

This Document can be made available  
in alternative formats upon request

State of Minnesota  
**HOUSE OF REPRESENTATIVES**

EIGHTY-FIFTH  
SESSION

**HOUSE FILE No. 3534**

February 28, 2008

Authored by Knuth, Kelliher, Seifert, Emmer, Simpson and others

The bill was read for the first time and referred to the Committee on Commerce and Labor

1.1 A bill for an act  
1.2 relating to insurance; regulating viatical settlements; enacting and modifying  
1.3 the Viatical Settlements Model Act of the National Association of Insurance  
1.4 Commissions; providing criminal penalties; amending Minnesota Statutes 2006,  
1.5 section 60A.964, subdivision 1; proposing coding for new law in Minnesota  
1.6 Statutes, chapter 60A; repealing Minnesota Statutes 2006, sections 13.716,  
1.7 subdivision 7; 60A.961; 60A.962; 60A.963; 60A.965; 60A.966; 60A.967;  
1.8 60A.968; 60A.969; 60A.970; 60A.971; 60A.972; 60A.973; 60A.974.

1.9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.10 Section 1. **[60A.957] DEFINITIONS.**

1.11 Subdivision 1. **Terms.** For purposes of sections 60A.957 to 60A.9585, the terms  
1.12 defined in this section have the meanings given them.

1.13 Subd. 2. **Advertising.** "Advertising" means any written, electronic, or printed  
1.14 communication or any communication by means of recorded telephone messages or  
1.15 transmitted on radio, television, the Internet, or similar communications media, including  
1.16 film strips, motion pictures, and videos, published, disseminated, circulated, or placed  
1.17 directly before the public in this state, for the purpose of creating an interest in or inducing  
1.18 a person to purchase or sell, assign, devise, bequeath, or transfer the death benefit or  
1.19 ownership of a life insurance policy pursuant to a viatical settlement contract.

1.20 Subd. 3. **Business of viatical settlements.** "Business of viatical settlements" means  
1.21 an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring,  
1.22 effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling,  
1.23 transferring, assigning, pledging, hypothecating, or in any other manner acquiring an  
1.24 interest in a life insurance policy by means of a viatical settlement contract.

1.25 Subd. 4. **Chronically ill.** "Chronically ill" means:

2.1 (1) being unable to perform at least two activities of daily living (for example,  
2.2 eating, toileting, transferring, bathing, dressing, or continence);

2.3 (2) requiring substantial supervision to protect the individual from threats to health  
2.4 and safety due to severe cognitive impairment; or

2.5 (3) having a level of disability similar to that described in paragraph (1) as  
2.6 determined by the secretary of health and human services;

2.7 Subd. 5. **Commissioner.** "Commissioner" means the commissioner of commerce.

2.8 Subd. 6. **Financing entity.** "Financing entity" means an underwriter, placement  
2.9 agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical  
2.10 settlement provider, credit enhancer, or any entity that has a direct ownership in a policy  
2.11 or certificate that is the subject of a viatical settlement contract, but:

2.12 (1) whose principal activity related to the transaction is providing funds to effect the  
2.13 viatical settlement or purchase of one or more viaticated policies; and

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

2.16 The term does not include a nonaccredited investor or a viatical settlement purchaser.

2.17 Subd. 7. **Fraudulent viatical settlement act.** "Fraudulent viatical settlement act"  
2.18 includes:

2.19 (a) acts or omissions committed by any person who, knowingly or with intent to  
2.20 defraud, for the purpose of depriving another of property or for pecuniary gain, commits,  
2.21 or permits its employees or its agents to engage in acts including:

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

2.28 (i) an application for the issuance of a viatical settlement contract or insurance policy;

2.29 (ii) the underwriting of a viatical settlement contract or insurance policy;

2.30 (iii) a claim for payment or benefit pursuant to a viatical settlement contract or  
2.31 insurance policy;

2.32 (iv) premiums paid on an insurance policy or as a result of a viatical settlement  
2.33 purchase agreement;

2.34 (v) payments and changes in ownership or beneficiary made in accordance with  
2.35 the terms of a viatical settlement contract, viatical settlement purchase agreement, or  
2.36 insurance policy;

- 3.1 (vi) the reinstatement or conversion of an insurance policy;
- 3.2 (vii) in the solicitation, offer, effectuation, or sale of a viatical settlement contract,
- 3.3 insurance policy, or viatical settlement purchase agreement;
- 3.4 (viii) the issuance of written evidence of viatical settlement contract, viatical
- 3.5 settlement purchase agreement, or insurance; or
- 3.6 (ix) a financing transaction;
- 3.7 (2) employing any plan, financial structure, device, scheme, or artifice to defraud
- 3.8 related to viaticated policies;
- 3.9 (3) entering into any practice or plan which involves stranger-originated life
- 3.10 insurance; and
- 3.11 (4) failing to disclose to the insurer when requested by the insurer that the prospective
- 3.12 insured has undergone a life expectancy evaluation by any person or entity other than the
- 3.13 insurer or its authorized representatives in connection with the issuance of the policy;
- 3.14 (b) in the furtherance of a fraud or to prevent the detection of a fraud any person
- 3.15 commits or permits its employees or its agents to:
- 3.16 (1) remove, conceal, alter, destroy, or sequester from the commissioner the assets or
- 3.17 records of a licensee or other person engaged in the business of viatical settlements;
- 3.18 (2) misrepresent or conceal the financial condition of a licensee, financing entity,
- 3.19 insurer, or other person;
- 3.20 (3) transact the business of viatical settlements in violation of laws requiring a
- 3.21 license, certificate of authority, or other legal authority for the transaction of the business
- 3.22 of viatical settlements; or
- 3.23 (4) file with the commissioner or the equivalent chief insurance regulatory official
- 3.24 of another jurisdiction a document containing false information or otherwise conceal
- 3.25 information about a material fact from the commissioner;
- 3.26 (c) embezzlement, theft, misappropriation, or conversion of money, funds,
- 3.27 premiums, credits, or other property of a viatical settlement provider, insurer, viator,
- 3.28 insurance policyowner, or any other person engaged in the business of viatical settlements
- 3.29 or insurance;
- 3.30 (d) recklessly entering into, negotiating, brokering, otherwise dealing in a viatical
- 3.31 settlement contract, the subject of which is a life insurance policy that was obtained by
- 3.32 presenting false information concerning any fact material to the policy or by concealing,
- 3.33 for the purpose of misleading another, information concerning any fact material to the
- 3.34 policy, where the person or the persons intended to defraud the policy's issuer, the
- 3.35 viatical settlement provider, or the viator. "Recklessly" means engaging in the conduct in
- 3.36 conscious and clearly unjustifiable disregard of a substantial likelihood of the existence

4.1 of the relevant facts or risks; such disregard involving a gross deviation from acceptable  
4.2 standards of conduct;

4.3 (e) facilitating the change of state of ownership of a policy or certificate or the state  
4.4 of residency of a viator to a state or jurisdiction that does not have a law similar to sections  
4.5 60A.957 to 60A.9585 for the express purposes of evading or avoiding the provisions of  
4.6 sections 60A.957 to 60A.9585; or

4.7 (f) attempting to commit, assisting, aiding, or abetting in the commission of, or  
4.8 conspiracy to commit, the acts or omissions specified in this subdivision.

4.9 Subd. 8. **Life insurance producer.** "Life insurance producer" means any person  
4.10 licensed in this state as a resident or nonresident insurance producer who has received  
4.11 qualification or authority for life insurance coverage or a life line of coverage pursuant to  
4.12 chapter 60K.

4.13 Subd. 9. **Person.** "Person" means a natural person or a legal entity, including,  
4.14 without limitation, an individual, partnership, limited liability company, association,  
4.15 trust, or corporation.

4.16 Subd. 10. **Policy.** "Policy" means an individual or group policy, group certificate,  
4.17 contract, or arrangement of life insurance owned by a resident of this state, regardless of  
4.18 whether delivered or issued for delivery in this state.

4.19 Subd. 11. **Related provider trust.** "Related provider trust" means a titling trust or  
4.20 other trust established by a licensed viatical settlement provider or a financing entity for  
4.21 the sole purpose of holding the ownership or beneficial interest in purchased policies in  
4.22 connection with a financing transaction. The trust shall have a written agreement with the  
4.23 licensed viatical settlement provider under which the licensed viatical settlement provider  
4.24 is responsible for ensuring compliance with all statutory and regulatory requirements and  
4.25 under which the trust agrees to make all records and files related to viatical settlement  
4.26 transactions available to the commissioner as if those records and files were maintained  
4.27 directly by the licensed viatical settlement provider.

4.28 Subd. 12. **Special purpose entity.** "Special purpose entity" means a corporation,  
4.29 partnership, trust, limited liability company, or other similar entity formed solely to  
4.30 provide either directly or indirectly access to institutional capital markets:

4.31 (1) for a financing entity or licensed viatical settlement provider; or

4.32 (2)(i) in connection with a transaction in which the securities in the special purposes  
4.33 entity are acquired by the viator or by "qualified institutional buyers" as defined in Rule  
4.34 144 promulgated under the Securities Act of 1933, as amended; or

4.35 (ii) the securities pay a fixed rate of return commensurate with established  
4.36 asset-backed institutional capital markets.

5.1            Subd. 13. **Stranger-originated life insurance; STOLI.** "Stranger-originated life  
5.2 insurance" or "STOLI," means a practice or a plan to initiate a life insurance policy for the  
5.3 benefit of a third-party investor who, at the time of policy origination, has no insurable  
5.4 interest in the insured. STOLI practices include but are not limited to cases in which  
5.5 life insurance is purchased with resources or guarantees from or through a person or  
5.6 entity who at the time of policy inception could not lawfully initiate the policy himself or  
5.7 itself, and where, at the time of policy inception, there is an arrangement or agreement,  
5.8 whether verbal or written, to directly or indirectly transfer either or both the ownership  
5.9 of the policy and the policy benefits to a third party. Trusts that are created to give the  
5.10 appearance of insurable interest, and are used to initiate policies for investors, violate  
5.11 insurable interest laws and the prohibition against wagering on life. STOLI arrangements  
5.12 do not include those practices set forth in subdivision 16, paragraph (c).

5.13           Subd. 14. **Terminally ill.** "Terminally ill" means having an illness or sickness that  
5.14 can reasonably be expected to result in death in 24 months or less.

