

CHAPTER 508E

VIATICAL SETTLEMENT CONTRACTS

508E.1	Short title.	508E.10	General rules.
508E.1A	Authority of the commissioner.	508E.11	Prohibited practices.
508E.2	Definitions.	508E.12	Permitted practices.
508E.3	License requirements.	508E.13	Prohibited practices and conflicts of interest.
508E.3A	Immunity from liability. Repealed by 2008 Acts, ch 1155, §22.	508E.14	Advertising for viatical settlements.
508E.4	License revocation and denial.	508E.15	Fraud prevention and control.
508E.5	Approval of viatical settlement contracts and disclosure statements.	508E.16	Injunctions — civil remedies — cease and desist orders — civil penalty.
508E.6	Reporting requirements and privacy.	508E.17	Unfair trade practices.
508E.7	Examination or investigations.	508E.18	Criminal penalties.
508E.8	Disclosure to viator.	508E.19	Authority to promulgate rules.
508E.9	Disclosure to insurer.	508E.20	Public records.

508E.1 Short title.

This Act may be cited as the “*Viatical Settlements Act*”.

2008 Acts, ch 1155, §1, 21

[SP] Former §508E.1 transferred to §508E.1A; 2008 Acts, ch 1155, §21

508E.1A Authority of the commissioner.

The commissioner shall regulate, but not prohibit, the sale of viatical settlements as provided in this chapter.

2000 Acts, ch 1147, §35

C2001, §508E.1

2008 Acts, ch 1155, §21

C2009, §508E.1A

508E.2 Definitions.

As used in this chapter, unless the context otherwise requires:

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

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

3. “*Chronically ill*” means any of the following:

a. Being unable to perform or maintain at least two activities of daily living, including but not limited to eating, toileting, transferring, bathing, dressing, or continence.

b. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

c. Having a level of disability similar to that described in paragraph “a” as determined by the United States secretary of health and human services.

4. “*Commissioner*” means the commissioner of insurance.

5. a. “*Financing entity*” means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit

enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but subject to all of the following:

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

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

b. “*Financing entity*” does not include a nonaccredited investor or a viatical settlement purchaser.

6. “*Fraudulent viatical settlement act*” includes any of the following:

a. An act or omission committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits or permits its employees or its agents to engage in acts including any of the following:

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

(a) An application for the issuance of a viatical settlement contract or insurance policy.

(b) The underwriting of a viatical settlement contract or insurance policy.

(c) A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy.

(d) Premiums paid on an insurance policy.

(e) Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy.

(f) The reinstatement or conversion of an insurance policy.

(g) In the solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy.

(h) The issuance of written evidence of viatical settlement contract or insurance policy.

(i) A financing transaction.

(2) Employing any plan, financial structure, device, scheme, or artifice to defraud related to viaticated policies.

(3) Entering into any practice or plan which involves stranger-originated life insurance.

(4) Failing to disclose to the insurer when requested by the insurer that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insurer or its authorized representative in connection with the issuance of the policy.

b. In the furtherance of a fraud or to prevent the detection of a fraud to do, or permit an employee or agent to do, any of the following:

(1) Remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements.

(2) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person.

(3) Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements.

(4) File with the commissioner or the equivalent chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceal information about a material fact from the commissioner.

c. Embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner, or any other person engaged in the business of viatical settlements or insurance.

d. Recklessly entering into, negotiating, brokering, or otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the person or the persons intended to defraud the policy’s issuer, the viatical settlement provider, or the viator. As used in this paragraph, “*recklessly*” means engaging

in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct.

e. Facilitating the change of state of ownership of a policy or certificate or the state of residency of a viator to a state or jurisdiction that does not have a law similar to this chapter for the express purposes of evading or avoiding the provisions of this chapter.

f. Attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.

7. "*Life insurance producer*" means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority for life insurance coverage or a life line of coverage pursuant to chapter 522B.

8. "*Person*" means a natural person or a legal entity, including, without limitation, an individual, partnership, limited liability company, association, trust, or corporation.

9. "*Policy*" means an individual or group policy, group certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

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

11. "*Special purpose entity*" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets for or in connection with any of the following:

a. For a financing entity or licensed viatical settlement provider.

b. (1) In connection with a transaction in which the securities in the special purpose entity are acquired by the viator or by qualified institutional buyers as defined in 17 C.F.R. § 230.144 promulgated by the United States securities and exchange commission under the federal Securities Act of 1933, as amended, 15 U.S.C. § 77a et seq.

(2) In connection with a transaction in which the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

12. "*Stranger-originated life insurance*" means a practice or an act to initiate a life insurance policy for the benefit of a third-party investor who, at the time of policy origination, has no insurable interest in the insured.

a. Stranger-originated life insurance practices include cases in which life insurance is purchased with resources or guarantees from or through a person or entity who, at the time of the policy inception, could not lawfully initiate the policy by the person or entity, and where, at the time of the policy's inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy or the policy benefits to a third party. Trusts that are created to give the appearance of an insurable interest, and are used to initiate policies for investors, violate insurable interest laws and the prohibition against wagering on life.

b. Stranger-originated life insurance arrangements do not include those practices set forth in subsection 15, paragraph "d".

13. "*Terminally ill*" means having an illness or sickness that can reasonably be expected to result in death in twenty-four months or less.

14. "*Viatical settlement broker*" means a person, including a life insurance producer as provided for in section 508E.3, who, working exclusively on behalf of a viator and for a fee, commission, or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or one or more viatical settlement brokers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty

to the viator to act according to the viator's instructions and in the best interest of the viator. "Viatical settlement broker" does not include an attorney, certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.

