

SUBSTITUTE FOR  
HOUSE BILL NO. 4890

A bill to amend 1956 PA 218, entitled  
"The insurance code of 1956,"  
(MCL 500.100 to 500.8302) by amending the title, as amended by 2002  
PA 304, and by adding chapter 43; and to repeal acts and parts of  
acts.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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TITLE

An act to revise, consolidate, and classify the laws relating  
to the insurance and surety business; to regulate the incorporation  
or formation of domestic insurance and surety companies and  
associations and the admission of foreign and alien companies and  
associations; to provide their rights, powers, and immunities and  
to prescribe the conditions on which companies and associations

1 organized, existing, or authorized under this act may exercise  
2 their powers; to provide the rights, powers, and immunities and to  
3 prescribe the conditions on which other persons, firms,  
4 corporations, associations, risk retention groups, and purchasing  
5 groups engaged in an insurance or surety business may exercise  
6 their powers; to provide for the imposition of a privilege fee on  
7 domestic insurance companies and associations and the state  
8 accident fund; to provide for the imposition of a tax on the  
9 business of foreign and alien companies and associations; to  
10 provide for the imposition of a tax on risk retention groups and  
11 purchasing groups; to provide for the imposition of a tax on the  
12 business of surplus line agents; to provide for the imposition of  
13 regulatory fees on certain insurers; to provide for assessment fees  
14 on certain health maintenance organizations; to modify tort  
15 liability arising out of certain accidents; to provide for limited  
16 actions with respect to that modified tort liability and to  
17 prescribe certain procedures for maintaining those actions; to  
18 require security for losses arising out of certain accidents; to  
19 provide for the continued availability and affordability of  
20 automobile insurance and homeowners insurance in this state and to  
21 facilitate the purchase of that insurance by all residents of this  
22 state at fair and reasonable rates; to provide for certain  
23 reporting with respect to insurance and with respect to certain  
24 claims against uninsured or self-insured persons; to prescribe  
25 duties for certain state departments and officers with respect to  
26 that reporting; to provide for certain assessments; to establish  
27 and continue certain state insurance funds; to modify and clarify

1 the status, rights, powers, duties, and operations of the nonprofit  
2 malpractice insurance fund; to provide for the departmental  
3 supervision and regulation of the insurance and surety business  
4 within this state; to provide for regulation over worker's  
5 compensation self-insurers; to provide for the conservation,  
6 rehabilitation, or liquidation of unsound or insolvent insurers; to  
7 provide for the protection of policyholders, claimants, and  
8 creditors of unsound or insolvent insurers; to provide for  
9 associations of insurers to protect policyholders and claimants in  
10 the event of insurer insolvencies; to prescribe educational  
11 requirements for insurance agents and solicitors; to provide for  
12 the regulation of multiple employer welfare arrangements; **TO**  
13 **PROVIDE FOR THE REGULATION OF VIATICAL SETTLEMENT CONTRACTS;** to  
14 create an automobile theft prevention authority to reduce the  
15 number of automobile thefts in this state; to prescribe the powers  
16 and duties of the automobile theft prevention authority; to provide  
17 certain powers and duties upon certain officials, departments, and  
18 authorities of this state; to provide for an appropriation; to  
19 repeal acts and parts of acts; and to provide penalties for the  
20 violation of this act.

21

**CHAPTER 43**

22

**VIATICAL SETTLEMENT CONTRACTS**

23

**SEC. 4301. AS USED IN THIS CHAPTER:**

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(A) "ADMINISTRATIVE PROCEDURES ACT OF 1969" MEANS THE

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ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO

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24.328.

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(B) "ADVERTISING" OR "ADVERTISEMENT" MEANS ANY WRITTEN,

1 ELECTRONIC, OR PRINTED COMMUNICATION OR ANY COMMUNICATION BY MEANS  
2 OF RECORDED TELEPHONE MESSAGES OR TRANSMITTED ON RADIO, TELEVISION,  
3 THE INTERNET, OR SIMILAR COMMUNICATIONS MEDIA, INCLUDING, BUT NOT  
4 LIMITED TO, FILM STRIPS, MOTION PICTURES, AND VIDEOS, THAT IS  
5 PUBLISHED, DISSEMINATED, CIRCULATED, OR PLACED DIRECTLY OR  
6 INDIRECTLY BEFORE THE PUBLIC IN THIS STATE FOR THE PURPOSE OF  
7 CREATING AN INTEREST IN OR INDUCING A PERSON TO PURCHASE OR SELL,  
8 ASSIGN, DEVISE, BEQUEATH, OR TRANSFER THE DEATH BENEFIT OR  
9 OWNERSHIP OF A POLICY PURSUANT TO A VIATICAL SETTLEMENT CONTRACT.

10 (C) "BUSINESS OF VIATICAL SETTLEMENTS" MEANS AN ACTIVITY  
11 INVOLVED IN, BUT NOT LIMITED TO, THE OFFERING, SOLICITATION,  
12 NEGOTIATION, PROCUREMENT, EFFECTUATION, PURCHASING, INVESTING,  
13 FINANCING, MONITORING, TRACKING, UNDERWRITING, SELLING,  
14 TRANSFERRING, ASSIGNING, PLEDGING, OR HYPOTHECATING OR IN ANY OTHER  
15 MANNER ACQUIRING AN INTEREST IN A POLICY BY MEANS OF A VIATICAL  
16 SETTLEMENT CONTRACT.

17 (D) "CHRONICALLY ILL" MEANS HAVING BEEN CERTIFIED WITHIN THE  
18 PRECEDING 12-MONTH PERIOD BY A LICENSED HEALTH PROFESSIONAL AS  
19 MEETING 1 OF THE FOLLOWING:

20 (i) BEING UNABLE TO PERFORM, WITHOUT SUBSTANTIAL ASSISTANCE  
21 FROM ANOTHER INDIVIDUAL, AT LEAST 2 ACTIVITIES OF DAILY LIVING,  
22 INCLUDING, BUT NOT LIMITED TO, EATING, TOILETING, TRANSFERRING,  
23 BATHING, DRESSING, OR CONTINENCE FOR AT LEAST 90 DAYS DUE TO A LOSS  
24 OF FUNCTIONAL CAPACITY.

25 (ii) REQUIRING SUBSTANTIAL SUPERVISION TO PROTECT THE  
26 INDIVIDUAL FROM THREATS TO HEALTH AND SAFETY DUE TO SEVERE  
27 COGNITIVE IMPAIRMENT.

1           (E) "ESCROW AGENT" MEANS AN INDEPENDENT THIRD-PARTY PERSON  
2 WHO, PURSUANT TO A WRITTEN AGREEMENT SIGNED BY THE VIATICAL  
3 SETTLEMENT PROVIDER AND VIATOR, PROVIDES ESCROW SERVICES RELATED TO  
4 THE ACQUISITION OF A POLICY PURSUANT TO A VIATICAL SETTLEMENT  
5 CONTRACT. ESCROW AGENT DOES NOT INCLUDE ANY PERSON ASSOCIATED WITH,  
6 AFFILIATED WITH, OR UNDER THE CONTROL OF A PERSON LICENSED UNDER  
7 THIS CHAPTER OR DESCRIBED IN SECTION 4305(2) OR (3).

8           (F) "FINANCING ENTITY" MEANS AN UNDERWRITER, PLACEMENT AGENT,  
9 LENDER, PURCHASER OF SECURITIES, PURCHASER OF A POLICY FROM A  
10 VIATICAL SETTLEMENT PROVIDER, OR ANY OTHER PERSON, OTHER THAN A  
11 NONACCREDITED INVESTOR OR VIATICAL SETTLEMENT PURCHASER, THAT HAS A  
12 DIRECT OWNERSHIP INTEREST IN A POLICY THAT IS THE SUBJECT OF A  
13 VIATICAL SETTLEMENT CONTRACT AND TO WHICH BOTH OF THE FOLLOWING  
14 APPLY:

15           (i) ITS PRINCIPAL ACTIVITY RELATED TO THE TRANSACTION IS  
16 PROVIDING FUNDS TO EFFECT THE BUSINESS OF VIATICAL SETTLEMENTS OR  
17 THE PURCHASE OF 1 OR MORE VIATICATED POLICIES.

18           (ii) IT HAS AN AGREEMENT IN WRITING WITH 1 OR MORE LICENSED  
19 VIATICAL SETTLEMENT PROVIDERS TO FINANCE THE ACQUISITION OF  
20 VIATICAL SETTLEMENT CONTRACTS.

21           (G) "FREEDOM OF INFORMATION ACT" MEANS THE FREEDOM OF  
22 INFORMATION ACT, 1976 PA 442, MCL 15.231 TO 15.246.

23           (H) "LICENSEE" MEANS A PERSON LICENSED AS A VIATICAL  
24 SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT FACILITATOR UNDER THIS  
25 CHAPTER.

26           (I) "LIFE EXPECTANCY" MEANS THE ARITHMETIC MEAN OF THE NUMBER  
27 OF MONTHS THE INSURED UNDER THE POLICY TO BE SETTLED CAN BE

1 EXPECTED TO LIVE AS DETERMINED BY A LIFE EXPECTANCY COMPANY OR  
2 OTHER EXPERT CONSIDERING MEDICAL RECORDS AND APPROPRIATE  
3 EXPERIENTIAL DATA.

4 (J) "NAIC" MEANS THE NATIONAL ASSOCIATION OF INSURANCE  
5 COMMISSIONERS.

6 (K) "POLICY" MEANS AN INDIVIDUAL OR GROUP LIFE INSURANCE  
7 POLICY OR CERTIFICATE, A DEATH BENEFIT UNDER AN INDIVIDUAL OR GROUP  
8 ANNUITY CONTRACT OR CERTIFICATE, OR OTHER CONTRACT OR ARRANGEMENT  
9 OF LIFE INSURANCE AFFECTING THE RIGHTS OF A RESIDENT OF THIS STATE  
10 OR BEARING A REASONABLE RELATION TO THIS STATE, REGARDLESS OF  
11 WHETHER DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE AND  
12 REGARDLESS OF WHETHER HELD INDIVIDUALLY, JOINTLY, OR BY A TRUST OR  
13 OTHER LEGAL ENTITY.

14 (L) "QUALIFIED INSTITUTIONAL BUYER" HAS THE SAME MEANING AS  
15 THAT TERM AS DEFINED IN 17 CFR 230.144A.

16 (M) "REGULATED FINANCIAL INSTITUTION" MEANS A STATE OR  
17 NATIONALLY CHARTERED BANK OR A STATE OR FEDERALLY CHARTERED SAVINGS  
18 AND LOAN ASSOCIATION, SAVINGS BANK, OR CREDIT UNION WHOSE DEPOSITS  
19 ARE INSURED BY AN AGENCY OF THE UNITED STATES GOVERNMENT.

20 (N) "RELATED PROVIDER TRUST" MEANS A TITLING TRUST OR ANY  
21 OTHER TRUST ESTABLISHED BY A LICENSED VIATICAL SETTLEMENT PROVIDER  
22 OR A FINANCING ENTITY FOR THE SOLE PURPOSE OF HOLDING OWNERSHIP OR  
23 BENEFICIAL INTEREST IN PURCHASED POLICIES IN CONNECTION WITH A  
24 FINANCING TRANSACTION, PROVIDED THAT THE TRUST HAS A WRITTEN  
25 AGREEMENT WITH THE LICENSED VIATICAL SETTLEMENT PROVIDER UNDER  
26 WHICH THE LICENSED VIATICAL SETTLEMENT PROVIDER IS RESPONSIBLE FOR  
27 ENSURING COMPLIANCE WITH ALL STATUTORY AND REGULATORY REQUIREMENTS

1 AND UNDER WHICH THE TRUST AGREES TO MAKE ALL RECORDS AND FILES  
2 RELATED TO VIATICAL SETTLEMENT TRANSACTIONS AVAILABLE TO THE  
3 COMMISSIONER AS IF THOSE RECORDS AND FILES WERE MAINTAINED DIRECTLY  
4 BY THE LICENSED VIATICAL SETTLEMENT PROVIDER.

5 (O) "SPECIAL PURPOSE ENTITY" MEANS A CORPORATION, PARTNERSHIP,  
6 TRUST, LIMITED LIABILITY COMPANY, OR OTHER ENTITY FORMED SOLELY FOR  
7 1 OF THE FOLLOWING PURPOSES:

8 (i) TO PROVIDE ACCESS, EITHER DIRECTLY OR INDIRECTLY, TO  
9 INSTITUTIONAL CAPITAL MARKETS FOR A FINANCING ENTITY OR LICENSED  
10 VIATICAL SETTLEMENT PROVIDER.

11 (ii) IN CONNECTION WITH A TRANSACTION IN WHICH THE SECURITIES  
12 IN THE SPECIAL PURPOSE ENTITY ARE ACQUIRED BY QUALIFIED  
13 INSTITUTIONAL BUYERS OR THE SECURITIES PAY A FIXED RATE OF RETURN  
14 COMMENSURATE WITH ESTABLISHED ASSET BACKED INSTITUTIONAL CAPITAL  
15 MARKETS.

16 (P) "STRANGER-ORIGINATED LIFE INSURANCE" OR "STOLI" MEANS A  
17 PRACTICE, ARRANGEMENT, OR AGREEMENT INITIATED AT OR PRIOR TO THE  
18 ISSUANCE OF A POLICY THAT INCLUDES THE PURCHASE OR ACQUISITION OF A  
19 POLICY PRIMARILY BENEFITING 1 OR MORE PERSONS WHO, AT THE TIME OF  
20 ISSUANCE OF THE POLICY, LACK INSURABLE INTEREST IN THE PERSON  
21 INSURED UNDER THE POLICY AND THE TRANSFER AT ANY TIME OF THE LEGAL  
22 OR BENEFICIAL OWNERSHIP OF THE POLICY OR BENEFITS OF THE POLICY OR  
23 BOTH, IN WHOLE OR IN PART, INCLUDING THROUGH AN ASSUMPTION OR  
24 FORGIVENESS OF A LOAN TO FUND PREMIUMS. STRANGER-ORIGINATED LIFE  
25 INSURANCE ALSO INCLUDES TRUSTS OR OTHER ARRANGEMENTS THAT ARE  
26 CREATED TO GIVE THE APPEARANCE OF INSURABLE INTEREST AND ARE USED  
27 TO INITIATE 1 OR MORE POLICIES FOR INVESTORS BUT VIOLATE INSURABLE

1 INTEREST LAWS AND THE PROHIBITION AGAINST WAGERING ON LIFE.  
2 STRANGER-ORIGINATED LIFE INSURANCE DOES NOT INCLUDE THOSE PRACTICES  
3 DESCRIBED IN SECTION 4303 UNLESS PART OF A PLAN, SCHEME, DEVICE, OR  
4 ARTIFICE TO AVOID THE APPLICATION OF THIS CHAPTER.

5 (Q) "TERMINALLY ILL" MEANS CERTIFIED BY A PHYSICIAN AS HAVING  
6 AN ILLNESS OR PHYSICAL CONDITION THAT CAN REASONABLY BE EXPECTED TO  
7 RESULT IN DEATH IN 24 MONTHS OR LESS.

8 (R) "VIATICAL SETTLEMENT FACILITATOR" MEANS A PERSON THAT, ON  
9 BEHALF OF A VIATOR AND FOR A FEE, COMMISSION, OR OTHER VALUABLE  
10 CONSIDERATION, OFFERS OR ATTEMPTS TO NEGOTIATE VIATICAL SETTLEMENT  
11 CONTRACTS BETWEEN A VIATOR AND 1 OR MORE VIATICAL SETTLEMENT  
12 PROVIDERS OR VIATICAL SETTLEMENT FACILITATORS, REPRESENTS ONLY THE  
13 VIATOR, AND OWES A FIDUCIARY DUTY TO THE VIATOR TO ACT ACCORDING TO  
14 THE VIATOR'S INSTRUCTIONS AND IN THE BEST INTERESTS OF THE VIATOR,  
15 NOTWITHSTANDING THE MANNER IN WHICH THE VIATOR IS COMPENSATED.  
16 VIATICAL SETTLEMENT FACILITATOR DOES NOT INCLUDE AN INDIVIDUAL WHO  
17 IS LICENSED AS AN ATTORNEY, A CERTIFIED PUBLIC ACCOUNTANT, OR A  
18 CERTIFIED FINANCIAL PLANNER ACCREDITED BY A NATIONALLY RECOGNIZED  
19 ACCREDITATION AGENCY, WHO IS ACTING IN HIS OR HER PROFESSIONAL  
20 CAPACITY, WHO IS RETAINED TO REPRESENT THE VIATOR, AND WHOSE  
21 COMPENSATION IS NOT PAID DIRECTLY OR INDIRECTLY BY THE VIATICAL  
22 SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT PURCHASER.

23 (S) "VIATICAL SETTLEMENT CONTRACT", "LIFE SETTLEMENT  
24 CONTRACT", OR "SENIOR SETTLEMENT CONTACT" MEANS ANY OF THE  
25 FOLLOWING:

26 (i) A WRITTEN AGREEMENT BETWEEN A VIATOR AND A VIATICAL  
27 SETTLEMENT PROVIDER THAT ESTABLISHES THE TERMS UNDER WHICH

1 COMPENSATION OR ANYTHING OF VALUE THAT IS LESS THAN THE EXPECTED  
2 DEATH BENEFIT OF THE POLICY IS OR WILL BE PAID IN RETURN FOR THE  
3 VIATOR'S PRESENT OR FUTURE ASSIGNMENT, TRANSFER, SALE, RELEASE,  
4 DEVISE, OR BEQUEST OF THE DEATH BENEFIT OR OWNERSHIP OF ANY PORTION  
5 OF THE POLICY OR ANY BENEFICIAL INTEREST IN THE POLICY OR ITS  
6 OWNERSHIP.

7 (ii) THE TRANSFER OR ACQUISITION FOR COMPENSATION OR ANYTHING  
8 OF VALUE FOR OWNERSHIP OR BENEFICIAL INTEREST IN A TRUST OR AN  
9 INTEREST IN ANOTHER PERSON THAT OWNS SUCH A POLICY IF THE TRUST OR  
10 OTHER PERSON WAS FORMED OR AVOIDED OF FOR THE PRINCIPAL PURPOSE OF  
11 ACQUIRING 1 OR MORE LIFE INSURANCE POLICIES.

12 (iii) A PREMIUM FINANCE LOAN OR AGREEMENT MADE FOR A POLICY THAT  
13 IS SUBJECT TO OR BECOMES A VIATICAL SETTLEMENT CONTRACT DESCRIBED  
14 IN SUBPARAGRAPH (i), IS HELD BY A TRUST OR PERSON DESCRIBED IN  
15 SUBPARAGRAPH (ii), OR CONTAINS ANY OF THE FOLLOWING CONTRACT TERMS:

16 (A) AN AGREEMENT BY THE VIATOR OR INSURED THAT THE POLICY OR  
17 THE VIATICAL SETTLEMENT CONTRACT CONSTITUTES SECURITY FOR THE LOAN.

18 (B) A GUARANTEE TO THE VIATOR OR INSURED OF A VIATICAL  
19 SETTLEMENT VALUE FOR THE POLICY.

20 (C) AN AGREEMENT BY THE VIATOR OR INSURED TO SELL THE POLICY  
21 OR ANY PORTION OF THE POLICY'S DEATH BENEFIT.

22 (T) "VIATICAL SETTLEMENT PROVIDER" MEANS A PERSON, OTHER THAN  
23 A VIATOR OR VIATICAL SETTLEMENT FACILITATOR, THAT ENTERS INTO OR  
24 EFFECTUATES A VIATICAL SETTLEMENT CONTRACT. VIATICAL SETTLEMENT  
25 PROVIDER DOES NOT INCLUDE ANY OF THE FOLLOWING:

26 (i) A BANK, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT  
27 UNION, OR OTHER REGULATED FINANCIAL INSTITUTION THAT TAKES AN

1 ASSIGNMENT OF A POLICY SOLELY AS A COLLATERAL FOR A LOAN.

2 (ii) THE ISSUER OF A POLICY.

3 (iii) AN AUTHORIZED OR ELIGIBLE INSURER THAT PROVIDES STOP-LOSS  
4 COVERAGE OR FINANCIAL GUARANTEE INSURANCE TO A VIATICAL SETTLEMENT  
5 PROVIDER, PURCHASER, FINANCING ENTITY, SPECIAL PURPOSE ENTITY, OR  
6 RELATED PROVIDER TRUST.

7 (iv) A FINANCING ENTITY.

8 (v) A SPECIAL PURPOSE ENTITY.

9 (vi) A RELATED PROVIDER TRUST.

10 (vii) A VIATICAL SETTLEMENT PURCHASER.

11 (viii) ANY OTHER PERSON EXEMPT FROM THE DEFINITION OF VIATICAL  
12 SETTLEMENT PROVIDER BY ORDER OF THE COMMISSIONER BASED ON HIS OR  
13 HER REASONABLE DETERMINATION THAT THE PERSON DOES NOT MEET THE  
14 DEFINITION OF VIATICAL SETTLEMENT PROVIDER.

15 (U) "VIATICATED POLICY" MEANS A POLICY THAT HAS BEEN ACQUIRED  
16 BY A VIATICAL SETTLEMENT PROVIDER PURSUANT TO A VIATICAL SETTLEMENT  
17 CONTRACT.

18 (V) "VIATOR" MEANS THE OWNER OF A POLICY OR A CERTIFICATE  
19 HOLDER UNDER A GROUP POLICY THAT HAS NOT PREVIOUSLY BEEN VIATICATED  
20 WHO, IN RETURN FOR COMPENSATION OR ANYTHING OF VALUE THAT IS LESS  
21 THAN THE EXPECTED DEATH BENEFIT OF THE POLICY OR CERTIFICATE,  
22 ASSIGNS, TRANSFERS, SELLS, RELEASES, DEVISES, OR BEQUEATHS THE  
23 DEATH BENEFIT OR OWNERSHIP OF ANY PORTION OF THE POLICY OR  
24 CERTIFICATE OF INSURANCE. FOR THE PURPOSES OF THIS CHAPTER, A  
25 VIATOR IS NOT LIMITED TO AN OWNER OF A POLICY OR A CERTIFICATE  
26 HOLDER UNDER A GROUP POLICY INSURING THE LIFE OF AN INDIVIDUAL WHO  
27 IS TERMINALLY OR CHRONICALLY ILL EXCEPT WHERE SPECIFICALLY

1 ADDRESSED. VIATOR DOES NOT INCLUDE ANY OF THE FOLLOWING:

2 (i) A LICENSEE UNDER THIS CHAPTER.

