

HOUSE BILL No. 4890

May 6, 2009, Introduced by Reps. Byrum, Rocca, Daley, Terry Brown, Espinoza, Polidori, Walsh, Rick Jones, Young, Segal, Lipton, Coulouris, Corriveau, Switalski, Kandrevas, Scripps, Pavlov, Green, Meadows, Sheltroun, Tlaib, Roberts and Bauer and referred to the Committee on Insurance.

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:

1 TITLE

2 An act to revise, consolidate, and classify the laws relating
3 to the insurance and surety business; to regulate the incorporation
4 or formation of domestic insurance and surety companies and
5 associations and the admission of foreign and alien companies and
6 associations; to provide their rights, powers, and immunities and
7 to prescribe the conditions on which companies and associations
8 organized, existing, or authorized under this act may exercise

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

malpractice insurance fund; to provide for the departmental supervision and regulation of the insurance and surety business within this state; to provide for regulation over worker's compensation self-insurers; to provide for the conservation, rehabilitation, or liquidation of unsound or insolvent insurers; to provide for the protection of policyholders, claimants, and creditors of unsound or insolvent insurers; to provide for associations of insurers to protect policyholders and claimants in the event of insurer insolvencies; to prescribe educational requirements for insurance agents and solicitors; to provide for the regulation of multiple employer welfare arrangements; **TO PROVIDE FOR THE REGULATION OF VIATICAL SETTLEMENT CONTRACTS;** to create an automobile theft prevention authority to reduce the number of automobile thefts in this state; to prescribe the powers and duties of the automobile theft prevention authority; to provide certain powers and duties upon certain officials, departments, and authorities of this state; to provide for an appropriation; to repeal acts and parts of acts; and to provide penalties for the violation of this act.

CHAPTER 43

VIATICAL SETTLEMENT CONTRACTS

SEC. 4301. AS USED IN THIS CHAPTER:

(A) "ADMINISTRATIVE PROCEDURES ACT OF 1969" MEANS THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328.

(B) "ADVERTISING" OR "ADVERTISEMENT" MEANS ANY WRITTEN, ELECTRONIC, OR PRINTED COMMUNICATION OR ANY COMMUNICATION BY MEANS

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

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

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

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

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

27 (E) "ESCROW AGENT" MEANS AN INDEPENDENT THIRD-PARTY PERSON

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

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

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

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

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

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

25 (I) "LIFE EXPECTANCY" MEANS THE ARITHMETIC MEAN OF THE NUMBER
26 OF MONTHS THE INSURED UNDER THE POLICY TO BE SETTLED CAN BE
27 EXPECTED TO LIVE AS DETERMINED BY A LIFE EXPECTANCY COMPANY OR

1 OTHER EXPERT CONSIDERING MEDICAL RECORDS AND APPROPRIATE
2 EXPERIENTIAL DATA.

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

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

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

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

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

1 RELATED TO VIATICAL SETTLEMENT TRANSACTIONS AVAILABLE TO THE
2 COMMISSIONER AS IF THOSE RECORDS AND FILES WERE MAINTAINED DIRECTLY
3 BY THE LICENSED VIATICAL SETTLEMENT PROVIDER.

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

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

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

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

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

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

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

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

25 (i) A WRITTEN AGREEMENT BETWEEN A VIATOR AND A VIATICAL
26 SETTLEMENT PROVIDER THAT ESTABLISHES THE TERMS UNDER WHICH
27 COMPENSATION OR ANYTHING OF VALUE THAT IS LESS THAN THE EXPECTED

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

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

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

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

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

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

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

25 (i) A BANK, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION, CREDIT
26 UNION, OR OTHER REGULATED FINANCIAL INSTITUTION THAT TAKES AN
27 ASSIGNMENT OF A POLICY SOLELY AS A COLLATERAL FOR A LOAN.

1 (ii) THE ISSUER OF A POLICY.

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

6 (iv) A FINANCING ENTITY.

7 (v) A SPECIAL PURPOSE ENTITY.

8 (vi) A RELATED PROVIDER TRUST.

9 (vii) A VIATICAL SETTLEMENT PURCHASER.

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

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

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

1 (i) A LICENSEE UNDER THIS CHAPTER.

2 (ii) A QUALIFIED INSTITUTIONAL BUYER.

3 (iii) A FINANCING ENTITY.

4 (iv) A SPECIAL PURPOSE ENTITY.

5 (v) A RELATED PROVIDER TRUST.

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

16 (i) A LICENSEE UNDER THIS CHAPTER.

17 (ii) A QUALIFIED INSTITUTIONAL BUYER.

18 (iii) A FINANCING ENTITY.

19 (iv) A SPECIAL PURPOSE ENTITY.

20 (v) A RELATED PROVIDER TRUST.

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

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

27 (B) LOAN PROCEEDS THAT ARE USED SOLELY TO PAY PREMIUMS FOR THE

1 POLICY AND THE COSTS OF THE LOAN INCLUDING INTEREST, ARRANGEMENT
2 FEES, UTILIZATION FEES AND SIMILAR FEES, CLOSING COSTS, LEGAL FEES
3 AND EXPENSES, TRUSTEE FEES AND EXPENSES, AND THIRD-PARTY COLLATERAL
4 PROVIDER FEES AND EXPENSES, INCLUDING FEES PAYABLE TO LETTER OF
5 CREDIT ISSUERS.