15. a. "Viatical settlement contract" means a written agreement entered into between a viator and a viatical settlement provider or any affiliate of the viatical settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy in return for the viator's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance.

b. "Viatical settlement contract" includes a premium finance loan made for a life insurance policy by a lender to a viator on, before, or after the date of issuance of the policy where any of the following applies:

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

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

c. "Viatical settlement contract" also includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns a life insurance policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance policies, which life insurance policy insures the life of a person residing in this state.

d. "Viatical settlement contract" does not include any of the following:

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

(2) Loan proceeds that are used solely to pay any of the following:

(a) Premiums for the policy.

(b) The costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third-party collateral provider fees and expenses, including fees payable to letter of credit issuers.

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

(4) A loan made by a lender that does not violate insurance premium finance law, provided that the premium finance loan is not described in paragraph "b".

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

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

(7) A bona fide business succession planning arrangement between one or more of the following:

(a) Shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders.

(b) Partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners.

(c) Members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members.

(8) An agreement entered into by a service recipient, or a trust established by the service

recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business.

(9) Any other contract, transaction, or arrangement exempted from the definition of viatical settlement contract by the commissioner based on a determination that the contract, transaction, or arrangement is not of the type intended to be regulated by this chapter.

16. *a.* "Viatical settlement provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract with a viator resident in this state.

b. "Viatical settlement provider" does not include any of the following:

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

(2) The issuer of the life insurance policy.

(3) An authorized or eligible insurer that provides stop-loss coverage or financial guaranty insurance to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust.

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

(5) A financing entity.

(6) A special purpose entity.

(7) A related provider trust.

(8) A viatical settlement purchaser.

(9) Any other person that the commissioner determines is not the type of person intended to be covered by the definition of viatical settlement provider.

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

b. "Viatical settlement purchaser" does not include any of the following:

(1) A licensee under this chapter.

(2) An accredited investor or qualified institutional buyer as defined, respectively, in 17 C.F.R. § 230.501(a) or 17 C.F.R. § 230.144A as promulgated by the United States securities and exchange commission under the federal Securities Act of 1933, as amended, 15 U.S.C. § 77a et seq.

(3) A financing entity.

(4) A special purpose entity.

(5) A related provider trust.

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

19. *a.* "Viator" means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and enters or seeks to enter into a viatical settlement contract. "Viator" includes but is not limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one viator on a single policy and the viators are residents of different states, the transaction shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all the viators.

b. "Viator" does not include any of the following:

(1) A licensee under this chapter, including a life insurance producer acting as a viatical settlement broker pursuant to this chapter.

(2) A qualified institutional buyer as defined in 17 C.F.R. § 230.144-144A as promulgated by the United States securities and exchange commission under the federal Securities Act of 1933, as amended, 15 U.S.C. § 77a et seq.

- (3) A financing entity.
 - (4) A special purpose entity.
 - (5) A related provider trust.
- 2000 Acts, ch 1147, §36; 2008 Acts, ch 1155, §2

508E.3 License requirements.

1. *a.* A person shall not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the commissioner of the state of residence of the viator.

b. (1) A life insurance producer who has been duly licensed as a resident insurance producer with a life line of authority in this state or the life insurance producer's home state for at least one year immediately prior to operating as a viatical settlement broker and is licensed as a nonresident producer in this state shall be deemed to meet the licensing requirements of this section and shall be permitted to operate as a viatical settlement broker.

(2) Not later than thirty days from the first day of operating as a viatical settlement broker, the life insurance producer shall notify the commissioner that the life insurance producer is acting as a viatical settlement broker on a form prescribed by the commissioner, and shall pay any applicable fee of up to one hundred dollars as provided by rules adopted by the commissioner. The notification shall include an acknowledgment by the life insurance producer that the life insurance producer will operate as a viatical settlement broker in accordance with this chapter. The notification shall also include proof that the life insurance producer is covered by an errors and omissions policy for an amount of not less than one hundred thousand dollars per occurrence and not less than one hundred thousand dollars total annual aggregate for all claims during the policy period.

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

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

2. An application for a viatical settlement provider or viatical settlement broker license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application shall be accompanied by a fee of not more than one hundred dollars as provided by rules adopted by the commissioner.

3. The license term shall be three years and the license may be renewed upon payment of the renewal fee of not more than one hundred dollars as provided by rules adopted by the commissioner. A failure to pay the fee by the renewal date results in expiration of the license.

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

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

6. Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant complies with all of the following:

- a.* If a viatical settlement provider, has provided a detailed plan of operation.

b. Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for.

c. Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for.

d. If a legal entity, provides a certificate of good standing from the state of its domicile.

e. If a viatical settlement provider or viatical settlement broker, has provided an antifraud plan that meets the requirements of section 508E.15, subsection 7.

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

8. A viatical settlement provider or viatical settlement broker shall provide to the commissioner new or revised information about officers, ten-percent-or-more stockholders, partners, directors, members, or designated employees within thirty days of the change.

9. An individual licensed as a viatical settlement broker shall complete on a triennial basis running concurrent with the license term twenty credits of training related to viatical settlements and viatical settlement transactions, as required by the commissioner; provided, however, that a life insurance producer who is operating as a viatical settlement broker pursuant to subsection 1, paragraph "b", shall not be subject to the requirements of this subsection. Any person failing to meet the requirements of this subsection shall be subject to the penalties imposed by the commissioner.

10. Fees collected pursuant to this section shall be deposited as provided in section 505.7. 2000 Acts, ch 1147, §37; 2008 Acts, ch 1155, §3; 2009 Acts, ch 145, §6, 7; 2009 Acts, ch 181, §69

[SP] For future repeal of 2009 amendment to subsection 10, effective July 1, 2011, see 2009 Acts, ch 179, §146

508E.3A Immunity from liability. Repealed by 2008 Acts, ch 1155, § 22. See § 508E.15.

508E.4 License revocation and denial.