3 (ii) A QUALIFIED INSTITUTIONAL BUYER.

4 (iii) A FINANCING ENTITY.

5 (iv) A SPECIAL PURPOSE ENTITY.

6 (v) A RELATED PROVIDER TRUST.

7 (w) "VIATICAL SETTLEMENT PURCHASER" MEANS A PERSON WHO  
 8 PROVIDES A SUM OF MONEY OR ANYTHING OF VALUE AS CONSIDERATION FOR A  
 9 POLICY OR AN INTEREST IN THE DEATH BENEFITS OF A POLICY THAT IS THE  
 10 SUBJECT OF A VIATICAL SETTLEMENT CONTRACT, OR A PERSON WHO OWNS,  
 11 ACQUIRES, OR IS ENTITLED TO A BENEFICIAL INTEREST IN A TRUST OR  
 12 OTHER ARRANGEMENT THAT OWNS A VIATICAL SETTLEMENT CONTRACT OR IS  
 13 THE BENEFICIARY OF A POLICY THAT IS THE SUBJECT OF A VIATICAL  
 14 SETTLEMENT CONTRACT, FOR THE PURPOSE OF DERIVING AN ECONOMIC  
 15 BENEFIT. VIATICAL SETTLEMENT PURCHASER DOES NOT INCLUDE ANY OF THE  
 16 FOLLOWING:

17 (i) A LICENSEE UNDER THIS CHAPTER.

18 (ii) A QUALIFIED INSTITUTIONAL BUYER.

19 (iii) A FINANCING ENTITY.

20 (iv) A SPECIAL PURPOSE ENTITY.

21 (v) A RELATED PROVIDER TRUST.

22 SEC. 4303. A VIATICAL SETTLEMENT CONTRACT DOES NOT INCLUDE ANY  
 23 OF THE FOLLOWING UNLESS PART OF A PLAN, SCHEME, DEVICE, OR ARTIFICE  
 24 TO AVOID THE APPLICATION OF THIS CHAPTER:

25 (A) A POLICY LOAN OR ACCELERATED DEATH BENEFIT MADE BY THE  
 26 INSURER PURSUANT TO THE POLICY'S TERMS WHETHER ISSUED WITH THE  
 27 ORIGINAL POLICY OR A RIDER.

1 (B) LOAN PROCEEDS THAT ARE USED SOLELY TO PAY PREMIUMS FOR THE  
2 POLICY AND THE COSTS OF THE LOAN INCLUDING INTEREST, ARRANGEMENT  
3 FEES, UTILIZATION FEES AND SIMILAR FEES, CLOSING COSTS, LEGAL FEES  
4 AND EXPENSES, TRUSTEE FEES AND EXPENSES, AND THIRD-PARTY COLLATERAL  
5 PROVIDER FEES AND EXPENSES, INCLUDING FEES PAYABLE TO LETTER OF  
6 CREDIT ISSUERS.

7 (C) A LOAN MADE BY A REGULATED FINANCIAL INSTITUTION IN WHICH  
8 THE LENDER TAKES AN INTEREST IN A POLICY SOLELY TO SECURE REPAYMENT  
9 OF A LOAN OR, IF THERE IS A DEFAULT ON THE LOAN AND THE POLICY IS  
10 TRANSFERRED, THE TRANSFER OF SUCH A POLICY BY THE LENDER, PROVIDED  
11 THAT NEITHER THE DEFAULT ITSELF NOR THE TRANSFER IS PURSUANT TO AN  
12 AGREEMENT OR UNDERSTANDING WITH ANY OTHER PERSON FOR THE PURPOSE OF  
13 EVADING REGULATION UNDER THIS CHAPTER.

14 (D) A PREMIUM FINANCE LOAN MADE BY A LENDER NOT IN VIOLATION  
15 OF CHAPTER 15.

16 (E) AN AGREEMENT WHERE ALL PARTIES ARE CLOSELY RELATED TO THE  
17 INSURED BY BLOOD OR LAW OR HAVE A LAWFUL SUBSTANTIAL ECONOMIC  
18 INTEREST IN THE CONTINUED LIFE, HEALTH, AND BODILY SAFETY OF THE  
19 PERSON INSURED, OR IS A TRUST ESTABLISHED PRIMARILY FOR THE BENEFIT  
20 OF SUCH PARTIES.

21 (F) ANY DESIGNATION, CONSENT, OR AGREEMENT BY AN INSURED WHO  
22 IS AN EMPLOYEE OF AN EMPLOYER IN CONNECTION WITH THE PURCHASE BY  
23 THE EMPLOYER, OR TRUST ESTABLISHED BY THE EMPLOYER, OF LIFE  
24 INSURANCE ON THE LIFE OF THE EMPLOYEE AS DESCRIBED IN THIS ACT.

25 (G) ANY BUSINESS SUCCESSION PLANNING ARRANGEMENT, INCLUDING,  
26 BUT NOT LIMITED TO, ALL OF THE FOLLOWING IF THE ARRANGEMENTS ARE  
27 BONA FIDE ARRANGEMENTS:

1 (i) AN ARRANGEMENT BETWEEN 1 OR MORE SHAREHOLDERS IN A  
2 CORPORATION OR BETWEEN A CORPORATION AND 1 OR MORE OF ITS  
3 SHAREHOLDERS OR 1 OR MORE PERSONS OR TRUSTS ESTABLISHED BY ITS  
4 SHAREHOLDERS.

5 (ii) AN ARRANGEMENT BETWEEN 1 OR MORE PARTNERS IN A PARTNERSHIP  
6 OR BETWEEN A PARTNERSHIP AND 1 OR MORE OF ITS PARTNERS OR 1 OR MORE  
7 TRUSTS ESTABLISHED BY ITS PARTNERS.

8 (iii) AN ARRANGEMENT BETWEEN 1 OR MORE MEMBERS IN A LIMITED  
9 LIABILITY COMPANY OR BETWEEN A LIMITED LIABILITY COMPANY AND 1 OR  
10 MORE OF ITS MEMBERS OR 1 OR MORE TRUSTS ESTABLISHED BY ITS MEMBERS.

11 (H) AN AGREEMENT ENTERED INTO BY A SERVICE RECIPIENT, A TRUST  
12 ESTABLISHED BY THE SERVICE RECIPIENT AND A SERVICE PROVIDER, OR A  
13 TRUST ESTABLISHED BY THE SERVICE PROVIDER WHO PERFORMS SIGNIFICANT  
14 SERVICES FOR THE SERVICE RECIPIENT'S TRADE OR BUSINESS.

15 (I) AN ARRANGEMENT OR AGREEMENT WITH A SPECIAL PURPOSE ENTITY.

16 (J) ANY OTHER CONTRACT, TRANSACTION, OR ARRANGEMENT EXEMPTED  
17 FROM THE DEFINITION OF VIATICAL SETTLEMENT CONTRACT BY ORDER  
18 ADOPTED BY THE COMMISSIONER BASED ON HIS OR HER REASONABLE  
19 DETERMINATION THAT THE CONTRACT, TRANSACTION, OR ARRANGEMENT IS NOT  
20 OF THE TYPE REGULATED BY THIS CHAPTER.

21 SEC. 4304. (1) IF THERE IS MORE THAN 1 OWNER ON A SINGLE  
22 POLICY AND THE OWNERS ARE RESIDENTS OF DIFFERENT STATES, THE  
23 VIATICAL SETTLEMENT CONTRACT SHALL BE GOVERNED BY THE LAW OF THE  
24 STATE IN WHICH THE OWNER HAVING THE LARGEST PERCENTAGE OWNERSHIP OF  
25 THE POLICY RESIDES OR, IF THE OWNERS HOLD EQUAL OWNERSHIP, THE  
26 STATE OF RESIDENCE OF 1 OWNER AGREED UPON IN WRITING BY ALL OWNERS.  
27 THE LAW OF THE STATE OF THE INSURED GOVERNS IF EQUAL OWNERS FAIL TO

1 AGREE IN WRITING ON A STATE OF RESIDENCE FOR JURISDICTIONAL  
2 PURPOSES.

3 (2) IF THE VIATOR IS A RESIDENT OF THIS STATE, THE VIATICAL  
4 SETTLEMENT CONTRACT AND ALL DOCUMENTS TO BE SIGNED BY THE VIATOR  
5 SHALL PROVIDE EXCLUSIVE JURISDICTION TO COURTS OF THIS STATE AND  
6 THE LAWS OF THIS STATE SHALL GOVERN THE VIATICAL SETTLEMENT  
7 CONTRACT AND ALL DOCUMENTS. NOTHING IN THE AGREEMENTS SHALL  
8 ABROGATE THE VIATOR'S RIGHT TO A TRIAL BY JURY.

9 SEC. 4305. (1) EXCEPT AS PROVIDED FOR IN SUBSECTIONS (2) AND  
10 (3), A PERSON SHALL NOT OPERATE IN THIS STATE AS A VIATICAL  
11 SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT FACILITATOR WITHOUT  
12 FIRST HAVING OBTAINED A LICENSE FROM THE COMMISSIONER. THIS  
13 SUBSECTION TAKES EFFECT 90 DAYS AFTER THE EFFECTIVE DATE OF THIS  
14 CHAPTER. LICENSURE UNDER THIS CHAPTER IS IN ADDITION TO AND NOT IN  
15 SUBSTITUTION FOR ANY APPLICABLE LICENSURE AND REGISTRATION  
16 REQUIREMENTS UNDER THE UNIFORM SECURITIES ACT (2002), 2008 PA 551,  
17 MCL 451.2101 TO 451.2703, THE SECURITIES ACT OF 1933, 15 USC 77A TO  
18 77AA, OR THE SECURITIES EXCHANGE ACT OF 1934, 15 USC 78A TO 78NN.

19 (2) A PERSON WHO REPRESENTS THE VIATOR AND IS NOT COMPENSATED  
20 DIRECTLY OR INDIRECTLY BY THE VIATICAL SETTLEMENT PROVIDER OR  
21 VIATICAL SETTLEMENT PURCHASER, WHO IS LICENSED AS AN ATTORNEY,  
22 CERTIFIED PUBLIC ACCOUNTANT, OR CERTIFIED FINANCIAL PLANNER  
23 ACCREDITED BY A NATIONALLY RECOGNIZED ACCREDITATION AGENCY, MAY  
24 NEGOTIATE VIATICAL SETTLEMENT CONTRACTS ON BEHALF OF A VIATOR  
25 WITHOUT OBTAINING A LICENSE PURSUANT TO SUBSECTION (1).

26 (3) AN INDIVIDUAL LIFE INSURANCE PRODUCER WHO HAS BEEN  
27 LICENSED IN THIS STATE FOR AT LEAST 1 YEAR AND AN INDIVIDUAL LIFE

1 INSURANCE PRODUCER WITH A LIFE LINE OF AUTHORITY IN HIS OR HER HOME  
2 STATE FOR AT LEAST 1 YEAR WHO HAS BEEN LICENSED AS A NONRESIDENT  
3 INDIVIDUAL LIFE INSURANCE PRODUCER IN THIS STATE SHALL BE  
4 CONSIDERED TO MEET THE LICENSING REQUIREMENTS OF SECTION 4307(1) TO  
5 (3)(C) AND (8) TO (11) AND MAY OPERATE AS A VIATICAL SETTLEMENT  
6 FACILITATOR. EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS  
7 SUBSECTION, AN INDIVIDUAL LIFE INSURANCE PRODUCER IS OTHERWISE  
8 SUBJECT TO THIS CHAPTER.

9 (4) AT LEAST 45 DAYS BEFORE OPERATING AS A VIATICAL SETTLEMENT  
10 FACILITATOR, THE INDIVIDUAL LIFE INSURANCE PRODUCER SHALL NOTIFY  
11 THE COMMISSIONER IN WRITING ON A FORM AS PRESCRIBED BY THE  
12 COMMISSIONER THAT HE OR SHE INTENDS TO OPERATE AS A VIATICAL  
13 SETTLEMENT FACILITATOR.

14 (5) AN APPLICANT FOR A LICENSE AS A VIATICAL SETTLEMENT  
15 PROVIDER OR VIATICAL SETTLEMENT FACILITATOR SHALL APPEAR BEFORE THE  
16 SHERIFF OR ANY POLICE AGENCY FOR THE COUNTY IN WHICH THE APPLICANT  
17 RESIDES AND REQUEST AN IMPRESSION OF HIS OR HER FINGERPRINTS AND  
18 SHALL PAY THE COSTS INCURRED. TO THE EXTENT ALLOWED BY FEDERAL LAW,  
19 THE COMMISSIONER SHALL REQUEST, AND THE DEPARTMENT OF STATE POLICE  
20 SHALL PROVIDE, STATE, MULTISTATE, AND FEDERAL CRIMINAL HISTORY  
21 RECORDS FOR THE COMMISSIONER'S USE IN DETERMINING WHETHER A LICENSE  
22 SHALL BE ISSUED, SUSPENDED, OR REVOKED. THIS SUBSECTION DOES NOT  
23 APPLY TO AN INDIVIDUAL LIFE INSURANCE PRODUCER WHO HAS A RESIDENT  
24 OR NONRESIDENT LIFE LINE OF AUTHORITY IN THIS STATE ON THE  
25 EFFECTIVE DATE OF THIS CHAPTER.

26 SEC. 4307. (1) AN APPLICANT FOR A LICENSE AS A VIATICAL  
27 SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT FACILITATOR SHALL SUBMIT

1 AN APPLICATION FOR THE LICENSE IN A MANNER PRESCRIBED BY THE  
2 COMMISSIONER IN ACCORDANCE WITH CHAPTER 12. THE APPLICATION FOR A  
3 VIATICAL SETTLEMENT PROVIDER LICENSE SHALL BE ACCOMPANIED BY A FEE  
4 OF \$1,000.00. THE APPLICATION FOR A VIATICAL SETTLEMENT FACILITATOR  
5 LICENSE SHALL BE ACCOMPANIED BY A FEE OF \$200.00.

6 (2) A LICENSE ISSUED UNDER THIS CHAPTER TO A PERSON OTHER THAN  
7 AN INDIVIDUAL AUTHORIZES ALL PARTNERS, OFFICERS, MEMBERS, OR  
8 DESIGNATED EMPLOYEES OF THE PERSON TO ACT AS VIATICAL SETTLEMENT  
9 PROVIDERS OR VIATICAL SETTLEMENT FACILITATORS, AS APPLICABLE, AND  
10 ALL THOSE PARTNERS, OFFICERS, MEMBERS, OR APPLICANT'S DESIGNATED  
11 EMPLOYEES SHALL BE NAMED IN THE APPLICATION AND ANY SUPPLEMENTS TO  
12 THE APPLICATION.

13 (3) UPON THE FILING OF AN APPLICATION UNDER THIS SECTION AND  
14 THE PAYMENT OF THE LICENSE FEE, THE COMMISSIONER SHALL MAKE AN  
15 INVESTIGATION OF THE APPLICANT AND ISSUE TO THE APPLICANT A LICENSE  
16 THAT STATES IN SUBSTANCE THAT THE PERSON IS AUTHORIZED TO ACT AS A  
17 VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT FACILITATOR, AS  
18 APPLICABLE, IF ALL OF THE FOLLOWING APPLY:

19 (A) REGARDING AN APPLICATION FOR A LICENSE AS A VIATICAL  
20 SETTLEMENT PROVIDER, THE APPLICANT PROVIDES ALL OF THE FOLLOWING:

21 (i) A DETAILED PLAN OF OPERATION.

22 (ii) PROOF OF FINANCIAL RESPONSIBILITY AS PROVIDED IN THIS  
23 SECTION.

24 (iii) A GENERAL DESCRIPTION OF THE METHOD THE APPLICANT WILL USE  
25 TO DETERMINE LIFE EXPECTANCIES, INCLUDING A DESCRIPTION OF THE  
26 APPLICANT'S INTENDED RECEIPT OF LIFE EXPECTANCIES, THE APPLICANT'S  
27 INTENDED USE OF LIFE EXPECTANCIES, THE APPLICANT'S INTENDED USE OF

1 LIFE EXPECTANCY PROVIDERS, AND A WRITTEN PLAN OF POLICIES AND  
2 PROCEDURES USED TO DETERMINE LIFE EXPECTANCIES.

3 (B) THE COMMISSIONER FINDS ALL OF THE FOLLOWING:

4 (i) THE APPLICANT INCLUDING, IF APPLICABLE, EACH PARTNER,  
5 OFFICER, MEMBER, OR DESIGNATED EMPLOYEE, IS COMPETENT AND  
6 TRUSTWORTHY AND INTENDS TO ACT IN GOOD FAITH IN THE CAPACITY OF A  
7 VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT FACILITATOR, AS  
8 APPLICABLE.

9 (ii) THE APPLICANT INCLUDING, IF APPLICABLE, EACH PARTNER,  
10 OFFICER, MEMBER, OR DESIGNATED EMPLOYEE, HAS A GOOD BUSINESS  
11 REPUTATION AND HAS HAD EXPERIENCE, TRAINING, OR EDUCATION SO AS TO  
12 BE QUALIFIED TO ACT IN THE CAPACITY OF A VIATICAL SETTLEMENT  
13 PROVIDER OR VIATICAL SETTLEMENT FACILITATOR, AS APPLICABLE.

14 (C) IF THE APPLICANT IS A PERSON OTHER THAN AN INDIVIDUAL, THE  
15 APPLICANT PROVIDES A CERTIFICATE OF GOOD STANDING FROM THE STATE OF  
16 ITS ORGANIZATION.

17 (D) THE APPLICANT PROVIDES AN ANTIFRAUD PLAN THAT MEETS THE  
18 REQUIREMENTS OF SECTION 4353.

19 (4) AN APPLICANT FOR LICENSURE AS A VIATICAL SETTLEMENT  
20 PROVIDER MAY PROVIDE PROOF OF FINANCIAL RESPONSIBILITY THROUGH 1 OF  
21 THE FOLLOWING MEANS:

22 (A) SUBMITTING AUDITED FINANCIAL STATEMENTS THAT SHOW A  
23 MINIMUM EQUITY OF NOT LESS THAN \$250,000.00 IN CASH OR CASH  
24 EQUIVALENTS.

25 (B) SUBMITTING AUDITED ANNUAL FINANCIAL STATEMENTS THAT SHOW  
26 POSITIVE EQUITY AND 1 OF THE FOLLOWING:

27 (i) A SURETY BOND IN THE AMOUNT OF \$250,000.00 IN FAVOR OF THIS

1 STATE ISSUED BY AN INSURER AUTHORIZED TO ISSUE SURETY BONDS IN THIS  
2 STATE. THE SURETY BOND SHALL SPECIFICALLY AUTHORIZE RECOVERY BY THE  
3 COMMISSIONER ON BEHALF OF ANY PERSON IN THIS STATE WHO SUSTAINS  
4 DAMAGES RESULTING FROM A VIATICAL SETTLEMENT PROVIDER'S OR VIATICAL  
5 SETTLEMENT FACILITATOR'S ERRONEOUS ACT, FAILURE TO ACT, CONVICTION  
6 FOR FRAUD, OR CONVICTION OF AN UNFAIR TRADE PRACTICE.

7 (ii) AN UNCONDITIONAL AND IRREVOCABLE LETTER OF CREDIT, DEPOSIT  
8 OF CASH, OR SECURITIES, IN ANY COMBINATION, IN THE AGGREGATE AMOUNT  
9 OF \$250,000.00.

10 (5) IF AN APPLICANT IS LICENSED AS A VIATICAL SETTLEMENT  
11 PROVIDER IN ANOTHER STATE, THE COMMISSIONER MAY ACCEPT AS VALID ANY  
12 SIMILAR PROOF OF FINANCIAL RESPONSIBILITY SIMILAR TO SUBSECTION (4)  
13 THAT THE APPLICANT FILED IN THAT STATE.

14 (6) THE COMMISSIONER MAY REQUEST PROOF OF FINANCIAL  
15 RESPONSIBILITY AT ANY TIME THE COMMISSIONER CONSIDERS NECESSARY.

16 (7) AN APPLICANT SHALL PROVIDE ALL INFORMATION REQUESTED BY  
17 THE COMMISSIONER. THE COMMISSIONER MAY, AT ANY TIME, REQUIRE AN  
18 APPLICANT TO FULLY DISCLOSE THE IDENTITY OF ALL SHAREHOLDERS,  
19 PARTNERS, DIRECTORS, OFFICERS, MEMBERS, AND EMPLOYEES, AND MAY, IN  
20 THE EXERCISE OF THE COMMISSIONER'S DISCRETION, REFUSE TO ISSUE A  
21 LICENSE TO AN APPLICANT THAT IS NOT AN INDIVIDUAL IF THE  
22 COMMISSIONER IS NOT SATISFIED THAT EACH OFFICER, EMPLOYEE,  
23 SHAREHOLDER, PARTNER, OR MEMBER WHO MAY MATERIALLY INFLUENCE THE  
24 APPLICANT'S CONDUCT MEETS THE STANDARDS SET FORTH IN THIS CHAPTER.

25 (8) EXCEPT AS OTHERWISE PROVIDED, A LICENSE AS A VIATICAL  
26 SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT FACILITATOR EXPIRES  
27 BIENNIALY AS PROVIDED IN A SCHEDULE ESTABLISHED BY THE

1 COMMISSIONER NOT LATER THAN 90 DAYS AFTER THE EFFECTIVE DATE OF  
2 THIS CHAPTER. A LICENSE AS A VIATICAL SETTLEMENT PROVIDER OR  
3 VIATICAL SETTLEMENT FACILITATOR MAY, IN THE DISCRETION OF THE  
4 COMMISSIONER AND AFTER THE PAYMENT OF A RENEWAL FEE OF \$500.00 FOR  
5 A VIATICAL SETTLEMENT PROVIDER AND OF \$100.00 FOR A VIATICAL  
6 SETTLEMENT FACILITATOR, BE CONTINUED PAST ITS EXPIRATION DATE AS  
7 PROVIDED IN THE SCHEDULE ESTABLISHED BY THE COMMISSIONER. FAILURE  
8 TO PAY A RENEWAL FEE BY THE REQUIRED DATE RESULTS IN THE EXPIRATION  
9 OF THE LICENSE.

