

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 853

FINAL READING

Introduced by Banking, Commerce and Insurance Committee: Pahls, 31, Chairperson; Carlson, 38; Christensen, 44; Gay, 14; Hansen, 42; Langemeier, 23; Pankonin, 2; Pirsch, 4.

Read first time January 11, 2008

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to insurance; to amend sections 44-1101,
2 44-1103, 44-1105, 44-1106, 44-1107, 44-1108, 44-1109,
3 44-1110, 44-1111, 44-1112, 44-1113, 44-1114, and 44-1115,
4 Reissue Revised Statutes of Nebraska, and sections
5 44-1102 and 44-1104, Revised Statutes Supplement, 2007;
6 to change provisions relating to the Viatical Settlements
7 Act; and to repeal the original sections.

8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-1101, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 44-1101 Sections 44-1101 to 44-1116 and sections 9 and
4 12 of this act shall be known and may be cited as the Viatical
5 Settlements Act.

6 Sec. 2. Section 44-1102, Revised Statutes Supplement,
7 2007, is amended to read:

8 44-1102 For purposes of the Viatical Settlements Act:

9 (1) Advertising means any written, electronic, or printed
10 communication or any communication by means of recorded telephone
11 messages or transmitted on radio, television, the Internet,
12 or similar communications media, including film strips, motion
13 pictures, and videos, published, disseminated, circulated, or
14 placed directly before the public, ~~directly or indirectly,~~ in this
15 state, for the purpose of creating an interest in or inducing a
16 person to sell, assign, devise, bequest, or transfer the death
17 benefit or ownership of a life insurance policy pursuant to a
18 viatical settlement contract;

19 (2) Business of viatical settlements means an activity
20 involved in, but not limited to, the offering, ~~solicitation,~~
21 ~~negotiation,~~ ~~procurement,~~ ~~effectuation,~~ soliciting, negotiating,
22 procuring, effectuating, purchasing, investing, financing,
23 monitoring, tracking, underwriting, selling, transferring,
24 assigning, pledging, or hypothecating ~~of~~ or in any manner acquiring
25 an interest in a life insurance policy by means of a viatical

1 settlement ~~contracts or purchase agreements~~, contract;

2 (3) Chronically ill means (a) being unable to perform at
3 least two activities of daily living, such as eating, toileting,
4 transferring, bathing, dressing, or continence; (b) requiring
5 substantial supervision to protect the individual from threats to
6 health and safety due to severe cognitive impairment; or (c) having
7 a level of disability similar to that described in subdivision
8 (3) (a) of this section as determined by the Department of Health
9 and Human Services;

10 (4) Department means the Department of Insurance;

11 (5) Director means the Director of Insurance;

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

24 (7) Fraudulent viatical settlement act means:

25 (a) An ~~an~~ act or omission committed by any person who,

1 knowingly and with intent to defraud and for the purpose of
2 depriving another of property or for pecuniary gain, commits, or
3 permits his or her employees or agents to commit, any of the
4 following acts:

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

12 ~~(i)~~ (A) An application for the issuance of a viatical
13 settlement contract or insurance policy;

14 ~~(ii)~~ (B) The underwriting of a viatical settlement
15 contract or insurance policy;

16 ~~(iii)~~ (C) A claim for payment or benefit pursuant to a
17 viatical settlement contract or insurance policy;

18 ~~(iv)~~ (D) Premiums paid on an insurance policy;

19 ~~(v)~~ (E) Payments and changes in ownership or beneficiary
20 made in accordance with the terms of a viatical settlement contract
21 or insurance policy;

22 ~~(vi)~~ (F) The reinstatement or conversion of an insurance
23 policy;

24 ~~(vii)~~ (G) The solicitation, offer, effectuation, or sale
25 of a viatical settlement contract or insurance policy;

1 ~~(viii)~~ (H) The issuance of written evidence of a viatical
2 settlement contract or insurance; or

3 ~~(ix)~~ (I) A financing transaction; or

4 ~~(x)~~ (ii) Employing any plan, financial structure, device,
5 scheme, or artifice to defraud related to viaticated policies;

6 (b) In the furtherance of a fraud or to prevent the
7 detection of a fraud:

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

11 (ii) Misrepresenting or concealing the financial
12 condition of a licensee, financing entity, insurer, or other
13 person;

14 (iii) Transacting the business of viatical settlements in
15 violation of laws requiring a license, certificate of authority,
16 or other legal authority for the transaction of the business of
17 viatical settlements; or

