

Senate File 2392 - Reprinted

SENATE FILE _____
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SSB 3238)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act to regulate viatical settlements, and providing for fees
2 and penalties.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
4 TLSB 5446SV 82
5 da/rj/5

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1 1 Section 1. NEW SECTION. 508E.1A SHORT TITLE.
1 2 This Act may be cited as the "Viatical Settlements Act".
1 3 Sec. 2. Section 508E.2, Code 2007, is amended to read as
1 4 follows:
1 5 508E.2 DEFINITIONS.
1 6 As used in this chapter, unless the context otherwise
1 7 requires:
1 8 1. "Advertising" means any written, electronic, or printed
1 9 communication or any communication by means of recorded
1 10 telephone messages or transmitted on radio; television; the
1 11 internet; or similar communications media, including film
1 12 strips, motion pictures, and videos, published, disseminated,
1 13 circulated, or placed directly before the public in this
1 14 state, for the purpose of creating an interest in or inducing
1 15 a person to sell, assign, devise, bequest, or transfer the
1 16 death benefit or ownership of a life insurance policy pursuant
1 17 to a viatical settlement contract.
1 18 2. "Business of viatical settlements" means an activity
1 19 involved in but not limited to the offering, soliciting,
1 20 negotiating, procuring, effectuating, purchasing, investing,
1 21 financing, monitoring, tracking, underwriting, selling,
1 22 transferring, assigning, pledging, hypothecating, or in any
1 23 other manner acquiring an interest in a life insurance policy
1 24 by means of a viatical settlement contract.
1 25 ~~3.~~ 3. "Chronically ill" means any of the following:
1 26 a. Being unable to perform or maintain at least two
1 27 activities of daily living, including but not limited to
1 28 eating, toileting, transferring, bathing, dressing, or
1 29 continence.
1 30 b. Requiring substantial supervision to protect the
1 31 individual from threats to health and safety due to severe
1 32 cognitive impairment.
1 33 c. Having a level of disability similar to that described
1 34 in paragraph "a" as determined by the United States secretary
1 35 of health and human services.
2 1 ~~4.~~ 4. "Commissioner" means the commissioner of insurance.
2 2 5. a. "Financing entity" means an underwriter, placement
2 3 agent, lender, purchaser of securities, purchaser of a policy
2 4 or certificate from a viatical settlement provider, credit
2 5 enhancer, or any entity that has a direct ownership in a
2 6 policy or certificate that is the subject of a viatical
2 7 settlement contract, but subject to all of the following:
2 8 (1) Whose principal activity related to the transaction is
2 9 providing funds to effect the viatical settlement or purchase
2 10 of one or more viaticated policies.
2 11 (2) Who has an agreement in writing with one or more
2 12 licensed viatical settlement providers to finance the
2 13 acquisition of viatical settlement contracts.
2 14 b. "Financing entity" does not include a nonaccredited
2 15 investor or a viatical settlement purchaser.
2 16 6. "Fraudulent viatical settlement act" includes any of
2 17 the following:
2 18 a. An act or omission committed by any person who,

2 19 knowingly or with intent to defraud, for the purpose of
2 20 depriving another of property or for pecuniary gain, commits
2 21 or permits its employees or its agents to engage in acts
2 22 including any of the following:

2 23 (1) Presenting, causing to be presented, or preparing with
2 24 knowledge or belief that it will be presented to or by a
2 25 viatical settlement provider, viatical settlement broker,
2 26 viatical settlement purchaser, financing entity, insurer,
2 27 insurance producer, or any other person, false material
2 28 information, or concealing material information, as part of,
2 29 in support of, or concerning a fact material to one or more of
2 30 the following:

2 31 (a) An application for the issuance of a viatical
2 32 settlement contract or insurance policy.

2 33 (b) The underwriting of a viatical settlement contract or
2 34 insurance policy.

2 35 (c) A claim for payment or benefit pursuant to a viatical
3 1 settlement contract or insurance policy.

3 2 (d) Premiums paid on an insurance policy.

3 3 (e) Payments and changes in ownership or beneficiary made
3 4 in accordance with the terms of a viatical settlement contract
3 5 or insurance policy.

3 6 (f) The reinstatement or conversion of an insurance
3 7 policy.

3 8 (g) In the solicitation, offer, effectuation, or sale of a
3 9 viatical settlement contract or insurance policy.

3 10 (h) The issuance of written evidence of viatical
3 11 settlement contract or insurance policy.

3 12 (i) A financing transaction.

3 13 (2) Employing any plan, financial structure, device,
3 14 scheme, or artifice to defraud related to viaticated policies.

3 15 (3) Entering into any practice or plan which involves
3 16 stranger-originated life insurance.

3 17 (4) Failing to disclose to the insurer when requested by
3 18 the insurer that the prospective insured has undergone a life
3 19 expectancy evaluation by any person or entity other than the
3 20 insurer or its authorized representative in connection with
3 21 the issuance of the policy.

3 22 b. In the furtherance of a fraud or to prevent the
3 23 detection of a fraud to do, or permit an employee or agent to
3 24 do, any of the following:

3 25 (1) Remove, conceal, alter, destroy, or sequester from the
3 26 commissioner the assets or records of a licensee or other
3 27 person engaged in the business of viatical settlements.

3 28 (2) Misrepresent or conceal the financial condition of a
3 29 licensee, financing entity, insurer, or other person.

3 30 (3) Transact the business of viatical settlements in
3 31 violation of laws requiring a license, certificate of
3 32 authority, or other legal authority for the transaction of the
3 33 business of viatical settlements.

3 34 (4) File with the commissioner or the equivalent chief
3 35 insurance regulatory official of another jurisdiction a
4 1 document containing false information or otherwise conceal
4 2 information about a material fact from the commissioner.

4 3 c. Embezzlement, theft, misappropriation, or conversion of
4 4 moneys, funds, premiums, credits, or other property of a
4 5 viatical settlement provider, insurer, insured, viator,
4 6 insurance policyowner, or any other person engaged in the
4 7 business of viatical settlements or insurance.

4 8 d. Recklessly entering into, negotiating, brokering, or
4 9 otherwise dealing in a viatical settlement contract, the
4 10 subject of which is a life insurance policy that was obtained
4 11 by presenting false information concerning any fact material
4 12 to the policy or by concealing, for the purpose of misleading
4 13 another, information concerning any fact material to the
4 14 policy, where the person or the persons intended to defraud
4 15 the policy's issuer, the viatical settlement provider, or the
4 16 viator. As used in this paragraph, "recklessly" means
4 17 engaging in the conduct in conscious and clearly unjustifiable
4 18 disregard of a substantial likelihood of the existence of the
4 19 relevant facts or risks, such disregard involving a gross
4 20 deviation from acceptable standards of conduct.

4 21 e. Facilitating the change of state of ownership of a
4 22 policy or certificate or the state of residency of a viator to
4 23 a state or jurisdiction that does not have a law similar to
4 24 this chapter for the express purposes of evading or avoiding
4 25 the provisions of this chapter.

4 26 f. Attempting to commit, assisting, aiding or abetting in
4 27 the commission of, or conspiracy to commit the acts or
4 28 omissions specified in this subsection.

4 29 7. "Life insurance producer" means any person licensed in

4 30 this state as a resident or nonresident insurance producer who
4 31 has received qualification or authority for life insurance
4 32 coverage or a life line of coverage pursuant to chapter 522B.

4 33 8. "Person" means a natural person or a legal entity,
4 34 including, without limitation, an individual, partnership,
4 35 limited liability company, association, trust, or corporation.

5 1 9. "Policy" means an individual or group policy, group
5 2 certificate, contract, or arrangement of life insurance owned
5 3 by a resident of this state, regardless of whether delivered
5 4 or issued for delivery in this state.

5 5 10. "Related provider trust" means a titling trust or
5 6 other trust established by a licensed viatical settlement
5 7 provider or a financing entity for the sole purpose of holding
5 8 the ownership or beneficial interest in purchased policies in
5 9 connection with a financing transaction. The trust shall have
5 10 a written agreement with the licensed viatical settlement
5 11 provider under which the licensed viatical settlement provider
5 12 is responsible for ensuring compliance with all statutory and
5 13 regulatory requirements and under which the trust agrees to
5 14 make all records and files related to viatical settlement
5 15 transactions available to the commissioner as if those records
5 16 and files were maintained directly by the licensed viatical
5 17 settlement provider.

5 18 11. "Special purpose entity" means a corporation,
5 19 partnership, trust, limited liability company, or other
5 20 similar entity formed solely to provide either directly or
5 21 indirectly access to institutional capital markets for or in
5 22 connection with any of the following:

5 23 a. For a financing entity or licensed viatical settlement
5 24 provider.

5 25 b. (1) In connection with a transaction in which the
5 26 securities in the special purposes entity are acquired by the
5 27 viator or by qualified institutional buyers as defined in 17
5 28 C.F.R. } 230.144 promulgated by the United States securities
5 29 and exchange commission under the federal Securities Act of
5 30 1933, as amended, 15 U.S.C. } 77a et seq.

5 31 (2) In connection with a transaction in which the
5 32 securities pay a fixed rate of return commensurate with
5 33 established asset-backed institutional capital markets.

5 34 12. "Stranger-originated life insurance" means a practice
5 35 or a plan to initiate a life insurance policy for the benefit
6 1 of a third-party investor who, at the time of policy
6 2 origination, has no insurable interest in the insured.

6 3 a. Stranger-originated life insurance practices include
6 4 cases in which life insurance is purchased with resources or
6 5 guarantees from or through a person or entity who, at the time
6 6 of the policy inception, could not lawfully initiate the
6 7 policy by the person or entity, and where, at the time of the
6 8 policy's inception, there is an arrangement or agreement,
6 9 whether verbal or written, to directly or indirectly transfer
6 10 the ownership of the policy or the policy benefits to a third
6 11 party. Trusts that are created to give the appearance of an
6 12 insurable interest, and are used to initiate policies for
6 13 investors, violate insurable interest laws and the prohibition
6 14 against wagering on life.

6 15 b. Stranger-originated life insurance arrangements do not
6 16 include those practices set forth in subsection 15, paragraph
6 17 "d".

6 18 ~~3-~~ 13. "Terminally ill" means having an illness or
6 19 sickness that can reasonably be expected to result in death in
6 20 twenty-four months or less.

6 21 14. "Viatical settlement broker" means a person, including
6 22 a life insurance producer as provided for in section 508E.3,
6 23 who, working exclusively on behalf of a viator and for a fee,
6 24 commission, or other valuable consideration, offers or
6 25 attempts to negotiate viatical settlement contracts between a
6 26 viator and one or more viatical settlement providers or one or
6 27 more viatical settlement brokers. Notwithstanding the manner
6 28 in which the viatical settlement broker is compensated, a
6 29 viatical settlement broker is deemed to represent only the
6 30 viator, and not the insurer or the viatical settlement
6 31 provider, and owes a fiduciary duty to the viator to act
6 32 according to the viator's instructions and in the best
6 33 interest of the viator. "Viatical settlement broker" does not
6 34 include an attorney, certified public accountant, or a
6 35 financial planner accredited by a nationally recognized
7 1 accreditation agency who is retained to represent the viator
7 2 and whose compensation is not paid directly or indirectly by
7 3 the viatical settlement provider or purchaser.

7 4 ~~4-~~ 15. a. "Viatical settlement contract" means a written
7 5 agreement entered into between a viator and a viatical

7 6 settlement provider and a person who owns or is insured under
7 7 a life insurance or any affiliate of the viatical settlement
7 8 provider establishing the terms under which compensation or
7 9 anything of value is or will be paid, which compensation or
7 10 value is less than the expected death benefits of the policy
7 11 in return for the viator's present or future assignment,
7 12 transfer, sale, devise, or bequest of the death benefit or
7 13 ownership of any portion of the insurance policy or
7 14 certificate, or who owns or is covered under a group life of
7 15 insurance policy.

7 16 b. "Viatical settlement contract" includes a premium
7 17 finance loan made for a life insurance policy by a lender to a
7 18 viator on, before, or after the date of issuance of the policy
7 19 where any of the following applies:

7 20 (1) The viator or the insured receives on the date of the
7 21 premium finance loan a guarantee of a future viatical
7 22 settlement value of the policy.

7 23 (2) The viator or the insured agrees on the date of the
7 24 premium finance loan to sell the policy or any portion of its
7 25 death benefit on any date following the issuance of the
7 26 policy.

7 27 c. "Viatical settlement contract" also includes the
7 28 transfer for compensation or value of ownership or beneficial
7 29 interest in a trust or other entity that owns a life insurance
7 30 policy if the trust or other entity was formed or availed of
7 31 for the principal purpose of acquiring one or more life
7 32 insurance policies, which life insurance policy insures the
7 33 life of a person residing in this state.