10 (9) ANY INDIVIDUAL LICENSED AS A VIATICAL SETTLEMENT  
11 FACILITATOR SHALL COMPLETE NOT LESS THAN 15 HOURS OF CONTINUING  
12 EDUCATION BIENNIALY. THE COMMISSIONER SHALL APPROVE CONTINUING  
13 EDUCATION COURSES THAT SHALL BE RELATED TO VIATICAL SETTLEMENTS AND  
14 VIATICAL SETTLEMENT TRANSACTIONS. THE COMMISSIONER MAY ADOPT RULES  
15 FOR THE ENFORCEMENT OF THIS SUBSECTION.

16 (10) AS A CONDITION OF DOING BUSINESS IN THIS STATE, A  
17 VIATICAL SETTLEMENT PROVIDER AND A VIATICAL SETTLEMENT FACILITATOR,  
18 NOT ORGANIZED UNDER THE LAWS OF THIS STATE, SHALL FILE WITH THE  
19 APPLICATION FILED WITH THE COMMISSIONER THE NAME AND ADDRESS OF A  
20 RESIDENT AGENT UPON WHICH ANY LOCAL SERVICE OF PROCESS AFFECTING  
21 THE APPLICANT MAY BE SERVED. THE DESIGNATION SHALL REMAIN IN FORCE  
22 AS LONG AS ANY LIABILITY REMAINS WITHIN THE STATE.

23 (11) A VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT  
24 FACILITATOR SHALL PROVIDE TO THE COMMISSIONER NEW OR REVISED  
25 INFORMATION REGARDING ANY CHANGE IN ITS OFFICERS, ANY SHAREHOLDER  
26 OWNING 10% OR MORE OF ITS VOTING SECURITIES, OR ITS PARTNERS,  
27 DIRECTORS, MEMBERS, OR DESIGNATED EMPLOYEES WITHIN 30 DAYS OF THE

1 CHANGE.

2 SEC. 4309. ANY CORPORATION, PARTNERSHIP, OR OTHER BUSINESS  
3 THAT IS LICENSED AS A VIATICAL SETTLEMENT FACILITATOR SHALL  
4 MAINTAIN AT LEAST 1 DESIGNATED INDIVIDUAL WHO IS INDIVIDUALLY  
5 LICENSED AS A VIATICAL SETTLEMENT FACILITATOR TO BE RESPONSIBLE FOR  
6 THE LICENSEE'S COMPLIANCE WITH THIS CHAPTER.

7 SEC. 4311. A PERSON SHALL NOT USE A VIATICAL SETTLEMENT  
8 CONTRACT FORM OR PROVIDE A DISCLOSURE STATEMENT FORM TO A VIATOR IN  
9 THIS STATE UNLESS THE VIATICAL SETTLEMENT CONTRACT FORM OR THE  
10 DISCLOSURE STATEMENT FORM IS FILED WITH AND APPROVED BY THE  
11 COMMISSIONER. THE COMMISSIONER SHALL DISAPPROVE A VIATICAL  
12 SETTLEMENT CONTRACT FORM OR A DISCLOSURE STATEMENT FORM IF, IN THE  
13 COMMISSIONER'S OPINION, THE VIATICAL SETTLEMENT CONTRACT FORM, THE  
14 DISCLOSURE STATEMENT FORM, OR ANY PROVISION CONTAINED THEREIN FAILS  
15 TO MEET THE REQUIREMENTS OF THIS CHAPTER, IS UNREASONABLE, IS  
16 CONTRARY TO THE INTERESTS OF THE PUBLIC, OR IS OTHERWISE MISLEADING  
17 OR UNFAIR TO THE VIATOR. IF NOT DISAPPROVED BY THE COMMISSIONER, A  
18 FILING MADE PURSUANT TO THIS SECTION SHALL BE CONSIDERED APPROVED  
19 45 DAYS AFTER THE CONTRACT FORM OR DISCLOSURE FORM IS FILED.

20 SEC. 4313. (1) ALL DISCLOSURES PROVIDED PURSUANT TO THIS  
21 CHAPTER SHALL BE UNDERSTANDABLE, READABLE, AND NOT MISLEADING.

22 (2) BEFORE A VIATICAL SETTLEMENT FACILITATOR OR VIATICAL  
23 SETTLEMENT PROVIDER PRESENTS ANY APPLICATION FOR A VIATICAL  
24 SETTLEMENT CONTRACT TO A PROSPECTIVE VIATOR, POLICY OWNER, OR  
25 INSURED PERSON FOR SIGNATURE, HE OR SHE SHALL DISCLOSE IN WRITING  
26 AT LEAST ALL OF THE FOLLOWING:

27 (A) A DESCRIPTION OF HOW VIATICAL SETTLEMENTS OPERATE,

1 INCLUDING DISTRIBUTION OF THE NAIC'S BROCHURE ON VIATICAL  
2 SETTLEMENTS UNLESS ANOTHER FORM IS DEVELOPED AND APPROVED BY THE  
3 COMMISSIONER.

4 (B) POSSIBLE ALTERNATIVES TO VIATICAL SETTLEMENT CONTRACTS,  
5 INCLUDING ANY ACCELERATED DEATH BENEFITS, CASH SURRENDER VALUES, OR  
6 POLICY LOANS AVAILABLE UNDER THE POLICY TO BE VIATICATED.

7 (C) THAT THE LIFE SETTLEMENT FACILITATOR OWES A FIDUCIARY DUTY  
8 TO THE POLICY OWNER, INCLUDING A DUTY TO ACT ACCORDING TO THE  
9 OWNER'S INSTRUCTIONS AND IN THE OWNER'S BEST INTERESTS.

10 (D) THAT ENTERING INTO A VIATICAL SETTLEMENT CONTRACT WILL  
11 RESULT IN INVESTORS HAVING A FINANCIAL INTEREST IN THE INSURED'S  
12 DEATH.

13 (E) THAT THE PROCEEDS OF THE VIATICAL SETTLEMENT MAY BE  
14 SUBJECT TO FEDERAL AND STATE INCOME TAXATION AND THAT THE POLICY  
15 OWNER SHOULD SEEK ADVICE ON TAX CONSEQUENCES FROM A PROFESSIONAL  
16 TAX ADVISER.

17 (F) THAT THE PROCEEDS OF THE VIATICAL SETTLEMENT MAY BE  
18 SUBJECT TO THE CLAIMS OF CREDITORS.

19 (G) THAT RECEIPT OF THE PROCEEDS OF THE VIATICAL SETTLEMENT  
20 CONTRACT MAY DISQUALIFY THE OWNER, THE OWNER'S SPOUSE, AND THE  
21 OWNER'S DEPENDENTS FROM ELIGIBILITY FOR GOVERNMENTAL MEDICAL AND  
22 PUBLIC ASSISTANCE PROGRAMS.

23 (H) THAT ENTERING INTO A VIATICAL SETTLEMENT CONTRACT MAY  
24 RESULT IN FORFEITURE OF OTHER RIGHTS AND BENEFITS UNDER THE POLICY,  
25 SUCH AS CONVERSION RIGHTS OR WAIVER OF PREMIUM, AND EXACTLY WHICH  
26 OTHER BENEFITS MAY OR WILL BE AFFECTED.

27 (I) THAT ENTERING INTO A VIATICAL SETTLEMENT CONTRACT MAY

1 PREVENT THE INSURED FROM PURCHASING OTHER LIFE INSURANCE IF THE  
2 SETTLED POLICY REMAINS IN FORCE.

3 (J) HOW AND TO WHOM THE IDENTITY OF THE INSURED AND MEDICAL,  
4 FINANCIAL, AND PERSONAL INFORMATION ABOUT THE INSURED WILL BE  
5 DISCLOSED.

6 (K) THAT IF ANY OTHER PERSONS ARE INSURED UNDER THE POLICY,  
7 COVERAGE ON THE OTHER LIVES MAY BE TERMINATED.

8 (L) THE DOLLAR AMOUNT OF THE CURRENT DEATH BENEFIT PAYABLE TO  
9 THE BENEFICIARY UNDER THE POLICY, THE AVAILABILITY OF ANY  
10 ADDITIONAL GUARANTEED INSURANCE BENEFITS, THE DOLLAR AMOUNT OF ANY  
11 ACCIDENTAL DEATH AND DISMEMBERMENT BENEFITS UNDER THE POLICY, AND  
12 THE EXTENT TO WHICH THE VIATOR'S INTEREST IN EACH BENEFIT WILL BE  
13 TRANSFERRED AS A RESULT OF THE VIATICAL SETTLEMENT CONTRACT.

14 (M) THAT WHEN VIATICAL SETTLEMENT PROCEEDS ARE PAID, THE  
15 VIATOR HAS THE RIGHT TO RESCIND THE VIATICAL SETTLEMENT CONTRACT  
16 FOR 30 DAYS AFTER THE CONTRACT IS SIGNED OR FOR 15 DAYS AFTER THE  
17 VIATOR RECEIVES THE VIATICAL SETTLEMENT PROCEEDS, WHICHEVER TIME  
18 PERIOD EXPIRES LAST. IF THE VIATOR DIES DURING THE RESCISSION  
19 PERIOD, SUCH DEATH SHALL RESCIND THE VIATICAL SETTLEMENT CONTRACT,  
20 SUBJECT TO REPAYMENT OF ALL VIATICAL SETTLEMENT PROCEEDS TO THE  
21 VIATICAL SETTLEMENT PROVIDER.

22 (N) THAT AFTER EXECUTION OF AN APPLICATION FOR A VIATICAL  
23 SETTLEMENT CONTRACT AND UNTIL PAYMENT OF THE VIATICAL SETTLEMENT  
24 CONTRACT PROCEEDS, THE VIATICAL SETTLEMENT PROVIDER OR HIS OR HER  
25 AUTHORIZED REPRESENTATIVE MAY CONTACT THE INSURED FOR THE PURPOSE  
26 OF DETERMINING THE INSURED'S HEALTH STATUS, TO CONFIRM THE  
27 INSURED'S RESIDENTIAL OR BUSINESS ADDRESS AND TELEPHONE NUMBER, AND

1 FOR OTHER PURPOSES PERMITTED BY LAW.

2 (3) THE VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT  
3 FACILITATOR SHALL PROVIDE THE DISCLOSURES UNDER SUBSECTION (1) IN A  
4 SEPARATE DOCUMENT THAT IS DATED AND SIGNED BY THE VIATOR AND THE  
5 VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT FACILITATOR,  
6 WHO SHALL DELIVER 1 COPY TO THE VIATOR.

7 (4) THE DISCLOSURE DOCUMENT UNDER SUBSECTION (1) SHALL CONTAIN  
8 THE FOLLOWING LANGUAGE:

9 "ALL MEDICAL, FINANCIAL, OR PERSONAL INFORMATION SOLICITED OR  
10 OBTAINED BY A VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT  
11 FACILITATOR ABOUT AN INSURED, INCLUDING THE INSURED'S IDENTITY OR  
12 THE IDENTITY OF FAMILY MEMBERS, A SPOUSE, OR A SIGNIFICANT OTHER  
13 MAY BE DISCLOSED AS NECESSARY TO EFFECT THE VIATICAL SETTLEMENT  
14 BETWEEN THE VIATOR AND THE VIATICAL SETTLEMENT PROVIDER. IF YOU ARE  
15 ASKED TO PROVIDE THIS INFORMATION, YOU WILL BE ASKED TO CONSENT TO  
16 THE DISCLOSURE TO SOMEONE WHO BUYS THE POLICY OR PROVIDES FUNDS FOR  
17 THE PURCHASE. YOU MAY BE ASKED TO RENEW YOUR PERMISSION TO SHARE  
18 MEDICAL AND FINANCIAL INFORMATION UNTIL THE VIATICAL SETTLEMENT  
19 CONTRACT IS SIGNED AND YOU RECEIVE ITS PROCEEDS AND TO SHARE  
20 PERSONAL LOCATION AND CONTACT INFORMATION EVERY 2 YEARS UNTIL THE  
21 VIATICAL SETTLEMENT CONTRACT IS FULLY EFFECTUATED."

22 (5) IN ADDITION TO THE DISCLOSURES REQUIRED BY SUBSECTION (1)  
23 AND PRIOR TO THE DATE THE VIATICAL SETTLEMENT CONTRACT IS SIGNED BY  
24 THE VIATOR AND ALL THE NECESSARY PARTIES, A VIATICAL SETTLEMENT  
25 PROVIDER SHALL DISCLOSE TO THE VIATOR AT LEAST ALL OF THE  
26 FOLLOWING:

27 (A) THE AFFILIATION, IF ANY, BETWEEN THE VIATICAL SETTLEMENT

1 PROVIDER AND THE ISSUER OF THE POLICY.

2 (B) THE NAME, BUSINESS ADDRESS, AND TELEPHONE NUMBER OF THE  
3 VIATICAL SETTLEMENT PROVIDER.

4 (C) THE AMOUNT AND METHOD OF CALCULATING THE VIATICAL  
5 SETTLEMENT FACILITATOR'S COMPENSATION. AS USED IN THIS SUBDIVISION,  
6 "COMPENSATION" INCLUDES ANYTHING OF VALUE PAID OR GIVEN TO A  
7 VIATICAL SETTLEMENT FACILITATOR FOR THE PLACEMENT OF A POLICY.

8 (D) ANY AFFILIATIONS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE  
9 VIATICAL SETTLEMENT PROVIDER AND THE VIATICAL SETTLEMENT  
10 FACILITATOR.

11 (E) THAT AN ESCROW AGENT SHALL PROVIDE ESCROW SERVICES TO THE  
12 PARTIES PURSUANT TO A WRITTEN AGREEMENT, SIGNED BY THE VIATICAL  
13 SETTLEMENT PROVIDER, THE VIATICAL SETTLEMENT FACILITATOR, AND THE  
14 VIATOR. AT THE CLOSE OF ESCROW, THE ESCROW AGENT WILL DISTRIBUTE  
15 THE PROCEEDS OF THE SALE TO THE VIATOR, MINUS ANY COMPENSATION TO  
16 BE PAID TO ANY OTHER PERSONS WHO PROVIDED SERVICES AND THE VIATOR  
17 HAS AGREED TO COMPENSATE OUT OF THE GROSS AMOUNT OFFERED BY THE  
18 VIATICAL SETTLEMENT PURCHASER. ALL PERSONS RECEIVING ANY FORM OF  
19 COMPENSATION UNDER THE ESCROW AGREEMENT SHALL BE CLEARLY  
20 IDENTIFIED, INCLUDING NAME, BUSINESS ADDRESS, TELEPHONE NUMBER, AND  
21 TAX IDENTIFICATION NUMBER.

22 (F) ANY OTHER DISCLOSURE AS MAY BE REQUIRED BY THE  
23 COMMISSIONER.

24 (6) IN ADDITION TO THE DISCLOSURES REQUIRED BY SUBSECTION (1)  
25 AND PRIOR TO THE DATE THE VIATICAL SETTLEMENT CONTRACT IS SIGNED BY  
26 THE VIATOR AND ALL THE NECESSARY PARTIES, A VIATICAL SETTLEMENT  
27 FACILITATOR SHALL DISCLOSE TO THE VIATOR AT LEAST ALL OF THE

1 FOLLOWING:

2 (A) THE NAME, BUSINESS ADDRESS, AND TELEPHONE NUMBER OF THE  
3 VIATICAL SETTLEMENT FACILITATOR.

4 (B) A FULL, COMPLETE, AND ACCURATE DESCRIPTION WITH DOLLAR  
5 AMOUNTS OF ALL OFFERS, COUNTEROFFERS, ACCEPTANCES, AND REJECTIONS  
6 FROM ALL VIATICAL SETTLEMENT PROVIDERS CONTACTED RELATING TO THE  
7 PROPOSED VIATICAL SETTLEMENT CONTRACT.

8 (C) ANY AFFILIATIONS OR CONTRACTUAL AGREEMENTS BETWEEN THE  
9 VIATICAL SETTLEMENT FACILITATOR AND ANY PERSON MAKING AN OFFER IN  
10 CONNECTION WITH THE PROPOSED VIATICAL CONTRACT.

11 (D) THE SOURCE OF CONTINUED PREMIUM PAYMENTS UNDER THE POLICY  
12 AND THE IDENTITY OF EACH BENEFICIARY OF ANY PROCEEDS OF EACH POLICY  
13 BENEFIT.

14 (E) THE DOLLAR AMOUNT OF THE VIATICAL SETTLEMENT PROVIDER'S  
15 GROSS FINAL OFFER.

16 (F) THE IDENTITY OF ANY PERSON RECEIVING ANY COMPENSATION  
17 DIRECTLY OR INDIRECTLY FROM THE VIATICAL SETTLEMENT PROVIDER WITH  
18 RESPECT TO THE VIATICAL SETTLEMENT CONTRACT.

19 (G) THE AMOUNT, TERMS, AND METHODS OF COMPUTING COMPENSATION  
20 IN DOLLARS AND AS A PERCENTAGE OF THE TOTAL.

21 (H) THE NET AMOUNT PAYABLE TO THE VIATOR.

22 (I) ANY OTHER DISCLOSURE REQUIRED BY THE COMMISSIONER.

23 (7) THE VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT  
24 FACILITATOR SHALL CONSPICUOUSLY DISPLAY THE DISCLOSURES REQUIRED BY  
25 SUBSECTIONS (5) AND (6) IN THE VIATICAL SETTLEMENT CONTRACT OR IN A  
26 SEPARATE ATTACHMENT SIGNED BY THE VIATOR AND THE VIATICAL  
27 SETTLEMENT PROVIDER AND VIATICAL SETTLEMENT FACILITATOR, AS

1 APPROPRIATE.

2 (8) IF THE VIATICAL SETTLEMENT PROVIDER TRANSFERS OWNERSHIP OR  
3 CHANGES THE BENEFICIARY OF THE POLICY, THE VIATICAL SETTLEMENT  
4 PROVIDER SHALL COMMUNICATE IN WRITING THE CHANGE IN OWNERSHIP OR  
5 BENEFICIARY TO THE VIATOR OR INSURED IMMEDIATELY, AND IN ALL  
6 EVENTS, NOT LATER THAN 20 DAYS AFTER THE CHANGE.

7 SEC. 4315. (1) A VIATICAL SETTLEMENT PROVIDER ENTERING INTO A  
8 VIATICAL SETTLEMENT CONTRACT SHALL FIRST OBTAIN ALL OF THE  
9 FOLLOWING:

10 (A) IF THE VIATOR IS THE INSURED, A WRITTEN STATEMENT FROM AN  
11 ATTENDING PHYSICIAN THAT THE VIATOR IS OF SOUND MIND AND UNDER NO  
12 CONSTRAINT OR UNDUE INFLUENCE TO ENTER INTO A VIATICAL SETTLEMENT  
13 CONTRACT. AS USED IN THIS SUBDIVISION, "PHYSICIAN" MEANS A PERSON  
14 LICENSED IN THIS STATE TO ENGAGE IN THE PRACTICE OF MEDICINE OR  
15 PRACTICE OF OSTEOPATHIC MEDICINE AND SURGERY.

16 (B) A DOCUMENT IN WHICH THE INSURED CONSENTS IN WRITING, AS  
17 REQUIRED BY THIS CHAPTER, TO THE RELEASE OF THE INSURED'S MEDICAL  
18 RECORDS TO A VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT  
19 FACILITATOR.

20 (2) WITHIN 20 DAYS AFTER A VIATOR EXECUTES DOCUMENTS NECESSARY  
21 TO TRANSFER ANY RIGHTS UNDER A POLICY OR WITHIN 20 DAYS OF ENTERING  
22 ANY EXPRESSED OR IMPLIED AGREEMENT, OPTION, PROMISE, OR OTHER FORM  
23 OF UNDERSTANDING TO VIATICATE THE POLICY, THE VIATICAL SETTLEMENT  
24 PROVIDER SHALL GIVE WRITTEN NOTICE TO THE INSURER THAT ISSUED THAT  
25 POLICY THAT THE POLICY HAS OR WILL BECOME A VIATICATED POLICY. THE  
26 NOTICE SHALL BE ACCOMPANIED BY THE DOCUMENTS REQUIRED BY SUBSECTION  
27 (3).

1           (3) THE VIATICAL SETTLEMENT PROVIDER SHALL DELIVER A COPY OF  
2 THE MEDICAL RELEASE REQUIRED UNDER SUBSECTION (1) (B), A COPY OF THE  
3 VIATOR'S APPLICATION FOR THE VIATICAL SETTLEMENT CONTRACT, AND A  
4 REQUEST FOR VERIFICATION OF COVERAGE TO THE INSURER THAT ISSUED THE  
5 POLICY THAT IS THE SUBJECT OF THE VIATICAL SETTLEMENT TRANSACTION.  
6 THE VIATICAL SETTLEMENT PROVIDER SHALL USE THE NAIC'S FORM FOR  
7 VERIFICATION OF COVERAGE UNLESS ANOTHER FORM IS APPROVED BY THE  
8 COMMISSIONER.

9           (4) THE INSURER SHALL RESPOND TO A REQUEST FOR VERIFICATION OF  
10 COVERAGE SUBMITTED ON AN APPROVED FORM BY A VIATICAL SETTLEMENT  
11 PROVIDER OR VIATICAL SETTLEMENT FACILITATOR WITHIN 30 CALENDAR DAYS  
12 AFTER THE DATE THE REQUEST IS RECEIVED. THE INSURER SHALL ACCEPT AN  
13 ORIGINAL OR FACSIMILE OR ELECTRONIC COPY OF A REQUEST FOR  
14 VERIFICATION AND ANY ACCOMPANYING AUTHORIZATION SIGNED BY THE  
15 VIATOR.

