

AMENDMENTS TO LB 853

Introduced by Hudkins, 21.

1 1. Strike the original sections and all amendments
2 thereto and insert the following new sections:

3 Sec. 1. Section 44-1102, Revised Statutes Supplement,
4 2007, is amended to read:

5 44-1102 For purposes of the Viatical Settlements Act:

6 (1) Advertising means any written, electronic, or printed
7 communication or any communication by means of recorded telephone
8 messages or transmitted on radio, television, the Internet,
9 or similar communications media, including film strips, motion
10 pictures, and videos, published, disseminated, circulated, or
11 placed before the public, directly or indirectly, for the purpose
12 of creating an interest in or inducing a person to sell a life
13 insurance policy pursuant to a viatical settlement contract;

14 (2) Business of viatical settlements means an
15 activity involved in, but not limited to, the offering,
16 solicitation, negotiation, procurement, effectuation, purchasing,
17 investing, financing, monitoring, tracking, underwriting, selling,
18 transferring, assigning, pledging, or hypothecating of viatical
19 settlement contracts or purchase agreements;

20 (3) Chronically ill means (a) being unable to perform at
21 least two activities of daily living, such as eating, toileting,
22 transferring, bathing, dressing, or continence; (b) requiring
23 substantial supervision to protect the individual from threats to

1 health and safety due to severe cognitive impairment; or (c) having
2 a level of disability similar to that described in subdivision
3 (3) (a) of this section as determined by the Department of Health
4 and Human Services;

5 (4) Department means the Department of Insurance;

6 (5) Director means the Director of Insurance;

7 (6) Financing entity means an underwriter, a placement
8 agent, a lender, a purchaser of securities, a purchaser of a
9 policy or certificate from a viatical settlement provider, a
10 credit enhancer, or any entity that has a direct ownership in a
11 policy or certificate that is the subject of a viatical settlement
12 contract (a) whose principal activity related to the transaction is
13 providing funds to effect the viatical settlement or purchase of
14 one or more viaticated policies and (b) who has an agreement in
15 writing with one or more licensed viatical settlement providers to
16 finance the acquisition of viatical settlement contracts. Financing
17 entity does not include a nonaccredited investor or viatical
18 settlement purchaser;

19 (7) Fraudulent viatical settlement act means an act or
20 omission committed by any person who, knowingly and with intent to
21 defraud and for the purpose of depriving another of property or for
22 pecuniary gain, commits, or permits his or her employees or agents
23 to commit, any of the following acts:

24 (a) Presenting, causing to be presented, or preparing
25 with the knowledge or belief that it will be presented to or by a
26 viatical settlement provider, viatical settlement broker, viatical
27 settlement purchaser, financing entity, insurer, insurance broker,

1 insurance agent, or any other person, false material information,
2 or concealing material information, as part of, in support of, or
3 concerning a fact material to one or more of the following:

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

6 (ii) The underwriting of a viatical settlement contract
7 or insurance policy;

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

10 (iv) Premiums paid on an insurance policy;

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

14 (vi) The reinstatement or conversion of an insurance
15 policy;

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

18 (viii) The issuance of written evidence of a viatical
19 settlement contract or insurance;

20 (ix) A financing transaction; or

21 (x) Employing any device, scheme, or artifice to defraud
22 related to viaticated policies;

23 (b) In the furtherance of a fraud or to prevent the
24 detection of a fraud:

25 (i) Removing, concealing, altering, destroying, or
26 sequestering from the director the assets or records of a licensee
27 or other person engaged in the business of viatical settlements;

1 (ii) Misrepresenting or concealing the financial
2 condition of a licensee, financing entity, insurer, or other
3 person;

4 (iii) Transacting the business of viatical settlements in
5 violation of laws requiring a license, certificate of authority,
6 or other legal authority for the transaction of the business of
7 viatical settlements; or

8 (iv) Filing with the director or the chief insurance
9 regulatory official of another jurisdiction a document containing
10 false information or otherwise concealing information about a
11 material fact from the director;

12 (c) Presenting, causing to be presented, or preparing
13 with the knowledge or reason to believe that it will be presented,
14 to or by a viatical settlement provider, viatical settlement
15 broker, insurer, insurance agent, financing entity, viatical
16 settlement purchaser, or any other person, in connection with
17 a viatical settlement transaction or insurance transaction, an
18 insurance policy, knowing the policy was fraudulently obtained by
19 the insured, owner, or any agent thereof;

20 (d) Embezzlement, theft, misappropriation, or conversion
21 of money, funds, premiums, credits, or other property of a
22 viatical settlement provider, insurer, insured, viator, insurance
23 policyowner, or any other person engaged in the business of
24 viatical settlements or insurance; ~~or~~