5.15           Subd. 15. **Viatical settlement broker.** "Viatical settlement broker" means a  
5.16 person, including a life insurance producer as provided for in section 60A.9572, who,  
5.17 working exclusively on behalf of a viator and for a fee, commission, or other valuable  
5.18 consideration, offers or attempts to negotiate viatical settlement contracts between a viator  
5.19 and one or more viatical settlement providers or one or more viatical settlement brokers.  
5.20 Notwithstanding the manner in which the viatical settlement broker is compensated, a  
5.21 viatical settlement broker is deemed to represent only the viator, and not the insurer or  
5.22 the viatical settlement provider, and owes a fiduciary duty to the viator to act according  
5.23 to the viator's instructions and in the best interest of the viator. The term does not  
5.24 include an attorney, certified public accountant, or a financial planner accredited by a  
5.25 nationally recognized accreditation agency, who is retained to represent the viator and  
5.26 whose compensation is not paid directly or indirectly by the viatical settlement provider  
5.27 or purchaser.

5.28           Subd. 16. **Viatical settlement contract.** (a) "Viatical settlement contract" means  
5.29 a written agreement between a viator and a viatical settlement provider or any affiliate  
5.30 of the viatical settlement provider establishing the terms under which compensation or  
5.31 anything of value is or will be paid, which compensation or value is less than the expected  
5.32 death benefits of the policy, in return for the viator's present or future assignment, transfer,  
5.33 sale, devise, or bequest of the death benefit or ownership of any portion of the insurance  
5.34 policy or certificate of insurance. "Viatical settlement contract" also includes the transfer  
5.35 for compensation or value of ownership or beneficial interest in a trust or other entity that  
5.36 owns such a policy if the trust or other entity was formed or availed of for the principal

6.1 purpose of acquiring one or more life insurance contracts, which life insurance contract  
6.2 insures the life of a person residing in this state.

6.3 (b) Viatical settlement contract includes a premium finance loan made for a life  
6.4 insurance policy by a lender to a viator on, before, or after the date of issuance of the  
6.5 policy where:

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

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

6.10 (c) Viatical settlement contract does not include:

6.11 (1) a policy loan or accelerated death benefit made by the insurer pursuant to the  
6.12 policy's terms;

6.13 (2) loan proceeds that are used solely to pay:

6.14 (i) premiums for the policy; and

6.15 (ii) the costs of the loan, including, without limitation, interest, arrangement fees,  
6.16 utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and  
6.17 expenses, and third party collateral provider fees and expenses, including fees payable  
6.18 to letter of credit issuers;

6.19 (3) a loan made by a bank or other licensed financial institution in which the lender  
6.20 takes an interest in a life insurance policy solely to secure repayment of a loan or, if there  
6.21 is a default on the loan and the policy is transferred, the transfer of such a policy by the  
6.22 lender, provided that neither the default itself nor the transfer of the policy in connection  
6.23 with the default is pursuant to an agreement;

6.24 (4) a loan made by a lender that does not violate chapter 59A, provided that the  
6.25 premium finance loan is not described in clause (3);

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

6.30 (6) any designation, consent, or agreement by an insured who is an employee of an  
6.31 employer in connection with the purchase by the employer, or trust established by the  
6.32 employer, of life insurance on the life of the employee;

6.33 (7) a bona fide business succession planning arrangement:

6.34 (i) between one or more shareholders in a corporation or between a corporation and  
6.35 one or more of its shareholders or one or more trusts established by its shareholders;

7.1 (ii) between one or more partners in a partnership or between a partnership and one  
7.2 or more of its partners or one or more trusts established by its partners; or

7.3 (iii) between one or more members in a limited liability company or between a  
7.4 limited liability company and one or more of its members or one or more trusts established  
7.5 by its members;

7.6 (8) an agreement entered into by a service recipient, or a trust established by the  
7.7 service recipient, and a service provider, or a trust established by the service provider, who  
7.8 performs significant services for the service recipient's trade or business; or

7.9 (9) any other contract, transaction, or arrangement exempted from the definition  
7.10 of viatical settlement contract by the commissioner based on a determination that the  
7.11 contract, transaction, or arrangement is not of the type intended to be regulated by sections  
7.12 60A.957 to 60A.9585.

7.13 Subd. 17. **Viatical settlement investment agent.** (a) "Viatical settlement  
7.14 investment agent" means a person who is an appointed or contracted agent of a licensed  
7.15 viatical settlement provider who solicits or arranges the funding for the purchase of a  
7.16 viatical settlement by a viatical settlement purchaser and who is acting on behalf of a  
7.17 viatical settlement provider.

7.18 (b) A viatical settlement investment agent shall not have any contact directly or  
7.19 indirectly with the viator or insured or have knowledge of the identity of the viator  
7.20 or insured.

7.21 (c) A viatical settlement investment agent is deemed to represent the viatical  
7.22 settlement provider of whom the viatical settlement investment agent is an appointed  
7.23 or contracted agent.

7.24 Subd. 18. **Viatical settlement provider.** (a) "Viatical settlement provider" means  
7.25 a person, other than a viator, that enters into or effectuates a viatical settlement contract  
7.26 with a viator resident in this state.

7.27 (b) Viatical settlement provider does not include:

7.28 (1) a bank, savings bank, savings and loan association, credit union, other licensed  
7.29 lending institution, or premium financing company making premium finance loans and  
7.30 exempted by the commissioner from the licensing requirement under the premium finance  
7.31 laws, that takes an assignment of a life insurance policy solely as a collateral for a loan;

7.32 (2) a premium finance company making premium finance loans and exempted by the  
7.33 commissioner from the licensing requirement under the premium finance laws that takes  
7.34 an assignment of a life insurance policy solely as collateral for a loan;

7.35 (3) the issuer of the life insurance policy;

8.1 (4) an authorized or eligible insurer that provides stop-loss coverage or financial  
 8.2 guaranty insurance to a viatical settlement provider, purchaser, financing entity, special  
 8.3 purpose entity, or related provider trust;

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

8.7 (6) a financing entity;

8.8 (7) a special purpose entity;

8.9 (8) a related provider trust;

8.10 (9) a viatical settlement purchaser; or

8.11 (10) any other person that the commissioner determines is not the type of person  
 8.12 intended to be covered by the definition of viatical settlement provider.

8.13 Subd. 19. **Viatical settlement purchase agreement.** "Viatical settlement purchase  
 8.14 agreement" means a contract or agreement, entered into by a viatical settlement purchaser,  
 8.15 to which the viator is not a party, to purchase a life insurance policy or an interest in a life  
 8.16 insurance policy, that is entered into for the purpose of deriving an economic benefit.

8.17 Subd. 20. **Viatical settlement purchaser.** (a) "Viatical settlement purchaser" means  
 8.18 a person who provides a sum of money as consideration for a life insurance policy or an  
 8.19 interest in the death benefits of a life insurance policy, or a person who owns or acquires or  
 8.20 is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is  
 8.21 the beneficiary of a life insurance policy that has been or will be the subject of a viatical  
 8.22 settlement contract, for the purpose of deriving an economic benefit.

8.23 (b) Viatical settlement purchaser does not include:

8.24 (1) a licensee under sections 60A.957 to 60A.9585;

8.25 (2) an accredited investor or qualified institutional buyer as defined, respectively,  
 8.26 in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as  
 8.27 amended;

8.28 (3) a financing entity;

8.29 (4) a special purpose entity; or

8.30 (5) a related provider trust.

8.31 Subd. 21. **Viaticated policy.** "Viaticated policy" means a life insurance policy or  
 8.32 certificate that has been acquired by a viatical settlement provider pursuant to a viatical  
 8.33 settlement contract.

8.34 Subd. 22. **Viator.** (a) "Viator" means the owner of a life insurance policy or a  
 8.35 certificate holder under a group policy who resides in this state and enters or seeks to  
 8.36 enter into a viatical settlement contract. For purposes of sections 60A.957 to 60A.9585,

9.1 a viator shall not be limited to an owner of a life insurance policy or a certificate holder  
9.2 under a group policy insuring the life of an individual with a terminal or chronic illness or  
9.3 condition except where specifically addressed. If there is more than one viator on a single  
9.4 policy and the viators are residents of different states, the transaction shall be governed by  
9.5 the law of the state in which the viator having the largest percentage ownership resides or,  
9.6 if the viators hold equal ownership, the state of residence of one viator agreed upon in  
9.7 writing by all the viators.

9.8 (b) Viator does not include:

9.9 (1) a license under this Act, including a life insurance producer acting as a viatical  
9.10 settlement broker pursuant to sections 60A.957 to 60A.9585;

9.11 (2) a qualified institutional buyer as defined, respectively, in Rule 144A promulgated  
9.12 under the Federal Securities Act of 1933, as amended;

9.13 (3) a financing entity;

9.14 (4) a special purpose entity; or

9.15 (5) a related provider trust.

9.16 **Sec. 2. [60A.9572] LICENSE AND BOND REQUIREMENTS.**

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

9.20 Subd. 2. **Agent license required.** A person shall not operate as a viatical settlement  
9.21 investment agent without first obtaining a license from the commissioner of the state of  
9.22 residence of the viatical settlement purchaser. If there is more than one purchaser of a  
9.23 single policy and the purchasers are residents of different states, the viatical settlement  
9.24 purchase agreement shall be governed by the law of the state in which the purchaser  
9.25 having the largest percentage ownership resides or, if the purchasers hold equal ownership,  
9.26 the state of residence of one purchaser agreed upon in writing by all purchasers.

9.27 Subd. 3. **Life insurance provider.** (a) A life insurance provider who has been duly  
9.28 licensed as a resident insurance producer with a life line of authority in this state or his or  
9.29 her home state for at least one year and is licensed as a nonresident producer in this state  
9.30 shall be deemed to meet the licensing requirements of this section and shall be permitted  
9.31 to operate as a viatical settlement broker.

9.32 (b) Not later than 30 days from the first day of operating as a viatical settlement  
9.33 broker, the life insurance producer shall notify the commissioner that he or she is acting  
9.34 as a viatical settlement broker on a form prescribed by the commissioner, and shall pay  
9.35 any applicable fee to be determined by the commissioner. Notification shall include an

10.1 acknowledgment by the life insurance producer that he or she will operate as a viatical  
10.2 settlement broker in accordance with sections 60A.957 to 60A.9585.