16           (5) PRIOR TO OR AT THE TIME OF EXECUTION OF THE VIATICAL  
17 SETTLEMENT CONTRACT, THE VIATICAL SETTLEMENT PROVIDER SHALL OBTAIN  
18 A WITNESSED DOCUMENT IN WHICH THE VIATOR CONSENTS TO THE VIATICAL  
19 SETTLEMENT CONTRACT, REPRESENTS THAT THE VIATOR HAS A FULL AND  
20 COMPLETE UNDERSTANDING OF THE VIATICAL SETTLEMENT CONTRACT AND A  
21 FULL AND COMPLETE UNDERSTANDING OF THE BENEFITS OF THE POLICY, AND  
22 ACKNOWLEDGES THAT THE VIATOR IS ENTERING INTO THE VIATICAL  
23 SETTLEMENT CONTRACT FREELY AND VOLUNTARILY AND, FOR PERSONS WHO ARE  
24 TERMINALLY OR CHRONICALLY ILL, ACKNOWLEDGES THAT THE INSURED IS  
25 TERMINALLY OR CHRONICALLY ILL AND THAT THE TERMINAL OR CHRONIC  
26 ILLNESS WAS DIAGNOSED AFTER THE POLICY WAS ISSUED.

27           (6) IF A VIATICAL SETTLEMENT FACILITATOR PERFORMS ANY OF THE

1 ACTIVITIES SPECIFIED IN THIS SECTION ON BEHALF OF THE VIATICAL  
2 SETTLEMENT PROVIDER, THE VIATICAL SETTLEMENT PROVIDER SHALL BE  
3 CONSIDERED TO HAVE FULFILLED THE REQUIREMENTS OF THIS SECTION.

4 (7) ALL MEDICAL INFORMATION SOLICITED OR OBTAINED BY ANY  
5 LICENSEE IS SUBJECT TO THE APPLICABLE PROVISIONS OF STATE AND  
6 FEDERAL LAW RELATING TO CONFIDENTIALITY OF MEDICAL INFORMATION.

7 SEC. 4317. (1) THE VIATICAL SETTLEMENT PROVIDER SHALL INSTRUCT  
8 THE VIATOR TO SEND THE EXECUTED DOCUMENTS REQUIRED TO EFFECT THE  
9 CHANGE IN OWNERSHIP, ASSIGNMENT, OR CHANGE IN BENEFICIARY DIRECTLY  
10 TO THE ESCROW AGENT. WITHIN 3 BUSINESS DAYS AFTER THE DATE THE  
11 ESCROW AGENT RECEIVES THE DOCUMENTS, OR FROM THE DATE THE VIATICAL  
12 SETTLEMENT PROVIDER RECEIVES THE DOCUMENTS IF THE VIATOR  
13 ERRONEOUSLY PROVIDES THE DOCUMENTS DIRECTLY TO THE VIATICAL  
14 SETTLEMENT PROVIDER, THE VIATICAL SETTLEMENT PROVIDER SHALL PAY OR  
15 TRANSFER THE GROSS AMOUNT TO BE PAID BY THE VIATICAL SETTLEMENT  
16 PROVIDER TO THE ESCROW AGENT FOR DEPOSIT IN A TRUST OR ESCROW  
17 ACCOUNT SET UP FOR THAT PURPOSE BY THE ESCROW AGENT IN A REGULATED  
18 FINANCIAL INSTITUTION. UPON PAYMENT OF THE SETTLEMENT PROCEEDS INTO  
19 THE ESCROW OR TRUST ACCOUNT, THE ESCROW AGENT OR TRUSTEE SHALL  
20 DELIVER THE ORIGINAL CHANGE IN OWNERSHIP, ASSIGNMENT, OR CHANGE IN  
21 BENEFICIARY FORMS TO THE VIATICAL SETTLEMENT PROVIDER, A  
22 REPRESENTATIVE OF THE VIATICAL SETTLEMENT PROVIDER, OR RELATED  
23 PROVIDER TRUST. UPON THE ESCROW AGENT'S RECEIPT OF THE  
24 ACKNOWLEDGMENT OF THE PROPERLY COMPLETED TRANSFER OF OWNERSHIP,  
25 ASSIGNMENT, OR DESIGNATION OF BENEFICIARY FROM THE INSURER, THE  
26 ESCROW AGENT SHALL PAY THE SETTLEMENT PROCEEDS TO THE VIATOR AND  
27 ANY OTHER PERSON PURSUANT TO THE VIATICAL SETTLEMENT CONTRACT AND

1 THE ESCROW AGREEMENT. THE ESCROW AGENT SHALL MAKE PAYMENT WITHIN 3  
2 BUSINESS DAYS OF THE DATE THE ESCROW AGENT RECEIVED THE  
3 ACKNOWLEDGED FORMS FROM THE INSURER. FUNDS ARE CONSIDERED SENT TO A  
4 VIATOR AS OF THE DATE THAT THE ESCROW AGENT EITHER RELEASES THE  
5 FUNDS FOR WIRE TRANSFER TO THE VIATOR OR PLACES A CHECK FOR  
6 DELIVERY TO THE VIATOR VIA UNITED STATES POSTAL SERVICE OR OTHER  
7 NATIONALLY RECOGNIZED DELIVERY SERVICE.

8 (2) FAILURE TO TRANSFER THE PROCEEDS TO THE VIATOR AS PROVIDED  
9 IN SUBSECTION (1) RENDERS THE VIATICAL SETTLEMENT CONTRACT VOIDABLE  
10 BY THE VIATOR FOR LACK OF CONSIDERATION UNTIL THE TIME  
11 CONSIDERATION IS TENDERED TO AND ACCEPTED BY THE VIATOR. IF A  
12 VIATICAL SETTLEMENT CONTRACT IS VOIDED BY THE VIATOR PURSUANT TO  
13 THIS SUBSECTION, OWNERSHIP OF THE POLICY REVERTS TO THE VIATOR OR  
14 TO THE VIATOR'S ESTATE IF THE VIATOR IS DECEASED, IRRESPECTIVE OF  
15 ANY TRANSFER OF OWNERSHIP OF THE POLICY BY THE VIATOR, VIATICAL  
16 SETTLEMENT PROVIDER, OR ANY OTHER PERSON.

17 SEC. 4319. (1) AFTER A VIATICAL SETTLEMENT HAS BEEN ENTERED  
18 INTO, THE VIATICAL SETTLEMENT PROVIDER, VIATICAL SETTLEMENT  
19 FACILITATOR, OR AUTHORIZED REPRESENTATIVE SHALL NOT CONTACT THE  
20 INSURED FOR ANY REASON RELATED TO THE VIATICAL SETTLEMENT, EXCEPT  
21 TO OBTAIN PERSONAL LOCATION AND CONTACT INFORMATION WHICH SHALL NOT  
22 BE OBTAINED MORE OFTEN THAN ONCE EVERY 2 YEARS.

23 (2) FOR THE PURPOSES OF THIS SECTION, VIATICAL SETTLEMENT  
24 PROVIDERS AND VIATICAL SETTLEMENT FACILITATORS ARE RESPONSIBLE FOR  
25 THE ACTIONS OF THEIR AUTHORIZED REPRESENTATIVES.

26 SEC. 4321. (1) A LICENSEE UNDER THIS CHAPTER SHALL RETAIN  
27 COPIES OF ALL OF THE FOLLOWING FOR 5 YEARS:

1 (A) ALL PROPOSED, OFFERED, OR EXECUTED VIATICAL SETTLEMENT  
2 CONTRACTS, PURCHASE AGREEMENTS, UNDERWRITING DOCUMENTS, POLICY  
3 FORMS, AND APPLICATIONS FROM THE DATE OF THE PROPOSAL, OFFER, OR  
4 EXECUTION OF THE VIATICAL SETTLEMENT CONTRACT OR PURCHASE  
5 AGREEMENT, WHICHEVER IS LATER.

6 (B) ALL CHECKS, DRAFTS, OR OTHER EVIDENCE AND DOCUMENTATION  
7 RELATED TO THE PAYMENT, TRANSFER, DEPOSIT, OR RELEASE OF FUNDS FROM  
8 THE DATE OF THE VIATICAL SETTLEMENT TRANSACTION.

9 (C) ALL OTHER RECORDS AND DOCUMENTS RELATED TO THE  
10 REQUIREMENTS OF THIS CHAPTER.

11 (2) THIS SECTION DOES NOT RELIEVE A PERSON OF THE OBLIGATION  
12 TO PRODUCE THE DOCUMENTS DESCRIBED IN SUBSECTION (1) TO THE  
13 COMMISSIONER AFTER THE RETENTION PERIOD SPECIFIED IN THAT  
14 SUBSECTION HAS EXPIRED IF THE PERSON HAS RETAINED THE DOCUMENTS.

15 (3) RECORDS REQUIRED TO BE RETAINED BY THIS SECTION SHALL BE  
16 LEGIBLE AND COMPLETE AND MAY BE RETAINED IN PAPER, PHOTOGRAPH,  
17 MICROPROCESS, MAGNETIC, MECHANICAL, OR ELECTRONIC MEDIA, OR BY ANY  
18 PROCESS THAT ACCURATELY REPRODUCES OR FORMS A DURABLE MEDIUM FOR  
19 THE REPRODUCTION OF A RECORD.

20 SEC. 4323. (1) THE COMMISSIONER OR ANY OF HIS OR HER  
21 AUTHORIZED DEPUTIES OR EXAMINERS MAY EXAMINE IN PERSON ANY OR ALL  
22 OF THE BOOKS, RECORDS, DOCUMENTS, AND PAPERS OF ANY APPLICANT OR  
23 LICENSEE, DOMESTIC OR FOREIGN, UNDER THIS CHAPTER, INCLUDING, BUT  
24 NOT LIMITED TO, THOSE OF ANY OFFICER, DIRECTOR, EMPLOYEE, AGENT OF  
25 THE LICENSEE, PERSON AFFILIATED OR ASSOCIATED WITH A LICENSEE, OR  
26 ANY OTHER PERSON WHO IN THE COMMISSIONER'S DISCRETION MAY HAVE  
27 INFORMATION MATERIAL OR NECESSARY TO AN EXAMINATION OF THE

1 LICENSEE.

2 (2) INSTEAD OF AN EXAMINATION UNDER THIS CHAPTER OF ANY  
3 FOREIGN OR ALIEN LICENSEE DOING BUSINESS IN THIS STATE, THE  
4 COMMISSIONER MAY ACCEPT AN EXAMINATION REPORT ON THE LICENSEE AS  
5 PREPARED BY THE INSURANCE REGULATOR FOR THE LICENSEE'S STATE OF  
6 DOMICILE OR PORT-OF-ENTRY STATE IF THAT STATE ACCEPTS EXAMINATION  
7 REPORTS PREPARED BY THE COMMISSIONER.

8 (3) THE COMMISSIONER HAS THE POWER TO ISSUE SUBPOENAS, TO  
9 ADMINISTER OATHS, AND TO EXAMINE UNDER OATH ANY PERSON AS TO ANY  
10 MATTER PERTINENT TO THE EXAMINATION. UPON THE FAILURE OR REFUSAL OF  
11 A PERSON TO OBEY A SUBPOENA, THE COMMISSIONER MAY PETITION A COURT  
12 OF COMPETENT JURISDICTION, AND, UPON PROPER SHOWING, THE COURT MAY  
13 ENTER AN ORDER COMPELLING THE WITNESS TO APPEAR AND TESTIFY OR  
14 PRODUCE DOCUMENTARY EVIDENCE. FAILURE TO OBEY THE COURT ORDER SHALL  
15 BE PUNISHABLE AS CONTEMPT OF COURT.

16 (4) ALL ACTUAL AND NECESSARY EXPENSES INCURRED IN CONNECTION  
17 WITH THE EXAMINATION OR OTHER INVESTIGATION OF A LICENSEE OR OTHER  
18 PERSON REGULATED UNDER THE COMMISSIONER'S AUTHORITY SHALL BE  
19 CERTIFIED BY THE COMMISSIONER, TOGETHER WITH A STATEMENT OF THE  
20 WORK PERFORMED INCLUDING THE NUMBER OF DAYS SPENT BY THE  
21 COMMISSIONER AND EACH OF THE COMMISSIONER'S DEPUTIES, ASSISTANTS,  
22 EMPLOYEES, AND OTHERS ACTING UNDER THE COMMISSIONER'S AUTHORITY. IF  
23 CORRECT, THE EXPENSES SHALL BE PAID TO THE PERSONS BY WHOM THEY  
24 WERE INCURRED, UPON THE WARRANT OF THE STATE TREASURER PAYABLE FROM  
25 APPROPRIATIONS MADE BY THE LEGISLATURE FOR THIS PURPOSE. THE  
26 COMMISSIONER SHALL PREPARE AND PRESENT TO THE LICENSEE OR OTHER  
27 PERSON EXAMINED OR INVESTIGATED A STATEMENT OF THE EXPENSES AND

1 REASONABLE COST INCURRED FOR EACH PERSON ENGAGED UPON THE  
2 EXAMINATION OR INVESTIGATION, INCLUDING AMOUNTS NECESSARY TO COVER  
3 THE PAY AND ALLOWANCES GRANTED TO THE PERSONS BY THE MICHIGAN CIVIL  
4 SERVICE COMMISSION, AND THE ADMINISTRATION AND SUPERVISORY EXPENSE  
5 INCLUDING AN AMOUNT NECESSARY TO COVER FRINGE BENEFITS IN  
6 CONJUNCTION WITH THE EXAMINATION OR INVESTIGATION. THE LICENSEE OR  
7 OTHER PERSON, UPON RECEIVING THE STATEMENT, SHALL PAY TO THE  
8 COMMISSIONER THE STATED AMOUNT. THE COMMISSIONER SHALL DEPOSIT THE  
9 FUNDS IN THE INSURANCE BUREAU FUND AS PROVIDED IN SECTION 225. THE  
10 COMMISSIONER MAY EMPLOY ATTORNEYS, ACTUARIES, ACCOUNTANTS,  
11 INVESTMENT ADVISERS, AND OTHER EXPERT PERSONNEL NOT OTHERWISE  
12 EMPLOYEES OF THIS STATE REASONABLY NECESSARY TO ASSIST IN THE  
13 CONDUCT OF THE EXAMINATION OR INVESTIGATION OR PROCEEDING WITH  
14 RESPECT TO A LICENSEE OR OTHER PERSON REGULATED UNDER THE  
15 COMMISSIONER'S AUTHORITY AT THE LICENSEE'S OR OTHER PERSON'S  
16 EXPENSE. UPON CERTIFICATION BY THE COMMISSIONER OF THE REASONABLE  
17 EXPENSES INCURRED UNDER THIS SECTION, THE INSURER OR OTHER PERSON  
18 EXAMINED OR INVESTIGATED SHALL PAY THOSE EXPENSES DIRECTLY TO THE  
19 PERSON OR FIRM RENDERING ASSISTANCE TO THE COMMISSIONER. EXPENSES  
20 PAID DIRECTLY TO SUCH PERSON OR FIRM AND THE REGULATORY FEES  
21 IMPOSED BY THIS SECTION SHALL BE EXAMINATION EXPENSES UNDER SECTION  
22 239(1) OF THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1239.

23 (5) NOTHING CONTAINED IN THIS CHAPTER LIMITS THE  
24 COMMISSIONER'S AUTHORITY TO TERMINATE OR SUSPEND AN EXAMINATION IN  
25 ORDER TO PURSUE OTHER LEGAL OR REGULATORY ACTION PURSUANT TO THE  
26 INSURANCE LAWS OF THIS STATE. FINDINGS OF FACT AND CONCLUSIONS MADE  
27 PURSUANT TO ANY EXAMINATION SHALL BE PRIMA FACIE EVIDENCE IN ANY

1 LEGAL OR REGULATORY ACTION.

2 (6) THIS CHAPTER DOES NOT LIMIT THE COMMISSIONER'S AUTHORITY  
3 TO USE AND, IF APPROPRIATE, TO MAKE PUBLIC ANY FINAL OR PRELIMINARY  
4 EXAMINATION REPORT, ANY EXAMINER OR LICENSEE WORKING PAPERS OR  
5 OTHER DOCUMENTS, OR ANY OTHER INFORMATION DISCOVERED OR DEVELOPED  
6 DURING THE COURSE OF ANY EXAMINATION IN THE FURTHERANCE OF ANY  
7 LEGAL OR REGULATORY ACTION THAT THE COMMISSIONER, IN THE  
8 COMMISSIONER'S SOLE DISCRETION, CONSIDERS APPROPRIATE.

9 SEC. 4325. (1) UPON COMPLETION OF THE EXAMINATION, THE  
10 EXAMINER IN CHARGE SHALL FILE WITH THE COMMISSIONER A VERIFIED  
11 WRITTEN REPORT OF THE EXAMINATION. EXAMINATION REPORTS SHALL BE  
12 BASED ON ONLY FACTS APPEARING UPON THE BOOKS, RECORDS, OR OTHER  
13 DOCUMENTS OF THE LICENSEE, ITS AGENTS, OR OTHER PERSONS EXAMINED,  
14 OR AS ASCERTAINED FROM THE TESTIMONY OF ITS OFFICERS, AGENTS, OR  
15 OTHER PERSONS EXAMINED CONCERNING ITS AFFAIRS, AND THE CONCLUSIONS  
16 AND RECOMMENDATIONS THAT THE EXAMINERS FIND REASONABLY WARRANTED  
17 FROM THE FACTS.

18 (2) UPON RECEIPT OF THE VERIFIED REPORT, THE COMMISSIONER  
19 SHALL TRANSMIT THE REPORT TO THE LICENSEE EXAMINED, AND PROVIDE  
20 NOTICE TO THE LICENSEE THAT THE LICENSEE HAS THE RIGHT, PURSUANT TO  
21 THE ADMINISTRATIVE PROCEDURES ACT OF 1969, TO SHOW THAT THE  
22 LICENSEE IS IN COMPLIANCE WITH THIS CHAPTER AS TO ANY MATTERS  
23 CONTAINED IN THE EXAMINATION REPORT.

24 (3) IF THE COMMISSIONER DETERMINES THAT REGULATORY ACTION IS  
25 APPROPRIATE AS A RESULT OF AN EXAMINATION, THE COMMISSIONER MAY  
26 INITIATE ANY PROCEEDINGS OR ACTIONS PROVIDED BY LAW.

27 (4) NAMES AND INDIVIDUAL IDENTIFICATION DATA FOR ALL VIATORS

1 SHALL BE CONSIDERED PRIVATE AND CONFIDENTIAL INFORMATION AND SHALL  
2 NOT BE DISCLOSED BY THE COMMISSIONER, UNLESS REQUIRED BY LAW.

3 (5) EXCEPT AS OTHERWISE PROVIDED IN THIS CHAPTER OR IN THE LAW  
4 OF ANOTHER STATE OR JURISDICTION THAT IS SUBSTANTIALLY SIMILAR TO  
5 THIS CHAPTER, ALL EXAMINATION REPORTS, WORKING PAPERS, RECORDED  
6 INFORMATION, DOCUMENTS, AND COPIES OF THOSE REPORTS, PAPERS,  
7 INFORMATION, DOCUMENTS, AND COPIES PRODUCED BY, OBTAINED BY, OR  
8 DISCLOSED TO THE COMMISSIONER OR TO ANY OTHER PERSON IN THE COURSE  
9 OF AN EXAMINATION MADE UNDER THIS CHAPTER OR UNDER THE LAW OF  
10 ANOTHER STATE OR JURISDICTION THAT IS SUBSTANTIALLY SIMILAR TO THIS  
11 CHAPTER, OR IN THE COURSE OF THE COMMISSIONER'S ANALYSIS OR  
12 INVESTIGATION OF THE FINANCIAL CONDITION OR MARKET CONDUCT OF A  
13 LICENSEE ARE CONFIDENTIAL BY LAW AND PRIVILEGED, ARE NOT SUBJECT TO  
14 THE DISCLOSURE REQUIREMENTS OF THE FREEDOM OF INFORMATION ACT, ARE  
15 NOT SUBJECT TO SUBPOENA, AND ARE NOT SUBJECT TO DISCOVERY OR  
16 ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION. THE  
17 COMMISSIONER MAY USE THE DOCUMENTS, MATERIALS, OR OTHER INFORMATION  
18 IN THE FURTHERANCE OF ANY REGULATORY OR LEGAL ACTION BROUGHT AS  
19 PART OF THE COMMISSIONER'S OFFICIAL DUTIES.

20 (6) DOCUMENTS, MATERIALS, OR OTHER INFORMATION, INCLUDING, BUT  
21 NOT LIMITED TO, ALL WORKING PAPERS, AND COPIES OF WORKING PAPERS,  
22 IN THE POSSESSION OR CONTROL OF THE NAIC AND ITS AFFILIATES AND  
23 SUBSIDIARIES ARE CONFIDENTIAL BY LAW AND PRIVILEGED, ARE NOT  
24 SUBJECT TO SUBPOENA, AND ARE NOT SUBJECT TO DISCOVERY OR ADMISSIBLE  
25 IN EVIDENCE IN ANY PRIVATE CIVIL ACTION, IF EITHER OF THE FOLLOWING  
26 APPLIES:

27 (A) THEY ARE CREATED, PRODUCED, OR OBTAINED BY OR DISCLOSED TO

1 THE NAIC AND ITS AFFILIATES AND SUBSIDIARIES IN THE COURSE OF  
2 ASSISTING AN EXAMINATION MADE UNDER THIS CHAPTER OR ASSISTING THE  
3 COMMISSIONER OR THE COMPARABLE OFFICIAL IN ANOTHER STATE IN THE  
4 ANALYSIS OR INVESTIGATION OF THE FINANCIAL CONDITION OR MARKET  
5 CONDUCT OF A LICENSEE.

6 (B) THE COMMISSIONER OR THE COMPARABLE OFFICIAL IN ANOTHER  
7 STATE DISCLOSES THEM TO THE NAIC AND ITS AFFILIATES AND  
8 SUBSIDIARIES UNDER SUBSECTION (8) OR UNDER A COMPARABLE PROVISION  
9 IN THE LAW OF THE OTHER STATE.

