)(a) Examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the licensee or 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 such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(b) No later than forty-five 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, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(c) Within thirty days after the end of the period allowed for the receipt of written submissions or rebuttals, the director shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers, and shall:

(i) Adopt the examination report as submitted or with modifications or corrections. If the examination report reveals that the licensee is operating in violation of any law, rule, regulation, or prior order of the director, the director may order the licensee to take any action the director considers necessary and appropriate to cure such violation; or

(ii) Reject the examination report with directions to the examiner

to reopen the examination for purposes of obtaining additional data, documentation, or information and to resubmit a report pursuant to subdivision (4)(b) of this section.

(d) Any licensee aggrieved by any action of the director pursuant to subdivision (4)(c) of this section may, within ten days after such action, make written request to the director for a hearing. Upon receipt of the licensee's request for a hearing, the director shall provide notice of the hearing no less than ten nor more than thirty days after the date of the licensee's request. The notice shall identify the subject of the hearing and the specific issues.

(e) Any hearing on an examination report shall be held in accordance with the Administrative Procedure Act.

(f) The examination report, with any modifications and corrections thereof, shall be accepted by the director and filed for public inspection immediately after the expiration of the times specified in subdivision (4)(d) of this section in the event that the licensee has not requested a hearing. Within thirty days after the filing of the examination report for public inspection, the licensee shall file affidavits executed by each of its directors stating under oath that they have received a copy of the examination report and related orders.

(5)(a) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the director unless required by law.

(b) Except as otherwise provided in the Viatical Settlements 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 the act, or in the course of analysis or investigation by the director of the financial condition or market conduct of a licensee, shall be confidential by law and privileged, shall not be subject to disclosure pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The director is authorized to use the documents, materials, communications, or other information in the furtherance of any regulatory or legal action brought as part of the director's official duties.

(c) Documents, materials, communications, or other information, including all working papers and copies thereof, in the possession or control of the National Association of Insurance Commissioners and its affiliates and subsidiaries shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if they are:

(i) Created, produced, or obtained by or disclosed to the National Association of Insurance Commissioners and its affiliates and subsidiaries in the course of assisting an examination made under the act or the law of another state or jurisdiction that is substantially similar to the act or assisting the director or the chief insurance regulatory official of another state in the analysis or investigation of the financial condition or market conduct of a licensee; or

(ii) Disclosed to the National Association of Insurance Commissioners and its affiliates and subsidiaries under subdivision (e) of this subsection by the director or the chief insurance regulatory official of another state.

(d) Neither the director nor any person that received the documents, materials, communications, or other information while acting under the authority of the director, including the National Association of Insurance Commissioners and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials, communications, or other information subject to this subsection.

(e) In order to assist in the performance of his or her duties, the director:

(i) May share documents, materials, communications, or other information, including the confidential and privileged documents, materials, communications, or other information subject to this subsection, with other state, federal, foreign, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, foreign, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, communications, or other information;

(ii) May receive documents, materials, communications, or other information, including otherwise confidential and privileged documents, materials, communications, or other information, from the National Association

of Insurance Commissioners 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 documents, materials, communications, or other 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 documents, materials, communications, or other information; and

(iii) May enter into agreements governing sharing and use of information consistent with this subsection.

(f) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, communications, or other information shall occur as a result of disclosure to the director under this section or as a result of sharing as authorized in subdivision ~~(d)~~ (e) of this subsection.

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

(h) Nothing contained in the act shall prevent or be construed as prohibiting the director from disclosing the content of an examination report, preliminary report or results, or any matter relating thereto to the director or chief insurance regulatory official of any other state or country, to any law enforcement official of this state or any other state, to any agency of the federal government at any time, or to the National Association of Insurance Commissioners so long as the agency or office receiving the examination report or matters relating thereto agrees in writing to hold the examination report or matters confidential and in a manner consistent with the act.

(6) (a) An examiner may not be appointed by the director if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under the Viatical Settlements Act. This subsection shall not be construed to automatically preclude an examiner from being:

(i) A viator;

(ii) An insured in a viaticated insurance policy; or

(iii) A beneficiary in an insurance policy that is proposed to be viaticated.