18 (iv) Filing with the director or the chief insurance
19 regulatory official of another jurisdiction a document containing
20 false information or otherwise concealing information about a
21 material fact from the director;

22 (c) Presenting, causing to be presented, or preparing
23 with the knowledge or reason to believe that it will be presented,
24 to or by a viatical settlement provider, viatical settlement
25 broker, insurer, insurance agent, financing entity, viatical

1 settlement purchaser, or any other person, in connection with
2 a viatical settlement transaction or insurance transaction, an
3 insurance policy, knowing the policy was fraudulently obtained by
4 the insured, owner, or any agent thereof;

5 (d) Embezzlement, theft, misappropriation, or conversion
6 of money, funds, premiums, credits, or other property of a
7 viatical settlement provider, insurer, insured, viator, insurance
8 policyowner, or any other person engaged in the business of
9 viatical settlements or insurance; ~~or~~

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

22 (f) Facilitating the change of state of ownership of a
23 policy or certificate or the state of residency of a viator to
24 a state or jurisdiction that does not have a law similar to the
25 Viatical Settlements Act for the express purposes of evading or

1 avoiding the provisions of the act; or

2 ~~(e)~~ (g) Attempting to commit, assisting, aiding, or
3 abetting in the commission of, or conspiring to commit the acts or
4 omissions specified in this subdivision;

5 (8) Life insurance producer means any person licensed in
6 this state as a resident or nonresident insurance producer who has
7 received qualification or authority for life insurance coverage or
8 a life line of coverage pursuant to subdivision (1)(a) of section
9 44-4054;

10 ~~(8)~~ (9) Person means a natural person or a legal
11 entity, including an individual, a partnership, a limited liability
12 company, an association, a trust, or a corporation;

13 ~~(9)~~ (10) Policy means an individual or group policy,
14 group certificate, contract, or arrangement of life insurance
15 affecting the rights of owned by a resident of this state, ~~or~~
16 bearing a reasonable relation to this state, regardless of whether
17 delivered or issued for delivery in this state;

18 ~~(10)~~ (11) Related provider trust means a titling trust or
19 other trust established by a licensed viatical settlement provider
20 or a financing entity for the sole purpose of holding the ownership
21 or beneficial interest in purchased policies in connection with
22 a financing transaction. The trust shall have a written agreement
23 with the licensed viatical settlement provider under which the
24 licensed viatical settlement provider is responsible for ensuring
25 compliance with all statutory and regulatory requirements and under

1 which the trust agrees to make all records and files related to
2 viatical settlement transactions available to the director as if
3 those records and files were maintained directly by the licensed
4 viatical settlement provider;

5 ~~(11)~~ (12) Special purpose entity means a corporation,
6 partnership, trust, limited liability company, or other similar
7 entity formed solely to provide, either directly or indirectly,
8 access to institutional capital markets;

9 (a) For ~~for~~ a financing entity or licensed viatical
10 settlement provider; ~~or~~

11 (b)(i) In connection with a transaction in which the
12 securities in the special purpose entity are acquired by the viator
13 or by qualified institutional buyers as defined in Rule 144A of the
14 federal Securities Act of 1933, as such act existed on January 1,
15 2008; or

16 (ii) The securities pay a fixed rate of return
17 commensurate with established asset-backed institutional capital
18 markets;

19 ~~(12)~~ (13) Terminally ill means having an illness or
20 sickness that can reasonably be expected to result in death in
21 twenty-four months or less;

22 ~~(13)~~ (14) Viatical settlement broker means a person,
23 including a life insurance producer as provided in subdivision
24 (1)(b) of section 44-1103, who, working exclusively ~~that~~ on
25 behalf of a viator and for a fee, commission, or other

1 valuable consideration, offers or attempts to negotiate viatical
2 settlement contracts between a viator and one or more viatical
3 settlement providers or one or more viatical settlement brokers.
4 Notwithstanding the manner in which the viatical settlement
5 broker is compensated, a viatical settlement broker is deemed to
6 represent only the viator, and not the insurer or the viatical
7 settlement provider, and owes a fiduciary duty to the viator to
8 act according to the viator's instructions and in the best interest
9 of the viator. ~~Viatical settlement broker includes a licensed~~
10 ~~life insurance producer that meets the requirements of section~~
11 ~~44-1103.~~ Viatical settlement broker does not include an attorney,
12 a certified public accountant, or a financial planner accredited
13 by a nationally recognized accreditation agency who is retained to
14 represent the viator and whose compensation is not paid directly or
15 indirectly by the viatical settlement provider or purchaser;

