

No. 2002-107

AN ACT

SB 462

Providing for the regulation of viatical settlements and for powers and duties of the Insurance Department.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Viatical Settlements Act.

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Advertising.” Any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet or similar communications media, including film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to sell a life insurance policy pursuant to a viatical settlement contract.

“Business of viatical settlements.” An activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning or pledging viatical settlement contracts in this Commonwealth.

“Chronically ill.” A condition which means a person:

(1) is unable to perform at least two activities of daily living, including, but not limited to, eating, toileting, transferring, bathing, dressing or continence; or

(2) requires substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment.

“Commissioner.” The Insurance Commissioner of the Commonwealth.

“Department.” The Insurance Department of the Commonwealth.

“Financing entity.” An entity other than a nonaccredited investor or viatical settlement purchaser that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, and:

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

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

“Fraudulent viatical settlement act.” An act or omission committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain commits or permits its employees or its agents to commit any of the following acts:

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

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

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

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

(iv) Premiums paid on an insurance policy.

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

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

(vii) The solicitation, offer, effectuation or sale of a viatical settlement contract or insurance policy.

(viii) The issuance of written evidence of a viatical settlement contract or insurance.

(ix) A financing transaction.

(2) In the furtherance of a fraud or to prevent the detection of a fraud:

(i) destroys, removes, conceals or alters the assets or records of a licensee or other person engaged in the business of viatical settlements;

(ii) misrepresents or conceals the financial condition of a licensee or insurer;

(iii) transacts the business of viatical settlements in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of viatical settlements; or

(iv) files with the Insurance Commissioner, the Insurance Department or the chief insurance regulatory official or agency of another jurisdiction a document containing false information or otherwise conceals information about a material fact.

(3) Presenting, causing to be presented or preparing with knowledge or reason to believe that it will be presented to or by a viatical settlement provider, viatical settlement broker, insurer, insurance agent, financing entity, viatical settlement purchaser or any other person, in connection with a viatical settlement transaction or insurance transaction, an insurance policy, knowing the policy was fraudulently obtained by the insured, owner or any agent thereof.

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

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

“Independent escrow agent.” A person designated by the viatical settlement provider and recognized by the Insurance Commissioner to accept, transmit and pay the proceeds of the viatical settlement.

“Insurer.” Any properly licensed life insurance company, association or exchange.

“Licensee.” A viatical settlement provider or viatical settlement broker.

“Policy.” An individual or group policy, group certificate, contract or arrangement of life insurance affecting the rights of a resident of this Commonwealth regardless of whether delivered or issued for delivery in this Commonwealth.

“Related provider trust.” A titling trust or other trust established by a licensed viatical settlement provider or financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction, which trust:

(1) has a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements; and

(2) has a written agreement with the licensed viatical settlement provider under which the trust agrees to make all records and files related to viatical settlement transactions available to the Insurance Department as if those records and files were maintained directly by the licensed viatical settlement provider.

“Special purpose entity.” A corporation, partnership, trust, limited liability company or other similar entity other than a natural person formed solely to provide, either directly or indirectly, access to institutional capital markets for a financing entity or licensed viatical settlement provider.

“Terminally ill.” Having an illness or sickness that can reasonably be expected to result in death in 24 months or less.

“Viatical settlement broker.” A person that on behalf of a viator and for a fee, commission or other valuable consideration offers to negotiate or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers. The term does not include an attorney, certified public accountant or financial planner accredited by a nationally recognized accreditation agency who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser. The term also does not include an investment advisor registered under the Investment Advisers Act of 1940 (15 U.S.C. § 80b-1 et seq.) or the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972, possessing a designation recognized by the Pennsylvania Securities Commission for the purposes of waiving any examination requirement under the Pennsylvania Securities Act of 1972, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.