(b) Notwithstanding the requirements of this subsection, the director may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under the act.

(7) The reasonable expenses of the examination of a licensee conducted under the Viatical Settlements Act shall be fixed and determined by the director who shall collect the same from the licensee examined. The licensee shall reimburse the amount thereof upon presentation of a statement by the director. Reimbursement shall be limited to a reasonable allocation for the salary of each examiner plus actual expenses. All money collected by the director for examination of licensees shall be remitted in accordance with section 44-116.

(8) (a) 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 the Viatical Settlements Act.

(b) 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 an examiner pursuant to an examination made under the act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This subdivision does not abrogate or modify in any way common-law or statutory privilege or immunity heretofore enjoyed by any person identified in this subsection.

(c) A person identified in this subsection is 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 the Viatical Settlements 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.

(9) The director may investigate suspected fraudulent viatical

settlement acts and persons engaged in the business of viatical settlements.

Sec. 8. Section 44-1108, Reissue Revised Statutes of Nebraska, is amended to read:

44-1108 (1) With each application for a viatical settlement, a viatical settlement provider or viatical settlement broker shall provide the viator with at least the disclosures required by this section no later than the time the application for the viatical settlement contract is signed by all parties. The disclosures 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:

(a) Possible alternatives to viatical settlement contracts, including any accelerated death benefits or policy loans offered under the viator's life insurance policy;

(b) Some or all of the proceeds of the viatical settlement may be taxable under federal income tax laws and state franchise and income tax laws, and assistance should be sought from a professional tax advisor;

(c) Proceeds from the viatical settlement could be subject to the claims of creditors;

(d) Receipt of the proceeds from a viatical settlement may adversely effect the viator's eligibility for medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies;

(e) A viatical settlement broker represents exclusively the viator, 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;

~~(e)~~ (f) The viator has the right to rescind the viatical settlement contract for fifteen before the earlier of sixty calendar days after the date on which the viatical settlement contract is executed by all parties or thirty calendar days after receipt of the viatical settlement proceeds by have been paid to the viator as provided in subsection (3) of section 44-1109. 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 account of the viatical settlement within the rescission period. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded by the viator or the viator's estate. If a viatical settlement contract is rescinded, all viatical settlement proceeds and any premiums paid by the viatical settlement provider or purchaser shall be repaid to the viatical settlement provider or purchaser within sixty days of such rescission;

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

~~(f)~~ (h) 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 or certificate to be forfeited by the viator, and assistance should be sought from a financial advisor;

~~(g)~~ (i) A brochure describing the process of viatical settlements. The National Association of Insurance Commissioners' form for the brochure shall be used unless one is developed by the director; and

~~(h)~~ (j) Following the execution of a viatical settlement contract, the insured may be contacted by either the viatical settlement provider or broker or its authorized representative 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 as otherwise provided under the Viatical Settlements Act. This contact is limited to once every six months if the insured has a life expectancy of more than one year, and no more than once every three months if the insured has a life expectancy of one year or less. For purposes of this subdivision, authorized representative does not include a viatical settlement purchaser. 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 the viatical settlement provider.

The disclosure document shall contain the following language: All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about you, the insured, including your identity or the identity of family members, a spouse, or a 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 two years.

(2) 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 shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and the viatical settlement provider or viatical settlement broker and provide the following information:

(a) The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated;

(b) The name, business address, and telephone number of the viatical settlement provider;

(c) The amount and method of calculating the viatical settlement broker's compensation. Compensation includes anything of value paid or given to a viatical settlement broker for the placement of a policy; Any affiliations or contractual arrangements between the viatical settlement provider and the viatical settlement purchaser;

(d) If an insurance policy to be viaticated 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 viaticated, there is the possibility of a loss of coverage on the other lives under the policy, and consultation with an insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement is advised;

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

(f) The Whether the funds will be escrowed with an independent third party during the transfer process, and if so, provide the name, business address, and telephone number of the independent third-party escrow agent. The viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(3) 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:

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

(b) A full, complete, and accurate description of all offers, counter-offers, acceptances, and rejections relating to the proposed viatical settlement contract;

(c) A written disclosure of any affiliations or contractual arrangements between the viatical settlement broker and any person making an offer in connection with the proposed viatical settlement contracts;

(d) The amount and method of calculating the viatical settlement broker's compensation. Compensation includes anything of value paid or given to a viatical settlement broker for the placement of a policy; and

(e) If any portion of the viatical settlement broker's compensation is taken from a proposed viatical settlement offer, the viatical settlement 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.