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

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

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

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

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

27 (i) AN ARRANGEMENT BETWEEN 1 OR MORE SHAREHOLDERS IN A

1 CORPORATION OR BETWEEN A CORPORATION AND 1 OR MORE OF ITS
2 SHAREHOLDERS OR 1 OR MORE PERSONS OR TRUSTS ESTABLISHED BY ITS
3 SHAREHOLDERS.

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

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

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

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

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

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

1 PURPOSES.

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

8 SEC. 4305. (1) EXCEPT AS PROVIDED FOR IN SUBSECTIONS (2) AND
9 (3), A PERSON SHALL NOT OPERATE IN THIS STATE AS A VIATICAL
10 SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT FACILITATOR WITHOUT
11 FIRST HAVING OBTAINED A LICENSE FROM THE COMMISSIONER AND, IF THE
12 OWNER OF THE POLICY TO BE VIATICATED IS NOT A RESIDENT OF THIS
13 STATE, FROM THE COMPARABLE OFFICIAL OF THE STATE OF RESIDENCE OF
14 THE OWNER IF THAT STATE ISSUES LICENSES FOR VIATICAL SETTLEMENT
15 PROVIDERS OR VIATICAL SETTLEMENT FACILITATORS. THIS SUBSECTION
16 TAKES EFFECT 90 DAYS AFTER THE EFFECTIVE DATE OF THIS CHAPTER.
17 LICENSURE UNDER THIS CHAPTER IS IN ADDITION TO AND NOT IN
18 SUBSTITUTION FOR ANY APPLICABLE LICENSURE AND REGISTRATION
19 REQUIREMENTS UNDER THE UNIFORM SECURITIES ACT (2002), 2008 PA 551,
20 MCL 451.2101 TO 451.2703, THE SECURITIES ACT OF 1933, 15 USC 77A TO
21 77AA, OR THE SECURITIES EXCHANGE ACT OF 1934, 15 USC 78A TO 78NN.

22 (2) A PERSON WHO REPRESENTS THE VIATOR AND IS NOT COMPENSATED
23 DIRECTLY OR INDIRECTLY BY THE VIATICAL SETTLEMENT PROVIDER OR
24 VIATICAL SETTLEMENT PURCHASER, WHO IS LICENSED AS AN ATTORNEY,
25 CERTIFIED PUBLIC ACCOUNTANT, OR CERTIFIED FINANCIAL PLANNER
26 ACCREDITED BY A NATIONALLY RECOGNIZED ACCREDITATION AGENCY, MAY
27 NEGOTIATE VIATICAL SETTLEMENT CONTRACTS ON BEHALF OF A VIATOR

1 WITHOUT OBTAINING A LICENSE PURSUANT TO SUBSECTION (1).

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

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

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

1 EFFECTIVE DATE OF THIS CHAPTER.

2 SEC. 4307. (1) AN APPLICANT FOR A LICENSE AS A VIATICAL
3 SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT FACILITATOR SHALL SUBMIT
4 AN APPLICATION FOR THE LICENSE IN A MANNER PRESCRIBED BY THE
5 COMMISSIONER IN ACCORDANCE WITH CHAPTER 12. THE APPLICATION FOR A
6 VIATICAL SETTLEMENT PROVIDER LICENSE SHALL BE ACCOMPANIED BY A FEE
7 OF \$1,000.00. THE APPLICATION FOR A VIATICAL SETTLEMENT FACILITATOR
8 LICENSE SHALL BE ACCOMPANIED BY A FEE OF \$200.00.

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

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

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

24 (i) A DETAILED PLAN OF OPERATION.

25 (ii) PROOF OF FINANCIAL RESPONSIBILITY AS PROVIDED IN THIS
26 SECTION.

27 (iii) A GENERAL DESCRIPTION OF THE METHOD THE APPLICANT WILL USE

1 TO DETERMINE LIFE EXPECTANCIES, INCLUDING A DESCRIPTION OF THE
2 APPLICANT'S INTENDED RECEIPT OF LIFE EXPECTANCIES, THE APPLICANT'S
3 INTENDED USE OF LIFE EXPECTANCIES, THE APPLICANT'S INTENDED USE OF
4 LIFE EXPECTANCY PROVIDERS, AND A WRITTEN PLAN OF POLICIES AND
5 PROCEDURES USED TO DETERMINE LIFE EXPECTANCIES.

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

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

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

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

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

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

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

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

3 (i) A SURETY BOND IN THE AMOUNT OF \$250,000.00 IN FAVOR OF THIS
4 STATE ISSUED BY AN INSURER AUTHORIZED TO ISSUE SURETY BONDS IN THIS
5 STATE. THE SURETY BOND SHALL SPECIFICALLY AUTHORIZE RECOVERY BY THE
6 COMMISSIONER ON BEHALF OF ANY PERSON IN THIS STATE WHO SUSTAINS
7 DAMAGES RESULTING FROM A VIATICAL SETTLEMENT PROVIDER'S OR VIATICAL
8 SETTLEMENT FACILITATOR'S ERRONEOUS ACT, FAILURE TO ACT, CONVICTION
9 FOR FRAUD, OR CONVICTION OF AN UNFAIR TRADE PRACTICE.