“Viatical settlement contract.” A written agreement entered into between a viatical settlement provider and a person owning a policy or group policy establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator’s assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. The term also includes a contract for a loan or other financing transaction secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator. This term shall not include a written

agreement entered into between a viator and a person having an insurable interest in the viator's life.

"Viatical settlement provider." A person other than a viator that enters into or effectuates a viatical settlement contract. The term does not include:

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

(2) the issuer of a life insurance policy providing accelerated benefits pursuant to the contract;

(3) an authorized or eligible insurer that provides stop loss coverage to a viatical settlement provider, purchaser, financing entity, special purpose entity or related provider trust;

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

(5) a financing entity;

(6) a special purpose entity;

(7) a related provider trust;

(8) a viatical settlement purchaser; or

(9) an accredited investor, qualified institutional buyer or qualified purchaser as defined respectively in 17 CFR § 230.501 (relating to definitions and terms used in Regulation D), 17 CFR § 230.144A (relating to private resales of securities to institutions), section 18(b)(3) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77c et seq.) and who purchases a viaticated policy from a licensed viatical settlement provider.

"Viatical settlement purchaser." A person who gives a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy or a person who owns, acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy which has been or will be the subject of a viatical settlement contract for the purpose of deriving an economic benefit. A viatical settlement purchaser does not include:

(1) a licensee under this act;

(2) an accredited investor, qualified institutional buyer or qualified purchaser as defined respectively in 17 CFR § 230.501 (relating to definitions and terms used in Regulation D), 17 CFR § 230.144A (relating to private resales of securities to institutions) and section 18(b)(3) of the Securities Act of 1933 (48 Stat. 74, 15 U.S.C. § 77c et seq.) and who purchases a viaticated policy from a viatical settlement provider;

(3) a financing entity;

(4) a special purpose entity; or

(5) a related provider trust.

“Viaticated policy.” A life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

“Viator.” The owner of a life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract. For the purposes of this act, a viator shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed in this act. The term does not include:

- (1) a licensee under this act;
- (2) an accredited investor or qualified institutional buyer as defined respectively in 17 CFR § 230.501 (relating to definitions and terms used in Regulation D), 17 CFR § 230.144A (relating to private resales of securities to institutions);
- (3) a financing entity;
- (4) a special purpose entity; or
- (5) a related provider trust.

Section 3. License requirements.

(a) General rule.—No person shall engage in the business of viatical settlements as a viatical settlement provider or as a viatical settlement broker or otherwise operate as a viatical settlement provider or viatical settlement broker in this Commonwealth without first obtaining an appropriate license from the department and being considered by the department to be worthy of such licensure.

(b) Application.—Application for a viatical settlement provider or viatical settlement broker license shall be made to the department by the applicant on a form required by the department. An application for initial licensure as a viatical settlement provider shall include the following information in addition to any other information required by the department:

- (1) an audited financial statement no more than one year and 120 days old prepared under the generally accepted accounting principles; and
- (2) an unaudited financial statement as of the end of the most recent quarter.

(c) Fees.—The following licensing fees shall be due at the time of initial and renewal application:

- (1) For licensure as a viatical settlement provider, \$300.
- (2) For licensure as a viatical settlement broker, \$100.
- (3) Fees for initial and renewal licensure as a viatical settlement provider and viatical settlement broker may be adjusted no more than annually at the discretion of the commissioner by publishing a notice in the Pennsylvania Bulletin.

(d) Reciprocity.—

(1) The department shall not assess a greater fee for a viatical settlement provider license or viatical settlement broker license or related service to a person not residing in this State based solely on the fact that the person does not reside in this State.

(2) The department shall waive any license application requirements for a nonresident license applicant with a valid viatical settlement provider or viatical settlement broker license from the applicant's home state if:

(i) the viatical settlement provider or viatical settlement broker has submitted the proper request for licensure and has paid the appropriate licensure fees;

(ii) the viatical settlement provider or viatical settlement broker has submitted or transmitted to the department the application for licensure that the person submitted to his or her home state; and

(iii) the viatical settlement provider's or the viatical settlement broker's home state awards nonresident viatical settlement provider and viatical settlement broker licenses to residents of this State on the same basis.