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

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

10.14 Subd. 4. **Application.** Application for a viatical settlement provider, viatical  
10.15 settlement broker, or viatical settlement investment agent license shall be made to the  
10.16 commissioner by the applicant on a form prescribed by the commissioner, and these  
10.17 applications shall be accompanied by the fees specified in section 60A.964.

10.18 Subd. 5. **Renewals.** Licenses may be renewed from year to year on the anniversary  
10.19 date upon payment of the annual renewal fees specified in section 60A.964. Failure to pay  
10.20 the fees by the renewal date results in expiration of the license.

10.21 Subd. 6. **Disclosures.** The applicant shall provide information on forms required  
10.22 by the commissioner. The commissioner shall have authority, at any time, to require the  
10.23 applicant to fully disclose the identity of all stockholders, partners, officers, members, and  
10.24 employees, and the commissioner may, in the exercise of the commissioner's discretion,  
10.25 refuse to issue a license in the name of a legal entity if not satisfied that any officer,  
10.26 employee, stockholder, partner, or member thereof who may materially influence the  
10.27 applicant's conduct meets the standards of sections 60A.957 to 60A.9585.

10.28 Subd. 7. **Legal entity license.** A license issued to a legal entity authorizes all  
10.29 partners, officers, members, and designated employees to act as viatical settlement  
10.30 providers, viatical settlement brokers, or viatical settlement investment agents, as  
10.31 applicable, under the license, and all those persons shall be named in the application  
10.32 and any supplements to the application.

10.33 Subd. 8. **Investigation.** (a) Upon the filing of an application and the payment of the  
10.34 license fee, the commissioner shall make an investigation of each applicant and issue a  
10.35 license if the commissioner finds that the applicant:

10.36 (1) if a viatical settlement provider, has provided a detailed plan of operation;

11.1 (2) is competent and trustworthy and intends to act in good faith in the capacity  
11.2 involved by the license applied for;

11.3 (3) has a good business reputation and has had experience, training, or education so  
11.4 as to be qualified in the business for which the license is applied for;

11.5 (4)(i) if a viatical settlement provider, has demonstrated evidence of financial  
11.6 responsibility in a format prescribed by the commissioner through either a surety bond  
11.7 executed and issued by an insurer authorized to issue surety bonds in this state or a deposit  
11.8 of cash, certificates of deposit, or securities or any combination thereof in the amount of  
11.9 \$250,000; and

11.10 (ii) if a viatical settlement broker, has demonstrated evidence of financial  
11.11 responsibility in a format prescribed by the commissioner through either a surety bond  
11.12 executed and issued by an insurer authorized to issue surety bonds in this state or a deposit  
11.13 of cash, certificates of deposit, or securities or any combination thereof in the amount of  
11.14 \$250,000. The commissioner shall accept, as evidence of financial responsibility, proof  
11.15 that financial instruments in accordance with the requirements in this paragraph have  
11.16 been filed with one or more states where the applicant is licensed as a viatical settlement  
11.17 provider or viatical settlement broker. The commissioner may ask for evidence of financial  
11.18 responsibility at any time the commissioner deems necessary. Any surety bond issued  
11.19 pursuant to this paragraph shall be in the favor of this state and shall specifically authorize  
11.20 recovery by the commission on behalf of any person in this state who sustained damages  
11.21 as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair  
11.22 practices by the viatical settlement provider or viatical settlement broker;

11.23 (5) if a legal entity, provides a certificate of good standing from the state of its  
11.24 domicile; and

11.25 (6) if a viatical settlement provider or viatical settlement broker, has provided an  
11.26 antifraud plan that meets the requirements of section 60A.9583.

11.27 (b) Notwithstanding any provision of this section to the contrary, the commissioner  
11.28 shall accept, as evidence of financial responsibility, proof that financial instruments in  
11.29 accordance with the requirements in paragraph (a), clause (4), have been filed with one  
11.30 state where the applicant is licensed as a viatical settlement provider or viatical settlement  
11.31 broker.

11.32 Subd. 9. **Consent to service of process.** The commissioner shall not issue a  
11.33 license to a nonresident applicant, unless a written designation of an agent for service of  
11.34 process is filed and maintained with the commissioner or the applicant has filed with  
11.35 the commissioner, the applicant's written irrevocable consent that any action against

12.1 the applicant may be commenced against the applicant by service of process on the  
12.2 commissioner.

12.3 Subd. 10. **Duty to supplement information.** A viatical settlement provider,  
12.4 viatical settlement broker, or viatical settlement investment agent shall provide to the  
12.5 commissioner new or revised information about officers, ten percent or more stockholders,  
12.6 partners, directors, members, or designated employees within 30 days of the change.

12.7 Subd. 11. **Training required.** An individual licensed as a viatical settlement broker  
12.8 shall complete on a biennial basis 15 hours of training related to viatical settlements and  
12.9 viatical settlement transactions, as required by the commissioner; provided, however,  
12.10 that a life insurance producer who is operating as a viatical settlement broker pursuant  
12.11 to subdivision 3 shall not be subject to the requirements of this subdivision. Any person  
12.12 failing to meet the requirements of this subdivision is subject to the penalties imposed by  
12.13 the commissioner.

12.14 **Sec. 3. [60A.9573] LICENSE REVOCATION AND DENIAL.**

12.15 Subdivision 1. **Grounds.** The commissioner may refuse to issue, suspend, revoke,  
12.16 or refuse to renew the license of a viatical settlement provider, viatical settlement broker,  
12.17 or viatical settlement investment agent if the commissioner finds that:

12.18 (1) there was any material misrepresentation in the application for the license;

12.19 (2) the licensee or any officer, partner, member, or key management personnel has  
12.20 been convicted of fraudulent or dishonest practices, is subject to a final administrative  
12.21 action or is otherwise shown to be untrustworthy or incompetent;

12.22 (3) the viatical settlement provider demonstrates a pattern of unreasonable payments  
12.23 to viators;

12.24 (4) the licensee or any officer, partner, member, or key management personnel  
12.25 has been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or to  
12.26 a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of  
12.27 conviction has been entered by the court;

12.28 (5) the viatical settlement provider has entered into any viatical settlement contract  
12.29 that has not been approved pursuant to sections 60A.957 to 60A.9585;

12.30 (6) the viatical settlement provider has failed to honor contractual obligations set out  
12.31 in a viatical settlement contract or a viatical settlement purchase agreement;

12.32 (7) the licensee no longer meets the requirements for initial licensure;

12.33 (8) the viatical settlement provider has assigned, transferred, or pledged a viaticated  
12.34 policy to a person other than a viatical settlement provider licensed in this state, viatical  
12.35 settlement purchaser, an accredited investor, or qualified institutional buyer as defined

13.1 respectively in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of  
 13.2 1933, as amended, financing entity, special purpose entity, or related provider trust; or  
 13.3 (9) the licensee or any officer, partner, member, or key management personnel has  
 13.4 violated any provision of sections 60A.957 to 60A.9585.

13.5 Subd. 2. **Bad faith by broker or producer.** The commissioner may suspend,  
 13.6 revoke, or refuse to renew the license of a viatical settlement broker or a life insurance  
 13.7 producer operating as a viatical settlement broker pursuant to sections 60A.957 to  
 13.8 60A.9585 if the commissioner finds that the viatical settlement broker or life insurance  
 13.9 producer has violated the provisions of sections 60A.957 to 60A.9585 or has otherwise  
 13.10 engaged in bad faith conduct with one or more viators.

13.11 Subd. 3. **License enforcement actions.** Section 45.027 applies to any action  
 13.12 taken by the commissioner to deny a license application or suspend, revoke, or refuse to  
 13.13 renew the license of a viatical settlement provider, viatical settlement broker, or viatical  
 13.14 settlement investment agent, or suspend, revoke, or refuse to renew a license of a life  
 13.15 insurance producer operating as a viatical settlement broker pursuant to sections 60A.957  
 13.16 to 60A.9585.

13.17 **Sec. 4. [60A.9574] APPROVAL OF VIATICAL SETTLEMENT CONTRACTS**  
 13.18 **AND DISCLOSURE STATEMENTS.**

13.19 A person shall not use a viatical settlement contract form or provide to a viator  
 13.20 a disclosure statement form in this state unless first filed with and approved by the  
 13.21 commissioner. The commissioner shall disapprove a viatical settlement contract form or  
 13.22 disclosure statement form if, in the commissioner's opinion, the contract or provisions  
 13.23 contained therein fail to meet the requirements of sections 60A.6577, 60A.9579,  
 13.24 60A.9582, and 60A.9583, subdivision 2, or are unreasonable, contrary to the interests  
 13.25 of the public, or otherwise misleading or unfair to the viator. At the commissioner's  
 13.26 discretion, the commissioner may require the submission of advertising material.

13.27 **Sec. 5. [60A.9575] REPORTING REQUIREMENTS AND PRIVACY.**

13.28 Subdivision 1. **Annual statement.** Each viatical settlement provider shall file with  
 13.29 the commissioner on or before March 1 of each year an annual statement containing  
 13.30 the following information:

13.31 (1) for each policy viaticated, the date that the viatical settlement was entered into;  
 13.32 the life expectancy of the viator at the time of the contract; the face amount of the policy;  
 13.33 the amount paid by the viatical settlement provider to viaticate the policy; and if the viator

14.1 has died, the date of death and the total insurance premiums paid by the viatical settlement  
14.2 provider to maintain the policy in force;

14.3 (2) a breakdown by disease category of applications received, accepted, and rejected;

14.4 (3) a breakdown of policies viaticated by issuer and policy type;

14.5 (4) the number of secondary market versus primary market transactions;

14.6 (5) the portfolio size; and

14.7 (6) the amount of outside borrowings.

14.8 The information shall be limited to only those transactions where the viator is  
14.9 a resident of this state. Individual transaction data regarding the business of viatical  
14.10 settlements or data that could compromise the privacy of personal, financial, and health  
14.11 information of the viator or insured shall be filed with the commissioner on a confidential  
14.12 basis.