10 (7) NEITHER THE COMMISSIONER NOR ANY PERSON THAT RECEIVED THE  
11 DOCUMENTS, MATERIAL, OR OTHER INFORMATION WHILE ACTING UNDER THE  
12 AUTHORITY OF THE COMMISSIONER, INCLUDING THE NAIC AND ITS  
13 AFFILIATES AND SUBSIDIARIES, SHALL BE PERMITTED TO TESTIFY IN ANY  
14 PRIVATE CIVIL ACTION CONCERNING ANY CONFIDENTIAL DOCUMENTS,  
15 MATERIALS, OR INFORMATION SUBJECT TO SUBSECTION (4).

16 (8) IN ORDER TO ASSIST IN THE PERFORMANCE OF THE  
17 COMMISSIONER'S DUTIES, THE COMMISSIONER MAY DO ANY OF THE  
18 FOLLOWING:

19 (A) SHARE DOCUMENTS, MATERIALS, OR OTHER INFORMATION,  
20 INCLUDING THE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR  
21 INFORMATION SUBJECT TO SUBSECTION (4), WITH OTHER STATE, FEDERAL,  
22 AND INTERNATIONAL REGULATORY AGENCIES, WITH THE NAIC AND ITS  
23 AFFILIATES AND SUBSIDIARIES, AND WITH STATE, FEDERAL, AND  
24 INTERNATIONAL LAW ENFORCEMENT AUTHORITIES, IF THE RECIPIENT AGREES  
25 TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED STATUS OF THE  
26 DOCUMENT, MATERIAL, COMMUNICATION, OR OTHER INFORMATION.

27 (B) RECEIVE DOCUMENTS, MATERIALS, COMMUNICATIONS, OR

1 INFORMATION, INCLUDING OTHERWISE CONFIDENTIAL AND PRIVILEGED  
2 DOCUMENTS, MATERIALS, OR INFORMATION, FROM THE NAIC AND ITS  
3 AFFILIATES AND SUBSIDIARIES, AND FROM REGULATORY AND LAW  
4 ENFORCEMENT OFFICIALS OF OTHER FOREIGN OR DOMESTIC JURISDICTIONS.

5 (C) ENTER INTO AGREEMENTS GOVERNING SHARING AND USE OF  
6 INFORMATION CONSISTENT WITH THIS SECTION.

7 (9) THE COMMISSIONER SHALL MAINTAIN AS CONFIDENTIAL OR  
8 PRIVILEGED ANY DOCUMENT, MATERIAL, OR INFORMATION RECEIVED UNDER  
9 SUBSECTION (8) (B) WITH NOTICE OR THE UNDERSTANDING THAT IT IS  
10 CONFIDENTIAL OR PRIVILEGED UNDER THE LAWS OF THE JURISDICTION THAT  
11 IS THE SOURCE OF THE DOCUMENT, MATERIAL, OR INFORMATION.

12 (10) NO WAIVER OF ANY APPLICABLE PRIVILEGE OR CLAIM OF  
13 CONFIDENTIALITY IN THE DOCUMENTS, MATERIALS, OR INFORMATION SHALL  
14 OCCUR AS A RESULT OF DISCLOSURE TO THE COMMISSIONER UNDER THIS  
15 SECTION OR AS A RESULT OF SHARING AS AUTHORIZED IN SUBSECTION (8).

16 (11) A PRIVILEGE ESTABLISHED UNDER THE LAW OF ANY STATE OR  
17 JURISDICTION THAT IS SUBSTANTIALLY SIMILAR TO THE PRIVILEGE  
18 ESTABLISHED UNDER THIS SECTION SHALL BE AVAILABLE AND ENFORCED IN  
19 ANY PROCEEDING IN, AND IN ANY COURT OF, THIS STATE.

20 (12) NOTHING CONTAINED IN THIS CHAPTER PREVENTS OR PROHIBITS  
21 THE COMMISSIONER FROM DISCLOSING THE CONTENT OF AN EXAMINATION  
22 REPORT, PRELIMINARY EXAMINATION REPORT OR RESULTS, OR ANY MATTER  
23 RELATING TO THOSE REPORTS OR RESULTS, TO THE OFFICIAL OF ANY OTHER  
24 STATE OR COUNTRY THAT IS COMPARABLE TO THE COMMISSIONER, OR TO LAW  
25 ENFORCEMENT OFFICIALS OF THIS OR ANY OTHER STATE OR AGENCY OF THE  
26 FEDERAL GOVERNMENT AT ANY TIME, OR TO THE NAIC, IF THE AGENCY OR  
27 OFFICE RECEIVING THE REPORT OR MATTERS RELATING TO IT AGREES IN

1 WRITING TO HOLD IT CONFIDENTIAL AND IN A MANNER CONSISTENT WITH  
2 THIS CHAPTER.

3 (13) THE COMMISSIONER MAY NOT APPOINT AN EXAMINER IF THE  
4 EXAMINER, EITHER DIRECTLY OR INDIRECTLY, HAS A CONFLICT OF INTEREST  
5 OR IS AFFILIATED WITH THE MANAGEMENT OF, OR OWNS A PECUNIARY  
6 INTEREST IN, ANY PERSON SUBJECT TO EXAMINATION UNDER THIS CHAPTER.  
7 THIS DOES NOT AUTOMATICALLY PRECLUDE A VIATOR, AN INSURED IN A  
8 VIATICATED POLICY, OR A BENEFICIARY IN A POLICY THAT IS PROPOSED TO  
9 BE VIATICATED FROM BEING AN EXAMINER.

10 SEC. 4333. (1) EACH VIATICAL SETTLEMENT PROVIDER SHALL FILE  
11 WITH THE COMMISSIONER, ON OR BEFORE THE FIRST DAY OF MARCH OF EACH  
12 YEAR, AN ANNUAL STATEMENT VERIFIED UNDER OATH BY 2 OFFICERS IN THE  
13 FORM PRESCRIBED BY THE COMMISSIONER. THE ANNUAL STATEMENT FOR A  
14 VIATICAL SETTLEMENT PROVIDER SHALL INCLUDE THE FOLLOWING  
15 INFORMATION ABOUT THE VIATICAL SETTLEMENT PROVIDER'S TRANSACTIONS:

16 (A) AGGREGATE TOTAL OF THE VALUE OF UNSETTLED VIATICAL  
17 SETTLEMENT CONTRACTS THAT HAVE BEEN SIGNED BY THE VIATOR BUT HAVE  
18 NOT BEEN SETTLED AS OF THE DATE OF THE REPORT CATEGORIZED BY THE  
19 NUMBER OF DAYS SINCE THE VIATOR SIGNED THE CONTRACT.

20 (B) NUMBER OF POLICIES PURCHASED, TOTAL AMOUNT OF SETTLEMENT  
21 PAID FOR POLICIES PURCHASED, AND TOTAL FACE VALUE OF POLICIES  
22 PURCHASED BEGINNING WITH THE REPORTING YEAR AND MOST RECENT 5  
23 YEARS.

24 (C) NUMBER OF SETTLEMENTS PAID IN THE PRECEDING CALENDAR YEAR,  
25 ALLOCATED BY STATE OR TERRITORY.

26 (D) ANY OTHER INFORMATION REQUIRED BY THE COMMISSIONER.

27 (2) ON OR BEFORE THE FIRST DAY OF MAY OF EACH YEAR, A VIATICAL

1 SETTLEMENT PROVIDER LICENSED IN THIS STATE SHALL FILE WITH THE  
2 COMMISSIONER ITS FINANCIAL STATEMENT, AUDITED BY AN INDEPENDENT  
3 CERTIFIED PUBLIC ACCOUNTANT ALONG WITH A LETTER STATING WHETHER ANY  
4 SIGNIFICANT DEFICIENCIES OR MATERIAL WEAKNESSES WERE DETECTED  
5 DURING THE AUDIT.

6 (3) EACH VIATICAL SETTLEMENT PROVIDER SHALL FILE WITH THE  
7 COMMISSIONER INTERIM UNAUDITED FINANCIAL STATEMENTS, INCLUDING  
8 COMPARATIVE RESULTS AND FOOTNOTES TO THE FINANCIAL STATEMENTS, ON A  
9 QUARTERLY BASIS WITHIN 45 DAYS AFTER THE END OF EACH QUARTER. THE  
10 INTERIM FINANCIAL STATEMENTS SHALL MEET ALL OF THE FOLLOWING  
11 REQUIREMENTS:

12 (A) BE CERTIFIED BY THE CHIEF EXECUTIVE OFFICER AND CHIEF  
13 FINANCIAL OFFICER AS TO THE ACCURACY AND FAIR PRESENTATION.

14 (B) INCLUDE DISCLOSURES EITHER ON THE FACE OF THE FINANCIAL  
15 STATEMENTS OR IN ACCOMPANYING FOOTNOTES SUFFICIENT SO AS TO MAKE  
16 THE INTERIM INFORMATION NOT MISLEADING.

17 (4) VIATICAL SETTLEMENT PROVIDERS MAY ASSUME THAT THE USERS OF  
18 THE INTERIM FINANCIAL STATEMENTS HAVE ACCESS TO THE PRIOR FISCAL  
19 YEAR-END AUDITED FINANCIAL STATEMENTS AND THAT THE ADEQUACY OF  
20 ADDITIONAL DISCLOSURE NEEDED FOR A FAIR PRESENTATION, EXCEPT IN  
21 REGARD TO MATERIAL CONTINGENCIES, MAY BE DETERMINED IN THAT  
22 CONTEXT. A FOOTNOTE DISCLOSURE THAT WOULD SUBSTANTIALLY DUPLICATE  
23 THE DISCLOSURE CONTAINED IN THE AUDITED FINANCIAL STATEMENTS FOR  
24 THE PRECEDING FISCAL YEAR MAY BE OMITTED. A FOOTNOTE DISCLOSURE  
25 SHALL BE PROVIDED IF EVENTS SUBSEQUENT TO THE FISCAL YEAR END HAVE  
26 A MATERIAL IMPACT ON THE VIATICAL SETTLEMENT PROVIDER.

27 (5) A VIATICAL SETTLEMENT PROVIDER THAT WILLFULLY FAILS TO

1 FILE THE ANNUAL STATEMENTS REQUIRED BY THIS SECTION, OR WILLFULLY  
2 FAILS TO REPLY WITHIN 30 CALENDAR DAYS TO A WRITTEN INQUIRY FROM  
3 THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE, SHALL, IN ADDITION  
4 TO OTHER PENALTIES OR REMEDIES PROVIDED BY THIS CHAPTER, BE SUBJECT  
5 TO AN ADMINISTRATIVE FINE OF UP TO \$250.00 PER DAY, NOT TO EXCEED  
6 \$25,000.00 IN THE AGGREGATE FOR EACH SUCH FAILURE.

7 (6) THE COMMISSIONER SHALL KEEP CONFIDENTIAL AND NOT A MATTER  
8 OF PUBLIC RECORD ALL PROPRIETARY INFORMATION OF THE LICENSEE, ALL  
9 INDIVIDUAL TRANSACTION DATA REGARDING THE BUSINESS OF VIATICAL  
10 SETTLEMENTS, AND DATA THAT COULD COMPROMISE THE PRIVACY OF  
11 PERSONAL, FINANCIAL, AND HEALTH INFORMATION OF THE VIATOR OR  
12 INSURED.

13 SEC. 4335. EXCEPT AS OTHERWISE PERMITTED OR REQUIRED BY LAW, A  
14 VIATICAL SETTLEMENT PROVIDER, VIATICAL SETTLEMENT FACILITATOR,  
15 INSURER, INSURANCE PRODUCER, INFORMATION BUREAU, RATING AGENCY OR  
16 COMPANY, OR ANY OTHER PERSON WITH ACTUAL KNOWLEDGE OF A VIATOR'S OR  
17 AN INSURED'S IDENTITY SHALL NOT DISCLOSE THAT IDENTITY, INCLUDING  
18 THE VIATOR'S OR INSURED'S NAME AND INDIVIDUAL IDENTIFICATION DATA,  
19 OR THE VIATOR'S OR INSURED'S FINANCIAL OR MEDICAL INFORMATION,  
20 UNLESS ANY OF THE FOLLOWING APPLY:

21 (A) THE DISCLOSURE IS NECESSARY TO EFFECT A VIATICAL  
22 SETTLEMENT, AND THE VIATOR AND INSURED HAVE PROVIDED PRIOR WRITTEN  
23 CONSENT TO THE DISCLOSURE.

24 (B) THE DISCLOSURE IS PROVIDED IN RESPONSE TO AN INVESTIGATION  
25 OR EXAMINATION BY THE COMMISSIONER OR BY ANY OTHER GOVERNMENTAL  
26 OFFICER OR AGENCY OR PURSUANT TO THIS CHAPTER.

27 (C) THE DISCLOSURE IS A TERM OF, OR CONDITION TO, THE TRANSFER

1 OF A VIATICATED POLICY BY 1 VIATICAL SETTLEMENT PROVIDER TO ANOTHER  
2 VIATICAL SETTLEMENT PROVIDER.

3 (D) THE DISCLOSURE IS NECESSARY TO PERMIT A FINANCING ENTITY,  
4 RELATED PROVIDER TRUST, OR SPECIAL PURPOSE ENTITY TO FINANCE THE  
5 PURCHASE OF POLICIES BY A VIATICAL SETTLEMENT PROVIDER, AND THE  
6 VIATOR AND INSURED HAVE PROVIDED PRIOR WRITTEN CONSENT TO THE  
7 DISCLOSURE.

8 (E) THE DISCLOSURE IS NECESSARY TO ALLOW THE VIATICAL  
9 SETTLEMENT PROVIDER OR ITS AUTHORIZED REPRESENTATIVES TO MAKE  
10 CONTACTS FOR THE PURPOSE OF DETERMINING HEALTH STATUS. HOWEVER,  
11 CONTACTS FOR THE PURPOSE OF DETERMINING HEALTH STATUS ARE NOT  
12 ALLOWED AFTER THE VIATOR RECEIVES THE VIATICAL SETTLEMENT CONTRACT  
13 PROCEEDS.

14 (F) THE DISCLOSURE IS REQUIRED TO PURCHASE STOP-LOSS COVERAGE  
15 OR FINANCIAL GUARANTY INSURANCE.

16 SEC. 4339. (1) THE COMMISSIONER MAY REFUSE TO ISSUE OR MAY  
17 SUSPEND, REVOKE, OR REFUSE TO RENEW THE LICENSE OF A VIATICAL  
18 SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT FACILITATOR IF THE  
19 COMMISSIONER FINDS THAT ANY OF THE FOLLOWING APPLY:

20 (A) THERE WAS A MATERIAL MISREPRESENTATION IN THE APPLICATION  
21 FOR THE LICENSE.

22 (B) THE APPLICANT OR LICENSEE OR ANY OFFICER, PARTNER, MEMBER,  
23 OR DESIGNATED EMPLOYEE OF THE APPLICANT OR LICENSEE HAS BEEN  
24 CONVICTED OF FRAUDULENT OR DISHONEST PRACTICES, IS OR HAS BEEN  
25 SUBJECT TO AN ADMINISTRATIVE OR CIVIL ACTION IN THIS STATE OR  
26 ANOTHER STATE, OR IS OTHERWISE SHOWN TO BE UNTRUSTWORTHY OR  
27 INCOMPETENT.

1 (C) THE LICENSEE IS A VIATICAL SETTLEMENT PROVIDER THAT  
2 DEMONSTRATES A PATTERN OF UNREASONABLE PAYMENTS TO VIATORS.

3 (D) THE LICENSEE OR ANY OFFICER, PARTNER, MEMBER, OR  
4 DESIGNATED EMPLOYEE OF THE LICENSEE HAS BEEN CONVICTED OF OR HAS  
5 PLEADED GUILTY OR NO CONTEST TO A FELONY, OR TO A MISDEMEANOR  
6 INVOLVING FRAUD, MORAL TURPITUDE, DISHONESTY, OR BREACH OF TRUST,  
7 REGARDLESS OF WHETHER A JUDGMENT OF CONVICTION HAS BEEN ENTERED BY  
8 THE COURT.

9 (E) THE LICENSEE IS A VIATICAL SETTLEMENT PROVIDER OR VIATICAL  
10 SETTLEMENT FACILITATOR THAT HAS USED A VIATICAL SETTLEMENT CONTRACT  
11 OR DISCLOSURE FORM THAT HAS NOT BEEN APPROVED UNDER THIS CHAPTER.

12 (F) THE LICENSEE IS A VIATICAL SETTLEMENT PROVIDER THAT HAS  
13 FAILED TO HONOR CONTRACTUAL OBLIGATIONS SET OUT IN A VIATICAL  
14 SETTLEMENT CONTRACT.

15 (G) THE LICENSEE NO LONGER MEETS THE REQUIREMENTS FOR INITIAL  
16 LICENSURE.

17 (H) THE LICENSEE IS A VIATICAL SETTLEMENT PROVIDER THAT HAS  
18 ASSIGNED, TRANSFERRED, OR PLEDGED A VIATICATED POLICY TO A PERSON  
19 THAT THE LICENSEE KNEW OR SHOULD HAVE KNOWN WAS NOT 1 OF THE  
20 FOLLOWING:

21 (i) A VIATICAL SETTLEMENT PROVIDER LICENSED IN THIS STATE.

22 (ii) A VIATICAL SETTLEMENT PURCHASER.

23 (iii) A QUALIFIED INSTITUTIONAL BUYER.

24 (iv) A FINANCING ENTITY.

25 (v) A SPECIAL PURPOSE ENTITY.

26 (vi) A RELATED PROVIDER TRUST.

27 (I) THE LICENSEE OR ANY OFFICER, PARTNER, MEMBER, KEY

1 MANAGEMENT PERSONNEL, OR DESIGNEE OF THE LICENSEE HAS VIOLATED ANY  
2 PROVISION OF THIS CHAPTER OR ANY RULE ADOPTED UNDER THIS CHAPTER.

3 (J) THE LICENSEE OR ANY OFFICER, PARTNER, MEMBER, OR  
4 DESIGNATED EMPLOYEE OF THE LICENSEE HAS COMMITTED ANY COERCIVE,  
5 FRAUDULENT, OR DISHONEST ACT, OR MADE ANY UNTRUE, DECEPTIVE, OR  
6 MISLEADING STATEMENT, IN CONNECTION WITH A VIATICAL SETTLEMENT  
7 TRANSACTION OR A PROPOSED VIATICAL SETTLEMENT TRANSACTION.

8 (2) BEFORE THE COMMISSIONER SUSPENDS, REVOKES, OR REFUSES TO  
9 RENEW THE LICENSE OF A VIATICAL SETTLEMENT PROVIDER OR VIATICAL  
10 SETTLEMENT FACILITATOR, THE COMMISSIONER SHALL PROVIDE THE LICENSEE  
11 OR APPLICANT WITH NOTICE AND AN OPPORTUNITY FOR HEARING AS PROVIDED  
12 IN THE ADMINISTRATIVE PROCEDURES ACT OF 1969.

13 SEC. 4341. (1) IT IS A VIOLATION OF THIS CHAPTER FOR ANY  
14 PERSON TO ENTER INTO A VIATICAL SETTLEMENT CONTRACT PRIOR TO THE  
15 APPLICATION FOR OR ISSUANCE OF A POLICY THAT IS THE SUBJECT OF THE  
16 VIATICAL SETTLEMENT CONTRACT.

17 (2) IT IS A VIOLATION OF THIS CHAPTER FOR ANY PERSON TO ISSUE,  
18 SOLICIT, MARKET, OR OTHERWISE PROMOTE THE PURCHASE OF A POLICY FOR  
19 THE PURPOSE OF OR WITH AN EMPHASIS ON SELLING THE POLICY.

20 (3) IT IS A VIOLATION OF THIS CHAPTER FOR ANY PERSON TO ENTER  
21 INTO A VIATICAL SETTLEMENT CONTRACT WITHIN A 5-YEAR PERIOD  
22 COMMENCING WITH THE DATE OF ISSUANCE OF THE POLICY UNLESS THE  
23 VIATOR CERTIFIES TO THE VIATICAL SETTLEMENT PROVIDER THAT 1 OR MORE  
24 OF THE FOLLOWING CONDITIONS HAVE BEEN MET WITHIN 5 YEARS AFTER THE  
25 ISSUANCE OF THE POLICY:

26 (A) THE POLICY WAS ISSUED UPON THE VIATOR'S EXERCISE OF  
27 CONVERSION RIGHTS ARISING OUT OF A GROUP POLICY, PROVIDED THE TOTAL

1 OF THE TIME COVERED UNDER THE CONVERSION POLICY PLUS THE TIME  
2 COVERED UNDER THE PRIOR POLICY IS AT LEAST 60 MONTHS. THE TIME  
3 COVERED UNDER A GROUP POLICY SHALL BE CALCULATED WITHOUT REGARD TO  
4 ANY CHANGE IN INSURANCE CARRIERS, PROVIDED THE COVERAGE HAS BEEN  
5 CONTINUOUS AND UNDER THE SAME GROUP SPONSORSHIP.

6 (B) THE VIATOR IS A CHARITABLE ORGANIZATION WITH AN INSURABLE  
7 INTEREST EXEMPT FROM FEDERAL INCOME TAX UNDER SECTION 501(C)(3) OF  
8 THE INTERNAL REVENUE CODE, 26 USC 501.

9 (C) THE VIATOR CERTIFIES AND SUBMITS INDEPENDENT EVIDENCE TO  
10 THE VIATICAL SETTLEMENT PROVIDER THAT 1 OR MORE OF THE FOLLOWING  
11 CONDITIONS HAVE ARISEN AFTER THE ISSUANCE OF THE POLICY:

12 (i) THE VIATOR OR INSURED IS TERMINALLY OR CHRONICALLY ILL.

13 (ii) THE VIATOR'S SPOUSE DIES.

14 (iii) THE VIATOR DIVORCES THE VIATOR'S SPOUSE.

15 (iv) THE VIATOR RETIRES FROM FULL-TIME EMPLOYMENT.

16 (v) THE VIATOR BECOMES PHYSICALLY OR MENTALLY DISABLED, AND A  
17 PHYSICIAN DETERMINES THAT THE DISABILITY PREVENTS THE VIATOR FROM  
18 MAINTAINING FULL-TIME EMPLOYMENT.