(e) **Renewal.**—A license issued under this section shall expire and may be renewed on the anniversary month of the initial date of licensure upon payment of the appropriate renewal fee and application with the department on a form required by the department. Failure to pay the fee or submit the renewal form within the terms required by the department shall be deemed voluntary termination of the license. The issuance of a renewal license to a viatical settlement provider shall be subject to approval of the appropriate application and financial information filed with the department.

(f) **Bond.**—In order to be eligible for licensure or renewal as a viatical settlement provider, an applicant must be bonded or otherwise provide for its financial accountability in an amount required by the department.

(g) **Full disclosure.**—The applicant shall provide information on forms required by the department. The department may, at any time, require the applicant to fully disclose the identity of all stockholders, investors, partners, officers, members and employees. The department may, in its discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant's conduct meets the standards set forth in this act.

(h) **Authorization.**—A viatical settlement provider license issued to a legal entity authorizes all partners, officers, members and designated employees to act as a viatical settlement provider under the legal entity's viatical settlement provider license, and all such persons and any person having material influence over the entity shall be named in the application and any supplements to the application. A viatical settlement broker license issued to a legal entity authorizes only that entity to act as a viatical settlement broker, and such license does not authorize partners, officers,

members and designated employees of the legal entity to act as viatical settlement brokers under the legal entity's license.

(i) Investigation.—Upon the filing of an application and the payment of the license processing fee, the department shall make an investigation of each applicant and issue a license if the department finds that the applicant:

- (1) if a viatical settlement provider, has provided a detailed plan of operation;
- (2) is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;
- (3) has a good business reputation and has had experience, training or education so as to be qualified in the business for which the license is applied for;
- (4) if a legal entity, provides a certificate of good standing from the state of its domicile;
- (5) has certified to the department implementation of an antifraud plan that meets the requirements of section 10(g); and
- (6) has provided the name of a designated agent for out-of-State companies.

(j) Report.—A viatical settlement provider or viatical settlement broker shall provide to the department new or revised information about officers, 10% or more stockholders, partners, directors, members or designated employees within 30 days of the change.

(k) Approval.—An application for license for a viatical settlement provider or viatical settlement broker shall be approved or disapproved by the department within 90 days of receipt of a completed application unless the applicant waives the time period.

Section 4. License suspension, revocation and denial.

(a) Suspension, revocation and denial.—The commissioner may refuse to issue, suspend, revoke or refuse to renew the license of a viatical settlement provider or viatical settlement broker if the commissioner finds that:

- (1) there was any material misrepresentation in the application for the license;
- (2) the licensee or any officer, partner, member or key management personnel has been adjudged guilty of fraudulent or dishonest practices, is subject to a final administrative action or is shown to be untrustworthy, incompetent or otherwise unworthy of licensure by the department;
- (3) the viatical settlement provider demonstrates a pattern of unreasonable payments to viators;
- (4) the licensee has been found guilty of or has pleaded guilty or nolo contendere to any felony or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;

(5) the viatical settlement provider has entered into any viatical settlement contract the form of which has not been approved pursuant to this act;

(6) the viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;

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

(8) the viatical settlement provider has assigned, transferred or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this Commonwealth or a financing entity, special purpose entity, stop-loss provider, viatical settlement purchaser or related provider trust;

(9) the licensee has effectuated the viatication of a life insurance policy that the licensee knew or reasonably should have known was procured through fraudulent means;

(10) the licensee has violated any provision of this act or any regulations promulgated by the department; or

(11) the licensee's viatical settlement provider, viatical settlement broker or other license related to the sale or effectuation of viatical settlement policies, insurance or securities has been revoked or suspended in this or another state.