25 (e) Procuring stranger-originated life insurance; or

26 ~~(e)~~ (f) Attempting to commit, assisting, aiding, or
27 abetting in the commission of, or conspiring to commit the acts or

1 omissions specified in this subdivision;

2 (8) Person means a natural person or a legal entity,
3 including an individual, a partnership, a limited liability
4 company, an association, a trust, or a corporation;

5 (9) Policy means an individual or group policy, group
6 certificate, contract, or arrangement of life insurance affecting
7 the rights of a resident of this state or bearing a reasonable
8 relation to this state, regardless of whether delivered or issued
9 for delivery in this state;

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

22 (11) Special purpose entity means a corporation,
23 partnership, trust, limited liability company, or other similar
24 entity formed solely to provide, either directly or indirectly,
25 access to institutional capital markets for a financing entity or
26 licensed viatical settlement provider;

27 (12) Stranger-originated life insurance means the

1 procurement of a new policy by persons or entities that lack
2 insurable interest on the insured and, at policy inception, such
3 person or entity owns or controls the policy or the majority of
4 the death benefit in the policy and the insured or the insured's
5 beneficiaries receive little or none of the proceeds of the death
6 benefits of the policy. Trusts that are created to give the
7 appearance of insurable interest and are used to initiate policies
8 for a person who lacks insurable interest violate insurable
9 interest laws and the prohibition against wagering on life;

10 (13) Terminally ill means having an illness or sickness
11 that can reasonably be expected to result in death in twenty-four
12 months or less;

13 ~~(13)~~ (14) Viatical settlement broker means a person
14 that on behalf of a viator and for a fee, commission, or other
15 valuable consideration, offers or attempts to negotiate viatical
16 settlement contracts between a viator and one or more viatical
17 settlement providers. Notwithstanding the manner in which the
18 viatical settlement broker is compensated, a viatical settlement
19 broker is deemed to represent only the viator and owes a fiduciary
20 duty to the viator to act according to the viator's instructions
21 and in the best interest of the viator. Viatical settlement
22 broker includes a licensed life insurance producer that meets
23 the requirements of section 44-1103. Viatical settlement broker
24 does not include an attorney, a certified public accountant,
25 or a financial planner accredited by a nationally recognized
26 accreditation agency who is retained to represent the viator and
27 whose compensation is not paid directly or indirectly by the

1 viatical settlement provider or purchaser;

2 ~~(14)~~ (15) (a) Viatical settlement contract means a written
3 agreement between a viator and a viatical settlement provider
4 establishing the terms under which compensation or anything of
5 value will be paid, which compensation or value is less than the
6 expected death benefit of the insurance policy or certificate,
7 in return for the viator's assignment, transfer, sale, devise,
8 or bequest of the death benefit or ownership or any portion of
9 the insurance policy or certificate of insurance; ~~— A viatical~~
10 ~~settlement contract also includes a contract for a loan or other~~
11 ~~financing transaction secured primarily by an individual or group~~
12 ~~life insurance policy, other than a loan by a life insurance~~
13 ~~company pursuant to the terms of the life insurance contract, or a~~
14 ~~loan secured by the cash value of a policy. A viatical settlement~~
15 ~~contract includes an agreement to transfer ownership or change the~~
16 ~~beneficiary designation at a later date regardless of the date that~~
17 ~~compensation is paid to the viator;~~

18 (b) Viatical settlement contract includes:

19 (i) The transfer for compensation or value of ownership
20 or beneficial interest in a trust or other entity that owns such
21 policy if the trust or other entity was formed or availed of
22 for the principal purpose of acquiring one or more policies which
23 insure the life of a person residing in this state; and

24 (ii) A written agreement for a loan or other lending
25 transaction, secured primarily by a policy or a premium finance
26 loan made for a policy on or before the date of issuance of the
27 policy if, pursuant to the terms of such loan:

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

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

7 (c) Viatical settlement contract does not include:

8 (i) A policy loan or accelerated death benefit made by
9 the insurer pursuant to the policy's terms;

10 (ii) A loan, the proceeds of which are used solely to
11 pay:

12 (A) Premiums for the policy; or

13 (B) The costs of the loan, including, without limitation,
14 interest, arrangement fees, utilization fees and similar fees,
15 closing costs, legal fees and expenses, trustee fees and expenses,
16 and third-party collateral provider fees and expenses, including
17 fees payable to letter-of-credit issuers;

18 (iii) A loan made by a bank or other licensed financial
19 institution in which the lender takes an interest in a life
20 insurance policy solely to secure repayment of a loan or, if
21 there is a default on the loan and the policy is transferred, the
22 transfer of such a policy by the lender;

23 (iv) A premium finance loan not described in subdivision
24 (15) (b) of this section; or

25 (v) The collateral assignment of a policy;

26 ~~(15)~~ (16) Viatical settlement provider means a person,
27 other than a viator, that enters into or effectuates a viatical

1 settlement contract.