1. The commissioner may refuse to issue, suspend, revoke, or refuse to renew the license of a viatical settlement provider or viatical settlement broker if the commissioner finds that any of the following applies:

a. There was any material misrepresentation in the application for the license.

b. The licensee or any officer, partner, member, or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent.

c. The viatical settlement provider demonstrates a pattern of unreasonable payments to viators.

d. The licensee or any officer, partner, member, or key management personnel has been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court.

e. The viatical settlement provider has entered into any viatical settlement contract form that has not been approved pursuant to this chapter.

f. The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract.

g. The licensee no longer meets the requirements for initial licensure.

h. The viatical settlement provider has assigned, transferred, or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, viatical settlement purchaser, an accredited investor, or qualified institutional buyer as defined respectively in 17 C.F.R. § 230.501(a) or 17 C.F.R. § 230.144A as promulgated by the United States securities and exchange commission under the federal Securities Act of 1933, as amended, 15 U.S.C. § 77a et seq., a financing entity, special purpose entity, or related provider trust.

i. The licensee or any officer, partner, member, or key management personnel has violated any provision of this chapter.

2. The commissioner may suspend, revoke, or refuse to renew the license of a viatical settlement broker or a life insurance producer operating as a viatical settlement broker pursuant to this chapter if the commissioner finds that the viatical settlement broker or life insurance producer has violated the provisions of this chapter or has otherwise engaged in bad faith conduct with one or more viators.

3. If the commissioner denies a license application or suspends, revokes, or refuses to renew the license of a viatical settlement provider or viatical settlement broker, or suspends, revokes, or refuses to renew a license of a life insurance producer operating as a viatical settlement broker pursuant to this chapter, the commissioner shall conduct a hearing in accordance with chapter 17A.

2000 Acts, ch 1147, §38; 2008 Acts, ch 1155, §4

508E.5 Approval of viatical settlement contracts and disclosure statements.

A person shall not use a viatical settlement contract form or provide to a viator a disclosure statement form in this state unless first filed with and approved by the commissioner. The commissioner shall disapprove a viatical settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or provisions contained therein fail to meet the requirements of sections 508E.8, 508E.10, 508E.14, and 508E.15, subsection 2, or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. At the commissioner's discretion, the commissioner may require the submission of advertising material. The commissioner's approval of any of the materials shall not be a defense or otherwise preclude a civil action for fraud.

2008 Acts, ch 1155, §5

508E.6 Reporting requirements and privacy.

1. For any policy settled within five years of policy issuance, each viatical settlement provider shall file with the commissioner on or before March 1 of each year an annual statement containing such information as the commissioner may adopt by rule. In addition to any other requirements, the annual statement shall specify the total number, aggregate face amount, and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year. The annual statement shall also include the names of the insurance companies whose policies have been settled and the viatical settlement brokers that have settled said policies. Such information shall be limited to only those transactions where the viator is a resident of this state. Notwithstanding chapter 22, individual transaction data regarding the business of viatical settlements or data that could compromise the privacy of personal, financial, and health information of the viator or insured shall be filed with the commissioner on a confidential basis.

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

a. Necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure.

b. Provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to the requirements of section 508E.15, subsection 3.

c. A term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider.

d. Necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies by a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure.

e. Necessary to allow the viatical settlement provider, viatical settlement broker, or their authorized representatives to make contacts for the purpose of determining health status.

f. Required to purchase stop-loss coverage or financial guaranty insurance.

2008 Acts, ch 1155, §6

508E.7 Examination or investigations.

1. *Authority, scope, and scheduling of examinations.*

a. (1) The commissioner may conduct an examination under this chapter of a licensee as often as the commissioner in the commissioner's discretion deems appropriate after considering the factors set forth in this paragraph "a".

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

b. For purposes of completing an examination of a licensee under this chapter, the commissioner may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the licensee.

c. In lieu of an examination under this chapter of any foreign or alien licensee licensed in this state, the commissioner may, at the commissioner's discretion, accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state.

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

2. *Record retention requirements.*

a. A person required to be licensed pursuant to section 508E.3 shall for five years retain copies of all of the following:

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

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

(3) All other records and documents related to the requirements of this chapter.

b. This section does not relieve a person of the obligation to produce documents described in paragraph "a" to the commissioner after the retention period has expired if the person has retained the documents.

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

3. *Conduct of examinations.*

a. Upon determining that an examination should be conducted, the commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the examiners handbook adopted by the national association of insurance commissioners. The commissioner may also adopt rules for such other guidelines or procedures as the commissioner may deem appropriate.

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

so. The refusal of a licensee, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the commissioner shall be grounds for suspension or refusal of, or nonrenewal of, any license or authority held by the licensee to engage in the viatical settlement business or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation, or refusal of any license or authority shall be conducted pursuant to section 507B.6A.

c. The commissioner shall have the power to issue subpoenas, to administer oaths, and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. A failure to obey the court order shall be punishable as contempt of court.

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

e. Nothing contained in this chapter shall be construed to limit the commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

f. The commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee workpapers, or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action shall be permitted consistent with section 507.14.

4. *Examination reports.*

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

b. Not later than sixty days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

c. In the event the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions provided by law.

5. *Confidentiality of examination information.*

a. Notwithstanding chapter 22, the names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the commissioner, unless required by law.

b. Except as otherwise provided in this chapter, all examination reports, working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this chapter, or in the course of an analysis or investigation by the commissioner of the financial condition or market conduct of a licensee, shall be confidential by law and privileged, shall not be subject to chapter 22, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties. All examination reports, working papers, recorded information, documents, and their copies produced by, obtained by, or disclosed to the commissioner or any other person in the course of an examination made under this chapter, or in the course of an analysis or investigation by the commissioner

of the financial condition or market conduct of a licensee shall be privileged and confidential in any judicial or administrative proceeding except for any of the following:

(1) An administrative proceeding brought by the insurance division under chapter 17A.

(2) A judicial review proceeding under chapter 17A brought by an insurer to whom the records relate.