(b) **Hearing.**—An applicant who disputes the department's determination concerning licensure may seek a formal administrative hearing before the commissioner under 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies).

Section 5. Approval of viatical settlement contracts and disclosure statements.

(a) **General rule.**—A person shall not use a viatical settlement contract or provide to a viator a disclosure statement form in this Commonwealth unless the contract or form is filed with and approved by the department. The department shall disapprove a viatical settlement contract form or viatical settlement disclosure statement form if, in the department's opinion, the contract or statement or provisions contained therein are unreasonable, contrary to the interests of the public, otherwise misleading or unfair to the viator. At the department's discretion, the department may also require the submission of advertising material.

(b) **Deemed effective.**—Unless disapproved within 45 days of receipt by the department, a filing of a viatical settlement contract or viatical settlement disclosure form shall be effective for use.

(c) **Disapproval after use.**—Any viatical settlement contract or viatical settlement disclosure form approved or effective for use in accordance with subsections (a) and (b) may be subsequently disapproved by the department. The department shall notify the appropriate person in writing and provide the opportunity for a hearing as provided in 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies).

(d) **Discontinuance of contract.**—If following a hearing the commissioner finds that a viatical settlement contract or viatical settlement disclosure statement form should be disapproved, the commissioner shall order the use of the contract or disclosure form to be discontinued after a date specified in the order.

Section 6. Reporting requirements and confidentiality.

(a) **General rule.**—With each renewal application on the anniversary month of initial licensure by the department, each licensee shall file an annual statement containing such information as required by the department. If the licensee is a viatical settlement provider, such information shall include:

(1) an audited financial statement no more than one year and 120 days old prepared under the generally accepted accounting principles; and

(2) an unaudited financial statement as of the end of the most recent quarter.

(b) **Confidentiality.**—Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, insurance company, insurance agent, insurance broker, information bureau, rating agency or company or any other person with actual knowledge of an insured's identity, health information or financial information may not disclose that information as an insured to any other person unless the disclosure is:

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

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

(3) provided in response to an investigation or examination by the department or any other governmental officer or agency;

(4) a term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider, and the viator and insured have provided prior written consent to the disclosure;

(5) necessary to permit a financing entity, related provider trust or special purpose entity to finance the purchase of policies by a viatical settlement provider, and the parties to the transaction agree to maintain the confidentiality of such information, and the viator and insured have provided written consent to the disclosure;

(6) made by an insurance company in the course of its business, including, without being limited to, activities such as reinsurance transactions, sales or mergers of the insurance company or one or more of its books of business, handling and investigation of claims and conduct of all legal proceedings connected with them, underwriting,

litigation and market conduct investigations, and the viator and insured have provided prior written consent to the disclosure;

(7) necessary to allow the viatical settlement provider or viatical settlement broker or their authorized representatives to make contacts for the purpose of determining health status, and the viator and insured have provided prior written consent to the disclosure; or

(8) required to purchase stop loss coverage and the viator and insured have provided prior written consent to the disclosure.

Section 7. Disclosure.

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

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

(2) some or all of the proceeds of the viatical settlement may be taxable under Federal income tax and State franchise and income taxes, and assistance should be sought from a professional tax advisor;

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

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

(5) the viator has the right to rescind a viatical settlement contract for 15 calendar days from the receipt of the viatical settlement proceeds by the viator as provided in section 8(g). If the insured dies during the rescission period, the settlement contract shall be deemed to have been rescinded, subject to repayment of all viatical settlement proceeds and other payments made by the viatical settlement provider on behalf of the viator or insured to the viatical settlement provider;

(6) funds will be sent to the viator within three business days after the viatical settlement provider has received the insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated;

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

(8) all medical, financial or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider and/or financing entities. If a viator is asked to provide this information, the viator must consent to the disclosure, and failure to consent may affect the viator's ability to viaticate a life insurance policy. The information may be provided to viatical settlement purchasers, financing entities, special purpose entities or related provider trusts; and

(9) all information provided by a viator or insured to a viatical settlement provider or viatical settlement broker will be shared with the insurer that issued the life insurance policy that is the subject of the viatical transaction.