7 34 d. "Viatical settlement contract" does not mean a written
7 35 agreement entered into between a viator and a person having an
8 1 insurable interest in the viator's life. include any of the
8 2 following:

8 3 (1) A policy loan or accelerated death benefit made by the
8 4 insurer pursuant to the policy's terms.

8 5 (2) Loan proceeds that are used solely to pay any of the
8 6 following:

8 7 (a) Premiums for the policy.

8 8 (b) The costs of the loan, including, without limitation,
8 9 interest, arrangement fees, utilization fees and similar fees,
8 10 closing costs, legal fees and expenses, trustee fees and
8 11 expenses, and third-party collateral provider fees and
8 12 expenses, including fees payable to letter of credit issuers.

8 13 (3) A loan made by a bank or other licensed financial
8 14 institution in which the lender takes an interest in a life
8 15 insurance policy solely to secure repayment of a loan or, if
8 16 there is a default on the loan and the policy is transferred,
8 17 the transfer of such a policy by the lender, provided that
8 18 neither the default itself nor the transfer of the policy in
8 19 connection with such default is pursuant to an agreement or
8 20 understanding with any other person for the purpose of evading
8 21 regulation under this chapter.

8 22 (4) A loan made by a lender that does not violate
8 23 insurance premium finance law, provided that the premium
8 24 finance loan is not described in paragraph "b".

8 25 (5) An agreement where all the parties are closely related
8 26 to the insured by blood or law; have a lawful substantial
8 27 economic interest in the continued life, health, and bodily
8 28 safety of the person insured; or are trusts established
8 29 primarily for the benefit of such parties.

8 30 (6) Any designation, consent, or agreement by an insured
8 31 who is an employee of an employer in connection with the
8 32 purchase by the employer, or trust established by the
8 33 employer, of life insurance on the life of the employee.

8 34 (7) A bona fide business succession planning arrangement
8 35 between one or more of the following:

9 1 (a) Shareholders in a corporation or between a corporation
9 2 and one or more of its shareholders or one or more trusts
9 3 established by its shareholders.

9 4 (b) Partners in a partnership or between a partnership and
9 5 one or more of its partners or one or more trusts established
9 6 by its partners.

9 7 (c) Members in a limited liability company or between a
9 8 limited liability company and one or more of its members or
9 9 one or more trusts established by its members.

9 10 (8) An agreement entered into by a service recipient, or a
9 11 trust established by the service recipient, and a service
9 12 provider, or a trust established by the service provider, who
9 13 performs significant services for the service recipient's
9 14 trade or business.

9 15 (9) Any other contract, transaction, or arrangement
9 16 exempted from the definition of viatical settlement contract

9 17 by the commissioner based on a determination that the
9 18 contract, transaction, or arrangement is not of the type
9 19 intended to be regulated by this chapter.
9 20 16. a. "Viatical settlement provider" means a person,
9 21 other than a viator, that enters into or effectuates a
9 22 viatical settlement contract with a viator resident in this
9 23 state.
9 24 b. "Viatical settlement provider" does not include any of
9 25 the following:
9 26 (1) A bank, savings bank, savings and loan association,
9 27 credit union, or other licensed lending institution that takes
9 28 an assignment of a life insurance policy solely as collateral
9 29 for a loan.
9 30 (2) A premium finance company making premium finance loans
9 31 and exempted by the commissioner from the licensing
9 32 requirement under the premium finance laws that takes an
9 33 assignment of a life insurance policy solely as collateral for
9 34 a loan.
9 35 (3) The issuer of the life insurance policy.
10 1 (4) An authorized or eligible insurer that provides
10 2 stop-loss coverage or financial guaranty insurance to a
10 3 viatical settlement provider, purchaser, financing entity,
10 4 special purpose entity, or related provider trust.
10 5 (5) A natural person who enters into or effectuates no
10 6 more than one agreement in a calendar year for the transfer of
10 7 life insurance policies for any value less than the expected
10 8 death benefit.
10 9 (6) A financing entity.
10 10 (7) A special purpose entity.
10 11 (8) A related provider trust.
10 12 (9) A viatical settlement purchaser.
10 13 (10) Any other person that the commissioner determines is
10 14 not the type of person intended to be covered by the
10 15 definition of viatical settlement provider.
10 16 17. a. "Viatical settlement purchaser" means a person who
10 17 provides a sum of money as consideration for a life insurance
10 18 policy or an interest in the death benefits of a life
10 19 insurance policy, or a person who owns or acquires or is
10 20 entitled to a beneficial interest in a trust that owns a
10 21 viatical settlement contract or is the beneficiary of a life
10 22 insurance policy that has been or will be the subject of a
10 23 viatical settlement contract, for the purpose of deriving an
10 24 economic benefit.
10 25 b. "Viatical settlement purchaser" does not include any of
10 26 the following:
10 27 (1) A licensee under this chapter.
10 28 (2) An accredited investor or qualified institutional
10 29 buyer as defined, respectively, in 17 C.F.R. } 230.501(a) or
10 30 17 C.F.R. } 230.144A as promulgated by the United States
10 31 securities and exchange commission under the federal
10 32 Securities Act of 1933, as amended, 15 U.S.C. } 77a et seq.
10 33 (3) A financing entity.
10 34 (4) A special purpose entity.
10 35 (5) A related provider trust.
11 1 18. "Viaticated policy" means a life insurance policy or
11 2 certificate that has been acquired by a viatical settlement
11 3 provider pursuant to a viatical settlement contract.
11 4 5- 19. a. "Viator" means a person selling the owner of a
11 5 life insurance policy or a certificate holder under a group
11 6 policy who resides in this state and enters or seeks to enter
11 7 into a viatical settlement contract. "Viator" includes but is
11 8 not limited to an owner of a life insurance policy or a
11 9 certificate holder under a group policy insuring the life of
11 10 an individual with a terminal or chronic illness or condition
11 11 except where specifically addressed. If there is more than
11 12 one viator on a single policy and the viators are residents of
11 13 different states, the transaction shall be governed by the law
11 14 of the state in which the viator having the largest percentage
11 15 ownership resides or, if the viators hold equal ownership, the
11 16 state of residence of one viator agreed upon in writing by all
11 17 the viators.
11 18 b. "Viator" does not include any of the following:
11 19 (1) A licensee under this chapter, including a life
11 20 insurance producer acting as a viatical settlement broker
11 21 pursuant to this chapter.
11 22 (2) A qualified institutional buyer as defined in 17
11 23 C.F.R. } 230.144=144A as promulgated by the United States
11 24 securities and exchange commission under the federal
11 25 Securities Act of 1933, as amended, 15 U.S.C. } 77a et seq.
11 26 (3) A financing entity.
11 27 (4) A special purpose entity.

11 28 (5) A related provider trust.

11 29 Sec. 3. Section 508E.3, Code 2007, is amended by striking
11 30 the section and inserting in lieu thereof the following:

11 31 508E.3 LICENSE AND BOND REQUIREMENTS.

11 32 1. a. A person shall not operate as a viatical settlement
11 33 provider or viatical settlement broker without first obtaining
11 34 a license from the commissioner of the state of residence of
11 35 the viator.

12 1 b. (1) A life insurance producer who has been duly
12 2 licensed as a resident insurance producer with a life line of
12 3 authority in this state or the life insurance producer's home
12 4 state for at least one year and is licensed as a nonresident
12 5 producer in this state shall be deemed to meet the licensing
12 6 requirements of this section and shall be permitted to operate
12 7 as a viatical settlement broker.

12 8 (2) Not later than thirty days from the first day of
12 9 operating as a viatical settlement broker, the life insurance
12 10 producer shall notify the commissioner that the life insurance
12 11 producer is acting as a viatical settlement broker on a form
12 12 prescribed by the commissioner, and shall pay any applicable
12 13 fee of up to one hundred dollars as provided by rules adopted
12 14 by the commissioner. The notification shall include an
12 15 acknowledgment by the life insurance producer that the life
12 16 insurance producer will operate as a viatical settlement
12 17 broker in accordance with this chapter.

12 18 (3) The insurer that issued the policy being viaticated
12 19 shall not be responsible for any act or omission of a viatical
12 20 settlement broker or viatical settlement provider arising out
12 21 of or in connection with the viatical settlement transaction,
12 22 unless the insurer receives compensation for the placement of
12 23 a viatical settlement contract from the viatical settlement
12 24 provider or viatical settlement broker in connection with the
12 25 viatical settlement contract.

12 26 c. A person licensed as an attorney, certified public
12 27 accountant, or financial planner accredited by a nationally
12 28 recognized accreditation agency who is retained to represent
12 29 the viator, whose compensation is not paid directly or
12 30 indirectly by the viatical settlement provider, may negotiate
12 31 viatical settlement contracts on behalf of the viator without
12 32 having to obtain a license as a viatical settlement broker.

12 33 2. An application for a viatical settlement provider or
12 34 viatical settlement broker license shall be made to the
12 35 commissioner by the applicant on a form prescribed by the
13 1 commissioner, and the application shall be accompanied by a
13 2 fee of not more than one hundred dollars as provided by rules
13 3 adopted by the commissioner.

13 4 3. A license may be renewed from year to year on the
13 5 anniversary date upon payment of the annual renewal fee of not
13 6 more than one hundred dollars as provided by rules adopted by
13 7 the commissioner. A failure to pay the fee by the renewal
13 8 date results in expiration of the license.

13 9 4. An applicant shall provide information on forms
13 10 required by the commissioner. The commissioner shall have
13 11 authority, at any time, to require the applicant to fully
13 12 disclose the identity of all stockholders, partners, officers,
13 13 members, and employees, and the commissioner may, in the
13 14 exercise of the commissioner's discretion, refuse to issue a
13 15 license in the name of a legal entity if not satisfied that
13 16 any officer, employee, stockholder, partner, or member thereof
13 17 who may materially influence the applicant's conduct meets the
13 18 standards of this chapter.

13 19 5. A license issued to a legal entity authorizes all
13 20 partners, officers, members, and designated employees to act
13 21 as viatical settlement providers or viatical settlement
13 22 brokers, as applicable, under the license, and all those
13 23 persons shall be named in the application and any supplements
13 24 to the application.

13 25 6. Upon the filing of an application and the payment of
13 26 the license fee, the commissioner shall make an investigation
13 27 of each applicant and issue a license if the commissioner
13 28 finds that the applicant complies with all of the following:

13 29 a. If a viatical settlement provider, has provided a
13 30 detailed plan of operation.

13 31 b. Is competent and trustworthy and intends to act in good
13 32 faith in the capacity involved by the license applied for.

13 33 c. Has a good business reputation and has had experience,
13 34 training, or education so as to be qualified in the business
13 35 for which the license is applied for.

14 1 d. (1) If a viatical settlement provider, has
14 2 demonstrated evidence of financial responsibility in a format
14 3 prescribed by the commissioner through either a surety bond

14 4 executed and issued by an insurer authorized to issue surety
14 5 bonds in this state, or a deposit of cash, certificates of
14 6 deposit, or securities, or any combination thereof in the
14 7 amount of one hundred thousand dollars.

14 8 (2) If a viatical settlement broker, has demonstrated
14 9 evidence of financial responsibility in a format prescribed by
14 10 the commissioner through either a surety bond executed and
14 11 issued by an insurer authorized to issue surety bonds in this
14 12 state, or a deposit of cash, certificates of deposit, or
14 13 securities, or any combination thereof in the amount of one
14 14 hundred thousand dollars.

14 15 (3) The commissioner may demand evidence of financial
14 16 responsibility at any time the commissioner deems necessary.

14 17 (4) Any surety bond issued pursuant to this paragraph "d"
14 18 shall be in the favor of this state and shall specifically
14 19 authorize recovery by the commissioner on behalf of any person
14 20 in this state who sustained damages as the result of an
14 21 erroneous act, failure to act, conviction of fraud, or upon a
14 22 finding after hearing by the commissioner that a person has
14 23 engaged in any act or practice constituting a violation of
14 24 this chapter or a rule adopted or order issued under this
14 25 chapter of an unfair practice by the viatical settlement
14 26 provider or viatical settlement broker.

14 27 (5) Notwithstanding any provision of this paragraph "d" to
14 28 contrary, the commissioner shall accept, as evidence of
14 29 financial responsibility, proof that financial instruments in
14 30 accordance with the requirements in this paragraph "d" have
14 31 been filed with one state where the applicant is licensed as a
14 32 viatical settlement provider or viatical settlement broker.

14 33 e. If a legal entity, provides a certificate of good
14 34 standing from the state of its domicile.

14 35 f. If a viatical settlement provider or viatical
15 1 settlement broker, has provided an antifraud plan that meets
15 2 the requirements of section 508E.14, subsection 7.

15 3 7. The commissioner shall not issue a license to a
15 4 nonresident applicant unless a written designation of an agent
15 5 for service of process is filed and maintained with the
15 6 commissioner or the applicant has filed with the commissioner
15 7 the applicant's written irrevocable consent that any action
15 8 against the applicant may be commenced against the applicant
15 9 by service of process on the commissioner.