14.13 Subd. 2. **Identity disclosure restrictions.** Except as otherwise allowed or required  
14.14 by law, a viatical settlement provider, viatical settlement broker, or viatical settlement  
14.15 investment agent, insurance company, insurance producer, information bureau, rating  
14.16 agency or company, or any other person with actual knowledge of an insured's identity,  
14.17 shall not disclose that identity as an insured, or the insured's financial or medical  
14.18 information to any other person unless the disclosure:

14.19 (1) is necessary to effect a viatical settlement between the viator and a viatical  
14.20 settlement provider and the viator and insured have provided prior written consent to  
14.21 the disclosure;

14.22 (2) is necessary to effect a viatical settlement purchase agreement between the  
14.23 viatical settlement purchaser and a viatical settlement provider and the viator and insured  
14.24 have provided prior written consent to the disclosure;

14.25 (3) is provided in response to an investigation or examination by the commissioner  
14.26 or any other governmental officer or agency or pursuant to the requirements of section .....

14.27 (4) is a term of or condition to the transfer of a policy by one viatical settlement  
14.28 provider to another viatical settlement provider;

14.29 (5) is necessary to permit a financing entity, related provider trust, or special purpose  
14.30 entity to finance the purchase of policies by a viatical settlement provider and the viator  
14.31 and insured have provided prior written consent to the disclosure;

14.32 (6) is necessary to allow the viatical settlement provider or viatical settlement broker  
14.33 or their authorized representatives to make contacts for the purpose of determining health  
14.34 status; or

14.35 (7) is required to purchase stop-loss coverage or financial guaranty insurance.

15.1       Sec. 6. **[60A.9576] EXAMINATION OR INVESTIGATIONS.**

15.2             Subdivision 1. Authority, scope, and scheduling of examinations. (a) The  
15.3 commissioner may conduct an examination under this act of a licensee as often as the  
15.4 commissioner in his or her discretion deems appropriate after considering the factors set  
15.5 forth in this paragraph. Any examination must be conducted pursuant to section 60A.031.

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

15.11            (c) For purposes of completing an examination of a licensee under this act, the  
15.12 commissioner may examine or investigate any person, or the business of any person, in  
15.13 so far as the examination or investigation is, in the sole discretion of the commissioner,  
15.14 necessary or material to the examination of the licensee.

15.15            (d) In lieu of an examination under this act of any foreign or alien licensee  
15.16 licensed in this state, the commissioner may, at the commissioner's discretion, accept an  
15.17 examination report on the licensee as prepared by the commissioner for the licensee's state  
15.18 of domicile or port-of-entry state.

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

15.22            Subd. 2. Record retention requirements. (a) A person required to be licensed by  
15.23 sections 60A.957 to 60A.9585 shall for five years retain copies of all:

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

15.27            (2) all checks, drafts, or other evidence and documentation related to the payment,  
15.28 transfer, deposit, or release of funds from the date the transaction; and

15.29            (3) all other records and documents related to the requirements of sections ... to ....

15.30            (b) This section does not relieve a person of the obligation to produce these  
15.31 documents to the commissioner after the retention period has expired if the person has  
15.32 retained the documents.

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

16.1 Subd. 3 **Investigative authority of commissioner.** The commissioner may  
16.2 investigate suspected fraudulent viatical settlement acts and persons engaged in the  
16.3 business of viatical settlements.

16.4 **Sec. 7. [60A.9577] DISCLOSURE TO VIATOR.**

16.5 Subdivision 1. **Application disclosures by provider and broker.** With each  
16.6 application for a viatical settlement, a viatical settlement provider or viatical settlement  
16.7 broker shall provide the viator with at least the following disclosures no later than the  
16.8 time the application for the viatical settlement contract is signed by all parties. The  
16.9 disclosures shall be provided in a separate document that is signed by the viator and the  
16.10 viatical settlement provider or viatical settlement broker, and shall provide the following  
16.11 information:

16.12 (1) there are possible alternatives to viatical settlement contracts including any  
16.13 accelerated death benefits or policy loans offered under the viator's life insurance policy;

16.14 (2) that a viatical settlement broker represents exclusively the viator, and not the  
16.15 insurer or the viatical settlement provider, and owes a fiduciary duty to the viator, including  
16.16 a duty to act according to the viator's instructions and in the best interest of the viator;

16.17 (3) some or all of the proceeds of the viatical settlement may be taxable under  
16.18 federal income tax and state franchise and income taxes, and assistance should be sought  
16.19 from a professional tax advisor;

16.20 (4) proceeds of the viatical settlement could be subject to the claims of creditors;

16.21 (5) receipt of the proceeds of a viatical settlement may adversely affect the viator's  
16.22 eligibility for Medicaid or other government benefits or entitlements, and advice should  
16.23 be obtained from the appropriate government agencies;

16.24 (6) the viator has the right to rescind a viatical settlement contract before the earlier  
16.25 of 60 calendar days after the date upon which the viatical settlement contract is executed  
16.26 by all parties or 30 calendar days after the viatical settlement proceeds have been paid to  
16.27 the viator, as provided in section 60A.9578, subdivision 6. Rescission, if exercised by  
16.28 the viator, is effective only if both notice of the rescission is given, and the viator repays  
16.29 all proceeds and any premiums, loans, and loan interest paid on account of the viatical  
16.30 settlement within the rescission period. If the insured dies during the rescission period, the  
16.31 viatical settlement contract shall be deemed to have been rescinded, subject to repayment  
16.32 by the viator or the viator's estate of all viatical settlement proceeds and any premiums,  
16.33 loans, and loan interest to the viatical settlement within 60 days of the insured's death;

16.34 (7) funds will be sent to the viator within three business days after the  
16.35 viatical settlement provider has received the insurer or group administrator's written

17.1 acknowledgment that ownership of the policy or interest in the certificate has been  
17.2 transferred and the beneficiary has been designated;

17.3 (8) entering into a viatical settlement contract may cause other rights or benefits,  
17.4 including conversion rights and waiver of premium benefits that may exist under the  
17.5 policy or certificate, to be forfeited by the viator. Assistance should be sought from  
17.6 a financial adviser;

17.7 (9) disclosure to a viator shall include distribution of a brochure describing the  
17.8 process of viatical settlements. The NAIC's form for the brochure shall be used unless  
17.9 another form is developed or approved by the commissioner;

17.10 (10) the disclosure document shall contain the following language: "All medical,  
17.11 financial, or personal information solicited or obtained by a viatical settlement provider or  
17.12 viatical settlement broker about an insured, including the insured's identity or the identity  
17.13 of family members, a spouse, or a significant other may be disclosed as necessary to  
17.14 effect the viatical settlement between the viator and the viatical settlement provider. If  
17.15 you are asked to provide this information, you will be asked to consent to the disclosure.  
17.16 The information may be provided to someone who buys the policy or provides funds for  
17.17 the purchase. You may be asked to renew your permission to share information every  
17.18 two years."; and

17.19 (11) following execution of a viatical contract, the insured may be contacted for the  
17.20 purpose of determining the insured's health status and to confirm the insured's residential  
17.21 or business street address and telephone number, or as otherwise provided in this act. This  
17.22 contact shall be limited to once every three months if the insured has a life expectancy of  
17.23 more than one year, and no more than once per month if the insured has a life expectancy  
17.24 of one year or less. All such contracts shall be made only by a viatical settlement provider  
17.25 licensed in the state in which the viator resided at the time of the viatical settlement, or by  
17.26 the authorized representative of a duly licensed viatical settlement provider.

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

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

17.34 (2) the document shall include the name, business address, and telephone number of  
17.35 the viatical settlement provider;

18.1 (3) any affiliations or contractual arrangements between the viatical settlement  
18.2 provider and the viatical settlement purchaser;

18.3 (4) if an insurance policy to be viaticated has been issued as a joint policy or  
18.4 involves family riders or any coverage of a life other than the insured under the policy to  
18.5 be viaticated, the viator shall be informed of the possible loss of coverage on the other  
18.6 lives under the policy and shall be advised to consult with his or her insurance producer or  
18.7 the insurer issuing the policy for advice on the proposed viatical settlement;

18.8 (5) state the dollar amount of the current death benefit payable to the viatical  
18.9 settlement provider under the policy or certificate. If known, the viatical settlement  
18.10 provider shall also disclose the availability of any additional guaranteed insurance  
18.11 benefits, the dollar amount of any accidental death and dismemberment benefits under the  
18.12 policy or certificate, and the extent to which the viator's interest in those benefits will be  
18.13 transferred as a result of the viatical settlement contract; and

18.14 (6) state whether the funds will be escrowed with an independent third party during  
18.15 the transfer process, and if so, provide the name, business address, and telephone number  
18.16 of the independent third-party escrow agent, and the fact that the viator or owner may  
18.17 inspect or receive copies of the relevant escrow or trust agreements or documents.

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

18.23 (1) the name, business address, and telephone number of the viatical settlement  
18.24 broker;

18.25 (2) a full, complete, and accurate description of all offers, counteroffers, acceptances,  
18.26 and rejections relating to the proposed viatical settlement contract;

18.27 (3) a written disclosure of any affiliations or contractual arrangements between the  
18.28 viatical settlement broker and any person making an offer in connection with the proposed  
18.29 viatical settlement contracts;

18.30 (4) the amount and method of calculating the broker's compensation, which term  
18.31 "compensation" includes anything of value paid or given to a viatical settlement broker  
18.32 for the placement of a policy; and

18.33 (5) where any portion of the viatical settlement broker's compensation, as defined in  
18.34 subdivision 2, clause (3), is taken from a proposed viatical settlement offer, the broker  
18.35 shall disclose the total amount of the viatical settlement offer and the percentage of the  
18.36 viatical settlement offer comprised by the viatical settlement broker's compensation.

19.1            Subd. 4. **Ownership and beneficiary changes.** If the viatical settlement provider  
19.2 transfers ownership or changes the beneficiary of the insurance policy, the provider shall  
19.3 communicate in writing the change in ownership or beneficiary to the insured within  
19.4 20 days after the change.