(b) Viatical settlements brochure.—Prior to the time the application for a viatical settlement contract is signed by all parties, a viatical settlement provider or viatical settlement broker shall provide the viator with a brochure describing the process of viatical settlements. The department shall develop this brochure to educate consumers in the selling of their life insurance policies.

(c) Disclosures by viatical settlement provider.—A viatical settlement provider shall provide the viator with at least the following disclosures no later than the time the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and the viatical settlement provider or viatical settlement broker and provide the following information:

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

(2) The name, address and telephone number of the viatical settlement provider.

(3) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement.

(4) The dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate and, if known, the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the viatical settlement provider's interest in those benefits.

(5) The name, business address and telephone number of the independent third party escrow agent and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(d) Disclosure by a viatical settlement broker.—In addition to any other disclosures, a viatical settlement broker shall provide a prospective viator with at least the following disclosures prior to the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in a document signed by the viator and the viatical settlement broker and shall provide the amount and method of calculating the viatical settlement broker's potential compensation. The term "compensation" includes anything of value paid or given to a viatical settlement broker for the placement of a policy.

(e) Disclosure of ownership transfer or beneficiary change.—If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate the change in ownership or beneficiary to the insured within 20 days after the change.

Section 8. General rules.

(a) General rules.—A viatical settlement provider entering into a viatical settlement contract shall first obtain:

(1) Prior to or at the time of execution of the viatical settlement contract, a witnessed document:

(i) in which the viator consents to the viatical settlement contract;

(ii) represents that the viator has a full and complete understanding of the viatical settlement contract, that he or she has a full and complete understanding of the benefits of the life insurance policy;

(iii) acknowledges that he or she has entered into the viatical settlement contract freely and voluntarily;

(iv) if applicable for the purposes of determining payments for persons who are terminally ill or chronically ill, acknowledges that the insured is terminally ill or chronically ill and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued; and

(v) acknowledges that he or she is of sound mind, under no constraint or undue influence.

(2) A document in which the insured consents to the release of his or her medical records to a viatical settlement provider, viatical settlement broker and the insurance company that issued the life insurance policy covering the life of the insured. All records shall remain confidential.

(3) If the viatical contract involves a life insurance policy that is being viaticated within the two-year period commencing with the date of the issuance of the insurance policy or certificate pursuant to section 9(2), a document in which the insured consents to the tolling of the running of the policy's contestable period until after the insurer has

completed its good faith investigation regarding the validity of the insurance contract.

(b) Notice to insurer.—Within 20 days after a viator executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement, option, promise or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy. If the viator is terminally or chronically ill, the notice must be accompanied by a written statement from the viator required by subsection (a)(1)(iv).

(c) Multiple viators.—If there is more than one viator on a single policy and the viators are residents of different states, the viatical settlement shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all viators.

(d) Fiduciary responsibility of viatical settlement broker.—Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator.

(e) Verification of coverage.—

(1) A viatical settlement provider or viatical settlement broker shall deliver a copy of the medical release required by subsection (a)(2), a copy of the viator's application for the viatical settlement contract, a copy of the notice required by subsection (b) and a request for verification of coverage to the insurer that issued the life insurance policy that is the subject of the viatical settlement transaction. The verification of coverage request shall be on a form substantially similar to the form developed by the department.

(2) The insurer shall complete the verification of coverage form submitted by the viatical settlement provider or viatical settlement broker and transmit to the requesting party the completed verification of coverage form within a reasonable time frame, not to exceed 30 calendar days of the date the request is received. The completed verification of coverage form shall indicate whether, based on the medical evidence and documents provided, the insurer intends in good faith to pursue an investigation at that time regarding the validity of the insurance contract because of an actual or potential fraudulent viatical settlement act or other fraud.