15 10 8. A viatical settlement provider or viatical settlement
15 11 broker shall provide to the commissioner new or revised
15 12 information about officers, ten-percent-or-more stockholders,
15 13 partners, directors, members, or designated employees within
15 14 thirty days of the change.

15 15 9. An individual licensed as a viatical settlement broker
15 16 shall complete on a biennial basis fifteen hours of training
15 17 related to viatical settlements and viatical settlement
15 18 transactions, as required by the commissioner; provided,
15 19 however, that a life insurance producer who is operating as a
15 20 viatical settlement broker pursuant to subsection 1, paragraph
15 21 "b", shall not be subject to the requirements of this
15 22 subsection. Any person failing to meet the requirements of
15 23 this subsection shall be subject to the penalties imposed by
15 24 the commissioner.

15 25 10. Fees collected pursuant to this section shall be
15 26 deposited into the general fund of the state.

15 27 Sec. 4. Section 508E.4, Code 2007, is amended by striking
15 28 the section and inserting in lieu thereof the following:

15 29 508E.4 LICENSE REVOCATION AND DENIAL.

15 30 1. The commissioner may refuse to issue, suspend, revoke,
15 31 or refuse to renew the license of a viatical settlement
15 32 provider or viatical settlement broker if the commissioner
15 33 finds that any of the following applies:

15 34 a. There was any material misrepresentation in the
15 35 application for the license.

16 1 b. The licensee or any officer, partner, member, or key
16 2 management personnel has been convicted of fraudulent or
16 3 dishonest practices, is subject to a final administrative
16 4 action, or is otherwise shown to be untrustworthy or
16 5 incompetent.

16 6 c. The viatical settlement provider demonstrates a pattern
16 7 of unreasonable payments to viators.

16 8 d. The licensee or any officer, partner, member, or key
16 9 management personnel has been found guilty of, or has pleaded
16 10 guilty or nolo contendere to, any felony, or to a misdemeanor
16 11 involving fraud or moral turpitude, regardless of whether a
16 12 judgment of conviction has been entered by the court.

16 13 e. The viatical settlement provider has entered into any
16 14 viatical settlement contract that has not been approved

16 15 pursuant to this chapter.

16 16 f. The viatical settlement provider has failed to honor
16 17 contractual obligations set out in a viatical settlement
16 18 contract.

16 19 g. The licensee no longer meets the requirements for
16 20 initial licensure.

16 21 h. The viatical settlement provider has assigned,
16 22 transferred, or pledged a viaticated policy to a person other
16 23 than a viatical settlement provider licensed in this state,
16 24 viatical settlement purchaser, an accredited investor, or
16 25 qualified institutional buyer as defined respectively in 17
16 26 C.F.R. } 230.501(a) or 17 C.F.R. } 230.144A as promulgated by
16 27 the United States securities and exchange commission under the
16 28 federal Securities Act of 1933, as amended, 15 U.S.C. } 77a et
16 29 seq., a financing entity, special purpose entity, or related
16 30 provider trust.

16 31 i. The licensee or any officer, partner, member, or key
16 32 management personnel has violated any provision of this
16 33 chapter.

16 34 2. The commissioner may suspend, revoke, or refuse to
16 35 renew the license of a viatical settlement broker or a life
17 1 insurance producer operating as a viatical settlement broker
17 2 pursuant to this chapter if the commissioner finds that the
17 3 viatical settlement broker or life insurance producer has
17 4 violated the provisions of this chapter or has otherwise
17 5 engaged in bad faith conduct with one or more viators.

17 6 3. If the commissioner denies a license application or
17 7 suspends, revokes, or refuses to renew the license of a
17 8 viatical settlement provider or viatical settlement broker, or
17 9 suspends, revokes, or refuses to renew a license of a life
17 10 insurance producer operating as a viatical settlement broker
17 11 pursuant to this chapter, the commissioner shall conduct a
17 12 hearing in accordance with chapter 17A.

17 13 Sec. 5. NEW SECTION. 508E.5 APPROVAL OF VIATICAL
17 14 SETTLEMENT CONTRACTS AND DISCLOSURE STATEMENTS.

17 15 A person shall not use a viatical settlement contract form
17 16 or provide to a viator a disclosure statement form in this
17 17 state unless first filed with and approved by the
17 18 commissioner. The commissioner shall disapprove a viatical
17 19 settlement contract form or disclosure statement form if, in
17 20 the commissioner's opinion, the contract or provisions
17 21 contained therein fail to meet the requirements of sections
17 22 508E.8, 508E.10, 508E.13, and 508.14, subsection 2, or are
17 23 unreasonable, contrary to the interests of the public, or
17 24 otherwise misleading or unfair to the viator. At the
17 25 commissioner's discretion, the commissioner may require the
17 26 submission of advertising material. The commissioner's
17 27 approval of any of the materials shall not be a defense or
17 28 otherwise preclude a civil action for fraud.

17 29 Sec. 6. NEW SECTION. 508E.6 REPORTING REQUIREMENTS AND
17 30 PRIVACY.

17 31 1. For any policy settled within five years of policy
17 32 issuance, each viatical settlement provider shall file with
17 33 the commissioner on or before March 1 of each year an annual
17 34 statement containing such information as the commissioner may
17 35 adopt by rule. In addition to any other requirements, the
18 1 annual statement shall specify the total number, aggregate
18 2 face amount, and life settlement proceeds of policies settled
18 3 during the immediately preceding calendar year, together with
18 4 a breakdown of the information by policy issue year. The
18 5 annual statement shall also include the names of the insurance
18 6 companies whose policies have been settled and the viatical
18 7 settlement brokers that have settled said policies. Such
18 8 information shall be limited to only those transactions where
18 9 the viator is a resident of this state. Notwithstanding
18 10 chapter 22, individual transaction data regarding the business
18 11 of viatical settlements or data that could compromise the
18 12 privacy of personal, financial, and health information of the
18 13 viator or insured shall be filed with the commissioner on a
18 14 confidential basis.

18 15 2. Except as otherwise allowed or required by law, a
18 16 viatical settlement provider, viatical settlement broker,
18 17 insurance company, insurance producer, information bureau,
18 18 rating agency or company, or any other person with actual
18 19 knowledge of an insured's identity shall not disclose that
18 20 identity as an insured, or the insured's financial or medical
18 21 information to any other person unless the disclosure is any
18 22 of the following:

18 23 a. Necessary to effect a viatical settlement between the
18 24 viator and a viatical settlement provider and the viator and
18 25 insured have provided prior written consent to the disclosure.

18 26 b. Provided in response to an investigation or examination
18 27 by the commissioner or any other governmental officer or
18 28 agency or pursuant to the requirements of section 508E.14,
18 29 subsection 3.

18 30 c. A term of or condition to the transfer of a policy by
18 31 one viatical settlement provider to another viatical
18 32 settlement provider.

18 33 d. Necessary to permit a financing entity, related
18 34 provider trust, or special purpose entity to finance the
18 35 purchase of policies by a viatical settlement provider and the
19 1 viator and insured have provided prior written consent to the
19 2 disclosure.

19 3 e. Necessary to allow the viatical settlement provider,
19 4 viatical settlement broker, or their authorized
19 5 representatives to make contacts for the purpose of
19 6 determining health status.

19 7 f. Required to purchase stop-loss coverage or financial
19 8 guaranty insurance.

19 9 Sec. 7. NEW SECTION. 508E.7 EXAMINATION OR
19 10 INVESTIGATIONS.

19 11 1. AUTHORITY, SCOPE, AND SCHEDULING OF EXAMINATIONS.

19 12 a. (1) The commissioner may conduct an examination under
19 13 this chapter of a licensee as often as the commissioner in the
19 14 commissioner's discretion deems appropriate after considering
19 15 the factors set forth in this paragraph "a".

19 16 (2) In scheduling and determining the nature, scope, and
19 17 frequency of the examinations, the commissioner shall consider
19 18 such matters as the consumer complaints, results of financial
19 19 statement analyses and ratios, changes in management or
19 20 ownership, actuarial opinions, reports of independent
19 21 certified public accountants, and other relevant criteria as
19 22 determined by the commissioner.

19 23 b. For purposes of completing an examination of a licensee
19 24 under this chapter, the commissioner may examine or
19 25 investigate any person, or the business of any person, in so
19 26 far as the examination or investigation is, in the sole
19 27 discretion of the commissioner, necessary or material to the
19 28 examination of the licensee.

19 29 c. In lieu of an examination under this chapter of any
19 30 foreign or alien licensee licensed in this state, the
19 31 commissioner may, at the commissioner's discretion, accept an
19 32 examination report on the licensee as prepared by the
19 33 commissioner for the licensee's state of domicile or
19 34 port-of-entry state.

19 35 d. As far as practical, the examination of a foreign or
20 1 alien licensee shall be made in cooperation with the insurance
20 2 supervisory officials of other states in which the licensee
20 3 transacts business.

20 4 2. RECORD RETENTION REQUIREMENTS.

20 5 a. A person required to be licensed pursuant to section
20 6 508E.3 shall for five years retain copies of all of the
20 7 following:

20 8 (1) Proposed, offered, or executed contracts, purchase
20 9 agreements, underwriting documents, policy forms, and
20 10 applications from the date of the proposal, offer, or
20 11 execution of the contract or purchase agreement, whichever is
20 12 later.

20 13 (2) All checks, drafts, or other evidence and
20 14 documentation related to the payment, transfer, deposit, or
20 15 release of funds from the date of the transaction.

20 16 (3) All other records and documents related to the
20 17 requirements of this chapter.

20 18 b. This section does not relieve a person of the
20 19 obligation to produce documents described in paragraph "a" to
20 20 the commissioner after the retention period has expired if the
20 21 person has retained the documents.

20 22 c. Records required to be retained by paragraph "a" must
20 23 be legible and complete and may be retained in paper,
20 24 photograph, microprocess, magnetic, mechanical, or electronic
20 25 media, or by any process that accurately reproduces or forms a
20 26 durable medium for the reproduction of a record.

20 27 3. CONDUCT OF EXAMINATIONS.

20 28 a. Upon determining that an examination should be
20 29 conducted, the commissioner shall issue an examination warrant
20 30 appointing one or more examiners to perform the examination
20 31 and instructing them as to the scope of the examination. In
20 32 conducting the examination, the examiner shall observe those
20 33 guidelines and procedures set forth in the examiners handbook
20 34 adopted by the national association of insurance
20 35 commissioners. The commissioner may also adopt rules for such
21 1 other guidelines or procedures as the commissioner may deem

21 2 appropriate.
21 3 b. Every licensee or person from whom information is
21 4 sought, its officers, directors, and agents shall provide to
21 5 the examiners timely, convenient, and free access at all
21 6 reasonable hours at its offices to all books, records,
21 7 accounts, papers, documents, assets, and computer or other
21 8 recordings relating to the property, assets, business, and
21 9 affairs of the licensee being examined. The officers,
21 10 directors, employees, and agents of the licensee or person
21 11 shall facilitate the examination and aid in the examination so
21 12 far as it is in their power to do so. The refusal of a
21 13 licensee, by its officers, directors, employees, or agents, to
21 14 submit to examination or to comply with any reasonable written
21 15 request of the commissioner shall be grounds for suspension or
21 16 refusal of, or nonrenewal of, any license or authority held by
21 17 the licensee to engage in the viatical settlement business or
21 18 other business subject to the commissioner's jurisdiction.
21 19 Any proceedings for suspension, revocation, or refusal of any
21 20 license or authority shall be conducted pursuant to section
21 21 507B.6A.

21 22 c. The commissioner shall have the power to issue
21 23 subpoenas, to administer oaths, and to examine under oath any
21 24 person as to any matter pertinent to the examination. Upon
21 25 the failure or refusal of a person to obey a subpoena, the
21 26 commissioner may petition a court of competent jurisdiction,
21 27 and upon proper showing, the court may enter an order
21 28 compelling the witness to appear and testify or produce
21 29 documentary evidence. A failure to obey the court order shall
21 30 be punishable as contempt of court.

21 31 d. When making an examination under this chapter, the
21 32 commissioner may retain attorneys, appraisers, independent
21 33 actuaries, independent certified public accountants, or other
21 34 professionals and specialists as examiners, the reasonable
21 35 cost of which shall be borne by the licensee that is the
22 1 subject of the examination.

22 2 e. Nothing contained in this chapter shall be construed to
22 3 limit the commissioner's authority to terminate or suspend an
22 4 examination in order to pursue other legal or regulatory
22 5 action pursuant to the insurance laws of this state. Findings
22 6 of fact and conclusions made pursuant to any examination shall
22 7 be prima facie evidence in any legal or regulatory action.

22 8 f. The commissioner's authority to use and, if
22 9 appropriate, to make public any final or preliminary
22 10 examination report, any examiner or licensee workpapers, or
22 11 other documents, or any other information discovered or
22 12 developed during the course of any examination in the
22 13 furtherance of any legal or regulatory action shall be
22 14 permitted consistent with section 507.14.