19 (vi) A COURT OF COMPETENT JURISDICTION ENTERS A FINAL ORDER,  
20 JUDGMENT, OR DECREE ON THE APPLICATION OF A CREDITOR OF THE VIATOR  
21 AND ADJUDICATES THE VIATOR BANKRUPT OR INSOLVENT OR APPROVES A  
22 PETITION SEEKING REORGANIZATION OF THE VIATOR OR APPOINTING A  
23 RECEIVER, TRUSTEE, OR LIQUIDATOR TO ALL OR A SUBSTANTIAL PART OF  
24 THE VIATOR'S ASSETS.

25 (vii) THE SOLE BENEFICIARY OF THE POLICY IS A FAMILY MEMBER OF  
26 THE VIATOR AND THE BENEFICIARY DIES.

27 (viii) THE VIATOR FACES FINANCIAL HARDSHIP OR DISTRESS SHORT OF

1 BANKRUPTCY, INCLUDING, BUT NOT LIMITED TO, FORECLOSURE OR THREAT OF  
2 FORECLOSURE, THAT WAS NOT PRESENT AT THE TIME OF THE INCEPTION OF  
3 THE POLICY.

4 (D) THE VIATOR ENTERS INTO A VIATICAL SETTLEMENT CONTRACT MORE  
5 THAN 2 YEARS AFTER THE DATE OF ISSUANCE OF A POLICY AND CERTIFIES  
6 THAT ALL OF THE FOLLOWING ARE TRUE:

7 (i) THE VIATOR HAS FUNDED THE POLICY USING PERSONAL ASSETS,  
8 WHICH MAY INCLUDE AN INTEREST IN THE POLICY BEING VIATICATED UP TO  
9 THE CASH SURRENDER VALUE OF THE POLICY OR ANY FINANCING AGREEMENT  
10 TO FUND THE POLICY PREMIUMS ENTERED INTO PRIOR TO POLICY ISSUANCE  
11 OR WITHIN 2 YEARS OF POLICY ISSUANCE WAS PROVIDED TO THE INSURER  
12 WITHIN 30 DAYS OF THE DATE THE AGREEMENT WAS EXECUTED AND THE  
13 FINANCING AGREEMENT WAS SECURED WITH PERSONAL ASSETS.

14 (ii) THE VIATOR HAD NO AGREEMENT OR UNDERSTANDING WITH ANY  
15 OTHER PERSON TO VIATICATE THE POLICY OR TRANSFER THE BENEFITS OF  
16 THE POLICY, INCLUDING THROUGH AN ASSUMPTION OR FORGIVENESS OF A  
17 PREMIUM FINANCE LOAN AT ANY TIME PRIOR TO ISSUANCE OF THE POLICY OR  
18 DURING THE 2 YEARS AFTER THE DATE OF ISSUANCE OF THE POLICY.

19 (iii) IF REQUESTED BY THE INSURER, THE VIATOR BOTH DISCLOSED TO  
20 THE INSURER WHETHER A PERSON OTHER THAN THE INSURER OBTAINED A LIFE  
21 EXPECTANCY EVALUATION FOR SETTLEMENT PURPOSES IN CONNECTION WITH  
22 THE APPLICATION, UNDERWRITING, AND ISSUANCE OF THE POLICY AND  
23 PROVIDED A COPY OF ANY SUCH LIFE EXPECTANCY EVALUATION TO THE  
24 INSURER AT THE TIME OF APPLICATION.

25 (iv) THE VIATOR DISCLOSED ANY FINANCIAL ARRANGEMENT, TRUST, OR  
26 OTHER ARRANGEMENT, TRANSACTION, OR DEVICE THAT CONCEALS THE  
27 OWNERSHIP OR BENEFICIAL INTEREST OF THE POLICY TO THE INSURER PRIOR

1 TO THE ISSUANCE OF THE POLICY.

2 (4) COPIES OF THE INDEPENDENT EVIDENCE DESCRIBED IN SUBSECTION  
3 (3) (C) AND DOCUMENTS REQUIRED BY SECTION 4315 SHALL BE SUBMITTED TO  
4 THE INSURER WHEN THE VIATICAL SETTLEMENT PROVIDER OR ANY OTHER  
5 PARTY ENTERING INTO A VIATICAL SETTLEMENT CONTRACT WITH A VIATOR  
6 SUBMITS A REQUEST TO THE INSURER FOR VERIFICATION OF COVERAGE. THE  
7 COPIES SHALL BE ACCOMPANIED BY A LETTER OF ATTESTATION FROM THE  
8 VIATICAL SETTLEMENT PROVIDER THAT THE COPIES ARE TRUE AND CORRECT  
9 COPIES OF THE DOCUMENTS RECEIVED BY THE VIATICAL SETTLEMENT  
10 PROVIDER.

11 (5) IF THE VIATICAL SETTLEMENT PROVIDER SUBMITS TO THE INSURER  
12 A COPY OF THE OWNER'S OR INSURED'S CERTIFICATION AND INDEPENDENT  
13 EVIDENCE DESCRIBED IN SUBSECTION (3) (C) WHEN THE VIATICAL  
14 SETTLEMENT PROVIDER SUBMITS A REQUEST TO THE INSURER TO EFFECT THE  
15 TRANSFER OF THE POLICY OR CERTIFICATE TO THE VIATICAL SETTLEMENT  
16 PROVIDER, THE COPY CONCLUSIVELY ESTABLISHES THAT THE VIATICAL  
17 SETTLEMENT CONTRACT SATISFIES THE REQUIREMENTS OF THIS SECTION, AND  
18 THE INSURER SHALL TIMELY RESPOND TO THE REQUEST.

19 (6) AN INSURER, AS A CONDITION OF RESPONDING TO A REQUEST FOR  
20 VERIFICATION OF COVERAGE OR EFFECTING THE TRANSFER OF A POLICY  
21 PURSUANT TO A VIATICAL SETTLEMENT CONTRACT, SHALL NOT REQUIRE THE  
22 VIATOR, INSURED, VIATICAL SETTLEMENT PROVIDER, OR VIATICAL  
23 SETTLEMENT FACILITATOR TO SIGN ANY FORM, DISCLOSURE, CONSENT, OR  
24 WAIVER FORM THAT HAS NOT BEEN APPROVED BY THE COMMISSIONER FOR USE  
25 IN CONNECTION WITH VIATICAL SETTLEMENT CONTRACTS.

26 (7) UPON RECEIPT OF A PROPERLY COMPLETED REQUEST FOR CHANGE OF  
27 OWNERSHIP OR BENEFICIARY OF A POLICY, THE INSURER SHALL RESPOND IN

1 WRITING WITHIN 30 CALENDAR DAYS TO CONFIRM THAT THE INSURER HAS  
2 MADE THE CHANGE OR SPECIFY REASONS THAT THE CHANGE CANNOT BE  
3 PROCESSED. AN INSURER SHALL NOT UNREASONABLY DELAY EFFECTING CHANGE  
4 IN OWNERSHIP OR BENEFICIARY OR SEEK TO INTERFERE WITH ANY VIATICAL  
5 SETTLEMENT CONTRACT LAWFULLY ENTERED INTO IN THIS STATE.

6 (8) A VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT  
7 FACILITATOR THAT IS PARTY TO A PLAN, TRANSACTION, OR SERIES OF  
8 TRANSACTIONS TO ORIGINATE, RENEW, CONTINUE, OR FINANCE A POLICY  
9 WITH THE INSURER FOR THE PURPOSE OF ENGAGING IN THE BUSINESS OF  
10 VIATICAL SETTLEMENTS AT ANY TIME PRIOR TO OR DURING THE FIRST 5  
11 YEARS AFTER THE INSURER ISSUES THE POLICY SHALL FULLY DISCLOSE THE  
12 PLAN, TRANSACTION, OR SERIES OF TRANSACTIONS TO THE COMMISSIONER.

13 SEC. 4343. (1) THIS SECTION APPLIES TO ANY ADVERTISING OF  
14 VIATICAL SETTLEMENT CONTRACTS, OR ANY RELATED PRODUCTS OR SERVICES  
15 INTENDED FOR DISSEMINATION IN THIS STATE, INCLUDING, BUT NOT  
16 LIMITED TO, INTERNET ADVERTISING VIEWED BY PERSONS LOCATED IN THIS  
17 STATE. WHERE DISCLOSURE REQUIREMENTS ARE ESTABLISHED PURSUANT TO  
18 FEDERAL REGULATION, THIS SECTION SHALL BE INTERPRETED SO AS TO  
19 MINIMIZE OR ELIMINATE CONFLICT WITH FEDERAL REGULATION WHEREVER  
20 POSSIBLE.

21 (2) EVERY LICENSEE SHALL ESTABLISH AND AT ALL TIMES SHALL  
22 MAINTAIN A SYSTEM OF CONTROL OVER THE CONTENT, FORM, AND METHOD OF  
23 DISSEMINATION OF ALL ADVERTISEMENTS OF ITS CONTRACTS, PRODUCTS, AND  
24 SERVICES. ALL ADVERTISEMENTS, REGARDLESS OF BY WHOM THEY ARE  
25 WRITTEN, CREATED, DESIGNED, OR PRESENTED, SHALL BE THE  
26 RESPONSIBILITY OF THE LICENSEE THAT USES OR DISSEMINATES THEM.

27 (3) ALL ADVERTISEMENTS SUBJECT TO THIS SECTION SHALL BE

1 TRUTHFUL AND NOT DECEPTIVE OR MISLEADING IN FACT OR BY IMPLICATION.  
2 THE COMMISSIONER AT ANY TIME MAY REQUIRE ANY LICENSEE TO FILE WITH  
3 THE OFFICE OF INSURANCE AND FINANCIAL REGULATION ANY ADVERTISEMENT  
4 OF ANY PRODUCT OR SERVICE REGULATED UNDER THIS CHAPTER. UPON  
5 WRITTEN NOTICE TO THE LICENSEE, THE COMMISSIONER MAY DISAPPROVE THE  
6 ADVERTISEMENT AND ORDER THE LICENSEE TO CEASE USE OF THE  
7 ADVERTISEMENT IN THIS STATE IF THE COMMISSIONER FINDS IT TO BE  
8 UNTRUTHFUL, DECEPTIVE, MISLEADING, OR OTHERWISE IN VIOLATION OF  
9 THIS CHAPTER. THE ORDER OR NOTICE SHALL STATE THE REASONS FOR THE  
10 DISAPPROVAL AND THE EFFECTIVE DATE OF THE DISAPPROVAL. A  
11 DISAPPROVAL MAY TAKE EFFECT IMMEDIATELY FOR ADVERTISEMENTS NOT  
12 CURRENTLY IN USE AND SHALL TAKE EFFECT 30 DAYS AFTER DISAPPROVAL  
13 FOR ADVERTISEMENTS CURRENTLY IN USE, PROVIDED THAT THE LICENSEE IS  
14 ENTITLED UPON WRITTEN DEMAND TO AN ADMINISTRATIVE REVIEW BEFORE THE  
15 COMMISSIONER OR HIS OR HER DEPUTY WITHIN 30 DAYS OF THE DEMAND.  
16 AFTER THE ADMINISTRATIVE REVIEW, THE COMMISSIONER SHALL EITHER  
17 AFFIRM, MODIFY, OR WITHDRAW HIS OR HER ORIGINAL ORDER OR  
18 DISAPPROVAL. ANY ORDER OR DISAPPROVAL ISSUED UNDER THE PROVISIONS  
19 OF THIS CHAPTER IS SUBJECT TO JUDICIAL REVIEW AS PROVIDED IN  
20 SECTION 244.

21 (4) VIATICAL SETTLEMENT ADVERTISEMENTS CONTAINING ANY  
22 REPRESENTATION DESCRIBED IN THIS SUBSECTION ARE CONSIDERED FALSE  
23 AND MISLEADING ON THEIR FACE AND ARE PROHIBITED. FALSE AND  
24 MISLEADING VIATICAL SETTLEMENT ADVERTISEMENTS INCLUDE, BUT ARE NOT  
25 LIMITED TO, ALL OF THE FOLLOWING REPRESENTATIONS:

26 (A) "GUARANTEED", "FULLY SECURED", "100 PERCENT SECURED",  
27 "FULLY INSURED", "SECURE", "SAFE", "BACKED BY RATED INSURANCE

1 COMPANIES", "BACKED BY FEDERAL LAW", "BACKED BY STATE LAW", "STATE  
2 GUARANTY FUNDS", OR SIMILAR REPRESENTATIONS.

3 (B) "NO RISK", "MINIMAL RISK", "LOW RISK", "NO SPECULATION",  
4 "NO FLUCTUATION", OR SIMILAR REPRESENTATIONS.

5 (C) "QUALIFIED OR APPROVED FOR INDIVIDUAL RETIREMENT ACCOUNTS  
6 (IRAS), ROTH IRAS, 401(K) PLANS, SIMPLIFIED EMPLOYEE PENSIONS  
7 (SEPS), 403(B), KEOGH PLANS, TSA, OR OTHER RETIREMENT ACCOUNT  
8 ROLLOVERS", "TAX DEFERRED", OR SIMILAR REPRESENTATIONS.

9 (D) UTILIZATION OF THE WORD "GUARANTEED" TO DESCRIBE THE FIXED  
10 RETURN, ANNUAL RETURN, PRINCIPAL, EARNINGS, PROFITS, INVESTMENT, OR  
11 SIMILAR REPRESENTATIONS.

12 (E) "NO SALES CHARGES OR FEES" OR SIMILAR REPRESENTATIONS.

13 (F) "HIGH YIELD", "SUPERIOR RETURN", "EXCELLENT RETURN", "HIGH  
14 RETURN", "QUICK PROFIT", OR SIMILAR REPRESENTATIONS.

15 (G) PURPORTED FAVORABLE REPRESENTATIONS OR TESTIMONIALS ABOUT  
16 THE BENEFITS OF VIATICAL SETTLEMENT CONTRACTS OR VIATICAL  
17 SETTLEMENT PURCHASE AGREEMENTS AS AN INVESTMENT, TAKEN OUT OF  
18 CONTEXT FROM ANY NEWSPAPER, TRADE PAPER, JOURNAL, RADIO OR  
19 TELEVISION PROGRAM, OR ANY OTHER FORM OF PRINT AND ELECTRONIC  
20 MEDIA.

21 (H) USE THE WORDS "FREE", "NO COST", "WITHOUT COST", "NO  
22 ADDITIONAL COST", "AT NO EXTRA COST", OR WORDS OF SIMILAR IMPORT  
23 FOR ANY POLICY OR FOR ANY BENEFIT OR SERVICE. AN ADVERTISEMENT MAY  
24 SPECIFY THE CHARGE FOR A BENEFIT OR A SERVICE OR MAY STATE THAT A  
25 CHARGE IS INCLUDED IN THE PAYMENT OR USE OTHER APPROPRIATE  
26 LANGUAGE.

27 (5) AN ADVERTISEMENT SHALL NOT DO ANY OF THE FOLLOWING:

1 (A) OMIT MATERIAL INFORMATION IN STATEMENTS, REFERENCES, OR  
2 ILLUSTRATIONS AS TO THE NATURE OR EXTENT OF ANY BENEFIT, LOSS  
3 COVERED, PREMIUM PAYABLE, OR STATE OR FEDERAL TAX CONSEQUENCE.  
4 OFFERING A VIATICAL SETTLEMENT CONTRACT FOR INSPECTION PRIOR TO  
5 SALE, OFFERING A REFUND IF THE VIATOR IS NOT SATISFIED, OR OFFERING  
6 A "FREE LOOK" PERIOD THAT SATISFIES OR EXCEEDS LEGAL REQUIREMENTS  
7 DOES NOT REMEDY OMISSIONS OF MATERIAL INFORMATION REGARDING  
8 BENEFITS, COVERAGE, OR PREMIUMS.

9 (B) USE THE NAME OR TITLE OF A LIFE INSURER OR A POLICY UNLESS  
10 THE ADVERTISEMENT HAS BEEN APPROVED BY THAT INSURER.

11 (C) REPRESENT THAT ANY PREMIUM PAYMENTS WILL NOT BE REQUIRED  
12 TO BE PAID ON THE POLICY THAT IS THE SUBJECT OF A VIATICAL  
13 SETTLEMENT CONTRACT IN ORDER TO MAINTAIN THAT POLICY.

14 (D) STATE OR IMPLY THAT INTEREST CHARGED ON AN ACCELERATED  
15 DEATH BENEFIT OR A POLICY LOAN IS UNFAIR, INEQUITABLE, OR IN ANY  
16 MANNER AN INCORRECT OR IMPROPER PRACTICE.

17 (6) ALL OF THE FOLLOWING APPLY TO TESTIMONIALS, APPRAISALS,  
18 ANALYSES, OR ENDORSEMENTS USED IN ADVERTISEMENTS:

19 (A) THEY MUST BE GENUINE, REPRESENT THE CURRENT OPINION OF THE  
20 AUTHOR, BE APPLICABLE TO THE VIATICAL SETTLEMENT CONTRACT PRODUCT  
21 OR SERVICE ADVERTISED, IF ANY, AND BE ACCURATELY REPRODUCED WITH  
22 SUFFICIENT COMPLETENESS TO AVOID MISLEADING OR DECEIVING  
23 PROSPECTIVE VIATORS AS TO THE NATURE OR SCOPE OF THE TESTIMONIALS,  
24 APPRAISALS, ANALYSES, OR ENDORSEMENTS.

25 (B) THE LICENSEE MUST MAKE AS ITS OWN ALL THE STATEMENTS  
26 CONTAINED IN THE TESTIMONIALS, APPRAISALS, ANALYSES, OR  
27 ENDORSEMENTS, AND THE STATEMENTS ARE SUBJECT TO ALL THE PROVISIONS

1 OF THIS SECTION.

2 (C) IF THE INDIVIDUAL MAKING A TESTIMONIAL, APPRAISAL,  
3 ANALYSIS, OR ENDORSEMENT HAS A FINANCIAL INTEREST IN THE SUBJECT OF  
4 THAT TESTIMONIAL, APPRAISAL, ANALYSIS, OR ENDORSEMENT DIRECTLY OR  
5 INDIRECTLY AS A SHAREHOLDER, DIRECTOR, OFFICER, EMPLOYEE, OR  
6 OTHERWISE, OR RECEIVES ANY BENEFIT DIRECTLY OR INDIRECTLY OTHER  
7 THAN REQUIRED UNION SCALE WAGES, THAT FACT SHALL BE PROMINENTLY  
8 DISCLOSED IN THE ADVERTISEMENT.

9 (D) AN ADVERTISEMENT SHALL NOT STATE OR IMPLY THAT A VIATICAL  
10 SETTLEMENT CONTRACT BENEFIT OR SERVICE HAS BEEN APPROVED OR  
11 ENDORSED BY A GROUP OF INDIVIDUALS, SOCIETY, ASSOCIATION, OR OTHER  
12 ORGANIZATION UNLESS THAT IS THE FACT AND UNLESS ANY RELATIONSHIP  
13 BETWEEN THE GROUP OF INDIVIDUALS, SOCIETY, ASSOCIATION, OR  
14 ORGANIZATION AND THE VIATICAL SETTLEMENT PROVIDER IS DISCLOSED. IF  
15 THE ENTITY MAKING THE ENDORSEMENT OR TESTIMONIAL IS OWNED,  
16 CONTROLLED, OR MANAGED BY THE VIATICAL SETTLEMENT PROVIDER, OR  
17 RECEIVES ANY PAYMENT OR OTHER CONSIDERATION FROM THE VIATICAL  
18 SETTLEMENT PROVIDER FOR MAKING AN ENDORSEMENT OR TESTIMONIAL, THAT  
19 FACT SHALL BE DISCLOSED IN THE ADVERTISEMENT.

20 (E) IF AN ENDORSEMENT REFERS TO BENEFITS RECEIVED UNDER A  
21 VIATICAL SETTLEMENT CONTRACT, ALL PERTINENT INFORMATION SHALL BE  
22 RETAINED FOR A PERIOD OF AT LEAST 5 YEARS AFTER ITS USE.

23 (F) AN ADVERTISEMENT SHALL NOT CONTAIN STATISTICAL INFORMATION  
24 UNLESS THE INFORMATION ACCURATELY REFLECTS RECENT AND RELEVANT  
25 FACTS. THE SOURCE OF ALL STATISTICS USED IN AN ADVERTISEMENT SHALL  
26 BE IDENTIFIED.

27 (G) AN ADVERTISEMENT SHALL NOT DISPARAGE ANY INSURER, VIATICAL

1 SETTLEMENT PROVIDER, VIATICAL SETTLEMENT FACILITATOR, INSURANCE  
2 PRODUCER, POLICY, SERVICE, OR METHOD OF MARKETING.

3 (H) ALL ADVERTISEMENTS ABOUT A VIATICAL SETTLEMENT PROVIDER OR  
4 ITS VIATICAL SETTLEMENT CONTRACTS, PRODUCTS, OR SERVICES SHALL  
5 CLEARLY IDENTIFY THE VIATICAL SETTLEMENT PROVIDER'S NAME. IF ANY  
6 SPECIFIC VIATICAL SETTLEMENT CONTRACT IS ADVERTISED, THE VIATICAL  
7 SETTLEMENT CONTRACT SHALL BE IDENTIFIED EITHER BY FORM NUMBER OR  
8 SOME OTHER APPROPRIATE DESCRIPTION. IF AN APPLICATION IS PART OF  
9 THE ADVERTISEMENT, THE NAME OF THE VIATICAL SETTLEMENT PROVIDER  
10 SHALL BE SHOWN ON THE APPLICATION.

11 (I) AN ADVERTISEMENT SHALL NOT USE A TRADE NAME, GROUP  
12 DESIGNATION, NAME OF THE PARENT COMPANY OF A LICENSEE, NAME OF A  
13 PARTICULAR DIVISION OF THE LICENSEE, SERVICE MARK, SLOGAN, SYMBOL,  
14 OR OTHER DEVICE OR REFERENCE WITHOUT CLEARLY DISCLOSING THE NAME OF  
15 THE LICENSEE AS THE PERSON RESPONSIBLE FOR THE FINANCIAL OBLIGATION  
16 UNDER A CONTRACT.