19.5            Subd. 5. **Contract disclosures by provider or agent.** A viatical settlement provider  
19.6 or its viatical settlement investment agent shall provide the viatical settlement purchaser  
19.7 with at least the following disclosures prior to the date the viatical settlement purchase  
19.8 agreement is signed by all parties. The disclosures shall be conspicuously displayed in  
19.9 any viatical purchase contract or in a separate document signed by the viatical settlement  
19.10 purchaser and viatical settlement provider or viatical settlement investment agent, and  
19.11 shall make the following disclosure to the viatical settlement purchaser:

19.12            (1) the purchaser will receive no returns, for example, dividends and interest, until  
19.13 the insured dies and a death claim payment is made;

19.14            (2) the actual annual rate of return on a viatical settlement contract is dependent  
19.15 upon an accurate projection of the insured's life expectancy, and the actual date of the  
19.16 insured's death. An annual guaranteed rate of return is not determinable;

19.17            (3) the viaticated life insurance contract should not be considered a liquid purchase  
19.18 since it is impossible to predict the exact timing of its maturity and the funds are probably  
19.19 not available until the death of the insured. There is no established secondary market for  
19.20 resale of these products by the purchaser;

19.21            (4) the purchaser may lose all benefits or may receive substantially reduced benefits  
19.22 if the insurer goes out of business during the term of the viatical investment;

19.23            (5) the purchaser is responsible for payment of the insurance premium or other  
19.24 costs related to the policy, if required by the terms of the viatical purchase agreement.  
19.25 These payments may reduce the purchaser's return. If a party other than the purchaser is  
19.26 responsible for the payment, the name and address of that party shall also be disclosed;

19.27            (6) the purchaser is responsible for payment of the insurance premiums or other  
19.28 costs related to the policy if the insured returns to health. Disclose the amount of such  
19.29 premiums, if applicable;

19.30            (7) state the name, business address, and telephone number of the independent third  
19.31 party providing escrow services and the relationship to the broker;

19.32            (8) the amount of any trust fees or other expenses to be charged to the viatical  
19.33 settlement purchaser shall be disclosed;

19.34            (9) state whether the purchaser is entitled to a refund of all or part of his or her  
19.35 investment under the settlement contract if the policy is later determined to be null and  
19.36 void;

20.1 (10) disclose that group policies may contain limitations or caps in the conversion  
20.2 rights, additional premiums may have to be paid if the policy is converted, name the  
20.3 party responsible for the payment of the additional premiums and, if a group policy  
20.4 is terminated and replaced by another group policy, state that there may be no right  
20.5 to convert the original coverage;

20.6 (11) disclose the risks associated with policy contestability including, but not limited  
20.7 to, the risk that the purchaser will have no claim or only a partial claim to death benefits  
20.8 should the insurer rescind the policy within the contestability period;

20.9 (12) disclose whether the purchaser will be the owner of the policy in addition to  
20.10 being the beneficiary, and if the purchaser is the beneficiary only and not also the owner,  
20.11 the special risks associated with that status, including, but not limited to, the risk that the  
20.12 beneficiary may be changed or the premium may not be paid;

20.13 (13) describe the experience and qualifications of the person who determines the  
20.14 life expectancy of the insured, for example, in-house staff, independent physicians, and  
20.15 specialty firms that weigh medical and actuarial data; the information this projection is  
20.16 based on; and the relationship of the projection maker to the viatical settlement provider, if  
20.17 any; and

20.18 (14) disclosure to an investor shall include distribution of a brochure describing the  
20.19 process of investment in viatical settlements. The NAIC's form for the brochure shall be  
20.20 used unless one is developed by the commissioner.

20.21 Subd. 6. **Transfer or sale disclosures by provider or agent.** A viatical settlement  
20.22 provider or its viatical settlement investment agent shall provide the viatical settlement  
20.23 purchaser with at least the following disclosures no later than at the time of the  
20.24 assignment, transfer, or sale of all or a portion of an insurance policy. The disclosures  
20.25 shall be contained in a document signed by the viatical settlement purchaser and viatical  
20.26 settlement provider or viatical settlement investment agent, and shall make the following  
20.27 disclosures to the viatical settlement purchaser:

20.28 (1) disclose all the life expectancy certifications obtained by the provider in the  
20.29 process of determining the price paid to the viator;

20.30 (2) state whether premium payments (or other costs related to the policy have been  
20.31 escrowed. If escrowed, state the date upon which the escrowed funds will be depleted  
20.32 and whether the purchaser will be responsible for payment of premiums thereafter and, if  
20.33 so, the amount of the premiums;

20.34 (3) state whether premium payments (or other costs related to the policy have been  
20.35 waived. If waived, disclose whether the investor will be responsible for payment of the

21.1 premiums if the insurer that wrote the policy terminates the waiver after purchase and  
21.2 the amount of those premiums;

21.3 (4) disclose the type of policy offered or sold, for example, whole life, term life,  
21.4 universal life, or a group policy certificate; any additional benefits contained in the policy;  
21.5 and the current status of the policy;

21.6 (5) if the policy is term insurance, disclose the special risks associated with term  
21.7 insurance including, but not limited to, the purchaser's responsibility for additional  
21.8 premiums if the viator continues the term policy at the end of the current term;

21.9 (6) state whether the policy is contestable;

21.10 (7) state whether the insurer that wrote the policy has any additional rights that could  
21.11 negatively affect or extinguish the purchaser's rights under the viatical settlement contract,  
21.12 what these rights are, and under what conditions these rights are activated; and

21.13 (8) state the name and address of the person responsible for monitoring the insured's  
21.14 condition. Describe how often the monitoring of the insured's condition is done, how the  
21.15 date of death is determined, and how and when this information will be transmitted to  
21.16 the purchaser.

21.17 Subd. 7. **Agreement voidable.** The viatical settlement purchase agreement is  
21.18 voidable by the purchaser at any time within three days after the disclosures mandated by  
21.19 subdivisions 4 and 5 are received by the purchaser.

21.20 **Sec. 8. [60A.9578] DISCLOSURE TO INSURER.**

21.21 Prior to the initiation of a plan, transaction, or series of transactions, a viatical  
21.22 settlement broker or viatical settlement provider shall fully disclose to an insurer a plan,  
21.23 transaction, or series of transactions, to which the viatical settlement broker or viatical  
21.24 settlement provider is a party, to originate, renew, continue, or finance a life insurance  
21.25 policy with the insurer for the purpose of engaging in the business of viatical settlements  
21.26 at anytime prior to, or during the first five years after, issuance of the policy.

21.27 **Sec. 9. [60A.9579] GENERAL RULES.**

21.28 Subdivision 1. **Provider requirements.** (a) A viatical settlement provider entering  
21.29 into a viatical settlement contract shall first obtain:

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

22.1 (2) a document in which the insured consents to the release of his or her medical  
22.2 records to a licensed viatical settlement provider, viatical settlement broker, and the  
22.3 insurance company that issued the life insurance policy covering the life of the insured.

22.4 (b) Within 20 days after a viator executes documents necessary to transfer any rights  
22.5 under an insurance policy or within 20 days of entering any agreement, option, promise, or  
22.6 any other form of understanding, expressed or implied, to viaticate the policy, the viatical  
22.7 settlement provider shall give written notice to the insurer that issued that insurance policy  
22.8 that the policy has or will become a viaticated policy. The notice shall be accompanied by  
22.9 the documents required by paragraph (c).

22.10 (c) The viatical provider shall deliver a copy of the medical release required under  
22.11 paragraph (a), clause (2), a copy of the viator's application for the viatical settlement  
22.12 contract, the notice required under paragraph (b), and a request for verification of coverage  
22.13 to the insurer that issued the life insurance policy that is the subject of the viatical  
22.14 transaction. The NAIC's form for verification of coverage shall be used unless another  
22.15 form is developed or approved by the commissioner.

22.16 (d) The insurer shall respond to a request for verification of coverage submitted on  
22.17 an approved form by a viatical settlement provider or viatical settlement broker within 30  
22.18 calendar days of the date the request is received and shall indicate whether, based on the  
22.19 medical evidence and documents provided, the insurer intends to pursue an investigation  
22.20 at this time regarding the validity of the insurance contract or possible fraud. The insurer  
22.21 shall accept a request for verification of coverage made on an NAIC form or any other  
22.22 form approved by the commissioner. The insurer shall accept an original or facsimile or  
22.23 electronic copy of such request and any accompanying authorization signed by the viator.  
22.24 Failure by the insurer to meet its obligations under this subdivision shall be a violation of  
22.25 sections 60A.958, subdivision 3, and 60A.9585.

22.26 (e) Prior to or at the time of execution of the viatical settlement contract, the viatical  
22.27 settlement provider shall obtain a witnessed document in which the viator consents  
22.28 to the viatical settlement contract, represents that the viator has a full and complete  
22.29 understanding of the viatical settlement contract, that he or she has a full and complete  
22.30 understanding of the benefits of the life insurance policy, acknowledges that he or she is  
22.31 entering into the viatical settlement contract freely and voluntarily and, for persons with  
22.32 a terminal or chronic illness or condition, acknowledges that the insured has a terminal  
22.33 or chronic illness and that the terminal or chronic illness or condition was diagnosed  
22.34 after the life insurance policy was issued.

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

23.4 Subd. 2. **Confidentiality of personal information.** All personal information  
23.5 solicited or obtained by any licensee shall be subject to sections 72A.49 to 72A.505.

23.6 Subd. 3. **General right of rescission.** All viatical settlement contracts entered into  
23.7 in this state shall provide the viator with an absolute right to rescind the contract before  
23.8 the earlier of 60 calendar days after the date upon which the viatical settlement contract is  
23.9 executed by all parties or 30 calendar days after the viatical settlement proceeds have been  
23.10 sent to the viator as provided in subdivision 6. Rescission by the viator may be conditioned  
23.11 upon the viator both giving notice and repaying to the viatical settlement provider within  
23.12 the rescission period all proceeds of the settlement and any premiums, loans, and loan  
23.13 interest paid by or on behalf of the viatical settlement provider in connection with or  
23.14 as a consequence of the viatical settlement. If the insured dies during the rescission  
23.15 period, the viatical settlement contract shall be deemed to have been rescinded, subject  
23.16 to repayment to the viatical settlement provider or purchaser of all viatical settlement  
23.17 proceeds, and any premiums, loans, and loan interest that have been paid by the viatical  
23.18 settlement provider or purchaser, which shall be paid within 60 calendar days of the death  
23.19 of the insured. In the event of any rescission, if the viatical settlement provider has paid  
23.20 commissions or other compensation to a viatical settlement broker in connection with the  
23.21 rescinded transaction, the viatical settlement broker shall refund all such commissions  
23.22 and compensation to the viatical settlement provider within five business days following  
23.23 receipt of written demand from the viatical settlement provider, which demand shall be  
23.24 accompanied by either the viator's notice of rescission if rescinded at the election of the  
23.25 viator, or notice of the death of the insured if rescinded by reason of the death of the  
23.26 insured within the applicable rescission period.