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

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

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

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

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

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

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

26 (11) A VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT
27 FACILITATOR SHALL PROVIDE TO THE COMMISSIONER NEW OR REVISED

1 INFORMATION REGARDING ANY CHANGE IN ITS OFFICERS, ANY SHAREHOLDER
2 OWNING 10% OR MORE OF ITS VOTING SECURITIES, OR ITS PARTNERS,
3 DIRECTORS, MEMBERS, OR DESIGNATED EMPLOYEES WITHIN 30 DAYS OF THE
4 CHANGE.

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

10 SEC. 4311. A PERSON SHALL NOT USE A VIATICAL SETTLEMENT
11 CONTRACT FORM OR PROVIDE A DISCLOSURE STATEMENT FORM TO A VIATOR IN
12 THIS STATE UNLESS THE VIATICAL SETTLEMENT CONTRACT FORM OR THE
13 DISCLOSURE STATEMENT FORM IS FILED WITH AND APPROVED BY THE
14 COMMISSIONER. THE COMMISSIONER SHALL DISAPPROVE A VIATICAL
15 SETTLEMENT CONTRACT FORM OR A DISCLOSURE STATEMENT FORM IF, IN THE
16 COMMISSIONER'S OPINION, THE VIATICAL SETTLEMENT CONTRACT FORM, THE
17 DISCLOSURE STATEMENT FORM, OR ANY PROVISION CONTAINED THEREIN FAILS
18 TO MEET THE REQUIREMENTS OF THIS CHAPTER, IS UNREASONABLE, IS
19 CONTRARY TO THE INTERESTS OF THE PUBLIC, OR IS OTHERWISE MISLEADING
20 OR UNFAIR TO THE VIATOR. IF NOT DISAPPROVED BY THE COMMISSIONER, A
21 FILING MADE PURSUANT TO THIS SECTION SHALL BE CONSIDERED APPROVED
22 45 DAYS AFTER THE CONTRACT FORM OR DISCLOSURE FORM IS FILED.

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

25 (2) BEFORE A VIATICAL SETTLEMENT FACILITATOR OR VIATICAL
26 SETTLEMENT PROVIDER PRESENTS ANY APPLICATION FOR A VIATICAL
27 SETTLEMENT CONTRACT TO A PROSPECTIVE VIATOR, POLICY OWNER, OR

1 INSURED PERSON FOR SIGNATURE, HE OR SHE SHALL DISCLOSE IN WRITING
2 AT LEAST ALL OF THE FOLLOWING:

3 (A) A DESCRIPTION OF HOW VIATICAL SETTLEMENTS OPERATE,
4 INCLUDING DISTRIBUTION OF THE NAIC'S BROCHURE ON VIATICAL
5 SETTLEMENTS UNLESS ANOTHER FORM IS DEVELOPED AND APPROVED BY THE
6 COMMISSIONER.

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

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

13 (D) THAT ENTERING INTO A VIATICAL SETTLEMENT CONTRACT WILL
14 RESULT IN INVESTORS HAVING A FINANCIAL INTEREST IN THE INSURED'S
15 DEATH.

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

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

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

26 (H) THAT ENTERING INTO A VIATICAL SETTLEMENT CONTRACT MAY
27 RESULT IN FORFEITURE OF OTHER RIGHTS AND BENEFITS UNDER THE POLICY,

1 SUCH AS CONVERSION RIGHTS OR WAIVER OF PREMIUM, AND EXACTLY WHICH
2 OTHER BENEFITS MAY OR WILL BE AFFECTED.

3 (I) THAT ENTERING INTO A VIATICAL SETTLEMENT CONTRACT MAY
4 PREVENT THE INSURED FROM PURCHASING OTHER LIFE INSURANCE IF THE
5 SETTLED POLICY REMAINS IN FORCE.

6 (J) HOW AND TO WHOM THE IDENTITY OF THE INSURED AND MEDICAL,
7 FINANCIAL, AND PERSONAL INFORMATION ABOUT THE INSURED WILL BE
8 DISCLOSED.

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

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

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

25 (N) THAT AFTER EXECUTION OF AN APPLICATION FOR A VIATICAL
26 SETTLEMENT CONTRACT AND UNTIL PAYMENT OF THE VIATICAL SETTLEMENT
27 CONTRACT PROCEEDS, THE VIATICAL SETTLEMENT PROVIDER OR HIS OR HER

1 AUTHORIZED REPRESENTATIVE MAY CONTACT THE INSURED FOR THE PURPOSE
2 OF DETERMINING THE INSURED'S HEALTH STATUS, TO CONFIRM THE
3 INSURED'S RESIDENTIAL OR BUSINESS ADDRESS AND TELEPHONE NUMBER, AND
4 FOR OTHER PURPOSES PERMITTED BY LAW.

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

10 (4) THE DISCLOSURE DOCUMENT UNDER SUBSECTION (1) SHALL CONTAIN
11 THE FOLLOWING LANGUAGE:

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

25 (5) IN ADDITION TO THE DISCLOSURES REQUIRED BY SUBSECTION (1)
26 AND PRIOR TO THE DATE THE VIATICAL SETTLEMENT CONTRACT IS SIGNED BY
27 THE VIATOR AND ALL THE NECESSARY PARTIES, A VIATICAL SETTLEMENT

1 PROVIDER SHALL DISCLOSE TO THE VIATOR AT LEAST ALL OF THE
2 FOLLOWING:

3 (A) THE AFFILIATION, IF ANY, BETWEEN THE VIATICAL SETTLEMENT
4 PROVIDER AND THE ISSUER OF THE POLICY.