17 (J) AN ADVERTISEMENT SHALL NOT USE ANY COMBINATION OF WORDS,  
18 SYMBOLS, OR PHYSICAL MATERIALS THAT, BY THEIR CONTENT, PHRASEOLOGY,  
19 SHAPE, COLOR, OR OTHER CHARACTERISTICS, ARE SO SIMILAR TO A  
20 COMBINATION OF WORDS, SYMBOLS, OR PHYSICAL MATERIALS USED BY A  
21 GOVERNMENT PROGRAM OR AGENCY AS TO SUGGEST THAT THE ADVERTISEMENT  
22 IS SPONSORED BY, RECOMMENDED BY, OR ENDORSED BY ANY STATE OR  
23 FEDERAL GOVERNMENT PROGRAM OR AGENCY.

24 (K) AN ADVERTISEMENT MAY STATE THAT A LICENSEE IS LICENSED IN  
25 THE STATE IN WHICH THE ADVERTISEMENT APPEARS, PROVIDED IT DOES NOT  
26 EXAGGERATE THAT FACT OR SUGGEST OR IMPLY THAT COMPETITORS MAY NOT  
27 BE SO LICENSED. THE ADVERTISEMENT MAY ASK THE AUDIENCE TO CONSULT

1 THE LICENSEE'S WEBSITE OR CONTACT THE OFFICE OF FINANCIAL AND  
2 INSURANCE REGULATION TO FIND OUT IF THE STATE IN WHICH THE  
3 ADVERTISEMENT APPEARS REQUIRES LICENSING AND, IF IT DOES, WHETHER  
4 THE PERSON IS LICENSED.

5 (I) IF THE ADVERTISER EMPHASIZES THE SPEED WITH WHICH THE  
6 VIATICATION WILL OCCUR, THE ADVERTISING SHALL DISCLOSE THE AVERAGE  
7 TIME FRAME, FROM COMPLETED APPLICATION TO THE DATE OF OFFER AND  
8 FROM ACCEPTANCE OF THE OFFER TO RECEIPT OF THE FUNDS BY THE VIATOR.

9 (M) IF THE ADVERTISING EMPHASIZES THE DOLLAR AMOUNTS AVAILABLE  
10 TO VIATORS, THE ADVERTISING SHALL DISCLOSE THE AVERAGE PURCHASE  
11 PRICE AS A PERCENT OF FACE VALUE OBTAINED BY VIATORS CONTRACTING  
12 WITH THE LICENSEE DURING THE PAST 6 MONTHS.

13 SEC. 4344. THE COMMISSIONER MAY INVESTIGATE SUSPECTED  
14 FRAUDULENT VIATICAL SETTLEMENT ACTS AND PERSONS ENGAGED IN THE  
15 BUSINESS OF VIATICAL SETTLEMENTS.

16 SEC. 4345. A PERSON SHALL NOT COMMIT A FRAUDULENT VIATICAL  
17 SETTLEMENT ACT. ALL OF THE FOLLOWING ACTS ARE FRAUDULENT VIATICAL  
18 SETTLEMENT ACTS WHEN COMMITTED BY ANY PERSON WHO, KNOWINGLY AND  
19 WITH INTENT TO DEFRAUD AND FOR THE PURPOSE OF DEPRIVING ANOTHER OF  
20 PROPERTY OR FOR PECUNIARY GAIN, COMMITS, OR PERMITS ANY OF ITS  
21 EMPLOYEES OR ITS AGENTS TO COMMIT THEM:

22 (A) PRESENTING, CAUSING TO BE PRESENTED, OR PREPARING WITH  
23 KNOWLEDGE OR BELIEF THAT IT WILL BE PRESENTED TO OR BY A VIATICAL  
24 SETTLEMENT PROVIDER, VIATICAL SETTLEMENT FACILITATOR, LIFE  
25 EXPECTANCY PROVIDER, VIATICAL SETTLEMENT PURCHASER, FINANCING  
26 ENTITY, INSURER, INSURANCE FACILITATOR, INSURANCE PRODUCER, OR ANY  
27 OTHER PERSON, ANY FALSE MATERIAL INFORMATION, OR CONCEALING ANY

1 MATERIAL INFORMATION, AS PART OF, IN SUPPORT OF, OR CONCERNING A  
2 FACT MATERIAL TO, 1 OR MORE OF THE FOLLOWING:

3 (i) AN APPLICATION FOR THE ISSUANCE OF A VIATICAL SETTLEMENT  
4 CONTRACT OR A POLICY.

5 (ii) THE UNDERWRITING OF A VIATICAL SETTLEMENT CONTRACT OR A  
6 POLICY.

7 (iii) A CLAIM FOR PAYMENT OR BENEFIT PURSUANT TO A VIATICAL  
8 SETTLEMENT CONTRACT OR A POLICY.

9 (iv) ANY PREMIUMS PAID ON A POLICY.

10 (v) ANY PAYMENTS AND CHANGES IN OWNERSHIP OR BENEFICIARY MADE  
11 IN ACCORDANCE WITH THE TERMS OF A VIATICAL SETTLEMENT CONTRACT OR A  
12 POLICY.

13 (vi) THE REINSTATEMENT OR CONVERSION OF A POLICY.

14 (vii) THE SOLICITATION, OFFER, EFFECTUATION, OR SALE OF A  
15 VIATICAL SETTLEMENT CONTRACT OR A POLICY.

16 (viii) THE ISSUANCE OF WRITTEN EVIDENCE OF A VIATICAL SETTLEMENT  
17 CONTRACT OR A POLICY.

18 (ix) A FINANCING TRANSACTION.

19 (x) ANY APPLICATION FOR OR THE EXISTENCE OF OR ANY PAYMENTS  
20 RELATED TO A LOAN SECURED DIRECTLY OR INDIRECTLY BY ANY INTEREST IN  
21 A POLICY.

22 (B) FAILING TO DISCLOSE TO THE INSURER, WHERE THE INSURER HAS  
23 REQUESTED SUCH DISCLOSURE, THAT THE PROSPECTIVE INSURED HAS  
24 UNDERGONE A LIFE EXPECTANCY EVALUATION BY ANY PERSON OR ENTITY  
25 OTHER THAN THE INSURER OR ITS AUTHORIZED REPRESENTATIVES IN  
26 CONNECTION WITH THE APPLICATION, UNDERWRITING, AND ISSUANCE OF THE  
27 POLICY.

1 (C) IN THE FURTHERANCE OF A FRAUD OR TO PREVENT THE DETECTION  
2 OF A FRAUD, DOING ANY OF THE FOLLOWING:

3 (i) REMOVING, CONCEALING, ALTERING, DESTROYING, OR SEQUESTERING  
4 FROM THE COMMISSIONER THE ASSETS OR RECORDS OF A LICENSEE OR  
5 ANOTHER PERSON ENGAGED IN THE BUSINESS OF VIATICAL SETTLEMENTS.

6 (ii) MISREPRESENTING OR CONCEALING THE FINANCIAL CONDITION OF A  
7 LICENSEE, FINANCING ENTITY, INSURER, OR ANY OTHER PERSON.

8 (iii) TRANSACTING THE BUSINESS OF VIATICAL SETTLEMENTS IN  
9 VIOLATION OF ANY LAW OF THIS STATE REQUIRING A LICENSE, CERTIFICATE  
10 OF AUTHORITY, OR OTHER LEGAL AUTHORITY FOR THE TRANSACTION OF THE  
11 BUSINESS OF VIATICAL SETTLEMENTS.

12 (iv) FILING WITH THE COMMISSIONER OR THE CHIEF INSURANCE  
13 REGULATORY OFFICIAL OF ANOTHER JURISDICTION A DOCUMENT CONTAINING  
14 FALSE INFORMATION OR OTHERWISE CONCEALING FROM THE COMMISSIONER ANY  
15 INFORMATION ABOUT A MATERIAL FACT.

16 (D) RECKLESSLY ENTERING INTO, NEGOTIATING, BROKERING, OR  
17 OTHERWISE DEALING IN A VIATICAL SETTLEMENT CONTRACT INVOLVING A  
18 POLICY THAT WAS OBTAINED BY PRESENTING FALSE, DECEPTIVE, OR  
19 MISLEADING INFORMATION OF ANY FACT MATERIAL TO THE POLICY, OR BY  
20 CONCEALING INFORMATION CONCERNING ANY FACT MATERIAL TO THE POLICY,  
21 FOR THE PURPOSE OF MISLEADING AND WITH THE INTENT TO DEFRAUD THE  
22 ISSUER OF THE POLICY, THE VIATICAL SETTLEMENT PROVIDER, OR THE  
23 VIATOR.

24 (E) COMMITTING ANY EMBEZZLEMENT, THEFT, MISAPPROPRIATION, OR  
25 CONVERSION OF MONEY, FUNDS, PREMIUMS, CREDITS, OR OTHER PROPERTY OF  
26 A VIATICAL SETTLEMENT PROVIDER, INSURER, INSURED, VIATOR,  
27 POLICYOWNER, OR ANY OTHER PERSON ENGAGED IN THE BUSINESS OF

1 VIATICAL SETTLEMENTS OR INSURANCE.

2 (F) EMPLOYING ANY PLAN, FINANCIAL STRUCTURE, DEVICE, SCHEME,  
3 OR ARTIFICE TO DEFRAUD IN THE BUSINESS OF VIATICAL SETTLEMENTS.

4 (G) MISREPRESENTING THE STATE OF RESIDENCE OR FACILITATING THE  
5 CHANGE OF THE STATE IN WHICH A PERSON OWNS A POLICY OR THE STATE OF  
6 RESIDENCY OF A VIATOR TO A STATE OR JURISDICTION THAT DOES NOT HAVE  
7 LAWS SIMILAR TO THIS CHAPTER FOR THE EXPRESS PURPOSES OF EVADING OR  
8 AVOIDING THE PROVISIONS OF THIS CHAPTER.

9 (H) IN THE SOLICITATION, APPLICATION, OR ISSUANCE OF A POLICY,  
10 EMPLOYING ANY DEVICE, SCHEME, OR ARTIFICE IN VIOLATION OF CHAPTER  
11 20.

12 (I) ENGAGING IN ANY CONDUCT RELATED TO A VIATICAL SETTLEMENT  
13 CONTRACT IF THE PERSON KNOWS OR SHOULD HAVE KNOWN THAT THE INTENT  
14 OF THE TRANSACTION WAS TO AVOID THE DISCLOSURE AND NOTICE  
15 REQUIREMENTS OF THIS CHAPTER.

16 (J) ENTERING INTO A PREMIUM FINANCE AGREEMENT WITH ANY PERSON  
17 PURSUANT TO WHICH THE PERSON WILL RECEIVE, DIRECTLY OR INDIRECTLY,  
18 ANY PROCEEDS, FEES, OR OTHER CONSIDERATIONS FROM THE POLICY, THE  
19 OWNER OF THE POLICY, THE ISSUER OF THE POLICY, OR FROM ANY OTHER  
20 PERSON WITH RESPECT TO THE PREMIUM FINANCE AGREEMENT OR ANY  
21 VIATICAL SETTLEMENT CONTRACT, OR FROM ANY TRANSACTION RELATED TO  
22 THE POLICY, THAT ARE IN ADDITION TO THE AMOUNT REQUIRED TO PAY THE  
23 PRINCIPAL, INTEREST, COSTS, AND EXPENSES RELATED TO THE POLICY  
24 PREMIUMS PURSUANT TO THE PREMIUM FINANCE AGREEMENT OR SUBSEQUENT  
25 SALE OF THE AGREEMENT. ANY PAYMENTS, CHARGES, FEES, OR OTHER  
26 AMOUNTS IN ADDITION TO THE AMOUNTS REQUIRED TO PAY THE PRINCIPAL,  
27 INTEREST, COSTS, AND EXPENSES RELATED TO POLICY PREMIUMS PAID UNDER

1 THE PREMIUM FINANCE AGREEMENT SHALL BE REMITTED TO THE ORIGINAL  
2 OWNER OF THE POLICY OR, IF THE OWNER IS NOT LIVING AT THE TIME OF  
3 THE DETERMINATION OF THE OVERPAYMENT, TO THE ESTATE OF THE OWNER.

4 (K) FOR ANY VIATICAL SETTLEMENT CONTRACT OR A POLICY, FOR A  
5 VIATICAL SETTLEMENT FACILITATOR OR INDIVIDUAL LIFE INSURANCE  
6 PRODUCER OPERATING AS A VIATICAL SETTLEMENT FACILITATOR, TO  
7 KNOWINGLY SOLICIT AN OFFER FROM, EFFECTUATE A VIATICAL SETTLEMENT  
8 WITH, OR MAKE A SALE TO ANY VIATICAL SETTLEMENT PROVIDER, VIATICAL  
9 SETTLEMENT PURCHASER, FINANCING ENTITY, OR RELATED PROVIDER TRUST  
10 THAT IS CONTROLLING, CONTROLLED BY, OR UNDER COMMON CONTROL WITH  
11 SUCH VIATICAL SETTLEMENT FACILITATOR OR INDIVIDUAL LIFE INSURANCE  
12 PRODUCER UNLESS BOTH OF THE FOLLOWING ARE TRUE:

13 (i) THE VIATICAL SETTLEMENT FACILITATOR OR INDIVIDUAL LIFE  
14 INSURANCE PRODUCER DISCLOSED THAT AFFILIATION TO THE VIATOR.

15 (ii) THE VIATICAL SETTLEMENT FACILITATOR OR INDIVIDUAL LIFE  
16 INSURANCE PRODUCER IS CONTROLLED BY OR UNDER COMMON CONTROL WITH A  
17 PERSON THAT IS REGULATED UNDER THE SECURITIES ACT OF 1933, 15 USC  
18 77A TO 77AA, OR THE SECURITIES EXCHANGE ACT OF 1934, 15 USC 78A TO  
19 78NN.

20 (l) FOR ANY VIATICAL SETTLEMENT CONTRACT OR A POLICY, FOR A  
21 VIATICAL SETTLEMENT PROVIDER TO KNOWINGLY ENTER INTO A VIATICAL  
22 SETTLEMENT CONTRACT WITH A VIATOR IF, IN CONNECTION WITH SUCH  
23 VIATICAL SETTLEMENT CONTRACT, ANYTHING OF VALUE WILL BE PAID TO A  
24 VIATICAL SETTLEMENT FACILITATOR OR INDIVIDUAL LIFE INSURANCE  
25 PRODUCER OPERATING AS A VIATICAL SETTLEMENT FACILITATOR THAT IS  
26 CONTROLLING, CONTROLLED BY, OR UNDER COMMON CONTROL WITH SUCH  
27 VIATICAL SETTLEMENT PROVIDER OR THE VIATICAL SETTLEMENT PURCHASER,

1 FINANCING ENTITY, OR RELATED PROVIDER TRUST THAT IS INVOLVED IN  
2 SUCH VIATICAL SETTLEMENT CONTRACT UNLESS BOTH OF THE FOLLOWING ARE  
3 TRUE:

4 (i) THE VIATICAL SETTLEMENT FACILITATOR OR INDIVIDUAL LIFE  
5 INSURANCE PRODUCER DISCLOSED THAT AFFILIATION TO THE VIATOR.

6 (ii) THE VIATICAL SETTLEMENT FACILITATOR OR INDIVIDUAL LIFE  
7 INSURANCE PRODUCER IS CONTROLLED BY OR UNDER COMMON CONTROL WITH A  
8 PERSON THAT IS REGULATED UNDER THE SECURITIES ACT OF 1933, 15 USC  
9 77A TO 77AA, OR THE SECURITIES EXCHANGE ACT OF 1934, 15 USC 78A TO  
10 78NN.

11 (M) ISSUING, SOLICITING, MARKETING, OR OTHERWISE PROMOTING THE  
12 PURCHASE OF A POLICY FOR THE PURPOSE OF OR WITH EMPHASIS ON  
13 SETTLING THE POLICY.

14 (N) ISSUING OR USING A PATTERN OF FALSE, MISLEADING, OR  
15 DECEPTIVE LIFE EXPECTANCIES.

16 (O) ISSUING, SOLICITING, MARKETING, OR OTHERWISE PROMOTING  
17 STRANGER-ORIGINATED LIFE INSURANCE.

18 (P) ATTEMPTING TO COMMIT, ASSISTING, AIDING OR ABETTING IN THE  
19 COMMISSION OF, OR CONSPIRACY TO COMMIT ANY ACT OR OMISSION  
20 SPECIFIED IN THIS SECTION.

21 SEC. 4347. (1) ANY CONTRACT, AGREEMENT, ARRANGEMENT, OR  
22 TRANSACTION, INCLUDING, BUT NOT LIMITED TO, A FINANCING AGREEMENT  
23 OR ARRANGEMENT, ENTERED INTO FOR THE FURTHERANCE OR AID OF A  
24 STRANGER-ORIGINATED LIFE INSURANCE ACT, PRACTICE, ARRANGEMENT, OR  
25 AGREEMENT IS VOID AND UNENFORCEABLE.

26 (2) TRUSTS OR OTHER PERSONS THAT ARE CREATED TO GIVE THE  
27 APPEARANCE OF INSURABLE INTEREST AND ARE USED TO INITIATE 1 OR MORE

1 POLICIES FOR INVESTORS VIOLATE INSURABLE INTEREST LAWS AND THE  
2 PROHIBITION AGAINST WAGERING ON LIFE.

3 SEC. 4348. (1) A LIFE INSURER ISSUING LIFE INSURANCE POLICIES  
4 IN THIS STATE SHALL ADOPT AND HAVE IN OPERATION MEASURES TO DETECT  
5 AND PREVENT STRANGER-ORIGINATED LIFE INSURANCE.

6 (2) THE COMMISSIONER BY ORDER MAY REQUIRE THAT MEASURES TO  
7 DETECT AND PREVENT STRANGER-ORIGINATED LIFE INSURANCE ADOPTED BY A  
8 LIFE INSURER UNDER SUBSECTION (1) BE SUBMITTED TO THE COMMISSIONER.  
9 IF THE COMMISSIONER REQUIRES THAT THESE MEASURES BE SUBMITTED TO  
10 THE COMMISSIONER, THE PLANS SUBMITTED ARE PRIVILEGED AND  
11 CONFIDENTIAL, ARE NOT A PUBLIC RECORD OPEN FOR INSPECTION UNDER THE  
12 FREEDOM OF INFORMATION ACT, AND ARE NOT SUBJECT TO DISCOVERY OR  
13 SUBPOENA IN A CIVIL OR CRIMINAL ACTION.

14 SEC. 4349. (1) A PERSON SHALL NOT KNOWINGLY OR INTENTIONALLY  
15 INTERFERE WITH THE ENFORCEMENT OF THIS CHAPTER OR WITH  
16 INVESTIGATIONS OF SUSPECTED OR ACTUAL VIOLATIONS OF THIS CHAPTER.

17 (2) A PERSON IN THE BUSINESS OF VIATICAL SETTLEMENTS SHALL NOT  
18 KNOWINGLY OR INTENTIONALLY PERMIT ANY PERSON CONVICTED OF A FELONY  
19 TO PARTICIPATE IN THE BUSINESS OF VIATICAL SETTLEMENTS.

20 (3) EACH VIATICAL SETTLEMENT CONTRACT AND EACH APPLICATION FOR  
21 A VIATICAL SETTLEMENT, REGARDLESS OF THE FORM OF TRANSMISSION,  
22 SHALL CONTAIN THE FOLLOWING STATEMENT OR A SUBSTANTIALLY SIMILAR  
23 STATEMENT:

24 "ANY PERSON WHO KNOWINGLY PRESENTS FALSE INFORMATION IN AN  
25 APPLICATION FOR INSURANCE OR VIATICAL SETTLEMENT CONTRACT IS GUILTY  
26 OF A CRIME AND MAY BE SUBJECT TO FINES AND IMPRISONMENT."

27 (4) THE LACK OF A STATEMENT DESCRIBED IN SUBSECTION (3) DOES

1 NOT CONSTITUTE A DEFENSE IN ANY PROSECUTION FOR A FRAUDULENT  
2 VIATICAL SETTLEMENT ACT.

3 (5) EVERY PERSON ENGAGED IN THE BUSINESS OF VIATICAL  
4 SETTLEMENTS HAVING KNOWLEDGE OR A REASONABLE BELIEF THAT A  
5 FRAUDULENT VIATICAL SETTLEMENT ACT IS BEING, WILL BE, OR HAS BEEN  
6 COMMITTED SHALL PROVIDE TO THE COMMISSIONER THE INFORMATION  
7 REQUIRED BY THE COMMISSIONER. THE PERSON SHALL PROVIDE THE  
8 INFORMATION IN A MANNER PRESCRIBED BY THE COMMISSIONER.

9 (6) EVERY PERSON HAVING KNOWLEDGE OR A REASON TO BELIEVE THAT  
10 A FRAUDULENT VIATICAL SETTLEMENT ACT IS BEING, WILL BE, OR HAS BEEN  
11 COMMITTED MAY PROVIDE TO THE COMMISSIONER THE INFORMATION REQUIRED  
12 BY THE COMMISSIONER. THE PERSON SHALL PROVIDE THE INFORMATION IN A  
13 MANNER PRESCRIBED BY THE COMMISSIONER.