23.27 Subd. 4. **Right to rescind after mandated disclosures.** The purchaser shall have  
23.28 the right to rescind a viatical settlement contract within three days after the disclosures  
23.29 mandated by section 60A.9577, subdivisions 4 and 5, are received by the purchaser.

23.30 Subd. 5. **Payment of settlement proceeds.** The viatical settlement provider shall  
23.31 instruct the viator to send the executed documents required to effect the change in  
23.32 ownership, assignment, or change in beneficiary directly to the independent escrow agent.  
23.33 Within three business days after the date the escrow agent receives the document, or from  
23.34 the date the viatical settlement provider receives the documents, if the viator erroneously  
23.35 provides the documents directly to the provider, the provider shall pay or transfer the  
23.36 proceeds of the viatical settlement into an escrow or trust account maintained in a state- or

24.1 federally chartered financial institution whose deposits are insured by the Federal Deposit  
24.2 Insurance Corporation (FDIC). Upon payment of the settlement proceeds into the escrow  
24.3 account, the escrow agent shall deliver the original change in ownership, assignment, or  
24.4 change in beneficiary forms to the viatical settlement provider or related provider trust  
24.5 or other designated representative of the viatical settlement provider. Upon the escrow  
24.6 agent's receipt of the acknowledgment of the properly completed transfer of ownership,  
24.7 assignment, or designation of beneficiary from the insurance company, the escrow agent  
24.8 shall pay the settlement proceeds to the viator.

24.9 Subd. 6. **Tendering consideration.** Failure to tender consideration to the viator  
24.10 for the viatical settlement contract within the time set forth in the disclosure pursuant  
24.11 to section 60A.9577, subdivision 1, clause (7), renders the viatical settlement contract  
24.12 voidable by the viator for lack of consideration until the time consideration is tendered to  
24.13 and accepted by the viator. Funds shall be deemed sent by a viatical settlement provider  
24.14 to a viator as of the date that the escrow agent either releases funds for wire transfer  
24.15 to the viator or places a check for delivery to the viator by United States mail or other  
24.16 nationally recognized delivery service.

24.17 Subd. 7. **Health status contacts.** Contacts with the insured for the purpose of  
24.18 determining the health status of the insured by the viatical settlement provider or viatical  
24.19 settlement broker after the viatical settlement has occurred shall only be made by the  
24.20 viatical settlement provider or broker licensed in this state or its authorized representatives  
24.21 and shall be limited to once every three months for insureds with a life expectancy of more  
24.22 than one year, and to no more than once per month for insureds with a life expectancy of  
24.23 one year or less. The provider or broker shall explain the procedure for these contacts  
24.24 at the time the viatical settlement contract is entered into. The limitations set forth  
24.25 in this subdivision shall not apply to any contacts with an insured for reasons other  
24.26 than determining the insured's health status. Viatical settlement providers and viatical  
24.27 settlement brokers shall be responsible for the actions of their authorized representatives.

24.28 **Sec. 10. [60A.958] PROHIBITED PRACTICES.**

24.29 Subdivision 1. **Viator's failure to certify conditions.** It is a violation of sections  
24.30 60A.957 to 60A.9585 for any person to enter into a viatical settlement contract at any time  
24.31 prior to the application or issuance of a policy which is the subject of a viatical settlement  
24.32 contract or within a five-year period commencing with the date of issuance of the  
24.33 insurance policy or certificate unless the viator certifies to the viatical settlement provider  
24.34 that one or more of the following conditions have been met within the five-year period:

25.1 (1) the policy was issued upon the viator's exercise of conversion rights arising out  
25.2 of a group or individual policy, provided the total of the time covered under the conversion  
25.3 policy plus the time covered under the prior policy is at least 60 months. The time covered  
25.4 under a group policy shall be calculated without regard to any change in insurance carriers,  
25.5 provided the coverage has been continuous and under the same group sponsorship;

25.6 (2) the viator submits independent evidence to the viatical settlement provider that  
25.7 one or more of the following conditions have been met within the five-year period:

25.8 (i) the viator or insured is terminally or chronically ill;

25.9 (ii) the viator's spouse dies;

25.10 (iii) the viator divorces the viator's spouse;

25.11 (iv) the viator retires from full-time employment;

25.12 (v) the viator becomes physically or mentally disabled and a physician determines  
25.13 that the disability prevents the viator from maintaining full-time employment; or

25.14 (vi) a final order, judgment, or decree is entered by a court of competent jurisdiction,  
25.15 on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent,  
25.16 or approving a petition seeking reorganization of the viator or appointing a receiver,  
25.17 trustee, or liquidator to all or a substantial part of the viator's assets; or

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

25.21 (i) policy premiums have been funded exclusively with unencumbered assets,  
25.22 including an interest in the life insurance policy being financed only to the extent of its net  
25.23 cash surrender value, provided by, or fully recourse liability incurred by, the insured or a  
25.24 person described in section 60A.957, subdivision 16, paragraph (c), clause (4);

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

25.28 (iii) neither the insured nor the policy has been evaluated for settlement in  
25.29 connection with the issuance of the policy.

25.30 Subd. 2. **Document submissions.** Copies of the independent evidence described  
25.31 in subdivision 1, clause (2), and documents required by section 60A.9579 shall be  
25.32 submitted to the insurer when the viatical settlement provider or other party entering into a  
25.33 viatical settlement contract with a viator submits a request to the insurer for verification  
25.34 of coverage. The copies shall be accompanied by a letter of attestation from the viatical  
25.35 settlement provider that the copies are true and correct copies of the documents received  
25.36 by the viatical settlement provider.

26.1            Subd. 3. **Certification submission.** If the viatical settlement provider submits to  
26.2 the insurer a copy of the owner or insured's certification described in and the independent  
26.3 evidence required by subdivision 1, clause (2), when the provider submits a request to the  
26.4 insurer to effect the transfer of the policy or certificate to the viatical settlement provider,  
26.5 the copy shall be deemed to conclusively establish that the viatical settlement contract  
26.6 satisfies the requirements of this section and the insurer shall timely respond to the request.

26.7            Subd. 4. **Commissioner's form approval required.** No insurer may, as a condition  
26.8 of responding to a request for verification of coverage or effecting the transfer of a  
26.9 policy pursuant to a viatical settlement contract, require that the viator, insured, viatical  
26.10 settlement provider, or viatical settlement broker sign any forms, disclosures, consent,  
26.11 or waiver form that has not been expressly approved by the commissioner for use in  
26.12 connection with viatical settlement contracts in this state.

26.13           Subd. 5. **Change of ownership or beneficiary.** Upon receipt of a properly  
26.14 completed request for change of ownership or beneficiary of a policy, the insurer shall  
26.15 respond in writing within 30 calendar days with written acknowledgment confirming that  
26.16 the change has been effected or specifying the reasons why the requested change cannot  
26.17 be processed. The insurer shall not unreasonably delay effecting change of ownership or  
26.18 beneficiary and shall not otherwise seek to interfere with any viatical settlement contract  
26.19 lawfully entered into in this state.

26.20           Sec. 11. **[60A.9581] PROHIBITED PRACTICES AND CONFLICTS OF**  
26.21 **INTEREST.**

26.22           Subdivision 1. **Solicitations and sales to controlled person.** With respect to any  
26.23 viatical settlement contract or insurance policy, no viatical settlement broker knowingly  
26.24 shall solicit an offer from, effectuate a viatical settlement with, or make a sale to any  
26.25 viatical settlement provider, viatical settlement purchaser, viatical settlement investment  
26.26 agent, financing entity, or related provider trust that is controlling, controlled by, or under  
26.27 common control with such viatical settlement broker.

26.28           Subd. 2. **Payment to controlled broker.** With respect to any viatical settlement  
26.29 contract or insurance policy, no viatical settlement provider knowingly may enter into a  
26.30 viatical settlement contract with a viator, if, in connection with such viatical settlement  
26.31 contract, anything of value will be paid to a viatical settlement broker that is controlling,  
26.32 controlled by, or under common control with such viatical settlement provider or the  
26.33 viatical settlement purchaser, viatical settlement investment agent, financing entity, or  
26.34 related provider trust that is involved in such viatical settlement contract.

27.1            Subd. 3. **Fraudulent viatical settlement act.** A violation of subdivisions 1 and 2  
27.2 shall be deemed a fraudulent viatical settlement act.

27.3            Subd. 4. **Policy settlement.** No person shall issue, solicit, market, or otherwise  
27.4 promote the purchase of an insurance policy for the purpose of or with an emphasis on  
27.5 settling the policy.

27.6            Subd. 5. **Premium finance agreements.** No person shall enter into a premium  
27.7 finance agreement with any other person or agency, or any person affiliated with such  
27.8 person or agency, pursuant to which such person shall receive any proceeds, fees, or other  
27.9 consideration, directly or indirectly from the policy or owner of the policy or any other  
27.10 person with respect to the premium finance agreement or any viatical settlement contract  
27.11 or other transaction related to such policy that are in addition to the amounts required to  
27.12 pay the principal, interest, and service charges related to policy premiums pursuant to the  
27.13 premium finance agreement or subsequent sale of such agreement; provided further that  
27.14 any payments, charges, fees, or other amounts in addition to the amounts required to pay  
27.15 the principal, interest, and service charges related to policy premiums paid under the  
27.16 premium finance agreement shall be remitted to the original owner of the policy or to the  
27.17 owner's estate if the owner is not living at the time of the determination of overpayment.

27.18            Subd. 6. **Insurable interest.** In the solicitation, application, or issuance of a life  
27.19 insurance policy, no person shall employ any device, scheme, or artifice in violation  
27.20 of insurable interest laws.

27.21            Subd. 7. **Advertising.** (a) No viatical settlement provider shall enter into a viatical  
27.22 settlement contract unless the viatical settlement promotional, advertising, and marketing  
27.23 materials, as may be prescribed by rule, have been filed with the commissioner. In no  
27.24 event shall any marketing materials expressly reference that the insurance is "free" for  
27.25 any period of time. The inclusion of any reference in the marketing materials that would  
27.26 cause a viator to reasonably believe that the insurance is free for any period of time shall  
27.27 be considered a violation of sections 60A.957 to 60A.9585.