2 Viatical settlement provider does not include:

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

6 (b) The issuer of a life insurance policy providing
7 accelerated benefits under and pursuant to the contract;

8 (c) An authorized or eligible insurer that provides
9 stop-loss coverage to a viatical settlement provider, purchaser,
10 financing entity, special purpose entity, or related provider
11 trust;

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

16 (e) A financing entity;

17 (f) A special purpose entity;

18 (g) A related provider trust;

19 (h) A viatical settlement purchaser; or

20 (i) An accredited investor or qualified institutional
21 buyer as defined respectively in Regulation D, Rule 501, or Rule
22 144A of the federal Securities Act of 1933, as the act existed
23 on September 1, 2001, who purchases a viaticated policy from a
24 viatical settlement provider;

25 ~~(16)~~ (17) Viatical settlement purchaser means a person
26 who gives a sum of money as consideration for a life insurance
27 policy or an interest in the death benefits of a life insurance

1 policy, or a person who owns or acquires or is entitled to a
2 beneficial interest in a trust that owns a viatical settlement
3 contract or is the beneficiary of a life insurance policy that has
4 been or will be the subject of a viatical settlement contract, for
5 the purpose of deriving an economic benefit.

6 Viatical settlement purchaser does not include:

7 (a) A licensee under the Viatical Settlements Act;

8 (b) An accredited investor or qualified institutional
9 buyer as defined respectively in Regulation D, Rule 501, or Rule
10 144A of the federal Securities Act of 1933, as the act existed on
11 September 1, 2001;

12 (c) A financing entity;

13 (d) A special purpose entity; or

14 (e) A related provider trust;

15 ~~(17)~~ (18) Viaticated policy means a life insurance policy
16 or certificate that has been acquired by a viatical settlement
17 provider pursuant to a viatical settlement contract; and

18 ~~(18)~~ (19) Viator means the owner of a life insurance
19 policy or a certificate holder under a group policy who enters or
20 seeks to enter into a viatical settlement contract. For purposes
21 of the Viatical Settlements Act, a viator is not limited to an
22 owner of a life insurance policy or a certificate holder under a
23 group policy insuring the life of an individual with a terminal or
24 chronic illness or condition except as specifically addressed.

25 Viator does not include:

26 (a) A licensee under the act;

27 (b) An accredited investor or qualified institutional

1 buyer as defined respectively in Regulation D, Rule 501, or Rule
2 144A of the federal Securities Act of 1933, as the act existed on
3 September 1, 2001;

4 (c) A financing entity;

5 (d) A special purpose entity; or

6 (e) A related provider trust.

7 Sec. 2. Section 44-1108, Reissue Revised Statutes of
8 Nebraska, is amended to read:

9 44-1108 (1) With each application for a viatical
10 settlement, a viatical settlement provider or viatical settlement
11 broker shall provide the viator with at least the disclosures
12 required by this section no later than the time the application
13 for the viatical settlement contract is signed by all parties. The
14 disclosures shall be provided in a separate document that is signed
15 by the viator and the viatical settlement provider or viatical
16 settlement broker and shall provide the following information:

17 (a) Possible alternatives to viatical settlement
18 contracts, including any accelerated death benefits or policy loans
19 offered under the viator's life insurance policy;

20 (b) Some or all of the proceeds of the viatical
21 settlement may be taxable under federal income tax laws and
22 state franchise and income tax laws, and assistance should be
23 sought from a professional tax advisor;

24 (c) Proceeds from the viatical settlement could be
25 subject to the claims of creditors;

26 (d) Receipt of the proceeds from a viatical settlement
27 may adversely effect the viator's eligibility for medicaid or other

1 government benefits or entitlements, and advice should be obtained
2 from the appropriate government agencies;

3 (e) The viator has the right to rescind the viatical
4 settlement contract for fifteen calendar days after receipt of
5 the viatical settlement proceeds by the viator as provided in
6 subsection (3) of section 44-1109. If the insured dies during the
7 rescission period, the settlement contract shall be deemed to have
8 been rescinded. If a viatical settlement contract is rescinded,
9 all viatical settlement proceeds and any premiums paid by the
10 viatical settlement provider or purchaser shall be repaid to the
11 viatical settlement provider or purchaser within sixty days of such
12 rescission;

13 (f) Entering into a viatical settlement contract may
14 cause other rights or benefits, including conversion rights and
15 waiver of premium benefits, that may exist under the policy or
16 certificate to be forfeited by the viator, and assistance should be
17 sought from a financial advisor;

18 (g) A brochure describing the process of viatical
19 settlements. The National Association of Insurance Commissioners'
20 form for the brochure shall be used unless one is developed by
21 the director; and

22 (h) The insured may be contacted by either the viatical
23 settlement provider or broker or its authorized representative
24 for the purpose of determining the insured's health status. This
25 contact is limited to once every six months if the insured has a
26 life expectancy of more than one year, and no more than once every
27 three months if the insured has a life expectancy of one year or

1 less. For purposes of this subdivision, authorized representative
2 does not include a viatical settlement purchaser.