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

Sec. 9. Before 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 anytime prior to or during the first five years after issuance of the policy.

Sec. 10. Section 44-1109, Reissue Revised Statutes of Nebraska, is amended to read:

44-1109 (1)(a) A viatical settlement provider entering into a

viatical settlement contract shall first obtain:

(i) 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; and

(ii) A document in which the insured consents, as required in subsection (2) of section 44-1106, to the release of his or her medical records to a viatical settlement provider, a viatical settlement broker, and the insurance company that issued the life insurance policy covering the life of the insured.

(b) Within twenty days after a viator executes documents necessary to transfer any rights under an insurance policy, or within twenty days after entering any agreement, option, promise, or 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 must be accompanied by the documents required by subdivision (c) of this subsection.

(c) The viatical settlement provider shall deliver a copy of the medical release required under subdivision (a)(ii) of this subsection, a copy of the viator's application for the viatical settlement contract, the notice required under subdivision (b) of this subsection, and a request for verification of coverage to the insurer that issued the life insurance policy that is the subject of the viatical transaction. The National Association of Insurance Commissioners' form for verification of coverage shall be used unless standards for verification are another form is developed and approved by the director.

(d) 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 thirty 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 a National Association of Insurance Commissioners' form or any other form approved by the director. The insurer shall accept an original, 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 (3) of section 44-1110 and section 44-1115.

(e) 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 and represents that the viator has a full and complete understanding of the viatical settlement contract, that the viator has a full and complete understanding of the benefits of the life insurance policy, that the viator acknowledges he or she is entering into the viatical settlement contract freely and voluntarily, and, for persons with a terminal or chronic illness or condition, that the viator acknowledges the insured has a terminal or chronic illness and the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

(f) If a viatical settlement broker performs any of the activities listed in this subsection on behalf of the viatical settlement provider, the provider is deemed to have fulfilled the requirements of this section.

(2) 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.

(3) All viatical settlement contracts entered into in this state shall provide the viator with an unconditional absolute right to rescind the contract ~~for fifteen~~ before the earlier of sixty calendar days after the date on which the viatical settlement contract is executed by all parties or thirty calendar days from the receipt of after the viatical settlement proceeds have been sent to the viator as provided in subsection (5) of this section. Rescission by the viator may be conditioned on 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. If a viatical settlement contract is rescinded, all viatical settlement proceeds and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or purchaser shall be repaid to the viatical settlement provider or purchaser within sixty

days of such rescission. 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 five business days following receipt of a 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 death of the insured within the applicable rescission period.

(4) 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 independent escrow agent. Within three business days after the date the escrow agent receives the documents or after the date the viatical settlement provider receives the documents if the viator erroneously provides the documents directly to the provider, the provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a state-chartered or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the viatical settlement provider or related provider trust or other designated representative of the viatical settlement provider. 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.

(5) Failure to tender consideration to the viator for the viatical settlement contract within the time set forth in the disclosure pursuant to subdivision (1)(g) of section 44-1108 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. Funds shall be deemed as sent by a viatical settlement provider to a viator as of the date that the escrow agent either releases funds for wire transfer to the viator or sends a check for delivery to the viator by the United States Postal Service or other nationally recognized delivery service.