22 15 4. EXAMINATION REPORTS.

22 16 a. Examination reports shall be comprised of only facts
22 17 appearing upon the books, records, or other documents of the
22 18 licensee, its agents, or other persons examined, or as
22 19 ascertained from the testimony of its officers, agents, or
22 20 other persons examined concerning its affairs, and such
22 21 conclusions and recommendations as the examiners find
22 22 reasonably warranted from the facts.

22 23 b. Not later than sixty days following completion of the
22 24 examination, the examiner in charge shall file with the
22 25 commissioner a verified written report of examination under
22 26 oath. Upon receipt of the verified report, the commissioner
22 27 shall transmit the report to the licensee examined, together
22 28 with a notice that shall afford the licensee examined a
22 29 reasonable opportunity of not more than thirty days to make a
22 30 written submission or rebuttal with respect to any matters
22 31 contained in the examination report.

22 32 c. In the event the commissioner determines that
22 33 regulatory action is appropriate as a result of an
22 34 examination, the commissioner may initiate any proceedings or
22 35 actions provided by law.

23 1 5. CONFIDENTIALITY OF EXAMINATION INFORMATION.

23 2 a. Notwithstanding chapter 22, the names and individual
23 3 identification data for all viators shall be considered
23 4 private and confidential information and shall not be
23 5 disclosed by the commissioner, unless required by law.

23 6 b. Except as otherwise provided in this chapter, all
23 7 examination reports, working papers, recorded information,
23 8 documents, and copies thereof produced by, obtained by, or
23 9 disclosed to the commissioner or any other person in the
23 10 course of an examination made under this chapter, or in the
23 11 course of an analysis or investigation by the commissioner of
23 12 the financial condition or market conduct of a licensee, shall

23 13 be confidential by law and privileged, shall not be subject to
23 14 chapter 22, shall not be subject to subpoena, and shall not be
23 15 subject to discovery or admissible in evidence in any private
23 16 civil action. The commissioner is authorized to use the
23 17 documents, materials, or other information in the furtherance
23 18 of any regulatory or legal action brought as part of the
23 19 commissioner's official duties. All examination reports,
23 20 working papers, recorded information, documents, and their
23 21 copies produced by, obtained by, or disclosed to the
23 22 commissioner or any other person in the course of an
23 23 examination made under this chapter, or in the course of an
23 24 analysis or investigation by the commissioner of the financial
23 25 condition or market conduct of a licensee shall be privileged
23 26 and confidential in any judicial or administrative proceeding
23 27 except for any of the following:

23 28 (1) An administrative proceeding brought by the insurance
23 29 division under chapter 17A.

23 30 (2) A judicial review proceeding under chapter 17A brought
23 31 by an insurer to whom the records relate.

23 32 (3) An action or proceeding which arises out of the
23 33 criminal provisions of the laws of this state or the United
23 34 States.

23 35 c. Documents, materials, or other information, including
24 1 but not limited to all working papers and copies, in the
24 2 possession or control of the national association of insurance
24 3 commissioners and its affiliates and subsidiaries shall be
24 4 confidential by law and privileged, shall not be subject to
24 5 chapter 22, shall not be subject to subpoena, and shall not be
24 6 subject to discovery or admissible in evidence in any private
24 7 civil action if they are any of the following:

24 8 (1) Created, produced, or obtained by or disclosed to the
24 9 national association of insurance commissioners and its
24 10 affiliates and subsidiaries in the course of assisting an
24 11 examination made under this chapter, or assisting the
24 12 commissioner in the analysis or investigation of the financial
24 13 condition or market conduct of a licensee.

24 14 (2) Disclosed to the national association of insurance
24 15 commissioners and its affiliates and subsidiaries under
24 16 paragraph "d" by the commissioner.

24 17 (3) For the purposes of paragraph "b", "chapter" includes
24 18 the law of another state or jurisdiction that is substantially
24 19 similar to this chapter.

24 20 d. In order to assist in the performance of the
24 21 commissioner's duties, the commissioner may do all of the
24 22 following:

24 23 (1) Share documents, materials, or other information,
24 24 including the confidential and privileged documents,
24 25 materials, or information subject to paragraph "a", with other
24 26 state, federal, and international regulatory agencies, with
24 27 the national association of insurance commissioners and its
24 28 affiliates and subsidiaries, and with state, federal, and
24 29 international law enforcement authorities, provided that the
24 30 recipient agrees to maintain the confidentiality and
24 31 privileged status of the documents, materials, communications,
24 32 or other information.

24 33 (2) Receive documents, materials, communications, or
24 34 information, including otherwise confidential and privileged
24 35 documents, materials, or information, from the national
25 1 association of insurance commissioners and its affiliates and
25 2 subsidiaries, notwithstanding chapter 22, and from regulatory
25 3 and law enforcement officials of other foreign or domestic
25 4 jurisdictions, and shall maintain as confidential or
25 5 privileged any documents, materials, or information received
25 6 with notice or the understanding that it is confidential or
25 7 privileged under the laws of the jurisdiction that is the
25 8 source of the documents, materials, or information.

25 9 (3) Enter into agreements governing sharing and use of
25 10 information consistent with section 507.14, subsection 4.

25 11 e. No waiver of any applicable privilege or claim of
25 12 confidentiality in the documents, materials, or information
25 13 shall occur as a result of disclosure to the commissioner
25 14 under this section or as a result of sharing as authorized in
25 15 paragraph "c".

25 16 f. A privilege established under the law of any state or
25 17 jurisdiction that is substantially similar to the privilege
25 18 established under this subsection shall be available and
25 19 enforced in any proceeding in, and in any court of, this
25 20 state.

25 21 g. Nothing contained in this chapter shall prevent or be
25 22 construed as prohibiting the commissioner from disclosing the
25 23 content of an examination report, preliminary examination

25 24 report or results, or any matter relating thereto, to the
25 25 commissioner of any other state or country, or to law
25 26 enforcement officials of this or any other state or agency of
25 27 the federal government at any time or to the national
25 28 association of insurance commissioners, so long as such agency
25 29 or office receiving the report or matters relating thereto
25 30 agrees in writing to hold it confidential and in a manner
25 31 consistent with this chapter.

25 32 6. CONFLICT OF INTEREST.

25 33 a. An examiner may not be appointed by the commissioner if
25 34 the examiner, either directly or indirectly, has a conflict of
25 35 interest or is affiliated with the management of or owns a
26 1 pecuniary interest in any person subject to examination under
26 2 this chapter. This section shall not be construed to
26 3 automatically preclude an examiner from being any of the
26 4 following:

26 5 (1) A viator.

26 6 (2) An insured in a viaticated insurance policy.

26 7 (3) A beneficiary in an insurance policy that is proposed
26 8 to be viaticated.

26 9 b. Notwithstanding the requirements of paragraph "a", the
26 10 commissioner may retain from time to time, on an individual
26 11 basis, qualified actuaries, certified public accountants, or
26 12 other similar individuals who are independently practicing
26 13 their professions, even though these persons may from time to
26 14 time be similarly employed or retained by persons subject to
26 15 examination under this chapter.

26 16 7. COST OF EXAMINATIONS.

26 17 a. The commissioner may appoint insurance examiners who,
26 18 while conducting examinations, shall possess all the powers
26 19 conferred upon the commissioner for such purposes. The entire
26 20 time of the examiners shall be under the control of the
26 21 commissioner, and shall be employed as the commissioner may
26 22 direct.

26 23 b. The commissioner may, when in the commissioner's
26 24 judgment it is advisable, appoint assistants to aid in making
26 25 examinations. The examiners shall be compensated on the basis
26 26 of the normal workweek of the insurance division at a salary
26 27 to be fixed by the commissioner subject, however, to the
26 28 provisions of section 505.14. The compensation shall be paid
26 29 from appropriations for such purposes upon certification of
26 30 the commissioner, which shall be reimbursed as provided in
26 31 sections 507.8 and 507.9.

26 32 c. When making an examination under this chapter, the
26 33 commissioner may retain attorneys, appraisers, independent
26 34 actuaries, independent certified public accountants, or other
26 35 professionals and specialists as examiners, the reasonable
27 1 cost of which shall be borne by the company which is the
27 2 subject of the examination.

27 3 d. The commissioner shall, upon the completion of an
27 4 examination, or at such regular intervals prior to completion
27 5 as the commissioner determines, prepare an account of the
27 6 costs incurred in performing and preparing the report of such
27 7 examinations which shall be charged to and paid by the company
27 8 examined, and upon failure or refusal of a company examined to
27 9 pay such costs, the same may be recovered by the commissioner
27 10 or the attorney general in an action brought in the name of
27 11 the state, and the commissioner may also revoke the
27 12 certificate of authority of such company to transact business
27 13 within this state.

27 14 8. IMMUNITY FROM LIABILITY.

27 15 a. No cause of action shall arise, nor shall any liability
27 16 be imposed, against the commissioner, the commissioner's
27 17 authorized representatives, or any examiner appointed by the
27 18 commissioner for any statements made or conduct performed
27 19 reasonably and in good faith while carrying out the provisions
27 20 of this chapter.

27 21 b. No cause of action shall arise, nor shall any liability
27 22 be imposed, against any person for the act of communicating or
27 23 delivering information or data to the commissioner or the
27 24 commissioner's authorized representative or examiner pursuant
27 25 to an examination made under this chapter, if the act of
27 26 communication or delivery was performed reasonably and in good
27 27 faith and without fraudulent intent or the intent to deceive.
27 28 This paragraph does not abrogate or modify in any way any
27 29 common law or statutory privilege or immunity heretofore
27 30 enjoyed by any person identified in paragraph "a".

27 31 9. INVESTIGATIVE AUTHORITY OF THE COMMISSIONER. The
27 32 commissioner may investigate suspected fraudulent viatical
27 33 settlement acts and persons engaged in the business of
27 34 viatical settlements.

27 35 Sec. 8. NEW SECTION. 508E.8 DISCLOSURE TO VIATOR.

28 1 1. With each application for a viatical settlement, a
28 2 viatical settlement provider or viatical settlement broker
28 3 shall provide the viator with at least the following
28 4 disclosures no later than the time the application for the
28 5 viatical settlement contract is signed by all parties. The
28 6 disclosures shall be provided in a separate document that is
28 7 signed by the viator and the viatical settlement provider or
28 8 viatical settlement broker, and shall provide all of the
28 9 following information:

28 10 a. There are possible alternatives to viatical settlement
28 11 contracts including any accelerated death benefits or policy
28 12 loans offered under the viator's life insurance policy.

28 13 b. That a viatical settlement broker represents
28 14 exclusively the viator, and not the insurer or the viatical
28 15 settlement provider, and owes a fiduciary duty to the viator,
28 16 including a duty to act according to the viator's instructions
28 17 and in the best interest of the viator.

28 18 c. Some or all of the proceeds of the viatical settlement
28 19 may be taxable under federal income tax and state franchise
28 20 and income taxes, and assistance should be sought from a
28 21 professional tax advisor.

28 22 d. Proceeds of the viatical settlement could be subject to
28 23 the claims of creditors.

28 24 e. Receipt of the proceeds of a viatical settlement may
28 25 adversely affect the viator's eligibility for Medicaid or
28 26 other government benefits or entitlements, and advice should
28 27 be obtained from the appropriate government agencies.

28 28 f. The viator has the right to rescind a viatical
28 29 settlement contract before the earlier of sixty days after the
28 30 date upon which the viatical settlement contract is executed
28 31 by all parties or thirty days after the viatical settlement
28 32 proceeds have been paid to the viator, as provided in section
28 33 508E.10, subsection 3. Rescission, if exercised by the viator,
28 34 is effective only if both notice of the rescission is given, and
28 35 the viator repays all proceeds and any premiums, loans, and
29 1 loan interest paid on account of the viatical settlement
29 2 within the rescission period. If the insured dies during the
29 3 rescission period, the viatical settlement contract shall be
29 4 deemed to have been rescinded, subject to repayment by the
29 5 viator or the viator's estate of all viatical settlement
29 6 proceeds and any premiums, loans, and loan interest that have
29 7 been paid by the viatical settlement provider or purchaser
29 8 within sixty days of the insured's death.

29 9 g. Funds will be sent to the viator within three business
29 10 days after the viatical settlement provider has received the
29 11 insurer's or group administrator's written acknowledgment that
29 12 ownership of the policy or interest in the certificate has
29 13 been transferred and the beneficiary has been designated.

29 14 h. Entering into a viatical settlement contract may cause
29 15 other rights or benefits, including conversion rights and
29 16 waiver of premium benefits, that may exist under the policy or
29 17 certificate, to be forfeited by the viator. Assistance should
29 18 be sought from a financial adviser.

29 19 i. Disclosure to a viator shall include distribution of a
29 20 brochure describing the process of viatical settlements. The
29 21 national association of insurance commissioners form for the
29 22 brochure shall be used unless another form is developed or
29 23 approved by the commissioner.