16 ~~(14)~~ (15) (a) Viatical settlement contract means a written
17 agreement between a viator and a viatical settlement provider or
18 any affiliate of the viatical settlement provider establishing the
19 terms under which compensation or anything of value will be paid,
20 which compensation or value is less than the expected death benefit
21 of the ~~insurance policy, or certificate,~~ in return for the viator's
22 present or future assignment, transfer, sale, devise, or bequest
23 of the death benefit or ownership or any portion of the insurance
24 policy or certificate of insurance. ~~A viatical settlement contract~~
25 ~~also includes a contract for a loan or other financing transaction~~

1 ~~secured primarily by an individual or group life insurance policy,~~
2 ~~other than a loan by a life insurance company pursuant to the terms~~
3 ~~of the life insurance contract, or a loan secured by the cash value~~
4 ~~of a policy. A viatical settlement contract includes an agreement~~
5 ~~to transfer ownership or change the beneficiary designation at a~~
6 ~~later date regardless of the date that compensation is paid to the~~
7 ~~viator,~~

8 (b) Viatical settlement contract includes a premium
9 finance loan made for a life insurance policy by a lender to
10 a viator on, before, or after the date of issuance of the policy
11 if:

12 (i) The viator or the insured receives on the date of the
13 premium finance loan a guarantee of a future viatical settlement
14 value of the policy; or

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

18 (c) Viatical settlement contract does not include:

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

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

23 (A) Premiums for the policy; or

24 (B) The costs of the loan, including, without limitation,
25 interest, arrangement fees, utilization fees and similar fees,

1 closing costs, legal fees and expenses, trustee fees and expenses,
2 and third-party collateral provider fees and expenses, including
3 fees payable to letter-of-credit issuers;

4 (iii) A loan made by a bank or other licensed financial
5 institution in which the lender takes an interest in a life
6 insurance policy solely to secure repayment of a loan or, if
7 there is a default on the loan and the policy is transferred, the
8 transfer of such a policy by the lender, if the default itself
9 is not pursuant to an agreement or understanding with any other
10 person for the purpose of evading regulation under the Viatical
11 Settlements Act;

12 (iv) A premium finance loan not described in subdivision
13 (15) (b) of this section;

14 (v) An agreement where all the parties (A) are closely
15 related to the insured by blood or law, (B) have a lawful
16 substantial economic interest in the continued life, health, and
17 bodily safety of the person insured, or (C) are trusts established
18 primarily for the benefit of such parties;

19 (vi) Any designation, consent, or agreement by an insured
20 who is an employee of an employer in connection with the purchase
21 by the employer, or trust established by the employer, of life
22 insurance on the life of the employee;

23 (vii) A bona fide business succession planning
24 arrangement:

25 (A) Between one or more shareholders in a corporation or

1 between a corporation and one or more of its shareholders or one or
2 more trusts established by its shareholders;

3 (B) Between one or more partners in a partnership or
4 between a partnership and one or more of its partners or one or
5 more trusts established by its partners; or

6 (C) Between one or more members in a limited liability
7 company or between a limited liability company and one or more of
8 its members or one or more trusts established by its members;

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

14 (ix) Any other contract, transaction, or arrangement
15 exempted from the definition of viatical settlement contract by the
16 director based on a determination that the contract, transaction,
17 or arrangement is not of the type intended to be regulated under
18 the act;

19 ~~(15)~~ (16) (a) Viatical settlement provider means a person,
20 other than a viator, that enters into or effectuates a viatical
21 settlement contract.

22 (b) Viatical settlement provider does not include:

23 ~~(a)~~ (i) A bank, savings bank, savings and loan
24 association, credit union, or other licensed lending institution
25 that takes an assignment of a life insurance policy solely as

1 collateral for a loan;

2 (ii) A premium finance company making premium finance
3 loans that takes an assignment of a life insurance policy solely as
4 collateral for a loan;

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

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

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

15 ~~(e) (vi) A financing entity;~~

16 ~~(f) (vii) A special purpose entity;~~

17 ~~(g) (viii) A related provider trust;~~

18 ~~(h) (ix) A viatical settlement purchaser; or~~

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

24 (x) Any other person that the director exempts from the
25 definition of viatical settlement provider;

1 ~~(16)~~ (17)(a) Viatical settlement purchaser means a person
 2 who ~~gives~~ provides a sum of money as consideration for a life
 3 insurance policy or an interest in the death benefits of a life
 4 insurance policy, or a person who owns or acquires or is entitled
 5 to a beneficial interest in a trust that owns a viatical settlement
 6 contract or is the beneficiary of a life insurance policy that has
 7 been or will be the subject of a viatical settlement contract, for
 8 the purpose of deriving an economic benefit.