(3) An action or proceeding which arises out of the criminal provisions of the laws of this state or the United States.

c. Documents, materials, or other information, including but not limited to all working papers and copies, in the possession or control of the national association of insurance commissioners and its affiliates and subsidiaries shall be confidential by law and privileged, shall not be subject to chapter 22, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if they are any of the following:

(1) Created, produced, or obtained by or disclosed to the national association of insurance commissioners and its affiliates and subsidiaries in the course of assisting an examination made under this chapter, or assisting the commissioner in the analysis or investigation of the financial condition or market conduct of a licensee.

(2) Disclosed to the national association of insurance commissioners and its affiliates and subsidiaries under paragraph "d" by the commissioner.

(3) For the purposes of paragraph "b", "chapter" includes the law of another state or jurisdiction that is substantially similar to this chapter.

d. In order to assist in the performance of the commissioner's duties, the commissioner may do all of the following:

(1) Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to paragraph "a", with other state, federal, and international regulatory agencies, with the national association of insurance commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, communications, or other information.

(2) Receive documents, materials, communications, or information, including otherwise confidential and privileged documents, materials, or information, from the national association of insurance commissioners and its affiliates and subsidiaries, notwithstanding chapter 22, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any documents, materials, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, or information.

(3) Enter into agreements governing sharing and use of information consistent with section 507.14, subsection 4.

e. No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in paragraph "c".

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

g. Nothing contained in this chapter shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the commissioner of any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time or to the national association of insurance commissioners, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this chapter.

6. *Conflict of interest.*

a. An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a

pecuniary interest in any person subject to examination under this chapter. This section shall not be construed to automatically preclude an examiner from being any of the following:

- (1) A viator.
- (2) An insured in a viaticated insurance policy.
- (3) A beneficiary in an insurance policy that is proposed to be viaticated.

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

7. *Cost of examinations.*

a. The commissioner may appoint insurance examiners who, while conducting examinations, shall possess all the powers conferred upon the commissioner for such purposes. The entire time of the examiners shall be under the control of the commissioner, and shall be employed as the commissioner may direct.

b. The commissioner may, when in the commissioner's judgment it is advisable, appoint assistants to aid in making examinations. The examiners shall be compensated on the basis of the normal workweek of the insurance division at a salary to be fixed by the commissioner subject, however, to the provisions of section 505.14. The compensation shall be paid from appropriations for such purposes upon certification of the commissioner, which shall be reimbursed as provided in sections 507.8 and 507.9.

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

d. The commissioner shall, upon the completion of an examination, or at such regular intervals prior to completion as the commissioner determines, prepare an account of the costs incurred in performing and preparing the report of such examinations which shall be charged to and paid by the company examined, and upon failure or refusal of a company examined to pay such costs, the same may be recovered by the commissioner or the attorney general in an action brought in the name of the state, and the commissioner may also revoke the certificate of authority of such company to transact business within this state.

8. *Immunity from liability.*

a. No cause of action shall arise, nor shall any liability be imposed, against the commissioner, the commissioner's authorized representatives, or any examiner appointed by the commissioner for any statements made or conduct performed reasonably and in good faith while carrying out the provisions of this chapter.

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

9. *Investigative authority of the commissioner.* The commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.

2008 Acts, ch 1155, §7

508E.8 Disclosure to viator.

1. With each application for a viatical settlement, a viatical settlement provider or viatical settlement broker shall provide the viator with at least the following disclosures no later than the time the application for the viatical settlement contract is signed by all parties. The disclosures shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker, and shall provide all of the following information:

a. There are possible alternatives to viatical settlement contracts including any accelerated death benefits or policy loans offered under the viator's life insurance policy.

b. That a viatical settlement broker represents exclusively the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator, including a duty to act according to the viator's instructions and in the best interest of the viator.

c. Some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor.

d. Proceeds of the viatical settlement could be subject to the claims of creditors.

e. Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.

f. The viator has the right to rescind a viatical settlement contract before the earlier of thirty days after the date upon which the viatical settlement contract is executed by all parties or fifteen days after the viatical settlement proceeds have been paid to the viator, as provided in section 508E.10, subsection 3. Rescission, if exercised by the viator, is effective only if both notice of the rescission is given, and the viator repays all proceeds and any premiums, loans, and loan interest paid on account of the viatical settlement within the rescission period. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment by the viator or the viator's estate of all viatical settlement proceeds and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or purchaser within sixty days of the insured's death.

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

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

i. Disclosure to a viator shall include distribution of a brochure describing the process of viatical settlements. The national association of insurance commissioners form for the brochure shall be used unless another form is developed and approved by the commissioner.

j. The disclosure document shall contain the following language:

All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.

k. Following execution of a viatical contract, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number, or as otherwise provided in this chapter. This contact shall be limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less. All such contacts shall be made only by a duly licensed viatical settlement provider or by the authorized representative of a duly licensed viatical settlement provider.

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

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

b. The name, business address, and telephone number of the viatical settlement provider.

c. If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, a notice of the viator's possible loss of coverage on the other lives under the policy and to consult with the viator's insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement.

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

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

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

a. The name, business address, and telephone number of the viatical settlement broker.

b. A full, complete, and accurate description of all offers, counteroffers, acceptances, and rejections relating to the proposed viatical settlement contract.

c. Any affiliations or contractual arrangements between the viatical settlement broker and any person making an offer in connection with the proposed viatical settlement contracts.

d. The amount and method of calculating the broker's compensation. As used in this paragraph, "compensation" includes anything of value paid or given to a viatical settlement broker for the placement of a policy.

e. Where any portion of the viatical settlement broker's compensation, as defined in paragraph "d", is taken from a proposed viatical settlement offer, the broker shall disclose the total amount of the viatical settlement offer and the percentage of the viatical settlement offer comprised by the viatical settlement broker's compensation.