3 The disclosure document shall contain the following
4 language: All medical, financial, or personal information solicited
5 or obtained by a viatical settlement provider or viatical
6 settlement broker about you, the insured, including your identity
7 or the identity of family members, a spouse, or a significant
8 other, may be disclosed as necessary to effect the viatical
9 settlement between the viator and the viatical settlement provider.
10 If you are asked to provide this information, you will be asked
11 to consent to the disclosure. The information may be provided to
12 someone who buys the policy or provides funds for the purchase. You
13 may be asked to renew your permission to share information every
14 two years.

15 (2) A viatical settlement provider shall provide the
16 viator with at least the following disclosures no later than the
17 date the viatical settlement contract is signed by all parties.
18 The disclosures shall be conspicuously displayed in the viatical
19 settlement contract or in a separate document signed by the viator
20 and the viatical settlement provider or viatical settlement broker
21 and provide the following information:

22 (a) The affiliation, if any, between the viatical
23 settlement provider and the issuer of the insurance policy to be
24 viaticated;

25 (b) The name, address, and telephone number of the
26 viatical settlement provider;

27 (c) The amount and method of calculating the viatical

1 settlement broker's compensation. Compensation includes anything
2 of value paid or given to a viatical settlement broker for the
3 placement of a policy;

4 (d) If an insurance policy to be viaticated has been
5 issued as a joint policy or involves family riders or any coverage
6 of a life other than the insured under the policy to be viaticated,
7 there is the possibility of a loss of coverage on the other lives
8 under the policy, and consultation with an insurance producer or
9 the insurer issuing the policy for advice on the proposed viatical
10 settlement is advised;

11 (e) The dollar amount of the current death benefit
12 payable to the viatical settlement provider under the policy or
13 certificate and, if known, the availability of any additional
14 guaranteed insurance benefits, the dollar amount of any accidental
15 death and dismemberment benefits under the policy or certificate,
16 and the viatical settlement provider's interest in those benefits;
17 and

18 (f) The name, business address, and telephone number
19 of the independent third-party escrow agent. The viator or owner
20 may inspect or receive copies of the relevant escrow or trust
21 agreements or documents.

22 (3) If the provider transfers ownership or changes the
23 beneficiary of the insurance policy, the provider shall communicate
24 the change in ownership or beneficiary to the insured within twenty
25 days after the change.

26 (4) (a) In addition to other questions an insurance
27 carrier may lawfully pose to a life insurance applicant, an

1 insurance carrier may inquire in the application for insurance
2 whether the proposed owner intends to pay premiums with the
3 assistance of financing from a lender that will use the policy as
4 collateral to support the financing.

5 (b) If, as described in subdivision (15)(b)(ii) of
6 section 44-1102, the loan provides funds which can be used for
7 a purpose other than paying for the premiums, costs, and expenses
8 associated with obtaining and maintaining the life insurance policy
9 and loan, the application shall be rejected as a violation of the
10 Viatical Settlements Act.

11 (c) If the financing does not violate the act, the
12 insurance carrier:

13 (i) May make disclosures to the applicant and the
14 insured, either on the application or an amendment to the
15 application to be completed no later than the delivery of the
16 policy, including, but not limited to, the following statement.

17 If you have entered into a loan arrangement where the
18 policy is used as collateral and the policy changes ownership at
19 some point in the future in satisfaction of the loan, the following
20 may be true.

21 A change of ownership could lead to a stranger owning an
22 interest in the insured's life.

23 A change of ownership could limit your ability to
24 purchase future insurance on the insured's life because there
25 is a limit to how much coverage insurers will issue on one life.

26 If there is a change of ownership and you wish to obtain
27 more insurance coverage on the insured's life in the future, the

1 insured's higher issue age, a change in health status, or other
2 factors may reduce the ability to obtain coverage and may result in
3 significantly higher premiums.

4 You should consult a professional advisor, since a change
5 in ownership in satisfaction of the loan may result in tax
6 consequences to the owner, depending on the structure of the loan;
7 and

8 (ii) May require certifications from the applicant or the
9 insured, similar to the following statement.

10 I have not entered into any agreement or arrangement
11 providing for the future sale of this life insurance policy.

12 My loan arrangement for this policy provides funds
13 sufficient to pay for some or all of the premiums, costs,
14 and expenses associated with obtaining and maintaining my life
15 insurance policy, but I have not entered into any agreement by
16 which I am to receive consideration in exchange for procuring this
17 policy.