14 (7) ANY LIFE INSURER THAT HAS A GOOD FAITH BELIEF THAT A  
15 PERSON IS PARTICIPATING OR HAS PARTICIPATED IN A STRANGER-  
16 ORIGINATED LIFE INSURANCE TRANSACTION SHALL REPORT THE PERSON TO  
17 THE COMMISSIONER IN A FORM AND MANNER PRESCRIBED BY THE  
18 COMMISSIONER. UPON RECEIPT OF THE INSURER'S REPORT, THE  
19 COMMISSIONER SHALL CONDUCT AN INVESTIGATION TO DETERMINE WHETHER  
20 THERE IS PROBABLE CAUSE, BASED ON THE TOTALITY OF THE FACTS AND  
21 CIRCUMSTANCES THAT THE PERSON HAS OR HAD ENGAGED IN A STRANGER-  
22 ORIGINATED LIFE INSURANCE TRANSACTION. IF THE COMMISSIONER FINDS  
23 PROBABLE CAUSE, THE COMMISSIONER SHALL DO 1 OF THE FOLLOWING:

24 (A) IF THE PERSON IS LICENSED OR REGULATED BY THE OFFICE OF  
25 FINANCIAL AND INSURANCE REGULATION, THE COMMISSIONER SHALL PROVIDE  
26 THE PERSON AN OPPORTUNITY FOR NOTICE AND HEARING PURSUANT TO THE  
27 ADMINISTRATIVE PROCEDURES ACT OF 1969. IF THE PERSON WAIVES OR DOES

1 NOT REQUEST A HEARING PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT  
2 OF 1969, OR A HEARING IS HELD AND THE PERSON IS FOUND TO HAVE  
3 PARTICIPATED IN 1 OR MORE STRANGER-ORIGINATED LIFE INSURANCE  
4 TRANSACTIONS, THE COMMISSIONER SHALL PUBLISH THE ORDER ON THE  
5 OFFICE OF FINANCIAL AND INSURANCE REGULATION'S WEBSITE AND SHALL  
6 NOTIFY EACH INSURER LICENSED IN THIS STATE THAT THE PERSON HAS BEEN  
7 ADJUDICATED AS HAVING PARTICIPATED IN 1 OR MORE STRANGER-ORIGINATED  
8 LIFE INSURANCE TRANSACTIONS.

9 (B) IF THE PERSON IS NOT LICENSED OR REGULATED BY THE OFFICE  
10 OF FINANCIAL AND INSURANCE REGULATION, THE COMMISSIONER SHALL  
11 PROVIDE THE COMMISSIONER'S FINDINGS TO THE APPROPRIATE LICENSING,  
12 LAW ENFORCEMENT, OR REGULATORY AUTHORITY.

13 (8) CIVIL LIABILITY SHALL NOT BE IMPOSED ON, AND NO CAUSE OF  
14 ACTION SHALL ARISE FROM, A PERSON'S FURNISHING INFORMATION  
15 CONCERNING SUSPECTED, ANTICIPATED, OR COMPLETED FRAUDULENT VIATICAL  
16 SETTLEMENT ACTS, OR SUSPECTED OR COMPLETED FRAUDULENT INSURANCE  
17 ACTS, IF THE INFORMATION IS PROVIDED TO OR RECEIVED FROM ANY OF THE  
18 FOLLOWING:

19 (A) THE COMMISSIONER, OR THE COMMISSIONER'S EMPLOYEES, AGENTS,  
20 OR REPRESENTATIVES.

21 (B) LAW ENFORCEMENT OR REGULATORY OFFICIALS OF THIS STATE,  
22 ANOTHER STATE, THE UNITED STATES, OR A POLITICAL SUBDIVISION OF  
23 THIS STATE OR ANOTHER STATE, OR ANY EMPLOYEE, AGENT, OR  
24 REPRESENTATIVE OF ANY OF THOSE OFFICIALS.

25 (C) A PERSON INVOLVED IN THE PREVENTION AND DETECTION OF  
26 FRAUDULENT VIATICAL SETTLEMENT ACTS OR ANY AGENT, EMPLOYEE, OR  
27 REPRESENTATIVE OF ANY PERSON SO INVOLVED.

1 (D) THE NAIC, FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA),  
2 THE NORTH AMERICAN SECURITIES ADMINISTRATORS ASSOCIATION (NASAA),  
3 ANY EMPLOYEE, AGENT, OR REPRESENTATIVE OF ANY OF THOSE  
4 ASSOCIATIONS, OR OTHER REGULATORY BODY OVERSEEING LIFE INSURANCE,  
5 VIATICAL SETTLEMENTS, SECURITIES, OR INVESTMENT FRAUD.

6 (E) THE LIFE INSURER THAT ISSUED THE LIFE INSURANCE POLICY  
7 COVERING THE LIFE OF THE INSURED.

8 (9) THE IMMUNITY PROVIDED IN SUBSECTION (8) SHALL NOT APPLY TO  
9 ANY STATEMENT MADE WITH ACTUAL MALICE. IN AN ACTION BROUGHT AGAINST  
10 A PERSON FOR FILING A REPORT OR FURNISHING OTHER INFORMATION  
11 CONCERNING A FRAUDULENT VIATICAL SETTLEMENT ACT, THE PARTY BRINGING  
12 THE ACTION SHALL PLEAD SPECIFICALLY ANY ALLEGATION THAT THE  
13 IMMUNITY PROVIDED IN SUBSECTION (8) DOES NOT APPLY BECAUSE THE  
14 PERSON FILING THE REPORT OR FURNISHING THE INFORMATION DID SO WITH  
15 ACTUAL MALICE.

16 (10) IF A PERSON IS THE PREVAILING PARTY IN A CIVIL ACTION FOR  
17 LIBEL, SLANDER, OR ANY OTHER RELEVANT TORT ARISING OUT OF  
18 ACTIVITIES IN CARRYING OUT THE PROVISIONS OF THIS CHAPTER, IF THE  
19 PREVAILING PARTY IS A PERSON IDENTIFIED IN SUBSECTION (8) AND THE  
20 IMMUNITY DESCRIBED IN SUBSECTION (8) APPLIES TO THE PERSON, AND IF  
21 THE PARTY WHO BROUGHT THE ACTION WAS NOT SUBSTANTIALLY JUSTIFIED IN  
22 DOING SO, THE PERSON WHO IS THE PREVAILING PARTY IS ENTITLED TO AN  
23 AWARD OF ATTORNEY FEES AND COSTS ARISING OUT OF THE ACTION.  
24 HOWEVER, THE PERSON IS NOT ENTITLED TO AN AWARD OF ATTORNEY FEES IF  
25 THE PERSON PROVIDED INFORMATION ABOUT THE PERSON'S OWN FRAUDULENT  
26 VIATICAL SETTLEMENT ACTS. FOR PURPOSES OF THIS SUBSECTION, AN  
27 ACTION IS "SUBSTANTIALLY JUSTIFIED" IF IT HAD A REASONABLE BASIS IN

1 LAW OR FACT AT THE TIME THAT IT WAS INITIATED.

2 (11) THIS SECTION DOES NOT ABROGATE OR MODIFY ANY COMMON LAW  
3 OR STATUTORY PRIVILEGE OR IMMUNITY ENJOYED BY A PERSON DESCRIBED IN  
4 SUBSECTION (8).

5 (12) THE DOCUMENTS AND EVIDENCE PROVIDED PURSUANT TO  
6 SUBSECTIONS (8) TO (11) OR OBTAINED BY THE COMMISSIONER IN AN  
7 INVESTIGATION OF ANY SUSPECTED OR ACTUAL FRAUDULENT VIATICAL  
8 SETTLEMENT ACT IS PRIVILEGED AND CONFIDENTIAL, IS NOT A PUBLIC  
9 RECORD OPEN FOR INSPECTION UNDER THE FREEDOM OF INFORMATION ACT,  
10 AND IS NOT SUBJECT TO DISCOVERY OR SUBPOENA IN A CIVIL OR CRIMINAL  
11 ACTION.

12 (13) SUBSECTION (12) DOES NOT PROHIBIT RELEASE BY THE  
13 COMMISSIONER OF ANY DOCUMENT OR EVIDENCE OBTAINED IN AN  
14 INVESTIGATION OF SUSPECTED OR ACTUAL FRAUDULENT VIATICAL SETTLEMENT  
15 ACTS, IN ANY OF THE FOLLOWING MANNERS OR CIRCUMSTANCES:

16 (A) IN ANY ADMINISTRATIVE OR JUDICIAL PROCEEDING TO ENFORCE  
17 ANY LAWS ADMINISTERED BY THE COMMISSIONER.

18 (B) TO ANY LAW ENFORCEMENT OR REGULATORY AGENCY OF THIS STATE,  
19 ANOTHER STATE, THE UNITED STATES, OR A POLITICAL SUBDIVISION OF  
20 THIS STATE OR ANOTHER STATE, TO AN ORGANIZATION ESTABLISHED FOR THE  
21 PURPOSE OF DETECTING AND PREVENTING FRAUDULENT VIATICAL SETTLEMENT  
22 ACTS, OR TO THE NAIC.

23 (C) AT THE DISCRETION OF THE COMMISSIONER, TO A PERSON IN THE  
24 BUSINESS OF VIATICAL SETTLEMENTS THAT IS AGGRIEVED BY A FRAUDULENT  
25 VIATICAL SETTLEMENT ACT.

26 (14) RELEASE OF DOCUMENTS AND EVIDENCE UNDER SUBSECTION (13)  
27 DOES NOT ABROGATE OR MODIFY THE PRIVILEGE GRANTED IN SUBSECTION

1 (12).

2 SEC. 4351. THIS CHAPTER DOES NOT DO ANY OF THE FOLLOWING:

3 (A) PREEMPT THE AUTHORITY OR RELIEVE THE DUTY OF ANY OTHER LAW  
4 ENFORCEMENT OR REGULATORY AGENCIES TO INVESTIGATE, EXAMINE, OR  
5 PROSECUTE SUSPECTED VIOLATIONS OF LAW.

6 (B) PREVENT OR PROHIBIT A PERSON FROM DISCLOSING VOLUNTARILY  
7 ANY INFORMATION CONCERNING FRAUDULENT VIATICAL SETTLEMENT ACTS TO A  
8 LAW ENFORCEMENT OR REGULATORY AGENCY OTHER THAN THE OFFICE OF  
9 FINANCIAL AND INSURANCE REGULATION.

10 (C) LIMIT ANY POWER GRANTED ELSEWHERE BY THE LAW OF THIS STATE  
11 TO THE COMMISSIONER OR AN INSURANCE FRAUD UNIT TO INVESTIGATE AND  
12 EXAMINE POSSIBLE VIOLATIONS OF LAW AND TO TAKE APPROPRIATE ACTION  
13 AGAINST WRONGDOERS.

14 SEC. 4353. (1) VIATICAL SETTLEMENT PROVIDERS AND VIATICAL  
15 SETTLEMENT FACILITATORS SHALL ADOPT AND HAVE IN PLACE ANTIFRAUD  
16 INITIATIVES REASONABLY CALCULATED TO DETECT, PROSECUTE, AND PREVENT  
17 FRAUDULENT VIATICAL SETTLEMENT ACTS. AT THE DISCRETION OF THE  
18 COMMISSIONER, THE COMMISSIONER MAY ORDER, OR A VIATICAL SETTLEMENT  
19 PROVIDER OR VIATICAL SETTLEMENT FACILITATOR MAY REQUEST AND THE  
20 COMMISSIONER MAY GRANT, ANY MODIFICATIONS OF THE FOLLOWING REQUIRED  
21 INITIATIVES DESCRIBED IN THIS SUBSECTION THAT ARE NECESSARY TO  
22 ENSURE AN EFFECTIVE ANTIFRAUD PROGRAM. THE MODIFICATIONS MAY BE  
23 MORE OR LESS RESTRICTIVE THAN THE REQUIRED INITIATIVES SO LONG AS  
24 THE MODIFICATIONS MAY REASONABLY BE EXPECTED TO ACCOMPLISH THE  
25 PURPOSE OF THIS SECTION. ANTIFRAUD INITIATIVES UNDER THIS  
26 SUBSECTION SHALL INCLUDE ALL OF THE FOLLOWING:

27 (A) FRAUD INVESTIGATORS, WHO MAY BE LICENSED VIATICAL

1 SETTLEMENT PROVIDER OR LICENSED VIATICAL SETTLEMENT FACILITATOR  
2 EMPLOYEES OR INDEPENDENT CONTRACTORS.

3 (B) AN ANTIFRAUD PLAN THAT INCLUDES, BUT IS NOT LIMITED TO,  
4 ALL OF THE FOLLOWING:

5 (i) A DESCRIPTION OF THE PROCEDURES FOR DETECTING AND  
6 INVESTIGATING POSSIBLE FRAUDULENT VIATICAL SETTLEMENT ACTS AND  
7 PROCEDURES FOR RESOLVING MATERIAL INCONSISTENCIES BETWEEN MEDICAL  
8 RECORDS AND INSURANCE APPLICATIONS.

9 (ii) A DESCRIPTION OF THE PROCEDURES FOR REPORTING POSSIBLE  
10 FRAUDULENT VIATICAL SETTLEMENT ACTS TO THE COMMISSIONER.

11 (iii) A DESCRIPTION OF THE PLAN FOR ANTIFRAUD EDUCATION AND  
12 TRAINING OF UNDERWRITERS AND OTHER PERSONNEL.

13 (iv) A DESCRIPTION OR CHART OUTLINING THE ORGANIZATIONAL  
14 ARRANGEMENT OF THE ANTIFRAUD PERSONNEL WHO ARE RESPONSIBLE FOR THE  
15 INVESTIGATION AND REPORTING OF POSSIBLE FRAUDULENT VIATICAL  
16 SETTLEMENT ACTS AND INVESTIGATING UNRESOLVED MATERIAL  
17 INCONSISTENCIES BETWEEN MEDICAL RECORDS AND INSURANCE APPLICATIONS.

18 (v) A DESCRIPTION OF THE PROCEDURES USED TO PERFORM INITIAL  
19 AND CONTINUING REVIEW OF THE ACCURACY OF LIFE EXPECTANCIES USED IN  
20 CONNECTION WITH A VIATICAL SETTLEMENT CONTRACT.

21 (2) THE COMMISSIONER, BY RULE ADOPTED IN ACCORDANCE WITH THE  
22 ADMINISTRATIVE PROCEDURES ACT OF 1969, MAY REQUIRE THAT ANTIFRAUD  
23 PLANS REQUIRED UNDER SUBSECTION (1) BE SUBMITTED TO THE  
24 COMMISSIONER. IF THE COMMISSIONER REQUIRES THAT ANTIFRAUD PLANS BE  
25 SUBMITTED TO THE COMMISSIONER, THE PLANS SO SUBMITTED ARE  
26 PRIVILEGED AND CONFIDENTIAL, ARE NOT A PUBLIC RECORD OPEN FOR  
27 INSPECTION UNDER THE FREEDOM OF INFORMATION ACT, AND ARE NOT

1 SUBJECT TO DISCOVERY OR SUBPOENA IN A CIVIL OR CRIMINAL ACTION.

2 SEC. 4355. AN INSURER THAT ISSUED A POLICY BEING VIATICATED IS  
3 NOT RESPONSIBLE, UNDER THIS CHAPTER, FOR ANY ACT OR OMISSION OF A  
4 VIATICAL SETTLEMENT FACILITATOR OR VIATICAL SETTLEMENT PROVIDER  
5 ARISING OUT OF OR IN CONNECTION WITH THE VIATICAL SETTLEMENT  
6 TRANSACTION UNLESS THE INSURER RECEIVES COMPENSATION FOR THE  
7 PLACEMENT OF A VIATICAL SETTLEMENT CONTRACT FROM THE VIATICAL  
8 SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT FACILITATOR IN  
9 CONNECTION WITH THE VIATICAL SETTLEMENT CONTRACT.

10 SEC. 4357. (1) IN ADDITION TO THE PENALTIES AND OTHER  
11 ENFORCEMENT PROVISIONS OF THIS CHAPTER, IF ANY PERSON VIOLATES THIS  
12 CHAPTER, ANY ORDER, RULE, OR REGULATION ISSUED UNDER THIS CHAPTER,  
13 OR ANY WRITTEN AGREEMENT ENTERED INTO WITH THE COMMISSIONER, THE  
14 COMMISSIONER MAY DO ANY OF THE FOLLOWING:

15 (A) ISSUE CEASE AND DESIST ORDERS AS SPECIFIED IN THIS  
16 SECTION.

17 (B) SEEK AN INJUNCTION IN THE INGHAM COUNTY CIRCUIT COURT OR  
18 ANOTHER COURT OF COMPETENT JURISDICTION.

19 (C) APPLY FOR TEMPORARY AND PERMANENT ORDERS.

20 (2) ANY PERSON DAMAGED BY THE ACTS OF ANOTHER PERSON IN  
21 VIOLATION OF THIS CHAPTER OR ANY ORDER, RULE, OR REGULATION ISSUED  
22 UNDER THIS CHAPTER MAY BRING A CIVIL ACTION FOR DAMAGES AGAINST THE  
23 PERSON COMMITTING THE VIOLATION IN A COURT OF COMPETENT  
24 JURISDICTION. A CIVIL ACTION BROUGHT UNDER THIS CHAPTER DOES NOT  
25 PRECLUDE THE COMMISSIONER FROM EXERCISING ANY REGULATORY,  
26 ENFORCEMENT, OR OTHER AUTHORITY AVAILABLE TO THE COMMISSIONER.

27 (3) THE COMMISSIONER MAY ISSUE A CEASE AND DESIST ORDER IN

1 ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURES ACT OF 1969. IF THE  
2 COMMISSIONER FINDS THAT AN ACTION PRESENTS AN IMMEDIATE DANGER TO  
3 THE PUBLIC AND REQUIRES AN IMMEDIATE FINAL ORDER, THE COMMISSIONER  
4 MAY ISSUE AN EMERGENCY CEASE AND DESIST ORDER RECITING WITH  
5 PARTICULARITY THE FACTS UNDERLYING HIS OR HER FINDINGS. THE  
6 EMERGENCY CEASE AND DESIST ORDER IS EFFECTIVE IMMEDIATELY UPON  
7 SERVICE OF A COPY OF THE ORDER ON THE RESPONDENT AND REMAINS  
8 EFFECTIVE FOR 90 DAYS. IF NONEMERGENCY CEASE AND DESIST PROCEEDINGS  
9 ARE BEGUN, THE EMERGENCY CEASE AND DESIST ORDER REMAINS EFFECTIVE,  
10 ABSENT AN ORDER BY AN APPELLATE COURT OF COMPETENT JURISDICTION  
11 PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT OF 1969.

12 (4) IF THE COMMISSIONER FINDS THAT A PERSON HAS COMMITTED A  
13 FRAUDULENT VIATICAL SETTLEMENT ACT OR VIOLATED ANY OTHER PROVISION  
14 OF THIS CHAPTER, THE COMMISSIONER MAY ORDER THE PAYMENT OF A CIVIL  
15 PENALTY NOT EXCEEDING \$10,000.00 AND THE AMOUNT OF THE CLAIM FOR  
16 EACH VIOLATION. THE COMMISSIONER'S ORDER MAY REQUIRE A PERSON FOUND  
17 TO BE IN VIOLATION OF THIS CHAPTER TO MAKE FULL RESTITUTION TO  
18 PERSONS AGGRIEVED BY VIOLATIONS OF THIS CHAPTER.

19 (5) THIS CHAPTER DOES NOT PREEMPT, SUPERSEDE, OR LIMIT THE  
20 APPLICATION OF THE UNIFORM SECURITIES ACT (2002), 2008 PA 551, MCL  
21 451.2101 TO 451.2703, THE SECURITIES ACT OF 1933, 15 USC 77A TO  
22 77AA, OR THE SECURITIES EXCHANGE ACT OF 1934, 15 USC 78A TO 78NN,  
23 OR ANY RULES ADOPTED PURSUANT TO THOSE ACTS.

24 SEC. 4358. (1) A PERSON THAT COMMITS A FRAUDULENT VIATICAL  
25 SETTLEMENT ACT IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR  
26 NOT MORE THAN 10 YEARS, OR A FINE OF NOT MORE THAN \$100,000.00 FOR  
27 A SINGLE VIOLATION OR \$500,000.00 FOR MULTIPLE VIOLATIONS, OR BOTH

1 IMPRISONMENT AND FINE, TOGETHER WITH FULL RESTITUTION.

2 (2) A PERSON THAT OPERATES OR ATTEMPTS TO OPERATE AS A  
3 VIATICAL SETTLEMENT FACILITATOR OR VIATICAL SETTLEMENT PROVIDER IN  
4 THIS STATE WITHOUT THE LICENSURE REQUIRED UNDER THIS CHAPTER IS  
5 GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN 5  
6 YEARS, OR A FINE OF NOT MORE THAN \$1,000.00, OR BOTH IMPRISONMENT  
7 AND FINE, TOGETHER WITH FULL RESTITUTION.

8 SEC. 4359. EXCEPT FOR A FRAUDULENT VIATICAL SETTLEMENT ACT  
9 KNOWINGLY COMMITTED BY A VIATOR, THE PENALTIES OF THIS CHAPTER DO  
10 NOT APPLY TO A VIATOR.

11 SEC. 4360. THE COMMISSIONER MAY ADOPT RULES IN ACCORDANCE WITH  
12 THE ADMINISTRATIVE PROCEDURES ACT OF 1969 FOR PURPOSES OF  
13 IMPLEMENTING THIS CHAPTER, INCLUDING, BUT NOT LIMITED TO, RULES  
14 THAT DO THE FOLLOWING:

15 (A) GOVERN THE RELATIONSHIP AND RESPONSIBILITIES OF INSURERS,  
16 VIATICAL SETTLEMENT PROVIDERS, AND VIATICAL SETTLEMENT FACILITATORS  
17 DURING THE VIATICATION OF A POLICY.

18 (B) ESTABLISH STANDARDS FOR EVALUATING THE REASONABLENESS OF  
19 PAYMENTS UNDER VIATICAL SETTLEMENT CONTRACTS FOR PERSONS WHO ARE  
20 TERMINALLY OR CHRONICALLY ILL. THIS AUTHORITY INCLUDES, BUT IS NOT  
21 LIMITED TO, THE REGULATION OF DISCOUNT RATES USED TO DETERMINE THE  
22 AMOUNT PAID IN EXCHANGE FOR THE ASSIGNMENT, RELEASE, TRANSFER,  
23 SALE, DEVISE, OR BEQUEST OF A BENEFIT UNDER A POLICY INSURING  
24 PERSONS WHO ARE TERMINALLY OR CHRONICALLY ILL.

25 (C) ESTABLISH APPROPRIATE LICENSING REQUIREMENTS, FEES, AND  
26 STANDARDS FOR CONTINUED LICENSURE FOR VIATICAL SETTLEMENT PROVIDERS  
27 AND VIATICAL SETTLEMENT FACILITATORS.

1           Enacting section 1. 1996 PA 386, MCL 550.521 to 550.528, is  
2 repealed.

3           Enacting section 2. This amendatory act does not take effect  
4 unless House Bill No. 4891 of the 95th Legislature is enacted into  
5 law.