(3) Nothing in this section shall prohibit an insurer from exercising its right to contest the validity of any policy on the grounds of fraud.

(f) Viatical settlement broker's performance acceptable.—If a viatical settlement broker performs the provisions enumerated in this section on behalf of a viatical settlement provider, the viatical settlement provider is deemed to have fulfilled the requirements of this section, provided that the

viatical settlement provider shall remain responsible for any failure of the viatical settlement broker to have fulfilled the requirements of this section.

(g) Health and financial information.—All health or financial information solicited or obtained by any licensee shall be subject to the applicable provision of Federal and State law relating to confidentiality and disclosure of such information.

(h) Rescission.—All viatical settlement contracts entered into in this State shall provide the viator with an unconditional right to rescind the contract for 30 days from the date of contract and at least 15 calendar days from the receipt of the viatical settlement proceeds by the viator. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider of all viatical settlement proceeds.

(i) Transfer of proceeds.—The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment or change in beneficiary directly to the independent escrow agent. Within three business days after the date the escrow agent receives the document, the proceeds of the viatical settlement shall be placed into an escrow or trust account maintained in a federally or State-chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the viatical settlement provider or related provider trust. Upon the licensed provider's receipt of the properly completed acknowledgment of the transfer of ownership, assignment or designation of beneficiary from the insurance company, the licensed provider shall instruct the escrow agent to pay the settlement proceeds to the viator. Payment shall be made within three business days of the date the provider received the acknowledged forms from the insurance company.

(j) Deadline.—Failure to tender consideration to the viator for the viatical settlement contract within the time disclosed pursuant to section 7(a) or at all renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.

(k) Health status.—

(1) Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or broker licensed in this Commonwealth or its authorized representative and shall be limited to once every three months for insureds with a life expectancy of more than one year and to no more than once per month for insureds with a life expectancy of one year or less.

(2) The viatical settlement provider or viatical settlement broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into.

(3) The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status.

(l) Commission.—No viatical settlement broker shall receive from a viatical settlement provider a fee, commission or other valuable consideration for services rendered to or in connection with viators residing in this Commonwealth unless the viatical settlement provider is licensed in this Commonwealth.

(m) Prohibition.—No person who invests in a viaticated policy or broker or provider, including, but not limited to, a participant in a financing transaction, shall influence the treatment of the insured's illness.

Section 9. Prohibited practices.

It is a violation of this act for any person to:

(1) Enter into a viatical settlement contract the subject of which is a life insurance policy that the licensee knew or should have known was obtained by means of a false, deceptive or misleading application for the life insurance policy.

(2) Enter into a viatical settlement contract within a two-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one of the following conditions has been met within the two-year period:

(i) The policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the group policy is at least 24 months. The time covered under the group or individual policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship.

(ii) The viator is not a natural person (e.g., the viator is a corporation, limited liability company, partnership, etc.).

(iii) A sworn statement by the viator and insured is submitted to the viatical settlement provider, certifying that one or more of the following conditions have been met within the two-year period:

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

(B) The viator's or insured's spouse dies.

(C) The viator or insured divorces his or her spouse.

(D) The viator was the insured's employer at the time the policy or certificate was issued and the employment relationship has terminated.

(E) The viator experiences a significant decrease in income that impairs the viator's reasonable ability to pay the policy premium.

(F) The viator or insured disposes of his or her ownership interests in a closely held corporation.

The sworn statement shall be submitted by the viator or insured to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage pursuant to section 8(d). The documents shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies received by the viatical settlement provider.

(iv) The viatical settlement provider submits to the insurer a copy of the owner or insured's certification described in subparagraph (iii) when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider. The certification shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this section, and the insurer shall timely respond to the request.

(v) A financing entity is a party to a viatical settlement contract to which a licensed viatical settlement provider is not a party or to a viatical settlement purchase agreement.