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

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

11 (D) ANY AFFILIATIONS OR CONTRACTUAL ARRANGEMENTS BETWEEN THE
12 VIATICAL SETTLEMENT PROVIDER AND THE VIATICAL SETTLEMENT
13 FACILITATOR.

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

25 (F) ANY OTHER DISCLOSURE AS MAY BE REQUIRED BY THE
26 COMMISSIONER.

27 (6) IN ADDITION TO THE DISCLOSURES REQUIRED BY SUBSECTION (1)

1 AND PRIOR TO THE DATE THE VIATICAL SETTLEMENT CONTRACT IS SIGNED BY
2 THE VIATOR AND ALL THE NECESSARY PARTIES, A VIATICAL SETTLEMENT
3 FACILITATOR SHALL DISCLOSE TO THE VIATOR AT LEAST ALL OF THE
4 FOLLOWING:

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

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

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

14 (D) THE SOURCE OF CONTINUED PREMIUM PAYMENTS UNDER THE POLICY
15 AND THE IDENTITY OF EACH BENEFICIARY OF ANY PROCEEDS OF EACH POLICY
16 BENEFIT.

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

19 (F) THE IDENTITY OF ANY PERSON RECEIVING ANY COMPENSATION
20 DIRECTLY OR INDIRECTLY FROM THE VIATICAL SETTLEMENT PROVIDER WITH
21 RESPECT TO THE VIATICAL SETTLEMENT CONTRACT.

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

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

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

26 (7) THE VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT
27 FACILITATOR SHALL CONSPICUOUSLY DISPLAY THE DISCLOSURES REQUIRED BY

1 SUBSECTIONS (5) AND (6) IN THE VIATICAL SETTLEMENT CONTRACT OR IN A
2 SEPARATE ATTACHMENT SIGNED BY THE VIATOR AND THE VIATICAL
3 SETTLEMENT PROVIDER AND VIATICAL SETTLEMENT FACILITATOR, AS
4 APPROPRIATE.

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

10 SEC. 4315. (1) A VIATICAL SETTLEMENT PROVIDER ENTERING INTO A
11 VIATICAL SETTLEMENT CONTRACT SHALL FIRST OBTAIN ALL OF THE
12 FOLLOWING:

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

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

23 (2) WITHIN 20 DAYS AFTER A VIATOR EXECUTES DOCUMENTS NECESSARY
24 TO TRANSFER ANY RIGHTS UNDER A POLICY OR WITHIN 20 DAYS OF ENTERING
25 ANY EXPRESSED OR IMPLIED AGREEMENT, OPTION, PROMISE, OR OTHER FORM
26 OF UNDERSTANDING TO VIATICATE THE POLICY, THE VIATICAL SETTLEMENT
27 PROVIDER SHALL GIVE WRITTEN NOTICE TO THE INSURER THAT ISSUED THAT

1 POLICY THAT THE POLICY HAS OR WILL BECOME A VIATICATED POLICY. THE
2 NOTICE SHALL BE ACCOMPANIED BY THE DOCUMENTS REQUIRED BY SUBSECTION
3 (3) .

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

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

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

1 TERMINALLY OR CHRONICALLY ILL AND THAT THE TERMINAL OR CHRONIC
2 ILLNESS WAS DIAGNOSED AFTER THE POLICY WAS ISSUED.

3 (6) IF A VIATICAL SETTLEMENT FACILITATOR PERFORMS ANY OF THE
4 ACTIVITIES SPECIFIED IN THIS SECTION ON BEHALF OF THE VIATICAL
5 SETTLEMENT PROVIDER, THE VIATICAL SETTLEMENT PROVIDER SHALL BE
6 CONSIDERED TO HAVE FULFILLED THE REQUIREMENTS OF THIS SECTION.

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

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

1 ASSIGNMENT, OR DESIGNATION OF BENEFICIARY FROM THE INSURER, THE
2 ESCROW AGENT SHALL PAY THE SETTLEMENT PROCEEDS TO THE VIATOR AND
3 ANY OTHER PERSON PURSUANT TO THE VIATICAL SETTLEMENT CONTRACT AND
4 THE ESCROW AGREEMENT. THE ESCROW AGENT SHALL MAKE PAYMENT WITHIN 3
5 BUSINESS DAYS OF THE DATE THE ESCROW AGENT RECEIVED THE
6 ACKNOWLEDGED FORMS FROM THE INSURER. FUNDS ARE CONSIDERED SENT TO A
7 VIATOR AS OF THE DATE THAT THE ESCROW AGENT EITHER RELEASES THE
8 FUNDS FOR WIRE TRANSFER TO THE VIATOR OR PLACES A CHECK FOR
9 DELIVERY TO THE VIATOR VIA UNITED STATES POSTAL SERVICE OR OTHER
10 NATIONALLY RECOGNIZED DELIVERY SERVICE.