29 24 j. The disclosure document shall contain the following
29 25 language:

29 26 "All medical, financial, or personal information solicited
29 27 or obtained by a viatical settlement provider or viatical
29 28 settlement broker about an insured, including the insured's
29 29 identity or the identity of family members, a spouse, or a
29 30 significant other may be disclosed as necessary to effect the
29 31 viatical settlement between the viator and the viatical
29 32 settlement provider. If you are asked to provide this
29 33 information, you will be asked to consent to the disclosure.
29 34 The information may be provided to someone who buys the policy
29 35 or provides funds for the purchase. You may be asked to renew
30 1 your permission to share information every two years."

30 2 k. Following execution of a viatical contract, the insured
30 3 may be contacted for the purpose of determining the insured's
30 4 health status and to confirm the insured's residential or
30 5 business street address and telephone number, or as otherwise
30 6 provided in this chapter. This contact shall be limited to
30 7 once every three months if the insured has a life expectancy
30 8 of more than one year, and no more than once per month if the
30 9 insured has a life expectancy of one year or less. All such
30 10 contracts shall be made only by a viatical settlement provider

30 11 licensed in the state in which the viator resided at the time
30 12 of the viatical settlement, or by the authorized
30 13 representative of a duly licensed viatical settlement
30 14 provider.

30 15 2. A viatical settlement provider shall provide the viator
30 16 with at least the following disclosures no later than the date
30 17 the viatical settlement contract is signed by all parties.

30 18 The disclosures shall be conspicuously displayed in the
30 19 viatical settlement contract or in a separate document signed
30 20 by the viator and provide all of the following information:

30 21 a. The affiliation, if any, between the viatical
30 22 settlement provider and the issuer of the insurance policy to
30 23 be viaticated.

30 24 b. The name, business address, and telephone number of the
30 25 viatical settlement provider.

30 26 c. Any affiliations or contractual arrangements between
30 27 the viatical settlement provider and the viatical settlement
30 28 purchaser.

30 29 d. If an insurance policy to be viaticated has been issued
30 30 as a joint policy or involves family riders or any coverage of
30 31 a life other than the insured under the policy to be
30 32 viaticated, a notice of the viator's possible loss of coverage
30 33 on the other lives under the policy and to consult with the
30 34 viator's insurance producer or the insurer issuing the policy
30 35 for advice on the proposed viatical settlement.

31 1 e. The dollar amount of the current death benefit payable
31 2 to the viatical settlement provider under the policy or
31 3 certificate. If known, the viatical settlement provider shall
31 4 also disclose the availability of any additional guaranteed
31 5 insurance benefits, the dollar amount of any accidental death
31 6 and dismemberment benefits under the policy or certificate,
31 7 and the extent to which the viator's interest in those
31 8 benefits will be transferred as a result of the viatical
31 9 settlement contract.

31 10 f. Whether the funds will be escrowed with an independent
31 11 third party during the transfer process, and if so, provide
31 12 the name, business address, and telephone number of the
31 13 independent third-party escrow agent, and the fact that the
31 14 viator or owner may inspect or receive copies of the relevant
31 15 escrow or trust agreements or documents.

31 16 3. A viatical settlement broker shall provide the viator
31 17 with at least the following disclosures no later than the date
31 18 the viatical settlement contract is signed by all parties.

31 19 The disclosures shall be conspicuously displayed in the
31 20 viatical settlement contract or in a separate document signed
31 21 by the viator and provide all of the following information:

31 22 a. The name, business address, and telephone number of the
31 23 viatical settlement broker.

31 24 b. A full, complete, and accurate description of all
31 25 offers, counteroffers, acceptances, and rejections relating to
31 26 the proposed viatical settlement contract.

31 27 c. Any affiliations or contractual arrangements between
31 28 the viatical settlement broker and any person making an offer
31 29 in connection with the proposed viatical settlement contracts.

31 30 d. The amount and method of calculating the broker's
31 31 compensation. As used in this paragraph, "compensation"
31 32 includes anything of value paid or given to a viatical
31 33 settlement broker for the placement of a policy.

31 34 e. Where any portion of the viatical settlement broker's
31 35 compensation, as defined in paragraph "d", is taken from a
32 1 proposed viatical settlement offer, the broker shall disclose
32 2 the total amount of the viatical settlement offer and the
32 3 percentage of the viatical settlement offer comprised by the
32 4 viatical settlement broker's compensation.

32 5 4. If the viatical settlement provider transfers ownership
32 6 or changes the beneficiary of the insurance policy, the
32 7 viatical settlement provider shall communicate in writing the
32 8 change in ownership or beneficiary to the insured within
32 9 twenty days after the change.

32 10 5. A viatical settlement provider shall provide the
32 11 viatical settlement purchaser with at least the following
32 12 disclosures prior to the date the viatical settlement purchase
32 13 agreement is signed by all parties. The disclosures shall be
32 14 conspicuously displayed in any viatical purchase contract or
32 15 in a separate document signed by the viatical settlement
32 16 purchaser and viatical settlement provider or viatical
32 17 settlement investment agent, and shall make the following
32 18 disclosure to the viatical settlement purchaser:

32 19 a. The viatical settlement purchaser will receive no
32 20 returns including dividends and interest, until the insured
32 21 dies and a death claim payment is made.

32 22 b. The actual annual rate of return on a viatical
32 23 settlement contract is dependent upon an accurate projection
32 24 of the insured's life expectancy, and the actual date of the
32 25 insured's death. An annual "guaranteed" rate of return is not
32 26 determinable.

32 27 c. The viaticated life insurance contract should not be
32 28 considered a liquid purchase since it is impossible to predict
32 29 the exact timing of its maturity and the funds probably are
32 30 not available until the death of the insured. There is no
32 31 established secondary market for resale of these products by
32 32 the viatical settlement purchaser.

32 33 d. The viatical settlement purchaser may lose all benefits
32 34 or may receive substantially reduced benefits if the insurer
32 35 goes out of business during the term of the viatical
33 1 investment.

33 2 e. The viatical settlement purchaser is responsible for
33 3 payment of the insurance premium or other costs related to the
33 4 policy, if required by the terms of the viatical purchase
33 5 agreement. These payments may reduce the viatical settlement
33 6 purchaser's return. If a party other than the viatical
33 7 settlement purchaser is responsible for the payment, the name
33 8 and address of that party also shall be disclosed.

33 9 f. The viatical settlement purchaser is responsible for
33 10 payment of the insurance premiums or other costs related to
33 11 the policy if the insured returns to health. The viatical
33 12 settlement provider shall disclose the amount of such
33 13 premiums, if applicable.

33 14 g. The name, business address, and telephone number of the
33 15 independent third party providing escrow services and the
33 16 relationship to the viatical settlement broker.

33 17 h. The amount of any trust fees or other expenses to be
33 18 charged to the viatical settlement purchaser shall be
33 19 disclosed.

33 20 i. Whether the viatical settlement purchaser is entitled
33 21 to a refund of all or part of the viatical settlement
33 22 purchaser's investment under the viatical settlement contract
33 23 if the policy is later determined to be null and void.

33 24 j. That group policies may contain limitations or caps in
33 25 the conversion rights, that additional premiums may have to be
33 26 paid if the policy is converted, the name of the party
33 27 responsible for the payment of the additional premiums, and,
33 28 if a group policy is terminated and replaced by another group
33 29 policy, that there may be no right to convert the original
33 30 coverage.

33 31 k. The risks associated with policy contestability
33 32 including but not limited to the risk that the viatical
33 33 settlement purchaser will have no claim or only a partial
33 34 claim to death benefits should the insurer rescind the policy
33 35 within the contestability period.

34 1 l. Whether the viatical settlement purchaser will be the
34 2 owner of the policy in addition to being the beneficiary, and
34 3 if the viatical settlement purchaser is the beneficiary only
34 4 and not also the owner, the special risks associated with that
34 5 status, including but not limited to the risk that the
34 6 beneficiary may be changed or the premium may not be paid.

34 7 m. The experience and qualifications of the person who
34 8 determines the life expectancy of the insured, including
34 9 in-house staff, independent physicians, and specialty firms
34 10 that weigh medical and actuarial data; the information this
34 11 projection is based on; and the relationship of the projection
34 12 maker to the viatical settlement provider, if any.

34 13 n. A brochure describing the process of investment in
34 14 viatical settlements. The national association of insurance
34 15 commissioners form for the brochure shall be used unless
34 16 another form is developed and approved by the commissioner.

34 17 6. A viatical settlement provider shall provide the
34 18 viatical settlement purchaser with at least the following
34 19 disclosures no later than at the time of the assignment,
34 20 transfer, or sale of all or a portion of an insurance policy.
34 21 The disclosures shall be contained in a document signed by the
34 22 viatical settlement purchaser and viatical settlement
34 23 provider, and shall make all of the following disclosures to
34 24 the viatical settlement purchaser:

34 25 a. All the life expectancy certifications obtained by the
34 26 provider in the process of determining the price paid to the
34 27 viator.

34 28 b. Whether premium payments or other costs related to the
34 29 policy have been escrowed. If escrowed, state the date upon
34 30 which the escrowed funds will be depleted and whether the
34 31 viatical settlement purchaser will be responsible for payment
34 32 of premiums thereafter and, if so, the amount of the premiums.

34 33 c. Whether premium payments or other costs related to the
34 34 policy have been waived. If waived, disclose whether the
34 35 viatical settlement purchaser will be responsible for payment
35 1 of the premiums if the insurer that wrote the policy
35 2 terminates the waiver after purchase and the amount of those
35 3 premiums.

35 4 d. The type of policy offered or sold, i.e., whole life,
35 5 term life, universal life, or a group policy certificate, any
35 6 additional benefits contained in the policy, and the current
35 7 status of the policy.

35 8 e. If the policy is term insurance, the special risks
35 9 associated with term insurance including but not limited to
35 10 the viatical settlement purchaser's responsibility for
35 11 additional premiums if the viator continues the term policy at
35 12 the end of the current term.

35 13 f. Whether the policy is contestable.

35 14 g. Whether the insurer that wrote the policy has any
35 15 additional rights that could negatively affect or extinguish
35 16 the viatical settlement purchaser's rights under the viatical
35 17 settlement contract, what these rights are, and under what
35 18 conditions these rights are activated.

35 19 h. The name and address of the person responsible for
35 20 monitoring the insured's condition. The viatical settlement
35 21 provider shall describe how often the monitoring of the
35 22 insured's condition is done, how the date of death is
35 23 determined, and how and when this information will be
35 24 transmitted to the viatical settlement purchaser.

35 25 Sec. 9. NEW SECTION. 508E.9 DISCLOSURE TO INSURER.

35 26 Prior to the initiation of a plan, transaction, or series
35 27 of transactions, a viatical settlement broker, or viatical
35 28 settlement provider, shall fully disclose to an insurer a
35 29 plan, transaction, or series of transactions to which the
35 30 viatical settlement broker or viatical settlement provider is
35 31 a party to originate, renew, continue, or finance a life
35 32 insurance policy with the insurer for the purpose of engaging
35 33 in the business of viatical settlements at any time prior to,
35 34 or during the first five years after, issuance of the policy.

35 35 Sec. 10. NEW SECTION. 508E.10 GENERAL RULES.

36 1 1. a. A viatical settlement provider entering into a
36 2 viatical settlement contract shall first obtain all of the
36 3 following:

36 4 (1) If the viator is the insured, a written statement from
36 5 a licensed attending physician that the viator is of sound
36 6 mind and under no constraint or undue influence to enter into
36 7 a viatical settlement contract.

36 8 (2) A document in which the insured consents to the
36 9 release of the insured's medical records to a licensed
36 10 viatical settlement provider, viatical settlement broker, and
36 11 the insurance company that issued the life insurance policy
36 12 covering the life of the insured.

36 13 b. Within twenty days after a viator executes documents
36 14 necessary to transfer any rights under an insurance policy or
36 15 within twenty days of entering any agreement, option, promise,
36 16 or any other form of understanding, expressed or implied, to
36 17 viaticate the policy, the viatical settlement provider shall
36 18 give written notice to the insurer that issued that insurance
36 19 policy that the policy has or will become a viaticated policy.
36 20 The notice shall be accompanied by the documents required by
36 21 paragraph "c".

36 22 c. The viatical provider shall deliver a copy of the
36 23 medical release required under paragraph "a", subparagraph
36 24 (2), a copy of the viator's application for the viatical
36 25 settlement contract, the notice required under paragraph "b",
36 26 and a request for verification of coverage to the insurer that
36 27 issued the life policy that is the subject of the viatical
36 28 transaction. The national association of insurance
36 29 commissioners form for verification of coverage shall be used
36 30 unless another form is developed and approved by the
36 31 commissioner.