18 The borrower has an insurable interest in the insured.

19 (5) With respect to each policy issued by an insurance
20 company, the insurance company shall send written notice to the
21 owner of an individual life insurance policy, or a certificate
22 holder under a group life insurance policy, if the insured person
23 under such policy is sixty years of age or older or is known to be
24 terminally ill or chronically ill, that a viatical settlement is an
25 available alternative transaction to such owner at the time of each
26 of the following:

27 (a) When a life insurance company receives from such

1 owner a request to surrender, in whole or in part, an individual
2 life insurance policy or a certificate under a group life insurance
3 policy;

4 (b) When a life insurance company receives from such
5 owner a request to receive an accelerated death benefit under an
6 individual life insurance policy or certificate under a group life
7 insurance policy;

8 (c) When a life insurance company receives from such
9 owner a request to collaterally assign an individual life insurance
10 policy or a certificate under a group life insurance policy as
11 security for a loan;

12 (d) When a life insurance company sends to such owner
13 a notice of lapse of an individual life insurance policy or a
14 certificate under a group life insurance policy; or

15 (e) At any other time that the director may require by
16 rule or regulation.

17 Sec. 3. Section 44-1110, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 44-1110 It is a violation of the Viatical Settlements Act
20 for any person to enter into a viatical settlement contract at any
21 time prior to or at the time of the application for, or issuance
22 of, a policy or within a two-year period commencing on the date of
23 issuance of the insurance policy or certificate unless the viator
24 certifies to the viatical settlement provider that one or more of
25 the following conditions have been met within the two-year period:

26 (1) The policy was issued upon the viator's exercise of
27 conversion rights arising out of a group or individual policy if

1 the total of the time covered under the conversion policy, plus
2 the time covered under the group or individual policy, is at least
3 twenty-four months. The time covered under the group policy shall
4 be calculated without regard to any change in insurance carriers
5 if the coverage has been continuous and under the same group
6 sponsorship;

7 (2) The viator is a charitable organization exempt from
8 taxation under 26 U.S.C. 501(c)(3), as such section existed on
9 September 1, 2001;

10 (3) The viator is not a natural person, such as the owner
11 is a corporation, limited liability company, or partnership; and

12 (4) The viator submits independent evidence to the
13 viatical settlement provider that one or more of the following
14 conditions have been met within the two-year period:

15 (a) The viator or insured is terminally or chronically
16 ill;

17 (b) The viator's spouse died;

18 (c) The viator divorced his or her spouse;

19 (d) The viator retired from full-time employment;

20 (e) The viator became physically or mentally disabled and
21 a physician determined that the disability prevented the viator
22 from maintaining full-time employment;

23 (f) The viator was the insured's employer at the time the
24 policy or certificate was issued and the employment relationship
25 terminated;

26 (g) A final order, judgment, or decree was entered by a
27 court of competent jurisdiction, on the application of a creditor

1 of the viator, adjudicating the viator bankrupt or insolvent,
2 or approving a petition seeking reorganization of the viator
3 or appointing a receiver, trustee, or liquidator for all or a
4 substantial part of the viator's assets;

5 (h) The viator experienced a significant decrease
6 in income that was unexpected and that impaired the viator's
7 reasonable ability to pay the policy premium; or

8 (i) The viator or insured disposed of his or her
9 ownership interests in a closely held corporation.

10 Copies of the independent evidence described in
11 subdivision (4) of this section and documents required by
12 subsection (1) of section 44-1109 shall be submitted to the
13 insurer when the viatical settlement provider submits a request
14 to the insurer for verification of coverage. The copies shall be
15 accompanied by a letter of attestation from the viatical settlement
16 provider that the copies are true and correct copies of the
17 documents received by the viatical settlement provider.

18 If the viatical settlement provider submits to the
19 insurer a copy of the owner's or insured's certification described
20 in subdivision (4) of this section when the provider submits a
21 request to the insurer to effect the transfer of the policy or
22 certificate to the viatical settlement provider, the copy shall
23 be deemed to conclusively establish that the viatical settlement
24 contract satisfies the requirements of this section and the insurer
25 shall timely respond to the request.

26 Sec. 4. Section 44-1111, Reissue Revised Statutes of
27 Nebraska, is amended to read:

1 44-1111 (1) The purpose of this section is to provide
2 prospective viators with clear and unambiguous statements in
3 the advertisement of viatical settlements and to assure the
4 clear, truthful, and adequate disclosure of the benefits, risks,
5 limitations, and exclusions of any viatical settlement contract.
6 This purpose is intended to be accomplished by the establishment of
7 guidelines and standards of permissible and impermissible conduct
8 in the advertising of viatical settlements or related products or
9 services to assure that product descriptions are presented in a
10 manner that prevents unfair, deceptive, or misleading advertising
11 and is conducive to accurate presentation and description of
12 viatical settlements or related products or services through the
13 advertising media and material used by licensees.