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

5. A viatical settlement provider shall provide the viatical settlement purchaser with at least the following disclosures prior to the date the viatical settlement purchase agreement is signed by all parties. The disclosures shall be conspicuously displayed in any viatical purchase contract or in a separate document signed by the viatical settlement purchaser and viatical settlement provider or viatical settlement investment agent, and shall make the following disclosure to the viatical settlement purchaser:

a. The viatical settlement purchaser will receive no returns including dividends and interest, until the insured dies and a death claim payment is made.

b. The actual annual rate of return on a viatical settlement contract is dependent upon an accurate projection of the insured's life expectancy, and the actual date of the insured's death. An annual "guaranteed" rate of return is not determinable.

c. The viaticated life insurance contract should not be considered a liquid purchase since it is impossible to predict the exact timing of its maturity and the funds probably are not available until the death of the insured. There is no established secondary market for resale of these products by the viatical settlement purchaser.

d. The viatical settlement purchaser may lose all benefits or may receive substantially reduced benefits if the insurer goes out of business during the term of the viatical investment.

e. The viatical settlement purchaser is responsible for payment of the insurance premium or other costs related to the policy, if required by the terms of the viatical purchase agreement.

These payments may reduce the viatical settlement purchaser's return. If a party other than the viatical settlement purchaser is responsible for the payment, the name and address of that party also shall be disclosed.

f. The viatical settlement purchaser is responsible for payment of the insurance premiums or other costs related to the policy if the insured returns to health. The viatical settlement provider shall disclose the amount of such premiums, if applicable.

g. The name, business address, and telephone number of the independent third party providing escrow services and the relationship to the viatical settlement broker.

h. The amount of any trust fees or other expenses to be charged to the viatical settlement purchaser shall be disclosed.

i. Whether the viatical settlement purchaser is entitled to a refund of all or part of the viatical settlement purchaser's investment under the viatical settlement contract if the policy is later determined to be null and void.

j. That group policies may contain limitations or caps in the conversion rights, that additional premiums may have to be paid if the policy is converted, the name of the party responsible for the payment of the additional premiums, and, if a group policy is terminated and replaced by another group policy, that there may be no right to convert the original coverage.

k. The risks associated with policy contestability including but not limited to the risk that the viatical settlement purchaser will have no claim or only a partial claim to death benefits should the insurer rescind the policy within the contestability period.

l. Whether the viatical settlement purchaser will be the owner of the policy in addition to being the beneficiary, and if the viatical settlement purchaser is the beneficiary only and not also the owner, the special risks associated with that status, including but not limited to the risk that the beneficiary may be changed or the premium may not be paid.

m. The experience and qualifications of the person who determines the life expectancy of the insured, including in-house staff, independent physicians, and specialty firms that weigh medical and actuarial data; the information this projection is based on; and the relationship of the projection maker to the viatical settlement provider, if any.

n. A brochure describing the process of investment in viatical settlements. The national association of insurance commissioners form for the brochure shall be used unless another form is developed and approved by the commissioner.

6. A viatical settlement provider shall provide the viatical settlement purchaser with at least the following disclosures no later than at the time of the assignment, transfer, or sale of all or a portion of an insurance policy. The disclosures shall be contained in a document signed by the viatical settlement purchaser and viatical settlement provider, and shall make all of the following disclosures to the viatical settlement purchaser:

a. All the life expectancy certifications obtained by the provider in the process of determining the price paid to the viator.

b. Whether premium payments or other costs related to the policy have been escrowed. If escrowed, state the date upon which the escrowed funds will be depleted and whether the viatical settlement purchaser will be responsible for payment of premiums thereafter and, if so, the amount of the premiums.

c. Whether premium payments or other costs related to the policy have been waived. If waived, disclose whether the viatical settlement purchaser will be responsible for payment of the premiums if the insurer that wrote the policy terminates the waiver after purchase and the amount of those premiums.

d. The type of policy offered or sold, i.e., whole life, term life, universal life, or a group policy certificate, any additional benefits contained in the policy, and the current status of the policy.

e. If the policy is term insurance, the special risks associated with term insurance including but not limited to the viatical settlement purchaser's responsibility for additional premiums if the viator continues the term policy at the end of the current term.

f. Whether the policy is contestable.

g. Whether the insurer that wrote the policy has any additional rights that could negatively

affect or extinguish the viatical settlement purchaser's rights under the viatical settlement contract, what these rights are, and under what conditions these rights are activated.

h. The name and address of the person responsible for monitoring the insured's condition. The viatical settlement provider shall describe how often the monitoring of the insured's condition is done, how the date of death is determined, and how and when this information will be transmitted to the viatical settlement purchaser.

2008 Acts, ch 1155, §8; 2008 Acts, ch 1191, §130

508E.9 Disclosure to insurer.

A viatical settlement broker, or viatical settlement provider, shall fully disclose to an insurer a transaction or series of transactions to which the viatical settlement broker or viatical settlement provider is a party to originate, renew, continue, or finance a life insurance policy with the insurer for the purpose of engaging in the business of viatical settlements at any time prior to, or during the first five years after, issuance of the policy.

2008 Acts, ch 1155, §9

508E.10 General rules.

1. *a.* A viatical settlement provider entering into a viatical settlement contract shall first obtain all of the following:

(1) If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract.