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

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

26 (2) FOR THE PURPOSES OF THIS SECTION, VIATICAL SETTLEMENT
27 PROVIDERS AND VIATICAL SETTLEMENT FACILITATORS ARE RESPONSIBLE FOR

1 THE ACTIONS OF THEIR AUTHORIZED REPRESENTATIVES.

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

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

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

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

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

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

23 SEC. 4323. (1) THE COMMISSIONER OR ANY OF HIS OR HER
24 AUTHORIZED DEPUTIES OR EXAMINERS MAY EXAMINE IN PERSON ANY OR ALL
25 OF THE BOOKS, RECORDS, DOCUMENTS, AND PAPERS OF ANY APPLICANT OR
26 LICENSEE, DOMESTIC OR FOREIGN, UNDER THIS CHAPTER, INCLUDING, BUT
27 NOT LIMITED TO, THOSE OF ANY OFFICER, DIRECTOR, EMPLOYEE, AGENT OF

1 THE LICENSEE, PERSON AFFILIATED OR ASSOCIATED WITH A LICENSEE, OR
2 ANY OTHER PERSON WHO IN THE COMMISSIONER'S DISCRETION MAY HAVE
3 INFORMATION MATERIAL OR NECESSARY TO AN EXAMINATION OF THE
4 LICENSEE.

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

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

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

1 APPROPRIATIONS MADE BY THE LEGISLATURE FOR THIS PURPOSE. THE
2 COMMISSIONER SHALL PREPARE AND PRESENT TO THE LICENSEE OR OTHER
3 PERSON EXAMINED OR INVESTIGATED A STATEMENT OF THE EXPENSES AND
4 REASONABLE COST INCURRED FOR EACH PERSON ENGAGED UPON THE
5 EXAMINATION OR INVESTIGATION, INCLUDING AMOUNTS NECESSARY TO COVER
6 THE PAY AND ALLOWANCES GRANTED TO THE PERSONS BY THE MICHIGAN CIVIL
7 SERVICE COMMISSION, AND THE ADMINISTRATION AND SUPERVISORY EXPENSE
8 INCLUDING AN AMOUNT NECESSARY TO COVER FRINGE BENEFITS IN
9 CONJUNCTION WITH THE EXAMINATION OR INVESTIGATION. THE LICENSEE OR
10 OTHER PERSON, UPON RECEIVING THE STATEMENT, SHALL PAY TO THE
11 COMMISSIONER THE STATED AMOUNT. THE COMMISSIONER SHALL DEPOSIT THE
12 FUNDS IN THE INSURANCE BUREAU FUND AS PROVIDED IN SECTION 225. THE
13 COMMISSIONER MAY EMPLOY ATTORNEYS, ACTUARIES, ACCOUNTANTS,
14 INVESTMENT ADVISERS, AND OTHER EXPERT PERSONNEL NOT OTHERWISE
15 EMPLOYEES OF THIS STATE REASONABLY NECESSARY TO ASSIST IN THE
16 CONDUCT OF THE EXAMINATION OR INVESTIGATION OR PROCEEDING WITH
17 RESPECT TO A LICENSEE OR OTHER PERSON REGULATED UNDER THE
18 COMMISSIONER'S AUTHORITY AT THE LICENSEE'S OR OTHER PERSON'S
19 EXPENSE. UPON CERTIFICATION BY THE COMMISSIONER OF THE REASONABLE
20 EXPENSES INCURRED UNDER THIS SECTION, THE INSURER OR OTHER PERSON
21 EXAMINED OR INVESTIGATED SHALL PAY THOSE EXPENSES DIRECTLY TO THE
22 PERSON OR FIRM RENDERING ASSISTANCE TO THE COMMISSIONER. EXPENSES
23 PAID DIRECTLY TO SUCH PERSON OR FIRM AND THE REGULATORY FEES
24 IMPOSED BY THIS SECTION SHALL BE EXAMINATION EXPENSES UNDER SECTION
25 239(1) OF THE MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1239.

26 (5) NOTHING CONTAINED IN THIS CHAPTER LIMITS THE
27 COMMISSIONER'S AUTHORITY TO TERMINATE OR SUSPEND AN EXAMINATION IN

1 ORDER TO PURSUE OTHER LEGAL OR REGULATORY ACTION PURSUANT TO THE
2 INSURANCE LAWS OF THIS STATE. FINDINGS OF FACT AND CONCLUSIONS MADE
3 PURSUANT TO ANY EXAMINATION SHALL BE PRIMA FACIE EVIDENCE IN ANY
4 LEGAL OR REGULATORY ACTION.

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

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

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

27 (3) IF THE COMMISSIONER DETERMINES THAT REGULATORY ACTION IS

1 APPROPRIATE AS A RESULT OF AN EXAMINATION, THE COMMISSIONER MAY
2 INITIATE ANY PROCEEDINGS OR ACTIONS PROVIDED BY LAW.

3 (4) NAMES AND INDIVIDUAL IDENTIFICATION DATA FOR ALL VIATORS
4 SHALL BE CONSIDERED PRIVATE AND CONFIDENTIAL INFORMATION AND SHALL
5 NOT BE DISCLOSED BY THE COMMISSIONER, UNLESS REQUIRED BY LAW.