14 (2) This section applies to any advertising of viatical
15 settlement contracts or related products or services intended for
16 dissemination in this state, including Internet advertising viewed
17 by persons located in this state. If disclosure requirements are
18 established pursuant to federal regulation, this section shall be
19 interpreted so as to minimize or eliminate conflict with federal
20 regulation whenever possible.

21 (3) Every licensee shall establish and at all times
22 maintain a system of control over the content, form, and method
23 of dissemination of all advertisements of its contracts, products,
24 and services. All advertisements, regardless of by whom written,
25 created, designed, or presented, shall be the responsibility of the
26 licensee, as well as the individual who created or presented the
27 advertisement. A system of control shall include regular routine

1 notification, at least once a year, to agents and others authorized
2 by the licensee who disseminate advertisements of the requirements
3 and procedures for approval prior to the use of any advertisement
4 not furnished by the licensee.

5 (4) Advertisements shall be truthful and not misleading
6 in fact or by implication. The form and content of an advertisement
7 of a viatical settlement contract shall be sufficiently complete
8 and clear so as to avoid deception. It shall not have the capacity
9 or tendency to mislead or deceive. Whether an advertisement has the
10 capacity or tendency to mislead or deceive shall be determined by
11 the director from the overall impression that the advertisement may
12 be reasonably expected to create upon a person of average education
13 or intelligence within the segment of the public to which it is
14 directed.

15 (5) (a) The information required to be disclosed under
16 this section shall not be minimized, rendered obscure, or presented
17 in an ambiguous fashion or intermingled with the text of the
18 advertisement so as to be confusing or misleading.

19 (b) An advertisement shall not omit material information
20 or use words, phrases, statements, references, or illustrations
21 if the omission or use has the capacity, tendency, or effect of
22 misleading or deceiving viators as to the nature or extent of any
23 benefit, loss covered, premium payable, or state or federal tax
24 consequence. The fact that the viatical settlement contract offered
25 is made available for inspection prior to consummation of the sale,
26 or an offer is made to refund the payment if the viator is not
27 satisfied, or that the viatical settlement contract includes a free

1 look period that satisfies or exceeds legal requirements, does not
2 remedy misleading statements.

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

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

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

16 (f) (i) Any testimonial, appraisal, analysis, or
17 endorsement used in an advertisement must be genuine, represent
18 the current opinion of the author, be applicable to the viatical
19 settlement contract, product, or service advertised, and be
20 accurately reproduced with sufficient completeness to avoid
21 misleading or deceiving prospective viators as to the nature or
22 scope of the testimonial, appraisal, analysis, or endorsement. In
23 using a testimonial, an appraisal, an analysis, or an endorsement,
24 the licensee makes as its own all the statements contained therein,
25 and the statements are subject to all the provisions of this
26 section.

27 (ii) If the individual making a testimonial, an

1 appraisal, an analysis, or an endorsement has a financial interest
2 in the viatical settlement provider or related entity as a
3 stockholder, director, officer, employee, or otherwise, or receives
4 any benefit directly or indirectly other than required union
5 scale wages, that fact shall be prominently disclosed in the
6 advertisement.

7 (iii) An advertisement shall not state or imply that a
8 viatical settlement contract benefit or service has been approved
9 or endorsed by a group of individuals or any society, association,
10 or other organization unless that is the fact and unless any
11 relationship between an organization and the viatical settlement
12 provider is disclosed. If the entity making the approval or
13 endorsement is owned, controlled, or managed by the viatical
14 settlement provider, or receives any payment or other consideration
15 from the viatical settlement provider for making an approval or
16 endorsement, that fact shall be disclosed in the advertisement.

17 (iv) When a testimonial, an appraisal, an analysis, or an
18 endorsement refers to benefits received under a viatical settlement
19 contract, all pertinent information shall be retained for a period
20 of five years after its use.

21 (v) An advertisement shall not contain statistical
22 information unless it accurately reflects recent and relevant
23 facts. The source of all statistics used in an advertisement shall
24 be identified.

25 (vi) An advertisement shall not disparage insurers,
26 viatical settlement providers, viatical settlement brokers,
27 viatical settlement investment agents, insurance producers,

1 policies, services, or methods of marketing.

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

10 (viii) An advertisement shall not use a trade name, group
11 designation, name of the parent company of a licensee, name of a
12 particular division of the licensee, service mark, slogan, symbol,
13 or other device or reference without disclosing the name of the
14 licensee if the advertisement would have the capacity or tendency
15 to mislead or deceive as to the true identity of the licensee, or
16 to create the impression that a company other than the licensee
17 would have any responsibility for the financial obligation under a
18 viatical settlement contract.