27.28            (b) No life insurance producer, insurance company, viatical settlement broker,  
27.29 viatical settlement provider, or viatical settlement investment agent shall make any  
27.30 statement or representation to the applicant or policyholder in connection with the sale or  
27.31 financing of a life insurance policy to the effect that the insurance is free or without cost to  
27.32 the policyholder for any period of time unless provided in the policy.

27.33            Sec. 12. **[60A.9582] ADVERTISING FOR VIATICAL SETTLEMENTS AND**  
27.34 **VIATICAL SETTLEMENTS PURCHASE AGREEMENTS.**

28.1 Subdivision 1. **Application.** This section applies to any advertising of viatical  
28.2 settlement contracts, viatical purchase agreements, or related products or services intended  
28.3 for dissemination in this state, including Internet advertising viewed by persons located in  
28.4 this state. Where disclosure requirements are established pursuant to federal regulation,  
28.5 this section shall be interpreted so as to minimize or eliminate conflict with federal  
28.6 regulation wherever possible.

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

28.16 Subd. 3. **Form and content.** Advertisements shall be truthful and not misleading in  
28.17 fact or by implication. The form and content of an advertisement of a viatical settlement  
28.18 contract or viatical settlement purchase agreement, product, or service shall be sufficiently  
28.19 complete and clear so as to avoid deception and it shall not have the capacity or tendency  
28.20 to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead  
28.21 or deceive shall be determined by the commissioner from the overall impression that the  
28.22 advertisement may be reasonably expected to create upon a person of average education  
28.23 or intelligence within the segment of the public to which it is directed.

28.24 Subd. 4. **False and misleading advertisements.** Certain viatical settlement  
28.25 advertisements are deemed false and misleading on their face and are prohibited. False  
28.26 and misleading viatical settlement advertisements include, but are not limited to, the  
28.27 following representations:

28.28 (1) "guaranteed," "fully secured," "100 percent secured," "fully insured," "secure,"  
28.29 "safe," "backed by rated insurance companies," "backed by federal law," "backed by state  
28.30 law," or "state guaranty funds," or similar representations;

28.31 (2) "no risk," "minimal risk," "low risk," "no speculation," "no fluctuation," or  
28.32 similar representations;

28.33 (3) "qualified or approved for individual retirement accounts (IRAs), Roth IRAs,  
28.34 401(k) plans, simplified employee pensions (SEP), 403(b), Keogh plans, TSA, other  
28.35 retirement account rollovers," "tax deferred," or similar representations;

29.1 (4) utilization of the word "guaranteed" to describe the fixed return, annual return,  
29.2 principal, earnings, profits, investment, or similar representations;

29.3 (5) "no sales charges or fees" or similar representations;

29.4 (6) "high yield," "superior return," "excellent return," "high return," "quick profit,"  
29.5 or similar representations; and

29.6 (7) purported favorable representations or testimonials about the benefits of viatical  
29.7 settlement contracts or viatical settlement purchase agreements as an investment, taken  
29.8 out of context from newspapers, trade papers, journals, radio and television programs, and  
29.9 all other forms of print and electronic media.

29.10 Subd. 5. **Disclosures regulated.** (a) The information required to be disclosed under  
29.11 this section shall not be minimized, rendered obscure, or presented in ambiguous fashion  
29.12 or intermingled with the text of the advertisement so as to be confusing or misleading.

29.13 (b) An advertisement shall not omit material information or use words, phrases,  
29.14 statements, references, or illustrations if the omission or use has the capacity, tendency,  
29.15 or effect of misleading or deceiving viators, purchasers, or prospective purchasers as to  
29.16 the nature or extent of any benefit, loss covered, premium payable, or state or federal tax  
29.17 consequence. The fact that the viatical settlement contract or viatical settlement purchase  
29.18 agreement offered is made available for inspection prior to consummation of the sale, or  
29.19 an offer is made to refund the payment if the viator is not satisfied or that the viatical  
29.20 settlement contract or viatical settlement purchase agreement includes a "free look" period  
29.21 that satisfies or exceeds legal requirements, does not remedy misleading statements.

29.22 (c) An advertisement shall not use the name or title of a life insurance company or a  
29.23 life insurance policy unless the advertisement has been approved by the insurer.

29.24 (d) An advertisement shall not represent that premium payments will not be required  
29.25 to be paid on the life insurance policy that is the subject of a viatical settlement contract  
29.26 or viatical settlement purchase agreement in order to maintain that policy, unless that  
29.27 is the fact.

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

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

29.35 (g) Testimonials, appraisals, or analysis used in advertisements must be genuine;  
29.36 represent the current opinion of the author; be applicable to the viatical settlement contract

30.1 or viatical settlement purchase agreement product or service advertised, if any; and be  
30.2 accurately reproduced with sufficient completeness to avoid misleading or deceiving  
30.3 prospective viators or purchasers as to the nature or scope of the testimonials, appraisal,  
30.4 analysis, or endorsement. In using testimonials, appraisals, or analysis, a licensee under  
30.5 sections 60A.957 to 60A.9585 makes as its own all the statements contained therein, and  
30.6 the statements are subject to all the provisions of this section.

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

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

30.20 (j) When an endorsement refers to benefits received under a viatical settlement  
30.21 contract or viatical settlement purchase agreement, all pertinent information shall be  
30.22 retained for a period of five years after its use.

30.23 Subd. 6. **Statistics.** An advertisement shall not contain statistical information unless  
30.24 it accurately reflects recent and relevant facts. The source of all statistics used in an  
30.25 advertisement shall be identified.

30.26 Subd. 7. **Disparaging advertisements.** An advertisement shall not disparage  
30.27 insurers, viatical settlement providers, viatical settlement brokers, viatical settlement  
30.28 investment agents, insurance producers, policies, services, or methods of marketing.

30.29 Subd. 8. **Licensee's name.** The name of the viatical settlement licensee shall be  
30.30 clearly identified in all advertisements about the licensee or its viatical settlement contract  
30.31 or viatical settlement purchase agreements, products, or services, and if any specific  
30.32 viatical settlement contract or viatical settlement purchase agreement is advertised, the  
30.33 viatical settlement contract or viatical settlement purchase agreement shall be identified  
30.34 either by form number or some other appropriate description. If an application is part  
30.35 of the advertisement, the name of the viatical settlement provider shall be shown on  
30.36 the application.

31.1           Subd. 9. **Licensee disclosure.** An advertisement shall not use a trade name, group  
31.2 designation, name of the parent company of a viatical settlement licensee, name of a  
31.3 particular division of the viatical settlement licensee, service mark, slogan, symbol, or  
31.4 other device or reference without disclosing the name of the viatical settlement licensee, if  
31.5 the advertisement would have the capacity or tendency to mislead or deceive as to the  
31.6 true identity of the viatical settlement licensee, or to create the impression that a company  
31.7 other than the viatical settlement licensee would have any responsibility for the financial  
31.8 obligation under a viatical settlement contract or viatical settlement purchase agreement.

31.9           Subd. 10. **Government sponsorship; misleading advertisements.** An  
31.10 advertisement shall not use any combination of words, symbols, or physical materials that  
31.11 by their content, phraseology, shape, color, or other characteristics are so similar to a  
31.12 combination of words, symbols, or physical materials used by a government program or  
31.13 agency or otherwise appear to be of such a nature that they tend to mislead prospective  
31.14 viators or purchasers into believing that the solicitation is in some manner connected with  
31.15 a government program or agency.

31.16           Subd. 11. **State licensure.** An advertisement may state that a viatical settlement  
31.17 licensee is licensed in the state where the advertisement appears, provided it does not  
31.18 exaggerate that fact or suggest or imply that a competing viatical settlement licensee may  
31.19 not be so licensed. The advertisement may ask the audience to consult the licensee's  
31.20 Web site or contact the department of commerce to find out if the state requires licensing  
31.21 and, if so, whether the viatical settlement provider, viatical settlement broker, or viatical  
31.22 settlement investment agent is licensed.

31.23           Subd. 12. **Government entity endorsement.** An advertisement shall not create  
31.24 the impression that the viatical settlement provider, its financial condition or status, the  
31.25 payment of its claims, or the merits, desirability, or advisability of its viatical settlement  
31.26 contracts or viatical settlement purchase agreement forms are recommended or endorsed  
31.27 by any government entity.

31.28           Subd. 13. **Name.** The name of the actual licensee shall be stated in all of its  
31.29 advertisements. An advertisement shall not use a trade name, any group designation, name  
31.30 of any affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other  
31.31 device in a manner that would have the capacity or tendency to mislead or deceive as to  
31.32 the true identity of the actual licensee or create the false impression that an affiliate or  
31.33 controlling entity would have any responsibility for the financial obligation of the licensee.

31.34           Subd. 14. **Government approval.** An advertisement shall not directly or indirectly  
31.35 create the impression that any division or agency of the state or of the United States  
31.36 government endorses, approves, or favors:

- 32.1 (1) any viatical settlement licensee or its business practices or methods of operation;  
 32.2 (2) the merits, desirability, or advisability of any viatical settlement contract or  
 32.3 viatical settlement purchase agreement;  
 32.4 (3) any viatical settlement contract or viatical settlement purchase agreement; or  
 32.5 (4) any life insurance policy or life insurance company.

32.6 Subd. 15. **Time frame disclosure.** If the advertiser emphasizes the speed with  
 32.7 which the viatication will occur, the advertising must disclose the average time frame from  
 32.8 completed application to the date of offer and from acceptance of the offer to receipt of  
 32.9 the funds by the viator.

32.10 Subd. 16. **Average purchase price.** If the advertising emphasizes the dollar amounts  
 32.11 available to viators, the advertising shall disclose the average purchase price as a percent  
 32.12 of face value obtained by viators contracting with the licensee during the past six months.

32.13 **Sec. 13. [60A.9583] FRAUD PREVENTION AND CONTROL.**

32.14 Subdivision 1. **Fraudulent viatical settlement acts, interference, and**  
 32.15 **participation of convicted felons prohibited.** (a) A person shall not commit a fraudulent  
 32.16 viatical settlement act.