(vi) A special purpose entity enters into a viatical settlement contract.

Section 10. Fraud prevention and control.

(a) Fraudulent viatical settlement acts, interference and participation of convicted felons prohibited.—

(1) A person shall not commit a fraudulent viatical settlement act.

(2) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this act or investigations of suspected or actual violations of this act.

(3) A person in the business of viatical settlements shall not knowingly or intentionally permit any person convicted of a felony to effectuate the business of viatical settlements.

(b) Fraud warning required.—

(1) Viatical settlement contracts and applications for viatical settlements, regardless of the form of transmission, shall contain the following statement:

Any person who knowingly and with the intent to defraud another presents or causes to be presented any statement forming a part of or in support of an application for insurance or viatical settlement contract any false, incomplete or misleading information concerning any fact or thing material to the insurance policy or viatical settlement contract, or any claim thereunder, commits a fraudulent viatical settlement act and is subject to civil and criminal penalties.

(2) The lack of a statement as required in paragraph (1) does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

(c) Mandatory reporting.—

(1) Any person engaged in the business of viatical settlements having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed shall within 30 days make a written report of that information to a Federal, State or local criminal law enforcement agency and provide to the commissioner that information in a manner prescribed by the commissioner.

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

(d) Immunity from liability.—

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

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

(ii) Federal, State or local law enforcement or regulatory officials or their employees, agents or representatives;

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

(iv) the National Association of Insurance Commissioners (NAIC), National Association of Securities Dealers (NASD), the North American Securities Administrators Association (NASAA) or the United States Securities and Exchange Commission or their employees, agents or representatives, or other regulatory body overseeing life insurance, viatical settlements, securities or investment fraud; or

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

(2) Paragraph (1) shall not apply to statements made with actual malice.

(3) A person identified in paragraph (1) shall be entitled to an award of attorney fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this act and the party bringing the action was not substantially justified in doing so. For the purpose of this section, a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(4) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in paragraph (1).

(e) Confidentiality.—

(1) The documents and evidence provided pursuant to subsection (c) or obtained by the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil action.

(2) Paragraph (1) does not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:

(i) in administrative or judicial proceedings to enforce laws administered by the commissioner;

(ii) to Federal, State or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts or to the NAIC;

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

(3) Release of documents and evidence under paragraph (2) does not abrogate or modify the privilege granted in paragraph (1).

(f) Other law enforcement or regulatory authority.—This act shall not:

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

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

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

(g) Viatical settlement antifraud initiatives.—

(1) Viatical settlement providers shall within 60 days of licensure and annually by March 31 of each year thereafter certify to the department implementation of antifraud initiatives reasonably calculated to detect, investigate, prevent and report fraudulent viatical settlement acts. Antifraud initiatives shall include:

(i) Hiring of individuals qualified by experience and education for the investigation of fraudulent viatical settlement acts, including the viatical settlement provider's criteria and rationale for securing the services of such individuals.

(ii) An antifraud plan that includes:

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

(B) A description of the procedures for reporting possible fraudulent viatical settlement acts to the department and any appropriate law enforcement agency.

(C) Procedures to prevent fraudulent viatical settlement acts, including fraud awareness, detection and antifraud education and training of underwriters and other personnel.

(D) A description of the viatical settlement provider's organizational structure and key personnel, including antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

(2) A statistical reporting on the number of viatical settlement applications, viatical settlement contracts and actual or potential viatical settlement fraudulent acts that relate to the business of viatical settlements occurring within this Commonwealth. This statistical reporting shall accompany the initial and annual antifraud initiative certification submitted to the department.

(h) Antifraud plan confidential.—Antifraud certifications, plans and reports submitted to the department shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

Section 11. Responsibility of department.