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

Sec. 11. Section 44-1110, Reissue Revised Statutes of Nebraska, is amended to read:

44-1110 (1) It is a violation of the Viatical Settlements Act for any person to enter into a viatical settlement contract at any time prior to the application or issuance of a policy which is the subject of a viatical settlement contract or within a ~~two-year~~ five-year period commencing on the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the ~~two-year~~ five-year period:

~~(1)~~ (a) The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy if the total of the time covered under the conversion policy, plus the time covered under the group or individual policy, is at least ~~twenty-four~~ sixty months. The time covered under the group policy shall be calculated without regard to any change in insurance carriers if the coverage has been continuous and under the same group sponsorship;

~~(2)~~ The viator is a charitable organization exempt from taxation under 26 U.S.C. 501(c)(3), as such section existed on September 1, 2001;

~~(3)~~ The viator is not a natural person, such as the owner is a corporation, limited liability company, or partnership; and

~~(4)~~ (b) The viator submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the ~~two-year~~ five-year period:

~~(a)~~ (i) The viator or insured is terminally or chronically ill;

~~(b) (ii) The viator's spouse died;~~  
~~(c) (iii) The viator divorced his or her spouse;~~  
~~(d) (iv) The viator retired from full-time employment;~~  
~~(e) (v) The viator became physically or mentally disabled and a physician determined that the disability prevented the viator from maintaining full-time employment; or~~  
~~(f) The viator was the insured's employer at the time the policy or certificate was issued and the employment relationship terminated;~~  
~~(g) (vi) A final order, judgment, or decree was entered by a court of competent jurisdiction, 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 for all or a substantial part of the viator's assets; and~~  
~~(h) The viator experienced a significant decrease in income that was unexpected and that impaired the viator's reasonable ability to pay the policy premium; or~~  
~~(i) The viator or insured disposed of his or her ownership interests in a closely held corporation.~~

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

(i) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of its net cash surrender value, provided by, or fully recourse liability incurred by, the insured or a person described in subdivision (15) (c) (v) of section 44-1102;

(ii) There is no agreement or understanding with any other person to guarantee any such liability or to purchase or stand ready to purchase the policy, including through an assumption or forgiveness of the loan; and

(iii) Neither the insured nor the policy has been evaluated for settlement.

(2) Copies of the independent evidence described in subdivision (4) (1) (b) of this section and documents required by subsection (1) of section 44-1109 shall be submitted to the insurer when the viatical settlement provider or 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.

(3) If the viatical settlement provider submits to the insurer a copy of the owner's or insured's certification and the independent evidence described in subdivision (4) (1) (b) of this section when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, 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.

(4) 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.

(5) Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within thirty calendar days with written acknowledgment confirming that the change has been effected or specifying the reasons why the requested change cannot be processed. The insurer shall not unreasonably delay effecting change of ownership or beneficiary and shall not otherwise seek to interfere with any viatical settlement contract lawfully entered into in this state.

Sec. 12. (1) With respect to any viatical settlement contract or insurance policy, no viatical settlement broker shall knowingly 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 trust that is controlling, controlled by, or under common control with such viatical settlement broker.

(2) With respect to any viatical settlement contract or insurance policy, no viatical settlement provider shall knowingly 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.

(3) A violation of subsection (1) or (2) of this section shall be a fraudulent viatical settlement act.

(4) No viatical settlement provider shall enter into a viatical settlement contract unless the viatical settlement promotional, advertising, and marketing materials as may be prescribed by rule and regulation have been filed with the director. 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 the Viatical Settlements Act.

(5) No life insurance producer, insurance company, viatical settlement broker, or viatical settlement provider shall make any statement or representation to the applicant or policyholder 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.

Sec. 13. Section 44-1111, Reissue Revised Statutes of Nebraska, is amended to read:

44-1111 (1) 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. This purpose is intended to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of viatical settlements or related products or services to assure that product descriptions are presented in a manner that prevents unfair, deceptive, or misleading advertising and is conducive to accurate presentation and description of viatical settlements or related products or services through the advertising media and material used by licensees.

(2) This section applies to any advertising of viatical settlement contracts or related products or services intended for dissemination in this state, including Internet advertising viewed by persons located in this state. If disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation whenever possible.

(3) 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 or licensees, 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 advertisement not furnished by the licensee.

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

(5) (a) 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.

(b) 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.

(c) An advertisement shall not use the name or title of a life

insurance company or a life insurance policy unless the advertisement has been approved by the insurer.

(d) 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.