(2) A document in which the insured consents to the release of the insured's medical records to a licensed viatical settlement provider, viatical settlement broker, and, if the policy was issued less than two years from the date of application for a viatical settlement contract, the insurance company that issued the life insurance policy covering the life of the insured.

b. Within twenty days after a viator executes documents necessary to transfer any rights under an insurance policy or within twenty days of entering any agreement, option, promise, or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy. The notice shall be accompanied by the documents required by paragraph "c".

c. The viatical provider shall deliver a copy of the medical release required under paragraph "a", subparagraph (2), a copy of the viator's application for the viatical settlement contract, the notice required under paragraph "b", and a request for verification of coverage to the insurer that issued the life policy that is the subject of the viatical transaction. The national association of insurance commissioners form for verification of coverage shall be used unless another form is developed and approved by the commissioner.

d. The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider or viatical settlement broker within thirty days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible fraud. The insurer shall accept a request for verification of coverage made on a national association of insurance commissioners form or any other form developed and approved by the commissioner. The insurer shall accept an original, facsimile, or electronic copy of such request and any accompanying authorization signed by the viator. A failure by the insurer to meet its obligations under this subsection shall be a violation of sections 508E.11 and 508E.17.

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

or condition and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

f. If a viatical settlement broker performs any of these activities required of the viatical settlement provider, the viatical settlement provider is deemed to have fulfilled the requirements of this section.

2. All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information, including section 505.8.

3. All viatical settlement contracts entered into in this state shall provide the viator with an absolute right to rescind the contract before the earlier of thirty days after the date upon which the viatical settlement contract is executed by all parties or fifteen days after the viatical settlement proceeds have been sent to the viator as provided in subsection 4. Rescission by the viator may be conditioned upon the viator both giving notice and repaying to the viatical settlement provider within the rescission period all viatical settlement proceeds, and any premiums, loans, and loan interest paid by or on behalf of the viatical settlement provider in connection with or as a consequence of the viatical settlement. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or purchaser of all viatical settlement proceeds, and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or purchaser, which shall be paid within sixty days of the death of the insured. In the event of any rescission, if the viatical settlement provider has paid commissions or other compensation to a viatical settlement broker in connection with the rescinded transaction, the viatical settlement broker shall refund all such commissions and compensation to the viatical settlement provider within five business days following receipt of written demand from the viatical settlement provider, which demand shall be accompanied by either the viator's notice of rescission if rescinded at the election of the viator, or a notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period.

4. The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary directly to the independent escrow agent. Within three business days after the date the escrow agent receives the document, or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the viatical settlement provider, the viatical settlement provider shall pay or transfer the viatical settlement proceeds into an escrow or trust account maintained in a state or federally chartered financial institution whose deposits are insured by the federal deposit insurance corporation. Upon payment of the viatical settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the viatical settlement provider or related provider trust, or other designated representative of the viatical settlement provider. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company, the escrow agent shall pay the viatical settlement proceeds to the viator.

5. A failure to tender consideration to the viator for the viatical settlement contract within the time set forth in the disclosure pursuant to section 508E.8, subsection 1, paragraph "g", renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator. Funds shall be deemed sent by a viatical settlement provider to a viator as of the date that the escrow agent either releases funds for wire transfer to the viator or places a check for delivery to the viator via the United States postal service or other nationally recognized delivery service.

6. A contact with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or viatical settlement broker licensed pursuant to section 508E.3 or its authorized representatives and shall be limited to once every three months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one

year or less. The viatical settlement provider or viatical settlement broker shall explain the procedure for these contracts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contract with an insured for reasons other than determining the insured's health status. A viatical settlement provider and a viatical settlement broker shall be responsible for the actions of their authorized representatives.

2008 Acts, ch 1155, §10

508E.11 Prohibited practices.

1. Except as provided in section 508E.12, it is a violation of this chapter for any person to enter into a viatical settlement contract at any time prior to the application or issuance of a policy which is the subject of a viatical settlement contract or within a five-year period commencing with the date of issuance of the insurance policy or certificate.

2. An insurer shall not, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a viatical settlement contract, require that the viator, insured, viatical settlement provider, or viatical settlement broker sign any form, disclosure, consent, or waiver form that has not been expressly approved by the commissioner for use in connection with viatical settlement contracts in this state.

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

2008 Acts, ch 1155, §11

508E.12 Permitted practices.

1. Notwithstanding section 508E.11, at any time subsequent to the issuance of the policy, a person may enter into a viatical settlement contract if the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the five-year period:

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

b. The viator submits an affidavit to the viatical settlement provider that one or more of the following conditions exists:

(1) The viator or insured is terminally or chronically ill.

(2) The viator's spouse or child dies.

(3) The viator divorces the viator's spouse.

(4) The viator retires from full-time employment.

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

(6) The viator has filed for bankruptcy or sought reorganization in a court of competent jurisdiction, or a court of competent jurisdiction has appointed a receiver, trustee, or liquidator to all or a substantial part of the viator's assets.

(7) Other circumstances as established as eligible exemptions by the commissioner by rule, including but not limited to substantial adverse financial circumstances or other factors substantially affecting the viator.

2. Notwithstanding section 508E.11, a person may enter into a viatical settlement contract if at all times prior to the date that is two years after policy issuance, all of the following conditions are met with respect to the policy:

a. Policy premiums have been funded exclusively with any of the following:

(1) Unencumbered assets, including an interest in the life insurance policy being financed

only to the extent of its net cash surrender value, provided by a person described in section 508E.2, subsection 15, paragraph “d”, subparagraph (5).

(2) Fully recourse liability incurred by the insured or a person described in section 508E.2, subsection 15, paragraph “d”, subparagraph (5).

b. There is no agreement or understanding with any other person to guarantee any such liability or to purchase, or stand ready to purchase, the policy, including through an assumption or forgiveness of the loan.

c. Neither the insured nor the policy has been evaluated for settlement.

3. Copies of the affidavits described in this section and documents required by section 508E.10, subsection 1, shall be submitted to the insurer when the viatical settlement provider or viatical settlement broker submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

4. If the viatical settlement provider submits to the insurer a copy of the owner’s or insured’s or insurer’s affidavit described in this section when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirement of this section and the insurer shall timely respond to the request.

2008 Acts, ch 1155, §12; 2010 Acts, ch 1069, §62

[T] Subsection 2, paragraph a, subparagraphs (1) and (2) amended

508E.13 Prohibited practices and conflicts of interest.