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

23 (6) DOCUMENTS, MATERIALS, OR OTHER INFORMATION, INCLUDING, BUT
24 NOT LIMITED TO, ALL WORKING PAPERS, AND COPIES OF WORKING PAPERS,
25 IN THE POSSESSION OR CONTROL OF THE NAIC AND ITS AFFILIATES AND
26 SUBSIDIARIES ARE CONFIDENTIAL BY LAW AND PRIVILEGED, ARE NOT
27 SUBJECT TO SUBPOENA, AND ARE NOT SUBJECT TO DISCOVERY OR ADMISSIBLE

1 IN EVIDENCE IN ANY PRIVATE CIVIL ACTION, IF EITHER OF THE FOLLOWING
2 APPLIES:

3 (A) THEY ARE CREATED, PRODUCED, OR OBTAINED BY OR DISCLOSED TO
4 THE NAIC AND ITS AFFILIATES AND SUBSIDIARIES IN THE COURSE OF
5 ASSISTING AN EXAMINATION MADE UNDER THIS CHAPTER OR ASSISTING THE
6 COMMISSIONER OR THE COMPARABLE OFFICIAL IN ANOTHER STATE IN THE
7 ANALYSIS OR INVESTIGATION OF THE FINANCIAL CONDITION OR MARKET
8 CONDUCT OF A LICENSEE.

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

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

19 (8) IN ORDER TO ASSIST IN THE PERFORMANCE OF THE
20 COMMISSIONER'S DUTIES, THE COMMISSIONER MAY DO ANY OF THE
21 FOLLOWING:

22 (A) SHARE DOCUMENTS, MATERIALS, OR OTHER INFORMATION,
23 INCLUDING THE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, OR
24 INFORMATION SUBJECT TO SUBSECTION (4), WITH OTHER STATE, FEDERAL,
25 AND INTERNATIONAL REGULATORY AGENCIES, WITH THE NAIC AND ITS
26 AFFILIATES AND SUBSIDIARIES, AND WITH STATE, FEDERAL, AND
27 INTERNATIONAL LAW ENFORCEMENT AUTHORITIES, IF THE RECIPIENT AGREES

1 TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED STATUS OF THE
2 DOCUMENT, MATERIAL, COMMUNICATION, OR OTHER INFORMATION.

3 (B) RECEIVE DOCUMENTS, MATERIALS, COMMUNICATIONS, OR
4 INFORMATION, INCLUDING OTHERWISE CONFIDENTIAL AND PRIVILEGED
5 DOCUMENTS, MATERIALS, OR INFORMATION, FROM THE NAIC AND ITS
6 AFFILIATES AND SUBSIDIARIES, AND FROM REGULATORY AND LAW
7 ENFORCEMENT OFFICIALS OF OTHER FOREIGN OR DOMESTIC JURISDICTIONS.

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

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

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

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

23 (12) NOTHING CONTAINED IN THIS CHAPTER PREVENTS OR PROHIBITS
24 THE COMMISSIONER FROM DISCLOSING THE CONTENT OF AN EXAMINATION
25 REPORT, PRELIMINARY EXAMINATION REPORT OR RESULTS, OR ANY MATTER
26 RELATING TO THOSE REPORTS OR RESULTS, TO THE OFFICIAL OF ANY OTHER
27 STATE OR COUNTRY THAT IS COMPARABLE TO THE COMMISSIONER, OR TO LAW

1 ENFORCEMENT OFFICIALS OF THIS OR ANY OTHER STATE OR AGENCY OF THE
2 FEDERAL GOVERNMENT AT ANY TIME, OR TO THE NAIC, IF THE AGENCY OR
3 OFFICE RECEIVING THE REPORT OR MATTERS RELATING TO IT AGREES IN
4 WRITING TO HOLD IT CONFIDENTIAL AND IN A MANNER CONSISTENT WITH
5 THIS CHAPTER.

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

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

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

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

27 (C) NUMBER OF SETTLEMENTS PAID IN THE PRECEDING CALENDAR YEAR,

1 ALLOCATED BY STATE OR TERRITORY.

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

3 (2) ON OR BEFORE THE FIRST DAY OF MAY OF EACH YEAR, A VIATICAL
4 SETTLEMENT PROVIDER LICENSED IN THIS STATE SHALL FILE WITH THE
5 COMMISSIONER ITS FINANCIAL STATEMENT, AUDITED BY AN INDEPENDENT
6 CERTIFIED PUBLIC ACCOUNTANT ALONG WITH A LETTER STATING WHETHER ANY
7 SIGNIFICANT DEFICIENCIES OR MATERIAL WEAKNESSES WERE DETECTED
8 DURING THE AUDIT.

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

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

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

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

1 SHALL BE PROVIDED IF EVENTS SUBSEQUENT TO THE FISCAL YEAR END HAVE
2 A MATERIAL IMPACT ON THE VIATICAL SETTLEMENT PROVIDER.

3 (5) A VIATICAL SETTLEMENT PROVIDER THAT WILLFULLY FAILS TO
4 FILE THE ANNUAL STATEMENTS REQUIRED BY THIS SECTION, OR WILLFULLY
5 FAILS TO REPLY WITHIN 30 CALENDAR DAYS TO A WRITTEN INQUIRY FROM
6 THE COMMISSIONER OR THE COMMISSIONER'S DESIGNEE, SHALL, IN ADDITION
7 TO OTHER PENALTIES OR REMEDIES PROVIDED BY THIS CHAPTER, BE SUBJECT
8 TO AN ADMINISTRATIVE FINE OF UP TO \$250.00 PER DAY, NOT TO EXCEED
9 \$25,000.00 IN THE AGGREGATE FOR EACH SUCH FAILURE.