36 32 d. The insurer shall respond to a request for verification
36 33 of coverage submitted on an approved form by a viatical
36 34 settlement provider or viatical settlement broker within
36 35 thirty days of the date the request is received and shall
37 1 indicate whether, based on the medical evidence and documents
37 2 provided, the insurer intends to pursue an investigation at
37 3 this time regarding the validity of the insurance contract or
37 4 possible fraud. The insurer shall accept a request for
37 5 verification of coverage made on a national association of
37 6 insurance commissioners form or any other form developed and
37 7 approved by the commissioner. The insurer shall accept an
37 8 original, facsimile, or electronic copy of such request and

37 9 any accompanying authorization signed by the viator. A
37 10 failure by the insurer to meet its obligations under this
37 11 subsection shall be a violation of sections 508E.11 and
37 12 508E.16.

37 13 e. Prior to or at the time of execution of the viatical
37 14 settlement contract, the viatical settlement provider shall
37 15 obtain a witnessed document in which the viator consents to
37 16 the viatical settlement contract, represents that the viator
37 17 has a full and complete understanding of the viatical
37 18 settlement contract, that the viator has a full and complete
37 19 understanding of the benefits of the life insurance policy,
37 20 acknowledges that the viator is entering into the viatical
37 21 settlement contract freely and voluntarily, and, for persons
37 22 with a terminal or chronic illness or condition, acknowledges
37 23 that the insured has a terminal or chronic illness or
37 24 condition and that the terminal or chronic illness or
37 25 condition was diagnosed after the life insurance policy was
37 26 issued.

37 27 f. If a viatical settlement broker performs any of these
37 28 activities required of the viatical settlement provider, the
37 29 viatical settlement provider is deemed to have fulfilled the
37 30 requirements of this section.

37 31 2. All medical information solicited or obtained by any
37 32 licensee shall be subject to the applicable provisions of
37 33 state law relating to confidentiality of medical information,
37 34 including section 505.8.

37 35 3. All viatical settlement contracts entered into in this
38 1 state shall provide the viator with an absolute right to
38 2 rescind the contract before the earlier of sixty days after
38 3 the date upon which the viatical settlement contract is
38 4 executed by all parties or thirty days after the viatical
38 5 settlement proceeds have been sent to the viator as provided
38 6 in section 508E.10, subsection 4. Rescission by the viator may
38 7 be conditioned upon the viator both giving notice and repaying
38 8 to the viatical settlement provider within the rescission period
38 9 all viatical settlement proceeds, and any premiums, loans, and
38 10 loan interest paid by or on behalf of the viatical settlement
38 11 provider in connection with or as a consequence of the
38 12 viatical settlement. If the insured dies during the rescission
38 13 period, the viatical settlement contract shall be deemed to
38 14 have been rescinded, subject to repayment to the viatical
38 15 settlement provider or purchaser of all viatical settlement
38 16 proceeds, and any premiums, loans, and loan interest that have
38 17 been paid by the viatical settlement provider or purchaser,
38 18 which shall be paid within sixty days of the death of the
38 19 insured. In the event of any rescission, if the viatical
38 20 settlement provider has paid commissions or other compensation
38 21 to a viatical settlement broker in connection with the
38 22 rescinded transaction, the viatical settlement broker shall
38 23 refund all such commissions and compensation to the viatical
38 24 settlement provider within five business days following
38 25 receipt of written demand from the viatical settlement
38 26 provider, which demand shall be accompanied by either the
38 27 viator's notice of rescission if rescinded at the election of
38 28 the viator, or a notice of the death of the insured if
38 29 rescinded by reason of the death of the insured within the
38 30 applicable rescission period.

38 31 4. The viatical settlement provider shall instruct the
38 32 viator to send the executed documents required to effect the
38 33 change in ownership, assignment, or change in beneficiary
38 34 directly to the independent escrow agent. Within three
38 35 business days after the date the escrow agent receives the
39 1 document, or from the date the viatical settlement provider
39 2 receives the documents, if the viator erroneously provides the
39 3 documents directly to the viatical settlement provider, the
39 4 viatical settlement provider shall pay or transfer the
39 5 viatical settlement proceeds into an escrow or trust account
39 6 maintained in a state or federally chartered financial
39 7 institution whose deposits are insured by the federal deposit
39 8 insurance corporation. Upon payment of the viatical
39 9 settlement proceeds into the escrow account, the escrow agent
39 10 shall deliver the original change in ownership, assignment, or
39 11 change in beneficiary forms to the viatical settlement
39 12 provider or related provider trust, or other designated
39 13 representative of the viatical settlement provider. Upon the
39 14 escrow agent's receipt of the acknowledgment of the properly
39 15 completed transfer of ownership, assignment, or designation of
39 16 beneficiary from the insurance company, the escrow agent shall
39 17 pay the viatical settlement proceeds to the viator.

39 18 5. A failure to tender consideration to the viator for the
39 19 viatical settlement contract within the time set forth in the

39 20 disclosure pursuant to section 508E.8, subsection 1, paragraph
39 21 "g", renders the viatical settlement contract voidable by the
39 22 viator for lack of consideration until the time consideration
39 23 is tendered to and accepted by the viator. Funds shall be
39 24 deemed sent by a viatical settlement provider to a viator as
39 25 of the date that the escrow agent either releases funds for
39 26 wire transfer to the viator or places a check for delivery to
39 27 the viator via the United States postal service or other
39 28 nationally recognized delivery service.

39 29 6. A contact with the insured for the purpose of
39 30 determining the health status of the insured by the viatical
39 31 settlement provider or viatical settlement broker after the
39 32 viatical settlement has occurred shall only be made by the
39 33 viatical settlement provider or viatical settlement broker
39 34 licensed pursuant to section 508E.3 or its authorized
39 35 representatives and shall be limited to once every three
40 1 months for insureds with a life expectancy of more than one
40 2 year, and to no more than once per month for insureds with a
40 3 life expectancy of one year or less. The viatical settlement
40 4 provider or viatical settlement broker shall explain the
40 5 procedure for these contacts at the time the viatical
40 6 settlement contract is entered into. The limitations set
40 7 forth in this subsection shall not apply to any contact with
40 8 an insured for reasons other than determining the insured's
40 9 health status. A viatical settlement provider and a viatical
40 10 settlement broker shall be responsible for the actions of
40 11 their authorized representatives.

40 12 Sec. 11. NEW SECTION. 508E.11 PROHIBITED PRACTICES.

40 13 1. It is a violation of this chapter for any person to
40 14 enter into a viatical settlement contract at any time prior to
40 15 the application or issuance of a policy which is the subject
40 16 of a viatical settlement contract or within a five-year period
40 17 commencing with the date of issuance of the insurance policy
40 18 or certificate unless the viator certifies to the viatical
40 19 settlement provider that one or more of the following
40 20 conditions have been met within the five-year period:

40 21 a. The policy was issued upon the viator's exercise of
40 22 conversion rights arising out of a group or individual policy,
40 23 provided the total of the time covered under the conversion
40 24 policy plus the time covered under the prior policy is at
40 25 least sixty months. The time covered under a group policy
40 26 shall be calculated without regard to any change in insurance
40 27 carriers, provided the coverage has been continuous and under
40 28 the same group sponsorship.

40 29 b. The viator submits independent evidence to the viatical
40 30 settlement provider that one or more of the following
40 31 conditions have been met within the five-year period:

40 32 (1) The viator or insured is terminally or chronically
40 33 ill.

40 34 (2) The viator's spouse dies.

40 35 (3) The viator divorces the viator's spouse.

41 1 (4) The viator retires from full-time employment.

41 2 (5) The viator becomes physically or mentally disabled and
41 3 a physician determines that the disability prevents the viator
41 4 from maintaining full-time employment.

41 5 (6) A final order, judgment, or decree is entered by a
41 6 court of competent jurisdiction, on the application of a
41 7 creditor of the viator, adjudicating the viator bankrupt or
41 8 insolvent, or approving a petition seeking reorganization of
41 9 the viator or appointing a receiver, trustee, or liquidator to
41 10 all or a substantial part of the viator's assets.

41 11 (7) Other circumstances as established as eligible
41 12 exemptions by the commissioner by rule.

41 13 c. The viator enters into a viatical settlement contract
41 14 more than two years after the date of issuance of a policy
41 15 and, with respect to the policy, at all times prior to the
41 16 date that is two years after policy issuance, all of the
41 17 following conditions are met:

41 18 (1) Policy premiums have been funded exclusively with
41 19 unencumbered assets, including an interest in the life
41 20 insurance policy being financed only to the extent of its net
41 21 cash surrender value, provided by, or fully recourse liability
41 22 incurred by, the insured or a person described in section
41 23 508E.2, subsection 14, paragraph "d".

41 24 (2) There is no agreement or understanding with any other
41 25 person to guarantee any such liability or to purchase, or
41 26 stand ready to purchase, the policy, including through an
41 27 assumption or forgiveness of the loan.

41 28 (3) Neither the insured nor the policy has been evaluated
41 29 for settlement.

41 30 2. Copies of the independent evidence described in

41 31 subsection 1, paragraph "b", and documents required by section
41 32 508E.10, subsection 1, shall be submitted to the insurer when
41 33 the viatical settlement provider or other party entering into
41 34 a viatical settlement contract with a viator submits a request
41 35 to the insurer for verification of coverage. The copies shall
42 1 be accompanied by a letter of attestation from the viatical
42 2 settlement provider that the copies are true and correct
42 3 copies of the documents received by the viatical settlement
42 4 provider.

42 5 3. If the viatical settlement provider submits to the
42 6 insurer a copy of the owner's or insured's certification
42 7 described in and the independent evidence required by
42 8 subsection 1, paragraph "b" when the provider submits a
42 9 request to the insurer to effect the transfer of the policy or
42 10 certificate to the viatical settlement provider, the copy
42 11 shall be deemed to conclusively establish that the viatical
42 12 settlement contract satisfies the requirements of this section
42 13 and the insurer shall timely respond to the request.

42 14 4. An insurer shall not, as a condition of responding to a
42 15 request for verification of coverage or effecting the transfer
42 16 of a policy pursuant to a viatical settlement contract,
42 17 require that the viator, insured, viatical settlement
42 18 provider, or viatical settlement broker sign any form,
42 19 disclosure, consent, or waiver form that has not been
42 20 expressly approved by the commissioner for use in connection
42 21 with viatical settlement contracts in this state.

42 22 5. Upon receipt of a properly completed request for change
42 23 of ownership or beneficiary of a policy, the insurer shall
42 24 respond in writing within thirty days with written
42 25 acknowledgment confirming that the change has been effected or
42 26 specifying the reasons why the requested change cannot be
42 27 processed. The insurer shall not unreasonably delay effecting
42 28 a change of ownership or beneficiary and shall not otherwise
42 29 seek to interfere with any viatical settlement contract
42 30 lawfully entered into in this state.

42 31 Sec. 12. NEW SECTION. 508E.12 PROHIBITED PRACTICES AND
42 32 CONFLICTS OF INTEREST.

42 33 1. With respect to any viatical settlement contract or
42 34 insurance policy, a viatical settlement broker shall not
42 35 knowingly solicit an offer from, effectuate a viatical
43 1 settlement with, or make a sale to any viatical settlement
43 2 provider, viatical settlement purchaser, financing entity, or
43 3 related provider trust that is controlling, controlled by, or
43 4 under common control with such viatical settlement broker.

43 5 2. With respect to any viatical settlement contract or
43 6 insurance policy, a viatical settlement provider shall not
43 7 knowingly enter into a viatical settlement contract with a
43 8 viator, if, in connection with such viatical settlement
43 9 contract, anything of value will be paid to a viatical
43 10 settlement broker that is controlling, controlled by, or under
43 11 common control with such viatical settlement provider or the
43 12 viatical settlement purchaser, financing entity, or related
43 13 provider trust that is involved in such viatical settlement
43 14 contract.

43 15 3. A viatical settlement provider shall not enter into a
43 16 premium finance agreement with any person or agency, or any
43 17 person affiliated with such person or agency, pursuant to
43 18 which such person or agency shall receive any proceeds, fees,
43 19 or other consideration, directly or indirectly, from the
43 20 policy or owner of the policy or any other person with respect
43 21 to the premium finance agreement or any viatical settlement
43 22 contract or other transaction related to such policy that are
43 23 in addition to the amounts required to pay the principal,
43 24 interest, and service charges related to policy premiums
43 25 pursuant to the premium finance agreement or subsequent sale
43 26 of such agreement. Any payments, charges, fees, normal
43 27 insurance commissions, or other amounts in addition to the
43 28 amounts required to pay the principal, interest, and service
43 29 charges related to policy premiums paid under the premium
43 30 finance agreement shall be remitted to the original owner of
43 31 the policy or to the original owner's estate if the original
43 32 owner is not living at the time of the determination of the
43 33 overpayment.

43 34 4. A violation of subsection 1, 2, or 3 shall be deemed a
43 35 fraudulent viatical settlement act.