The commissioner may:

- (1) Promulgate regulations pursuant to this act.
- (2) Establish standards for evaluating reasonableness of payments under viatical settlement contracts.
- (3) Establish appropriate licensing requirements and standards for continued licensure for viatical settlement providers and brokers.
- (4) Adopt rules governing the duties and responsibilities of insurers, viatical settlement providers and brokers during the viatication of a life insurance policy or certificate.
- (5) Adopt rules governing advertising by viatical settlement providers and viatical settlement brokers.

Section 12. Injunctions; civil remedies; cease and desist.

(a) Injunctions.—In addition to the penalties and other enforcement provisions of this act, if any person violates this act or any regulation implementing this act, the commissioner may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the commissioner determines are necessary to restrain the person from committing the violation.

(b) Civil action.—Any person damaged by the acts of a person in violation of this act may bring a civil action against the person committing the violation in a court of competent jurisdiction.

(c) Cease and desist order.—The commissioner may issue a cease and desist order upon a person that violates any provision of this act, any regulation or order adopted by the commissioner or any written agreement or consent order entered into with the commissioner.

(d) Emergency cease and desist order.—When the commissioner finds that an activity in violation of this act presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for 90 days. If the commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction.

(e) Civil penalties.—In addition to the penalties and other enforcement provisions of this act, any person who violates this act is subject to civil penalties of up to \$5,000 per violation. Imposition of civil penalties shall be pursuant to an order of the commissioner. The order may require a person found to be in violation of this act to make restitution to persons aggrieved by violations of this act.

(f) Statute of limitations.—The applicable statute of limitations shall not begin to run until the defrauded person or law enforcement agency is aware of the fraud, but in no event may the prosecution be commenced later than seven years after the action has occurred.

Section 13. Violation of act.

(a) Unfair practices.—A violation of this act shall be considered a violation of the act of July 22, 1974 (P.L.589, No.205), known as the Unfair Insurance Practices Act.

(b) Unlicensed practice.—A person who, without an appropriate license, engages in the business of viatical settlements in this Commonwealth as a viatical settlement provider or viatical settlement broker commits a felony of the third degree.

Section 14. Severability.

If any portion of this act or any amendments thereto or its applicability to any person or circumstance is held invalid by a court, the remainder of this act or its applicability to other persons or circumstances shall not be affected.

Section 15. Applicability of securities laws.

Nothing in this act shall preempt or otherwise limit the provisions of the act of December 5, 1972 (P.L.1280, No.284), known as the Pennsylvania Securities Act of 1972, or any regulations, notices, bulletins or other interpretations issued by the Pennsylvania Securities Commission. Compliance with the provisions of this act shall not constitute compliance with any applicable provision of the Pennsylvania Securities Act of 1972 and any amendments thereto or any regulations, notices, bulletins or other interpretations issued by the Pennsylvania Securities Commission.

Section 16. Examination and investigation of books and records.

(a) **Examination and investigation.**—A viatical settlement provider, person selling viatical products or effectuating viatical settlements and viatical settlement broker shall be subject to examination and investigation by the department.

(b) **Maintenance and books and records.**—Every viatical settlement provider and viatical settlement broker shall maintain and make available all books, records, accounts and other files relating to its engaging in the business of viatical settlements, and such records shall be made available for examination and inspection by the department in a form usable by the department for five years.

(c) **Costs of examination.**—All the expenses incurred in and about the examination of any viatical settlement provider or viatical settlement broker, including compensation of department employees assisting in said examination and any other professionals or specialists retained in said examination, shall be charged to and paid by the viatical settlement provider or viatical settlement broker.

Section 17. Transition provision.

A viatical settlement provider or viatical settlement broker transacting business in this Commonwealth on or before the effective date of this act may continue to do so pending approval or disapproval of the provider or broker's application for a license as long as the application is filed with the department within 30 days after the application form is published in the Pennsylvania Bulletin.

Section 18. Effective date.

This act shall take effect in 180 days.

APPROVED—The 4th day of July, A.D. 2002.

MARK S. SCHWEIKER