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

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

24 (A) THE DISCLOSURE IS NECESSARY TO EFFECT A VIATICAL
25 SETTLEMENT, AND THE VIATOR AND INSURED HAVE PROVIDED PRIOR WRITTEN
26 CONSENT TO THE DISCLOSURE.

27 (B) THE DISCLOSURE IS PROVIDED IN RESPONSE TO AN INVESTIGATION

1 OR EXAMINATION BY THE COMMISSIONER OR BY ANY OTHER GOVERNMENTAL
2 OFFICER OR AGENCY OR PURSUANT TO THIS CHAPTER.

3 (C) THE DISCLOSURE IS A TERM OF, OR CONDITION TO, THE TRANSFER
4 OF A VIATICATED POLICY BY 1 VIATICAL SETTLEMENT PROVIDER TO ANOTHER
5 VIATICAL SETTLEMENT PROVIDER.

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

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

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

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

23 (A) THERE WAS A MATERIAL MISREPRESENTATION IN THE APPLICATION
24 FOR THE LICENSE.

25 (B) THE APPLICANT OR LICENSEE OR ANY OFFICER, PARTNER, MEMBER,
26 OR DESIGNATED EMPLOYEE OF THE APPLICANT OR LICENSEE HAS BEEN
27 CONVICTED OF FRAUDULENT OR DISHONEST PRACTICES, IS OR HAS BEEN

1 SUBJECT TO AN ADMINISTRATIVE OR CIVIL ACTION IN THIS STATE OR
2 ANOTHER STATE, OR IS OTHERWISE SHOWN TO BE UNTRUSTWORTHY OR
3 INCOMPETENT.

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

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

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

15 (F) THE LICENSEE IS A VIATICAL SETTLEMENT PROVIDER THAT HAS
16 FAILED TO HONOR CONTRACTUAL OBLIGATIONS SET OUT IN A VIATICAL
17 SETTLEMENT CONTRACT.

18 (G) THE LICENSEE NO LONGER MEETS THE REQUIREMENTS FOR INITIAL
19 LICENSURE.

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

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

25 (ii) A VIATICAL SETTLEMENT PURCHASER.

26 (iii) A QUALIFIED INSTITUTIONAL BUYER.

27 (iv) A FINANCING ENTITY.

1 (v) A SPECIAL PURPOSE ENTITY.

2 (vi) A RELATED PROVIDER TRUST.

3 (I) THE LICENSEE OR ANY OFFICER, PARTNER, MEMBER, KEY
4 MANAGEMENT PERSONNEL, OR DESIGNEE OF THE LICENSEE HAS VIOLATED ANY
5 PROVISION OF THIS CHAPTER OR ANY RULE ADOPTED UNDER THIS CHAPTER.

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

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

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

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

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

1 ISSUANCE OF THE POLICY:

2 (A) THE POLICY WAS ISSUED UPON THE VIATOR'S EXERCISE OF
3 CONVERSION RIGHTS ARISING OUT OF A GROUP POLICY, PROVIDED THE TOTAL
4 OF THE TIME COVERED UNDER THE CONVERSION POLICY PLUS THE TIME
5 COVERED UNDER THE PRIOR POLICY IS AT LEAST 60 MONTHS. THE TIME
6 COVERED UNDER A GROUP POLICY SHALL BE CALCULATED WITHOUT REGARD TO
7 ANY CHANGE IN INSURANCE CARRIERS, PROVIDED THE COVERAGE HAS BEEN
8 CONTINUOUS AND UNDER THE SAME GROUP SPONSORSHIP.

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

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

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

16 (ii) THE VIATOR'S SPOUSE DIES.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (7) UPON RECEIPT OF A PROPERLY COMPLETED REQUEST FOR CHANGE OF
26 OWNERSHIP OR BENEFICIARY OF A POLICY, THE INSURER SHALL RESPOND IN
27 WRITING WITHIN 30 CALENDAR DAYS TO CONFIRM THAT THE INSURER HAS

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

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

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

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

26 (3) ALL ADVERTISEMENTS SUBJECT TO THIS SECTION SHALL BE
27 TRUTHFUL AND NOT DECEPTIVE OR MISLEADING IN FACT OR BY IMPLICATION.

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

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

25 (A) "GUARANTEED", "FULLY SECURED", "100 PERCENT SECURED",
26 "FULLY INSURED", "SECURE", "SAFE", "BACKED BY RATED INSURANCE
27 COMPANIES", "BACKED BY FEDERAL LAW", "BACKED BY STATE LAW", "STATE

1 GUARANTY FUNDS", OR SIMILAR REPRESENTATIONS.

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

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

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

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

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

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

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

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

27 (A) OMIT MATERIAL INFORMATION IN STATEMENTS, REFERENCES, OR

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

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

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

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

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

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

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

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

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

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

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

26 (G) AN ADVERTISEMENT SHALL NOT DISPARAGE ANY INSURER, VIATICAL
27 SETTLEMENT PROVIDER, VIATICAL SETTLEMENT FACILITATOR, INSURANCE

1 PRODUCER, POLICY, SERVICE, OR METHOD OF MARKETING.

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

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

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

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

1 INSURANCE REGULATION TO FIND OUT IF THE STATE IN WHICH THE
2 ADVERTISEMENT APPEARS REQUIRES LICENSING AND, IF IT DOES, WHETHER
3 THE PERSON IS LICENSED.