32.17 (b) A person shall not knowingly or intentionally interfere with the enforcement of  
 32.18 the provisions of sections 60A.957 to 60A.9585 or investigations of suspected or actual  
 32.19 violations of sections 60A.957 to 60A.9585.

32.20 (c) A person in the business of viatical settlements shall not knowingly or  
 32.21 intentionally permit any person convicted of a felony involving dishonesty or breach of  
 32.22 trust to participate in the business of viatical settlements.

32.23 Subd. 2. **Fraud warning required.** (a) Viatical settlements contracts and purchase  
 32.24 agreement forms and applications for viatical settlements, regardless of the form of  
 32.25 transmission, shall contain the following statement or a substantially similar statement:  
 32.26 "Any person who knowingly presents false information in an application for insurance or  
 32.27 viatical settlement contract or a viatical settlement purchase agreement is guilty of a crime  
 32.28 and may be subject to fines and confinement in prison."

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

32.31 Subd. 3. **Mandatory reporting of fraudulent viatical settlement acts.** (a) Any  
 32.32 person engaged in the business of viatical settlements having knowledge or a reasonable  
 32.33 suspicion that a fraudulent viatical settlement act is being, will be, or has been committed  
 32.34 shall provide to the commissioner such information as required by, and in a manner  
 32.35 prescribed by, the commissioner.

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

33.5 Subd. 4. **Immunity from liability.** (a) No civil liability shall be imposed on and no  
33.6 cause of action shall arise from a person's furnishing information concerning suspected,  
33.7 anticipated, or completed fraudulent viatical settlement acts or suspected or completed  
33.8 fraudulent insurance acts, if the information is provided to or received from:

33.9 (1) the commissioner or the commissioner's employees, agents, or representatives;

33.10 (2) federal, state, or local law enforcement or regulatory officials or their employees,  
33.11 agents, or representatives;

33.12 (3) a person involved in the prevention and detection of fraudulent viatical settlement  
33.13 acts or that person's agents, employees, or representatives;

33.14 (4) the National Association of Insurance Commissioners (NAIC), National  
33.15 Association of Securities Dealers (NASD), the North American Securities Administrators  
33.16 Association (NASAA), or their employees, agents, or representatives, or other regulatory  
33.17 body overseeing life insurance, viatical settlements, securities, or investment fraud; or

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

33.19 (b) Paragraph (a) shall not apply to statements made with actual malice. In an action  
33.20 brought against a person for filing a report or furnishing other information concerning  
33.21 a fraudulent viatical settlement act, the party bringing the action shall plead specifically  
33.22 any allegation that paragraph (a) does not apply because the person filing the report or  
33.23 furnishing the information did so with actual malice.

33.24 (c) A person furnishing information as identified as paragraph (a) shall be entitled to  
33.25 an award of attorney fees and costs if the person is the prevailing party in a civil cause  
33.26 of action for libel, slander, or any other relevant tort arising out of activities in carrying  
33.27 out the provisions of sections 60A.957 to 60A.9585 and the party bringing the action  
33.28 was not substantially justified in doing so. For purposes of this section, a proceeding is  
33.29 "substantially justified" if it had a reasonable basis in law or fact at the time that it was  
33.30 initiated. However, such an award does not apply to any person furnishing information  
33.31 concerning the person's own fraudulent viatical settlement acts.

33.32 (d) This section does not abrogate or modify common law or statutory privileges or  
33.33 immunities enjoyed by a person described in paragraph (a).

33.34 Subd. 5. **Confidentiality.** (a) The documents and evidence provided pursuant to  
33.35 subdivision 4 or obtained by the commissioner in an investigation of suspected or actual

34.1 fraudulent viatical settlement acts shall be privileged and confidential and shall not be a  
34.2 public record and shall not be subject to discovery or subpoena in a civil or criminal action.

34.3 (b) Paragraph (a) does not prohibit release by the commissioner of documents and  
34.4 evidence obtained in an investigation of suspected or actual fraudulent viatical settlement  
34.5 acts:

34.6 (1) in administrative or judicial proceedings to enforce laws administered by the  
34.7 commissioner;

34.8 (2) to federal, state, or local law enforcement or regulatory agencies, to an  
34.9 organization established for the purpose of detecting and preventing fraudulent viatical  
34.10 settlement acts or to the NAIC; or

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

34.13 (c) Release of documents and evidence under paragraph (b) does not abrogate or  
34.14 modify the privilege granted in paragraph (a).

34.15 Subd. 6. **Other law enforcement or regulatory authority.** Sections 60A.957 to  
34.16 60A.9585 shall not:

34.17 (1) preempt the authority or relieve the duty of other law enforcement or regulatory  
34.18 agencies to investigate, examine, and prosecute suspected violations of law;

34.19 (2) prevent or prohibit a person from disclosing voluntarily information concerning  
34.20 viatical settlement fraud to a law enforcement or regulatory agency other than the  
34.21 insurance department; or

34.22 (3) limit the powers granted elsewhere by the laws of this state to the commissioner  
34.23 or an insurance fraud unit to investigate and examine possible violations of law and to  
34.24 take appropriate action against wrongdoers.

34.25 Subd. 7. **Viatical settlement antifraud initiatives.** (a) Viatical settlement providers  
34.26 and viatical settlement brokers shall have in place antifraud initiatives reasonably  
34.27 calculated to detect, prosecute, and prevent fraudulent viatical settlement acts. At the  
34.28 discretion of the commissioner, the commissioner may order, or a licensee may request  
34.29 and the commissioner may grant, such modifications of the following required initiatives  
34.30 as necessary to ensure an effective antifraud program. The modifications may be more or  
34.31 less restrictive than the required initiatives so long as the modifications may reasonably be  
34.32 expected to accomplish the purpose of this section.

34.33 (b) Antifraud initiatives shall include:

34.34 (1) fraud investigators, who may be viatical settlement provider or viatical settlement  
34.35 broker employees or independent contractors; and

35.1 (2) an antifraud plan, which shall be submitted to the commissioner. The antifraud  
35.2 plan shall include, but not be limited to:

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

35.6 (ii) a description of the procedures for reporting possible fraudulent viatical  
35.7 settlement acts to the commissioner;

35.8 (iii) a description of the plan for antifraud education and training of underwriters  
35.9 and other personnel; and

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

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

35.17 **Sec. 14. [60A.9584] CRIMINAL PENALTIES.**

35.18 Subdivision 1. **Sentence.** A person convicted of a violation of sections 60A.957  
35.19 to 60A.9585 by a court of competent jurisdiction may be sentenced as follows based on  
35.20 the greater of (i) the value of property, services, or other benefit wrongfully obtained  
35.21 or attempted to obtain, or (ii) the aggregate economic loss suffered by any person as  
35.22 a result of the violation:

35.23 (1) to imprisonment for not more than 20 years or to payment of a fine of not more  
35.24 than \$100,000, or both, if the value of the viatical settlement contract is more than \$35,000;

35.25 (2) to imprisonment for not more than ten years or to payment of a fine of not more  
35.26 than \$20,000, or both, if the value of the viatical settlement contract is more than \$2,500  
35.27 but not more than \$35,000;

35.28 (3) to imprisonment for not more than five years or to payment of a fine of not  
35.29 more than \$10,000, or both, if the value of the viatical settlement contract is more than  
35.30 \$500 but not more than \$2,500; or

35.31 (4) to imprisonment for not more than one year or to payment of a fine of not more  
35.32 than \$3,000, or both, if the value of the viatical settlement contract is \$500 or less.

35.33 In any prosecution under this section under clauses (1), (2), (3), and (4), the value of  
35.34 the viatical settlement contracts within any six-month period may be aggregated and the  
35.35 defendant charged accordingly in applying the provisions of this section; provided that

36.1 when two or more offenses are committed by the same person in two or more counties, the  
 36.2 accused may be prosecuted in any county in which one of the offenses was committed  
 36.3 for all of the offenses aggregated under this section. The applicable statute of limitations  
 36.4 provision under chapter 541 shall not begin to run until the insurance company or  
 36.5 law enforcement agency is aware of the fraud, but in no event may the prosecution be  
 36.6 commenced later than seven years after the act has occurred. A person convicted of a  
 36.7 fraudulent viatical settlement act must be ordered to pay restitution to persons aggrieved  
 36.8 by the fraudulent viatical settlement act. Restitution must be ordered in addition to a  
 36.9 fine or imprisonment but not in lieu of a fine or imprisonment. A person convicted of a  
 36.10 violation of sections 60A.957 to 60A.9585 shall be ordered to pay restitution to persons  
 36.11 aggrieved by the violation of sections 60A.957 to 60A.9585. Restitution shall be ordered  
 36.12 in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment.

36.13 Subd. 2. **Nonapplication.** Except for a fraudulent viatical settlement act committed  
 36.14 by a viator, the penalties of this section shall not apply to a viator.

36.15 **Sec. 15. [60A.9585] UNFAIR TRADE PRACTICES.**

36.16 A violation of sections 60A.957 to 60A.9585, including the commission of a  
 36.17 fraudulent viatical settlement act, shall be considered an unfair trade practice under  
 36.18 section 72A.20.

36.19 **Sec. 16. Minnesota Statutes 2006, section 60A.964, subdivision 1, is amended to read:**

36.20 **Subdivision 1. **Amount.**** The licensing fee for a viatical settlement provider, broker,  
 36.21 or investment agent license is \$750 for initial licensure and \$250 for each annual renewal.  
 36.22 The fees must be limited to the cost of license administration and enforcement and must  
 36.23 be deposited in the state treasury, credited to a special account, and appropriated to the  
 36.24 commissioner.

36.25 **Sec. 17. **REPEALER.****

36.26 Minnesota Statutes 2006, sections 13.716, subdivision 7; 60A.961; 60A.962;  
 36.27 60A.963; 60A.965; 60A.966; 60A.967; 60A.968; 60A.969; 60A.970; 60A.971; 60A.972;  
 36.28 60A.973; and 60A.974, are repealed.

36.29 **Sec. 18. **EFFECTIVE DATE; APPLICATION.****

36.30 This act is effective August 1, 2008. A viatical settlement provider, viatical  
 36.31 settlement broker, or viatical settlement investment agent transacting business in this  
 36.32 state may continue to do so pending approval or disapproval of the provider's, broker's,

- 37.1 or investment agent's application for a license as long as the application is filed with the
- 37.2 commissioner by .....