44 1 5. A person shall not issue, solicit, market, or otherwise
44 2 promote the purchase of an insurance policy for the purpose of
44 3 or with an emphasis on settling the policy.

44 4 6. A person shall not enter into a premium finance
44 5 agreement with any other person or agency, or any person
44 6 affiliated with such person or agency, pursuant to which such

44 7 person shall receive any proceeds, fees, or other
44 8 consideration, directly or indirectly, from the policy or
44 9 owner of the policy or any other person with respect to the
44 10 premium finance agreement or any viatical settlement contract
44 11 or other transaction related to such policy that are in
44 12 addition to the amounts required to pay the principal,
44 13 interest, and service charges related to policy premiums
44 14 pursuant to the premium finance agreement or subsequent sale
44 15 of such agreement. Any payments, charges, fees, or other
44 16 amounts in addition to the amounts required to pay the
44 17 principal, interest, and service charges related to policy
44 18 premiums paid under the premium finance agreement shall be
44 19 remitted to the original owner of the policy or to the
44 20 original owner's estate if the original owner is not living at
44 21 the time of the determination of overpayment.

44 22 7. In the solicitation, application for, or issuance of a
44 23 life insurance policy, a person shall not employ any device,
44 24 scheme, or artifice to create an insurable interest in the
44 25 life of a person except as provided in sections 511.39 and
44 26 511.40.

44 27 8. No viatical settlement provider shall enter into a
44 28 viatical settlement contract unless the viatical settlement
44 29 promotional, advertising, and marketing materials, as may be
44 30 prescribed by rules adopted by the commissioner, have been
44 31 filed with the commissioner. In no event shall any marketing
44 32 materials expressly reference that the insurance is free for
44 33 any period of time. The inclusion of any reference in the
44 34 marketing materials that would cause a viator to reasonably
44 35 believe that the insurance is free for any period of time
45 1 shall be considered a violation of this chapter.

45 2 6. No life insurance producer, insurance company, viatical
45 3 settlement broker, or viatical settlement provider shall make
45 4 any statement or representation to the applicant or
45 5 policyholder in connection with the sale or financing of a
45 6 life insurance policy to the effect that the insurance is free
45 7 or without cost to the policyholder for any period of time
45 8 unless provided in the policy.

45 9 Sec. 13. NEW SECTION. 508E.13 ADVERTISING FOR VIATICAL
45 10 SETTLEMENTS.

45 11 The purpose of this section is to provide prospective
45 12 viators with clear and unambiguous statements in the
45 13 advertisement of viatical settlements and to assure the clear,
45 14 truthful, and adequate disclosure of the benefits, risks,
45 15 limitations, and exclusions of any viatical settlement
45 16 contract. This purpose is intended to be accomplished by
45 17 rules adopted by the commissioner for the establishment of
45 18 guidelines and standards of permissible and impermissible
45 19 conduct in the advertising of viatical settlements to assure
45 20 that product descriptions are presented in a manner that
45 21 prevents unfair, deceptive, or misleading advertising, and is
45 22 conducive to accurate presentation and description of viatical
45 23 settlements through the advertising media and materials used
45 24 by viatical settlement licensees.

45 25 1. This section shall apply to any advertising of viatical
45 26 settlement contracts or related products or services intended
45 27 for dissemination in this state, including internet
45 28 advertising viewed by persons located in this state. Where
45 29 disclosure requirements are established pursuant to federal
45 30 regulation, this section shall be interpreted so as to
45 31 minimize or eliminate conflict with federal regulation
45 32 wherever possible.

45 33 2. Every viatical settlement licensee shall establish and
45 34 at all times maintain a system of control over the content,
45 35 form, and method of dissemination of all advertisements of its
46 1 contracts, products, and services. All advertisements,
46 2 regardless of by whom written, created, designed, or
46 3 presented, shall be the responsibility of the viatical
46 4 settlement licensees, as well as the individual who created or
46 5 presented the advertisement. A system of control shall
46 6 include regular, routine notification, at least once a year,
46 7 to agents and others authorized by the viatical settlement
46 8 licensee who disseminate advertisements of the requirements
46 9 and procedures for approval prior to the use of any
46 10 advertisements not furnished by the viatical settlement
46 11 licensee.

46 12 3. An advertisement shall be truthful and not misleading
46 13 in fact or by implication. The form and content of an
46 14 advertisement of a viatical settlement contract shall be
46 15 sufficiently complete and clear so as to avoid deception. It
46 16 shall not have the capacity or tendency to mislead or deceive.
46 17 Whether an advertisement has the capacity or tendency to

46 18 mislead or deceive shall be determined by the commissioner
46 19 from the overall impression that the advertisement may be
46 20 reasonably expected to create upon a person of average
46 21 education or intelligence within the segment of the public to
46 22 which it is directed.

46 23 4. The information required to be disclosed under this
46 24 section shall not be minimized, rendered obscure, or presented
46 25 in an ambiguous fashion or intermingled with the text of the
46 26 advertisement so as to be confusing or misleading.

46 27 a. An advertisement shall not omit material information or
46 28 use words, phrases, statements, references, or illustrations
46 29 if the omission or use has the capacity, tendency, or effect
46 30 of misleading or deceiving viators as to the nature or extent
46 31 of any benefit, loss covered, premium payable, or state or
46 32 federal tax consequence. The fact that the viatical
46 33 settlement contract offered is made available for inspection
46 34 prior to consummation of the sale, or an offer is made to
46 35 refund the payment if the viator is not satisfied or that the
47 1 viatical settlement contract includes a free-look period that
47 2 satisfies or exceeds legal requirements, does not remedy a
47 3 misleading statement.

47 4 b. An advertisement shall not use the name or title of a
47 5 life insurance company or a life insurance policy unless the
47 6 advertisement has been approved by the insurer.

47 7 c. An advertisement shall not state or imply that interest
47 8 charged on an accelerated death benefit or a policy loan is
47 9 unfair, inequitable, or in any manner an incorrect or improper
47 10 practice.

47 11 d. The words "free", "no cost", "without cost", "no
47 12 additional cost", "at no extra cost", or words of similar
47 13 import shall not be used with respect to any benefit or
47 14 service unless true. An advertisement may specify the charge
47 15 for a benefit or a service or may state that a charge is
47 16 included in the payment or use other appropriate language.

47 17 e. Testimonials, appraisals, analyses, or endorsements
47 18 used in advertisements must be genuine; represent the current
47 19 opinion of the author; be applicable to the viatical
47 20 settlement contract product or service advertised, if any; and
47 21 be accurately reproduced with sufficient completeness to avoid
47 22 misleading or deceiving prospective viators as to the nature
47 23 or scope of the testimonials, appraisal, analysis, or
47 24 endorsement. In using a testimonial, appraisal, analysis, or
47 25 endorsement, a licensee under this chapter makes as its own
47 26 all the statements contained therein, and the statements are
47 27 subject to all of the provisions of this section.

47 28 (1) If the individual making a testimonial, appraisal,
47 29 analysis, or an endorsement has a financial interest in the
47 30 party making use of the testimonial, appraisal, analysis, or
47 31 endorsement, either directly or through a related entity as a
47 32 stockholder, director, officer, employee, or otherwise, or
47 33 receives any benefit directly or indirectly other than
47 34 required union scale wages, that fact shall be prominently
47 35 disclosed in the advertisement.

48 1 (2) An advertisement shall not state or imply that a
48 2 viatical settlement contract benefit or product or service has
48 3 been approved or endorsed by a group of individuals, society,
48 4 association, or other organization unless that is the fact and
48 5 unless any relationship between an organization and the
48 6 viatical settlement licensee is disclosed. If the entity
48 7 making the endorsement or testimonial is owned, controlled, or
48 8 managed by the viatical settlement licensee, or receives any
48 9 payment or other consideration from the viatical settlement
48 10 licensee for making an endorsement or testimonial, that fact
48 11 shall be disclosed in the advertisement.

48 12 (3) When an endorsement refers to benefits received under
48 13 a viatical settlement contract, all pertinent information
48 14 shall be retained by the viatical settlement licensee for a
48 15 period of five years after its use.

48 16 5. An advertisement shall not contain statistical
48 17 information unless it accurately reflects recent and relevant
48 18 facts. The source of all statistics used in an advertisement
48 19 shall be identified.

48 20 6. An advertisement shall not disparage an insurer,
48 21 viatical settlement provider, viatical settlement broker,
48 22 insurance producer, policy, services, or methods of marketing.

48 23 7. The name of the viatical settlement licensee shall be
48 24 clearly identified in all advertisements about the viatical
48 25 settlement licensee or its viatical settlement contract,
48 26 products, or services, and if any specific viatical settlement
48 27 contract is advertised, the viatical settlement contract shall
48 28 be identified either by form number or some other appropriate

48 29 description. If an application is part of the advertisement,
48 30 the name of the viatical settlement provider shall be shown on
48 31 the application.

48 32 8. An advertisement shall not use a trade name, group
48 33 designation, name of the parent company of a viatical
48 34 settlement licensee, name of a particular division of the
48 35 viatical settlement licensee, service mark, slogan, symbol or
49 1 other device, or reference without disclosing the name of the
49 2 viatical settlement licensee, if the advertisement would have
49 3 the capacity or tendency to mislead or deceive as to the true
49 4 identity of the viatical settlement licensee, or to create the
49 5 impression that a company other than the viatical settlement
49 6 licensee would have any responsibility for the financial
49 7 obligation under a viatical settlement contract.

49 8 9. An advertisement shall not use any combination of
49 9 words, symbols, or physical materials that by their content,
49 10 phraseology, shape, color, or other characteristics are so
49 11 similar to a combination of words, symbols, or physical
49 12 materials used by a government program or agency or otherwise
49 13 appear to be of such a nature that they tend to mislead
49 14 prospective viators into believing that the solicitation is in
49 15 some manner connected with a government program or agency.

49 16 10. An advertisement may state that a viatical settlement
49 17 licensee is licensed in the state where the advertisement
49 18 appears, provided it does not exaggerate that fact or suggest
49 19 or imply that a competing viatical settlement licensee may not
49 20 be so licensed. The advertisement may ask the audience to
49 21 consult the viatical settlement licensee's internet site or
49 22 contact the commissioner to find out if the state requires
49 23 licensing and, if so, whether the viatical settlement provider
49 24 or viatical settlement broker is licensed.

49 25 11. An advertisement shall not create the impression that
49 26 the viatical settlement provider, its financial condition or
49 27 status, the payment of its claims or the merits, desirability,
49 28 or advisability of its viatical settlement contracts are
49 29 recommended or endorsed by any government entity.

49 30 12. The name of the actual viatical settlement licensee
49 31 shall be stated in each of its advertisements. An
49 32 advertisement shall not use a trade name, any group
49 33 designation, name of any affiliate, or controlling entity of
49 34 the viatical settlement licensee, service mark, slogan,
49 35 symbol, or other device in a manner that would have the
50 1 capacity or tendency to mislead or deceive as to the true
50 2 identity of the actual viatical settlement licensee or create
50 3 the false impression that an affiliate or controlling entity
50 4 would have any responsibility for the financial obligation of
50 5 the viatical settlement licensee.

50 6 13. An advertisement shall not directly or indirectly
50 7 create the impression that any division or agency of the state
50 8 or of the United States government endorses, approves, or
50 9 favors any of the following:

50 10 a. A viatical settlement licensee or its business
50 11 practices or methods of operation.

50 12 b. The merits, desirability, or advisability of any
50 13 viatical settlement contract.

50 14 c. Any viatical settlement contract.

50 15 d. Any life insurance policy or life insurance company.

50 16 14. If the advertiser emphasizes the speed with which the
50 17 viatication will occur, the advertising must disclose the
50 18 average time frame from completed application to the date of
50 19 offer and from acceptance of the offer to receipt of the funds
50 20 by the viator.

50 21 15. If the advertising emphasizes the dollar amounts
50 22 available to viators, the advertising shall disclose the
50 23 average purchase price as a percent of face value obtained by
50 24 viators contracting with the licensee during the past six
50 25 months.

50 26 Sec. 14. NEW SECTION. 508E.14 FRAUD PREVENTION AND
50 27 CONTROL

50 28 1. FRAUDULENT VIATICAL SETTLEMENT ACTS == INTERFERENCE AND
50 29 PARTICIPATION OF CONVICTED FELONS PROHIBITED.

50 30 a. A person shall not commit a fraudulent viatical
50 31 settlement act.

50 32 b. A person shall not knowingly or intentionally interfere
50 33 with the enforcement of the provisions of this chapter or
50 34 investigations of suspected or actual violations of this
50 35 chapter.

51 1 c. A person in the business of viatical settlements shall
51 2 not knowingly or intentionally permit any person convicted of
51 3 a felony involving dishonesty or breach of trust to
51 4 participate in the business of viatical settlements.

51 5 2. FRAUD WARNING REQUIRED.