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

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

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

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

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

1 FACT MATERIAL TO, 1 OR MORE OF THE FOLLOWING:

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

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

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

8 (iv) ANY PREMIUMS PAID ON A POLICY.

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

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

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

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

17 (ix) A FINANCING TRANSACTION.

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

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

27 (C) IN THE FURTHERANCE OF A FRAUD OR TO PREVENT THE DETECTION

1 OF A FRAUD, DOING ANY OF THE FOLLOWING:

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

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

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

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

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

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

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

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

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

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

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

1 OWNER OF THE POLICY OR, IF THE OWNER IS NOT LIVING AT THE TIME OF
2 THE DETERMINATION OF THE OVERPAYMENT, TO THE ESTATE OF THE OWNER.

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

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

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

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

1 SUCH VIATICAL SETTLEMENT CONTRACT UNLESS BOTH OF THE FOLLOWING ARE
2 TRUE:

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

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

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

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

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

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

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

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

1 PROHIBITION AGAINST WAGERING ON LIFE.

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

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

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

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

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

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

26 (4) THE LACK OF A STATEMENT DESCRIBED IN SUBSECTION (3) DOES
27 NOT CONSTITUTE A DEFENSE IN ANY PROSECUTION FOR A FRAUDULENT

1 VIATICAL SETTLEMENT ACT.

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

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

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

23 (A) IF THE PERSON IS LICENSED OR REGULATED BY THE OFFICE OF
24 FINANCIAL AND INSURANCE REGULATION, THE COMMISSIONER SHALL PROVIDE
25 THE PERSON AN OPPORTUNITY FOR NOTICE AND HEARING PURSUANT TO THE
26 ADMINISTRATIVE PROCEDURES ACT OF 1969. IF THE PERSON WAIVES OR DOES
27 NOT REQUEST A HEARING PURSUANT TO THE ADMINISTRATIVE PROCEDURES ACT

1 OF 1969, OR A HEARING IS HELD AND THE PERSON IS FOUND TO HAVE
2 PARTICIPATED IN 1 OR MORE STRANGER-ORIGINATED LIFE INSURANCE
3 TRANSACTIONS, THE COMMISSIONER SHALL PUBLISH THE ORDER ON THE
4 OFFICE OF FINANCIAL AND INSURANCE REGULATION'S WEBSITE AND SHALL
5 NOTIFY EACH INSURER LICENSED IN THIS STATE THAT THE PERSON HAS BEEN
6 ADJUDICATED AS HAVING PARTICIPATED IN 1 OR MORE STRANGER-ORIGINATED
7 LIFE INSURANCE TRANSACTIONS.

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

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

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

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

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

27 (D) THE NAIC, FINANCIAL INDUSTRY REGULATORY AUTHORITY (FINRA),

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

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

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

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

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

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

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

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

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

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

25 (14) RELEASE OF DOCUMENTS AND EVIDENCE UNDER SUBSECTION (13)
26 DOES NOT ABROGATE OR MODIFY THE PRIVILEGE GRANTED IN SUBSECTION
27 (12) .

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

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

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

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

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

26 (A) FRAUD INVESTIGATORS, WHO MAY BE LICENSED VIATICAL
27 SETTLEMENT PROVIDER OR LICENSED VIATICAL SETTLEMENT FACILITATOR

1 EMPLOYEES OR INDEPENDENT CONTRACTORS.

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

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

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

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

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

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

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

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

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

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

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

18 (C) APPLY FOR TEMPORARY AND PERMANENT ORDERS.

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

26 (3) THE COMMISSIONER MAY ISSUE A CEASE AND DESIST ORDER IN
27 ACCORDANCE WITH THE ADMINISTRATIVE PROCEDURES ACT OF 1969. IF THE

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

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

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

23 (6) EXCEPT FOR A FRAUDULENT VIATICAL SETTLEMENT ACT COMMITTED
24 BY A VIATOR, THE ENFORCEMENT PROVISIONS AND PENALTIES OF THIS
25 SECTION DO NOT APPLY TO A VIATOR.

26 SEC. 4358. (1) A PERSON THAT COMMITS A FRAUDULENT VIATICAL
27 SETTLEMENT ACT IS GUILTY OF A FELONY PUNISHABLE BY IMPRISONMENT FOR

1 NOT MORE THAN 10 YEARS, OR A FINE OF NOT MORE THAN \$100,000.00 FOR
2 A SINGLE VIOLATION OR \$500,000.00 FOR MULTIPLE VIOLATIONS, OR BOTH
3 IMPRISONMENT AND FINE, TOGETHER WITH FULL RESTITUTION.

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

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

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

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

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

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

1 repealed.

2 Enacting section 2. This amendatory act does not take effect
3 unless Senate Bill No.____ or House Bill No. 4891(request no.
4 02218'09 a) of the 95th Legislature is enacted into law.