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

27 (x) An advertisement may state that a viatical settlement

1 provider is licensed in the state where the advertisement appears
2 if it does not exaggerate that fact or suggest or imply that
3 competing viatical settlement providers may not be licensed. The
4 advertisement may ask the audience to consult the licensee's web
5 site or contact the department to find out if the state requires
6 licensing and, if so, whether the viatical settlement provider is
7 licensed.

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

13 (xii) The name of the licensee shall be stated in all of
14 its advertisements. An advertisement shall not use a trade name,
15 any group designation, the name of any affiliate or controlling
16 entity of the licensee, a service mark, a slogan, a symbol, or
17 any other device in a manner that would have the capacity or
18 tendency to mislead or deceive as to the true identity of the
19 actual licensee or create the false impression that an affiliate or
20 controlling entity would have any responsibility for the financial
21 obligation of the licensee.

22 (xiii) An advertisement shall not disclose or indirectly
23 create the impression that any division or agency of the state or
24 of the United States Government endorses, approves, or favors:

25 (A) Any licensee or its business practices or methods of
26 operation;

27 (B) The merits, desirability, or advisability of any

1 viatical settlement contract or viatical settlement program;

2 (C) Any viatical settlement contract or viatical
3 settlement program; or

4 (D) Any life insurance policy or life insurance company.

5 (xiv) If the advertiser emphasizes the speed with which
6 the viatication will occur, the advertising must disclose the
7 average timeframe from completed application to the date of offer
8 and from acceptance of the offer to receipt of the funds by the
9 viator.

10 (xv) If the advertising emphasizes the dollar amounts
11 available to viators, the advertising shall disclose the average
12 purchase price as a percent of face value obtained by viators
13 contracting with the licensee during the past six months.

14 (xvi) No advertising by any person shall solicit, market,
15 or otherwise promote the purchase of an insurance policy for the
16 sole purpose of or with the primary emphasis on entering into a
17 viatical settlement contract.

18 Sec. 5. Section 44-1112, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 44-1112 (1)(a) A person shall not commit a fraudulent
21 viatical settlement act.

22 (b) A person shall not knowingly or intentionally
23 interfere with the enforcement of the provisions of the Viatical
24 Settlements Act or investigations of suspected or actual violations
25 of the act.

26 (c) A person in the business of viatical settlements
27 shall not knowingly or intentionally permit any person convicted of

1 a felony involving dishonesty or breach of trust to participate in
2 the business of viatical settlements.

3 (d) A person shall not enter into a viatical settlement
4 contract on a policy that was the subject of a premium finance
5 agreement as described in subdivision (15)(b)(ii) of section
6 44-1102.

7 (2)(a) Viatical settlement contracts and applications
8 for viatical settlements, regardless of the form of transmission,
9 shall contain the following statement or a substantially similar
10 statement: Any person who knowingly presents false information in
11 an application for insurance or viatical settlement contract is
12 guilty of a crime and may be subject to fines and confinement in
13 prison.

14 (b) The lack of a statement as required in this
15 subsection does not constitute a defense in any prosecution for a
16 fraudulent viatical settlement act.

17 (3)(a) Any person engaged in the business of viatical
18 settlements having knowledge or a reasonable belief that a
19 fraudulent viatical settlement act is being, will be, or has been
20 committed shall provide to the director the information required
21 by, and in a manner prescribed by, the director.

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

26 (4)(a) No civil liability shall be imposed on and no
27 cause of action shall arise from a person's furnishing information

1 concerning suspected, anticipated, or completed fraudulent viatical
2 settlement acts, if the information is provided to or received
3 from:

4 (i) The director or the director's employees, agents, or
5 representatives;

6 (ii) The Director of Banking and Finance or his or her
7 employees, agents, or representatives;

8 (iii) Federal, state, or local law enforcement officials
9 or their employees, agents, or representatives;

10 (iv) The National Association of Insurance Commissioners,
11 the National Association of Securities Dealers, or the North
12 American Securities Administrators Association, employees, agents,
13 or representatives of any such association, or any other regulatory
14 body overseeing life insurance, viatical settlements, securities,
15 or investment fraud; or

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

18 (b) This subsection does not apply to statements made
19 with actual malice, fraudulent intent, or bad faith. In an action
20 brought against a person for filing a report or furnishing other
21 information concerning a fraudulent viatical settlement act, the
22 party bringing the action shall plead specifically any allegation
23 that this subsection does not apply because the person filing the
24 report or furnishing the information did so with actual malice,
25 fraudulent intent, or bad faith.

26 (c) A person identified in this subsection shall be
27 entitled to an award of attorney's fees and costs if he or she

1 is the prevailing party in a civil cause of action for libel,
2 slander, or any other relevant tort arising out of activities in
3 carrying out the provisions of the Viatical Settlements Act and the
4 party bringing the action was not substantially justified in doing
5 so. For purposes of this section, a proceeding is substantially
6 justified if it had a reasonable basis in law or fact at the time
7 it was initiated.