(e) The words free, no cost, without cost, no additional cost, or at no extra cost or words of similar import shall not be used with respect 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.

(f)(i) Any testimonial, appraisal, analysis, or endorsement used in an advertisement must be genuine, represent the current opinion of the author, be applicable to the viatical settlement contract, product, or service advertised, and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonial, appraisal, analysis, or endorsement. In using a testimonial, an appraisal, an analysis, or an endorsement, the licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

(ii) If the individual making a testimonial, an appraisal, an analysis, or an endorsement has a financial interest in the viatical settlement provider or party making use of the testimonial, appraisal, analysis, or endorsement either directly or through a related entity 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.

(iii) 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 or any society, association, or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement provider is disclosed. If the entity making the approval or endorsement is owned, controlled, or managed by the viatical settlement provider, or receives any payment or other consideration from the viatical settlement provider for making an approval or endorsement, that fact shall be disclosed in the advertisement.

(iv) When a testimonial, an appraisal, an analysis, or an endorsement refers to benefits received under a viatical settlement contract, all pertinent information shall be retained for a period of five years after its use.

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

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

(vii) The name of the viatical settlement 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 shall be shown on the application.

(viii) 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.

(ix) 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.

(x) An advertisement may state that a viatical settlement provider is licensed in the state where the advertisement appears if it does not exaggerate that fact or suggest or imply that competing viatical settlement providers may not be licensed. The advertisement may ask the audience to

consult the licensee's web site or contact the department to find out if the state requires licensing and, if so, whether the viatical settlement provider is licensed.

(xi) 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.

(xii) The name of the licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, the name of any affiliate or controlling entity of the licensee, a service mark, a slogan, a symbol, or any 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.

(xiii) An advertisement shall not disclose or indirectly create the impression that any division or agency of the state or of the United States Government endorses, approves, or favors:

(A) Any licensee or its business practices or methods of operation;

(B) The merits, desirability, or advisability of any viatical settlement contract or viatical settlement program;

(C) Any viatical settlement contract or viatical settlement program;

or

(D) Any life insurance policy or life insurance company.

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

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

Sec. 14. Section 44-1112, Reissue Revised Statutes of Nebraska, is amended to read:

44-1112 (1)(a) A person shall not commit a fraudulent viatical settlement act.

(b) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of the Viatical Settlements Act or investigations of suspected or actual violations of the act.

(c) 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.

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

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

(3)(a) Any person engaged in the business of viatical settlements having knowledge or a reasonable belief suspicion that a fraudulent viatical settlement act is being, will be, or has been committed shall provide to the director the information required by, and in a manner prescribed by, the director.

(b) Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act 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.

(4)(a) 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 fraudulent viatical settlement acts, if the information is provided to or received from:

(i) The director or the director's employees, agents, or representatives;

(ii) The Director of Banking and Finance or his or her employees, agents, or representatives;

(iii) Federal, state, or local law enforcement officials or their employees, agents, or representatives;

(iv) The National Association of Insurance Commissioners, the

National Association of Securities Dealers, or the North American Securities Administrators Association, employees, agents, or representatives of any such association, or any other regulatory body overseeing life insurance, viatical settlements, securities, or investment fraud; or

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

(b) This subsection does not apply to statements made with actual malice, fraudulent intent, or bad faith. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act, the party bringing the action shall plead specifically any allegation that this subsection does not apply because the person filing the report or furnishing the information did so with actual malice, fraudulent intent, or bad faith.

(c) A person furnishing information as identified in this subsection 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 the Viatical Settlements 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 it was initiated. An award granted under this subdivision shall not apply to any person furnishing information concerning his or her own fraudulent viatical settlement acts.

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

(5) (a) The documents and evidence provided pursuant to subsection (4) of this section or obtained by the director in an investigation of suspected or actual fraudulent viatical settlement acts 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.

(b) This subsection does not prohibit release by the director of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:

(i) In administrative or judicial proceedings to enforce laws administered by the director;

(ii) To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts, or to the National Association of Insurance Commissioners; or

(iii) At the discretion of the director, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act.