51 6 a. A viatical settlements contract and application for a
51 7 viatical settlement, regardless of the form of transmission,
51 8 shall contain the following statement or a substantially
51 9 similar statement:

51 10 "Any person who knowingly presents false information in an
51 11 application for insurance or viatical settlement contract is
51 12 guilty of a crime and may be subject to fines and confinement
51 13 in prison."

51 14 b. The lack of a statement as required in paragraph "a"
51 15 does not constitute a defense in any prosecution for a
51 16 fraudulent viatical settlement act.

51 17 3. MANDATORY REPORTING OF FRAUDULENT VIATICAL SETTLEMENT
51 18 ACTS.

51 19 a. Any person engaged in the business of viatical
51 20 settlements having knowledge or a reasonable suspicion that a
51 21 fraudulent viatical settlement act is being, will be, or has
51 22 been committed shall provide to the commissioner such
51 23 information as required by and in a manner prescribed by rules
51 24 adopted by the commissioner.

51 25 b. Any other person having knowledge or a reasonable
51 26 belief that a fraudulent viatical settlement act is being,
51 27 will be, or has been committed may provide to the commissioner
51 28 the information required by and in a manner prescribed by
51 29 rules adopted by the commissioner.

51 30 4. IMMUNITY FROM LIABILITY.

51 31 a. No civil liability shall be imposed on and no cause of
51 32 action shall arise from a person, who acting reasonably and in
51 33 good faith, furnishes information concerning suspected,
51 34 anticipated, or completed fraudulent viatical settlement acts
51 35 or suspected or completed fraudulent insurance acts, if the
52 1 information is provided to or received from any of the
52 2 following:

52 3 (1) The commissioner or the commissioner's employees,
52 4 agents, or representatives.

52 5 (2) A federal, state, or local law enforcement or
52 6 regulatory official or the official's employees, agents, or
52 7 representatives.

52 8 (3) A person involved in the prevention and detection of
52 9 fraudulent viatical settlement acts or that person's agents,
52 10 employees, or representatives.

52 11 (4) The national association of insurance commissioners;
52 12 the national association of securities dealers; the north
52 13 American securities administrators association; their
52 14 employees, agents, or representatives; or other regulatory
52 15 body overseeing life insurance, viatical settlements,
52 16 securities, or investment fraud.

52 17 (5) A life insurer that issued the life insurance policy
52 18 covering the life of the insured.

52 19 b. Paragraph "a" does not apply to a statement made in bad
52 20 faith or with actual malice. In an action brought against a
52 21 person for filing a report or furnishing other information
52 22 concerning a fraudulent viatical settlement act, the party
52 23 bringing the action shall plead specifically any allegation
52 24 that paragraph "a" does not apply because the person filing
52 25 the report or furnishing the information did so in bad faith
52 26 or with actual malice.

52 27 c. A person furnishing information as identified in
52 28 paragraph "a" shall be entitled to an award of attorney fees
52 29 and costs if the person is the prevailing party in a civil
52 30 cause of action for libel, slander, or any other relevant tort
52 31 arising out of an activity in carrying out the provisions of
52 32 this chapter and the party bringing the action was not
52 33 substantially justified in doing so. For purposes of this
52 34 paragraph, a proceeding is substantially justified if it had a
52 35 reasonable basis in law or fact at the time that it was
53 1 initiated. However, such an award does not apply to any
53 2 person furnishing information concerning the person's own
53 3 fraudulent viatical settlement act.

53 4 d. This section does not abrogate or modify a common law
53 5 or statutory privilege or immunity enjoyed by a person
53 6 described in paragraph "a".

53 7 5. CONFIDENTIALITY.

53 8 a. A document or evidence provided pursuant to subsection
53 9 4 or obtained by the commissioner in an investigation of a
53 10 suspected or actual fraudulent viatical settlement act shall
53 11 be privileged and confidential, notwithstanding chapter 22,
53 12 shall not be a public record, and shall not be subject to
53 13 discovery or subpoena in a civil or criminal action.

53 14 b. Paragraph "a" does not prohibit the release by the
53 15 commissioner of a document or evidence obtained in an

53 16 investigation of a suspected or actual fraudulent viatical
53 17 settlement act if any of the following applies:
53 18 (1) In an administrative or judicial proceeding to enforce
53 19 laws administered by the commissioner.
53 20 (2) To a federal, state, or local law enforcement or
53 21 regulatory agency, to an organization established for the
53 22 purpose of detecting and preventing fraudulent viatical
53 23 settlement acts, or to the national association of insurance
53 24 commissioners.
53 25 (3) At the discretion of the commissioner, to a person in
53 26 the business of viatical settlements that is aggrieved by a
53 27 fraudulent viatical settlement act.
53 28 c. Release of a document or evidence under paragraph "b"
53 29 does not abrogate or modify the privilege granted in paragraph
53 30 "a".
53 31 6. OTHER LAW ENFORCEMENT OR REGULATORY AUTHORITY. This
53 32 chapter shall not do any of the following:
53 33 a. Preempt the authority or relieve the duty of other law
53 34 enforcement or regulatory agencies to investigate, examine,
53 35 and prosecute suspected violations of law.
54 1 b. Prevent or prohibit a person from disclosing
54 2 voluntarily information concerning viatical settlement fraud
54 3 to a law enforcement or regulatory agency other than the
54 4 commissioner.
54 5 c. Limit the powers granted elsewhere by the laws of this
54 6 state to the commissioner or an insurance fraud unit to
54 7 investigate and examine possible violations of law and to take
54 8 appropriate action against wrongdoers.
54 9 7. VIATICAL SETTLEMENT ANTIFRAUD INITIATIVES.
54 10 a. A viatical settlement provider or viatical settlement
54 11 broker shall have in place antifraud initiatives reasonably
54 12 calculated to detect, prosecute, and prevent fraudulent
54 13 viatical settlement acts. At the discretion of the
54 14 commissioner, the commissioner may order, or a licensee may
54 15 request and the commissioner may grant, such modifications of
54 16 the following required initiatives as necessary to ensure an
54 17 effective antifraud program. The modifications may be more or
54 18 less restrictive than the required initiatives so long as the
54 19 modifications may reasonably be expected to accomplish the
54 20 purpose of this section.
54 21 b. Antifraud initiatives shall include all of the
54 22 following:
54 23 (1) A fraud investigator, who may be a viatical settlement
54 24 provider, viatical settlement broker, a viatical settlement
54 25 provider's or viatical settlement broker's employee, or an
54 26 independent contractor.
54 27 (2) An antifraud plan, which shall be submitted to the
54 28 commissioner. The antifraud plan shall include, but is not
54 29 limited to all of the following:
54 30 (a) A description of the procedures for detecting and
54 31 investigating possible fraudulent viatical settlement acts and
54 32 procedures for resolving material inconsistencies between
54 33 medical records and insurance applications.
54 34 (b) A description of the procedures for reporting possible
54 35 fraudulent viatical settlement acts to the commissioner.
55 1 (c) A description of the plan for antifraud education and
55 2 training of underwriters and other personnel.
55 3 (d) A description or chart outlining the organizational
55 4 arrangement of the antifraud personnel who are responsible for
55 5 the investigation and reporting of possible fraudulent
55 6 viatical settlement acts and investigating unresolved material
55 7 inconsistencies between medical records and insurance
55 8 applications.
55 9 c. An antifraud plan submitted to the commissioner shall
55 10 be privileged and confidential, notwithstanding chapter 22,
55 11 shall not be a public record, and shall not be subject to
55 12 discovery or subpoena in a civil or criminal action.
55 13 Sec. 15. NEW SECTION. 508E.15 INJUNCTIONS == CIVIL
55 14 REMEDIES == CEASE AND DESIST ORDERS == CIVIL PENALTY.
55 15 1. In addition to the penalties and other enforcement
55 16 provisions of this chapter, if any person violates this
55 17 chapter or any rule implementing this chapter, the
55 18 commissioner may seek an injunction in a court of competent
55 19 jurisdiction and may apply for a temporary or permanent order
55 20 that the commissioner determines is necessary to restrain the
55 21 person from committing the violation.
55 22 2. A person damaged by the act of a person in violation of
55 23 this chapter may bring a civil action against the person
55 24 committing the violation in a court of competent jurisdiction.
55 25 3. The commissioner may issue, in accordance with chapter
55 26 17A, a cease and desist order upon a person that violates any

55 27 provision of this chapter, any rule or order adopted by the
55 28 commissioner, or any written agreement entered into with the
55 29 commissioner.

55 30 4. When the commissioner finds that an activity in
55 31 violation of this chapter presents an immediate danger to the
55 32 health, safety, or welfare of the public requiring immediate
55 33 agency action, the commissioner may proceed under section
55 34 17A.18A.

55 35 5. In addition to the penalties and other enforcement
56 1 provisions of this chapter, any person who violates this
56 2 chapter is subject to a civil penalty of up to five thousand
56 3 dollars for each violation of this chapter. The civil penalty
56 4 shall be deposited into the general fund of the state. If a
56 5 person has not been ordered to pay restitution by a court, the
56 6 commissioner's order may require a person found to be in
56 7 violation of this chapter to make restitution to a person
56 8 aggrieved by a violation of this chapter.

56 9 6. Except for a fraudulent viatical settlement act
56 10 committed by a viator, the enforcement provisions and
56 11 penalties of this section shall not apply to a viator.

56 12 Sec. 16. NEW SECTION. 508E.16 UNFAIR TRADE PRACTICES.

56 13 A violation of this chapter, including the commission of a
56 14 fraudulent viatical settlement act, is an unfair trade
56 15 practice under chapter 507B and a person convicted of the
56 16 violation is subject to the penalties contained in that
56 17 chapter.

56 18 Sec. 17. NEW SECTION. 508E.17 CRIMINAL PENALTIES.

56 19 1. a. A person acting in this state as a viatical
56 20 settlement provider or viatical settlement broker, without
56 21 being licensed pursuant to section 508E.3, who willfully
56 22 violates any provision of this chapter or any rule adopted or
56 23 order issued under this chapter, is guilty of a class "D"
56 24 felony.

56 25 b. A person acting in this state as a viatical settlement
56 26 provider or viatical settlement broker, without proper
56 27 licensure who willfully violates any provision of this
56 28 chapter, or any rule adopted or order issued under this
56 29 chapter, and when such violation results in a loss of more
56 30 than ten thousand dollars, is guilty of a class "C" felony.

56 31 2. The commissioner may refer such evidence as is
56 32 available concerning violations of this chapter or of any rule
56 33 adopted or order issued under this chapter, or of the failure
56 34 of a person to comply with the licensing requirements of this
56 35 chapter, to the attorney general or the proper county attorney
57 1 who may, with or without such reference, institute the
57 2 appropriate criminal proceedings under this chapter.

57 3 Sec. 18. NEW SECTION. 508E.18 AUTHORITY TO PROMULGATE
57 4 RULES.

57 5 The commissioner shall have the authority to do all of the
57 6 following:

57 7 1. Adopt rules implementing and administering this
57 8 chapter.

57 9 2. Establish standards for evaluating reasonableness of
57 10 payments under viatical settlement contracts for persons who
57 11 are terminally or chronically ill. This authority includes
57 12 but is not limited to regulation of discount rates used to
57 13 determine the amount paid in exchange for assignment,
57 14 transfer, sale, devise, or bequest of a benefit under a life
57 15 insurance policy insuring the life of a person who is
57 16 chronically or terminally ill.

57 17 3. Establish appropriate licensing requirements, fees, and
57 18 standards for continued licensure for viatical settlement
57 19 providers and brokers.

57 20 4. Require a bond or other mechanism for financial
57 21 accountability for viatical settlement providers and viatical
57 22 settlement brokers.

57 23 5. Adopt rules governing the relationship and
57 24 responsibilities of both insurers and viatical settlement
57 25 providers and viatical settlement brokers during the
57 26 viatication of a life insurance policy or certificate.

57 27 Sec. 19. Section 507B.3, subsection 1, Code 2007, is
57 28 amended to read as follows:

57 29 1. A person shall not engage in this state in any trade
57 30 practice which is defined in this chapter as, or determined
57 31 pursuant to section 507B.6 to be, an unfair method of
57 32 competition, or an unfair or deceptive act or practice in the
57 33 business of insurance.

57 34 a. A person who violates a provision in chapter 508E shall
57 35 be deemed to have committed an unfair trade practice under
58 1 this chapter.

58 2 b. The issuance of a qualified charitable gift annuity as

58 3 provided in chapter 508F does not constitute a trade practice
58 4 in violation of this chapter.
58 5 Sec. 20. CODIFICATION.
58 6 1. The Code editor shall codify section 508E.1 as section
58 7 508E.1A.
58 8 2. The Code editor shall codify section 508E.1A, as
58 9 enacted in this Act, as section 508E.1.
58 10 Sec. 21. Section 508E.3A, Code 2007, is repealed.
58 11 SF 2392
58 12 da/rj/cc/26