8 (d) This section does not abrogate or modify common-law
9 or statutory privileges or immunities enjoyed by a person described
10 in this subsection.

11 (5) (a) The documents and evidence provided pursuant to
12 subsection (4) of this section or obtained by the director in an
13 investigation of suspected or actual fraudulent viatical settlement
14 acts shall be privileged and confidential and shall not be a public
15 record and shall not be subject to discovery or subpoena in a civil
16 or criminal action.

17 (b) This subsection does not prohibit release by the
18 director of documents and evidence obtained in an investigation of
19 suspected or actual fraudulent viatical settlement acts:

20 (i) In administrative or judicial proceedings to enforce
21 laws administered by the director;

22 (ii) To federal, state, or local law enforcement or
23 regulatory agencies, to an organization established for the purpose
24 of detecting and preventing fraudulent viatical settlement acts, or
25 to the National Association of Insurance Commissioners; or

26 (iii) At the discretion of the director, to a person
27 in the business of viatical settlements that is aggrieved by a

1 fraudulent viatical settlement act.

2 (c) Release of documents and evidence under this
3 subsection does not abrogate or modify the privilege granted in
4 this subsection.

5 (6) The Viatical Settlements Act shall not:

6 (a) Preempt the authority or relieve the duty of other
7 law enforcement or regulatory agencies to investigate, examine, and
8 prosecute suspected violations of law;

9 (b) Prevent or prohibit a person from disclosing
10 voluntarily information concerning viatical settlement fraud to a
11 law enforcement or regulatory agency other than the department; or

12 (c) Limit the powers granted elsewhere by the laws
13 of this state to the director or an insurance fraud unit to
14 investigate and examine possible violations of law and to take
15 appropriate action against wrongdoers.

16 (7) Viatical settlement providers and viatical settlement
17 brokers shall have in place antifraud initiatives reasonably
18 calculated to detect, prosecute, and prevent fraudulent viatical
19 settlement acts. At the discretion of the director, the director
20 may order, or a licensee may request and the director may
21 grant, such modifications of the following required initiatives
22 as necessary to ensure an effective antifraud program. The
23 modifications may be more or less restrictive than the required
24 initiatives so long as the modifications may reasonably be expected
25 to accomplish the purpose of this section. Antifraud initiatives
26 shall include:

27 (a) Fraud investigators, who may be viatical settlement

1 provider or viatical settlement broker employees or independent
2 contractors; and

3 (b) An antifraud plan submitted to the director. The
4 antifraud plan shall include, but not be limited to:

5 (i) A description of the procedures for detecting and
6 investigating possible fraudulent viatical settlement acts and
7 procedures for resolving material inconsistencies between medical
8 records and insurance applications;

9 (ii) A description of the procedures for reporting
10 possible fraudulent viatical settlement acts to the director;

11 (iii) A description of the plan for antifraud education
12 and training of underwriters and other personnel; and

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

18 Antifraud plans submitted to the director shall be
19 privileged and confidential, shall not be a public record, and
20 shall not be subject to discovery or subpoena in a civil or
21 criminal action.

22 Sec. 6. Section 44-1115, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 44-1115 (1) No person shall (a) prohibit, restrict,
25 limit, or impair an insurance producer from lawfully negotiating
26 a viatical settlement contract on behalf of a viator, aiding
27 and assisting a viator with a viatical settlement contract,

1 or otherwise participating in a viatical settlement transaction
2 under the Viatical Settlements Act, (b) engage in or permit any
3 discrimination between individuals of the same class, same policy
4 amount, and equal expectation of life in the rates charged for
5 any life insurance policy or annuity contract based upon an
6 individual's having entered into a viatical settlement contract or
7 being insured under a viaticated policy, (c) make any false or
8 misleading statement as to the business of viatical settlements or
9 financing premiums due for a policy or to any owner of a policy or
10 insured for the purpose of inducing or tending to induce the owner
11 or insured not to enter into a viatical settlement contract, or (d)
12 engage in any transaction, act, practice, or course of business or
13 dealing which restricts, limits, or impairs in any way the lawful
14 transfer of ownership, change of beneficiary, or assignment of a
15 policy.

16 (2) A violation of the Viatical Settlements Act shall
17 be considered an unfair trade practice under the Unfair Insurance
18 Trade Practices Act subject to the penalties contained in the act.

19 Sec. 7. Original sections 44-1108, 44-1110, 44-1111,
20 44-1112, and 44-1115, Reissue Revised Statutes of Nebraska, and
21 section 44-1102, Revised Statutes Supplement, 2007, are repealed.