(c) Release of documents and evidence under this subsection does not abrogate or modify the privilege granted in this subsection.

(6) The Viatical Settlements Act shall not:

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

(b) Prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the department; or

(c) 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.

~~(7)~~ (7) (a) Viatical settlement providers and viatical settlement brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent viatical settlement acts. 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.

(b) Antifraud initiatives shall include:

~~(a)~~ (i) Fraud investigators, who may be viatical settlement provider or viatical settlement broker employees or independent contractors; and

~~(b)~~ (ii) An antifraud plan submitted to the director. The antifraud plan shall include, but not be limited to:

~~(i)~~ (A) A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

~~(ii)~~ (B) A description of the procedures for reporting possible fraudulent viatical settlement acts to the director;

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

~~(iv)~~ (D) A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(c) Antifraud plans submitted to the director shall be privileged and confidential, shall not be a public record, and shall not be subject to discovery or subpoena in a civil or criminal action.

Sec. 15. Section 44-1113, Reissue Revised Statutes of Nebraska, is amended to read:

44-1113 (1) In addition to the penalties and other enforcement provisions of the Viatical Settlements Act, if any person violates the act or any rule or regulation implementing the 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.

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

(3) The director may issue, in accordance with the Administrative Procedure Act, a cease and desist order upon a person that violates any provision of the Viatical Settlements Act, any rule, regulation, or order adopted or issued by the director, or any written agreement entered into between such person and the director.

(4) When the director finds that an activity in violation of the act presents an immediate danger to the public that requires an immediate final order, the director may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for ninety days. If the director begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction pursuant to the Administrative Procedure Act.

(5) In addition to the penalties and other enforcement provisions of the Viatical Settlements Act, any person who violates the act is subject to civil penalties of up to one thousand dollars per violation. Imposition of civil penalties shall be pursuant to an order of the director issued under the Administrative Procedure Act. The director's order may require a person found to be in violation of the Viatical Settlements Act to make restitution to persons aggrieved by violations of the act.

(6) A person who is found by a court of competent jurisdiction, pursuant to an action initiated by the director, to have committed a fraudulent viatical settlement act, is subject to a civil penalty not to exceed five thousand dollars for the first violation, ten thousand dollars for the second violation, and fifteen thousand dollars for each subsequent violation.

(7) A person convicted of a violation of the act by a court of competent jurisdiction shall be guilty of a Class III misdemeanor. A person convicted of a violation of the act shall be ordered to pay restitution to persons aggrieved by the violation. Restitution shall be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment. A prosecution under this subsection shall be in lieu of an action under subsection (6) of this section.

(8) Except for a fraudulent viatical settlement act committed by a viator, the enforcement provisions and penalties of this section shall not apply to a viator.

Sec. 16. Section 44-1114, Reissue Revised Statutes of Nebraska, is amended to read:

44-1114 The director shall have the authority to:

(1) Adopt and promulgate rules and regulations to carry out the Viatical Settlements Act;

(2) Establish standards for evaluating reasonableness of payments under viatical settlement contracts for persons with a terminal or chronic illness or condition. This authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy insuring the life of a person who is chronically ill or terminally ill;

(3) Establish appropriate licensing requirements, fees, and standards for continued licensure for viatical settlement providers and brokers;

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

(5) Adopt rules and regulations governing the relationship and responsibilities of insurers, viatical settlement providers, and viatical settlement brokers during the viatication of a life insurance policy or certificate.

Sec. 17. Section 44-1115, Reissue Revised Statutes of Nebraska, is amended to read:

44-1115 A violation of the Viatical Settlements Act, including the commission of a fraudulent viatical settlement act, shall be considered an unfair trade practice under the Unfair Insurance Trade Practices Act subject to the penalties contained in the act.

Sec. 18. Original sections 44-1101, 44-1103, 44-1105, 44-1106, 44-1107, 44-1108, 44-1109, 44-1110, 44-1111, 44-1112, 44-1113, 44-1114, and 44-1115, Reissue Revised Statutes of Nebraska, and sections 44-1102 and 44-1104, Revised Statutes Supplement, 2007, are repealed.