1. With respect to any viatical settlement contract or insurance policy, a viatical settlement broker shall not knowingly solicit an offer from, effectuate a viatical settlement with, or make a sale to any viatical settlement provider, viatical settlement purchaser, financing entity, or related provider trust that is controlling, controlled by, or under common control with such viatical settlement broker unless such relationship is disclosed to the viator.

2. With respect to any viatical settlement contract or insurance policy, a viatical settlement provider shall not knowingly enter into a viatical settlement contract with a viator, if, in connection with such viatical settlement contract, anything of value will be paid to a viatical settlement broker that is controlling, controlled by, or under common control with such viatical settlement provider or the viatical settlement purchaser, financing entity, or related provider trust that is involved in such viatical settlement contract unless such relationship is disclosed to the viator.

3. A viatical settlement provider shall not enter into a premium finance agreement with any person or agency, or any person affiliated with such person or agency, pursuant to which such person or agency shall receive any proceeds, fees, or other consideration, directly or indirectly, from the policy or owner of the policy or any other person with respect to the premium finance agreement or any viatical settlement contract or other transaction related to such policy that are in addition to the amounts required to pay the principal, interest, and service charges related to policy premiums pursuant to the premium finance agreement or subsequent sale of such agreement. Any payments, charges, fees, normal insurance commissions, or other amounts in addition to the amounts required to pay the principal, interest, and service charges related to policy premiums paid under the premium finance agreement shall be remitted to the original owner of the policy or to the original owner’s estate if the original owner is not living at the time of the determination of the overpayment.

4. A violation of subsection 1, 2, or 3 shall be deemed a fraudulent viatical settlement act.

5. A person shall not issue, solicit, market, or otherwise promote the purchase of an insurance policy for the sole purpose of or with a primary emphasis on settling the policy.

6. A person providing premium financing shall not receive any proceeds, fees, or other consideration from the policy or owner of the policy that are in addition to the amounts required to pay principal, interest, and any costs or expenses incurred by the lender or borrower in connection with the premium finance agreement, except for the event of a default, unless either the default on such loan or transfer of the policy occurs pursuant to an

agreement or understanding with any other person for the purpose of evading regulation under this chapter. Any payments, charges, fees, or other amounts received by a person providing premium financing in violation of this subsection shall be remitted to the original owner of the policy or to the original owner's estate if the original owner is not living at the time of the determination of overpayment.

7. In the solicitation, application for, or issuance of a life insurance policy, a person shall not employ any device, scheme, or artifice to create an insurable interest in the life of a person except as provided in sections 511.39 and 511.40.

8. No viatical settlement provider shall enter into a viatical settlement contract unless the viatical settlement promotional, advertising, and marketing materials, as may be prescribed by rules adopted by the commissioner, have been filed with the commissioner. In no event shall any marketing materials expressly reference that the insurance is free for any period of time. The inclusion of any reference in the marketing materials that would cause a viator to reasonably believe that the insurance is free for any period of time shall be considered a violation of this chapter.

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

2008 Acts, ch 1155, §13

508E.14 Advertising for viatical settlements.

The purpose of this section is to provide prospective viators with clear and unambiguous statements in the advertisement of viatical settlements and to assure the clear, truthful, and adequate disclosure of the benefits, risks, limitations, and exclusions of any viatical settlement contract. This purpose is intended to be accomplished by rules adopted by the commissioner for the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of viatical settlements to assure that product descriptions are presented in a manner that prevents unfair, deceptive, or misleading advertising, and is conducive to accurate presentation and description of viatical settlements through the advertising media and materials used by viatical settlement licensees.

1. This section shall apply to any advertising of viatical settlement contracts or related products or services intended for dissemination in this state, including internet advertising viewed by persons located in this state. Where disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

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

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

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

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

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

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

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

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

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

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

(3) When an endorsement refers to benefits received under a viatical settlement contract, all pertinent information shall be retained by the viatical settlement licensee for a period of five years after its use.

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

6. An advertisement shall not disparage an insurer, viatical settlement provider, viatical settlement broker, insurance producer, policy, services, or methods of marketing.

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

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

licensee would have any responsibility for the financial obligation under a viatical settlement contract.

9. An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

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

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

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

13. An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the United States government endorses, approves, or favors any of the following:

- a. A viatical settlement licensee or its business practices or methods of operation.
- b. The merits, desirability, or advisability of any viatical settlement contract.
- c. Any viatical settlement contract.
- d. Any life insurance policy or life insurance company.

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

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

2008 Acts, ch 1155, §14

508E.15 Fraud prevention and control.

1. *Fraudulent viatical settlement acts — interference, and participation of convicted felons prohibited.*

- a. A person shall not commit a fraudulent viatical settlement act.
- b. A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this chapter or investigations of suspected or actual violations of this chapter.
- c. A person in the business of viatical settlements shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.

2. *Fraud warning required.*

a. A viatical settlement contract and application for a viatical settlement, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison.

b. The lack of a statement as required in paragraph “a” does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

3. *Mandatory reporting of fraudulent viatical settlement acts.*

a. Any person engaged in the business of viatical settlements having knowledge or a reasonable suspicion that a fraudulent viatical settlement act is being, will be, or has been committed shall provide to the commissioner such information as required by and in a manner prescribed by rules adopted by the commissioner.

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

4. *Immunity from liability.*

a. No civil liability shall be imposed on and no cause of action shall arise from a person who, acting reasonably and in good faith, furnishes information concerning suspected, anticipated, or completed fraudulent viatical settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from any of the following:

(1) The commissioner or the commissioner’s employees, agents, or representatives.

(2) A federal, state, or local law enforcement or regulatory official or the official’s employees, agents, or representatives.

(3) A person involved in the prevention and detection of fraudulent viatical settlement acts or that person’s agents, employees, or representatives.

(4) The national association of insurance commissioners; the national association of securities dealers; the North American securities administrators association; their employees, agents, or representatives; or other regulatory body overseeing life insurance, viatical settlements, securities, or investment fraud.

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

b. Paragraph “a” does not apply to a statement made in bad faith or with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act, the party bringing the action shall plead specifically any allegation that paragraph “a” does not apply because the person filing the report or furnishing the information did so in bad faith or with actual malice.

c. A person furnishing information as identified in paragraph “a” shall be entitled to an award of attorney fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of an activity in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this paragraph, a proceeding is substantially justified if it had a reasonable basis in law or fact at the time that it was initiated. However, such an award does not apply to any person furnishing information concerning the person’s own fraudulent viatical settlement act.

d. This section does not abrogate or modify a common law or statutory privilege or immunity enjoyed by a person described in paragraph “a”.

5. *Confidentiality.*

a. A document or evidence provided pursuant to subsection 4 or obtained by the commissioner in an investigation of a suspected or actual fraudulent viatical settlement act shall be privileged and confidential, notwithstanding chapter 22, shall not be a public record, and shall not be subject to discovery or subpoena in a civil or criminal action.

b. Paragraph “a” does not prohibit the release by the commissioner of a document or evidence obtained in an investigation of a suspected or actual fraudulent viatical settlement act if any of the following applies:

(1) In an administrative or judicial proceeding to enforce laws administered by the commissioner.

(2) To a federal, state, or local law enforcement or regulatory agency, to an organization

established for the purpose of detecting and preventing fraudulent viatical settlement acts, or to the national association of insurance commissioners.

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

c. Release of a document or evidence under paragraph “b” does not abrogate or modify the privilege granted in paragraph “a”.

6. *Other law enforcement or regulatory authority.* This chapter shall not do any of the following:

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

b. Prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the commissioner.

c. Limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

7. *Viatical settlement antifraud initiatives.*

a. A viatical settlement provider or viatical settlement broker shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent viatical settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section.

b. Antifraud initiatives shall include all of the following:

(1) A fraud investigator, who may be a viatical settlement provider, viatical settlement broker, a viatical settlement provider’s or viatical settlement broker’s employee, or an independent contractor.

(2) An antifraud plan, which shall be submitted to the commissioner. The antifraud plan shall include, but is not limited to all of the following:

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

(b) A description of the procedures for reporting possible fraudulent viatical settlement acts to the commissioner.

(c) A description of the plan for antifraud education and training of underwriters and other personnel.

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

c. An antifraud plan submitted to the commissioner shall be privileged and confidential, notwithstanding chapter 22, shall not be a public record, and shall not be subject to discovery or subpoena in a civil or criminal action.

2008 Acts, ch 1155, §15

508E.16 Injunctions — civil remedies — cease and desist orders — civil penalty.

1. In addition to the penalties and other enforcement provisions of this chapter, if any person violates this chapter or any rule implementing this chapter, the commissioner may seek an injunction in a court of competent jurisdiction and may apply for a temporary or permanent order that the commissioner determines is necessary to restrain the person from committing the violation.

2. A person damaged by the act of a person in violation of this chapter may bring a civil action against the person committing the violation in a court of competent jurisdiction.

3. The commissioner may issue, in accordance with chapter 17A, a cease and desist order upon a person that violates any provision of this chapter, any rule or order adopted by the commissioner, or any written agreement entered into with the commissioner.

4. When the commissioner finds that an activity in violation of this chapter presents an immediate danger to the health, safety, or welfare of the public requiring immediate agency action, the commissioner may proceed under section 17A.18A.

5. In addition to the penalties and other enforcement provisions of this chapter, any person who violates this chapter is subject to a civil penalty of up to five thousand dollars for each violation of this chapter. The civil penalty shall be deposited as provided in section 505.7. If a person has not been ordered to pay restitution by a court, the commissioner's order may require a person found to be in violation of this chapter to make restitution to a person aggrieved by a violation of this chapter.

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

2008 Acts, ch 1155, §16; 2009 Acts, ch 181, §70

[SP] For future repeal of 2009 amendment to subsection 5, effective July 1, 2011, see 2009 Acts, ch 179, §146

508E.17 Unfair trade practices.

A violation of this chapter, including the commission of a fraudulent viatical settlement act, is an unfair trade practice under chapter 507B and a person convicted of the violation is subject to the penalties contained in that chapter.

2008 Acts, ch 1155, §17

508E.18 Criminal penalties.

1. *a.* A person acting in this state as a viatical settlement provider or viatical settlement broker, without being licensed pursuant to section 508E.3, who willfully violates any provision of this chapter or any rule adopted or order issued under this chapter, is guilty of a class "D" felony.

b. A person acting in this state as a viatical settlement provider or viatical settlement broker, without proper licensure, who willfully violates any provision of this chapter, or any rule adopted or order issued under this chapter, and when such violation results in a loss of more than ten thousand dollars, is guilty of a class "C" felony.

2. The commissioner may refer such evidence as is available concerning violations of this chapter or of any rule adopted or order issued under this chapter, or of the failure of a person to comply with the licensing requirements of this chapter, to the attorney general or the proper county attorney who may, with or without such reference, institute the appropriate criminal proceedings under this chapter.

2008 Acts, ch 1155, §18

508E.19 Authority to promulgate rules.

The commissioner shall have the authority to do all of the following:

1. Adopt rules implementing and administering this chapter.

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

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

4. Require a bond or other mechanism for financial accountability for viatical settlement providers and viatical settlement brokers.

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

2008 Acts, ch 1155, §19

508E.20 Public records.

All information filed with the commissioner pursuant to the requirements of this chapter and its implementing rules shall constitute a public record that is open for public inspection except as otherwise provided in this chapter.

2008 Acts, ch 1123, §18; 2008 Acts, ch 1191, §135