9 (b) Viatical settlement purchaser does not include:

10 ~~(a)~~ (i) A licensee under the Viatical Settlements Act;

11 ~~(b)~~ (ii) An accredited investor or qualified
 12 institutional buyer as defined respectively in ~~Regulation D,~~
 13 ~~Rule 501,~~ Rule 501(a) or Rule 144A of the federal Securities Act of
 14 1933, as the act existed on ~~September 1, 2001,~~ January 1, 2008;

15 ~~(c)~~ (iii) A financing entity;

16 ~~(d)~~ (iv) A special purpose entity; or

17 ~~(e)~~ (v) A related provider trust;

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

21 ~~(18)~~ (19)(a) Viator means the owner of a life insurance
 22 policy or a certificate holder under a group policy who resides
 23 in this state and who enters or seeks to enter into a viatical
 24 settlement contract. For purposes of the Viatical Settlements Act,
 25 a viator is not limited to an owner of a life insurance policy or

1 a certificate holder under a group policy insuring the life of an
 2 individual with a terminal or chronic illness or condition except
 3 as specifically addressed. If there is more than one viator on a
 4 single policy and the viators are residents of different states,
 5 the transaction shall be governed by the law of the state in which
 6 the viator having the largest percentage ownership resides or, if
 7 the viators hold equal ownership, the state of residence of one of
 8 the viators agreed upon in writing by all the viators.

9 (b) Viator does not include:

10 ~~(a) (i) A licensee under the act;~~

11 ~~(b) An accredited investor or (ii) A qualified~~
 12 ~~institutional buyer as defined respectively in Regulation D, Rule~~
 13 ~~501, or in Rule 144A of the federal Securities Act of 1933, as the~~
 14 ~~act existed on September 1, 2001, January 1, 2008;~~

15 ~~(c) (iii) A financing entity;~~

16 ~~(d) (iv) A special purpose entity; or~~

17 ~~(e) (v) A related provider trust.~~

18 Sec. 3. Section 44-1103, Reissue Revised Statutes of
 19 Nebraska, is amended to read:

20 44-1103 (1) (a) A person shall not operate as a viatical
 21 settlement provider or viatical settlement broker without first
 22 obtaining a license from the director or the chief insurance
 23 regulatory official of the state of residence of the viator. ~~If~~
 24 ~~there is more than one viator on a single policy and the viators~~
 25 ~~are residents of different states, the viatical settlement shall~~

1 be governed by the law of the state in which the viator having
2 the largest percentage ownership resides or, if the viators hold
3 equal ownership, the state of residence of one viator agreed upon
4 in writing by all viators.

5 ~~(b)(i)~~ A licensed insurance producer who has received
6 qualification for a license in life insurance shall be exempt from
7 the requirements of subdivision (1)(a) of this section if:

8 ~~(A)~~ The insurance producer is involved in no more than
9 five viatical settlements per year;

10 ~~(B)~~ The insurance producer registers as a licensed
11 insurance producer involved in no more than five viatical
12 settlements per year;

13 ~~(C)~~ The insurance producer makes such registration no
14 later than three days following the referral of a potential
15 settlement to a viatical settlement provider; and

16 ~~(D)~~ The insurance producer meets the requirements set
17 forth in subsections (4) through (7) of this section.

18 ~~(ii)~~ A registration application made pursuant to this
19 subdivision shall be accompanied by a registration fee as set forth
20 in subsection (2) of this section.

21 ~~(iii)~~ The director may suspend, revoke, or refuse to
22 issue or renew a registration of an insurance producer pursuant
23 to this subdivision for any of the grounds set forth in section
24 44-1104.

25 (b)(i) A life insurance producer who has been duly

1 licensed as a resident insurance producer with a life line of
2 authority in this state or his or her home state for at least one
3 year and is licensed as a nonresident producer in this state shall
4 be deemed to meet the licensing requirements of this section and
5 shall be permitted to operate as a viatical settlement broker.

6 (ii) No later than thirty days after the first day of
7 operating as a viatical settlement broker, the life insurance
8 producer shall notify the director that he or she is acting as a
9 viatical settlement broker on a form prescribed by the director
10 and shall pay any applicable fee to be determined by the director.
11 Notification shall include an acknowledgment by the life insurance
12 producer that he or she will operate as a viatical settlement
13 broker in accordance with the Viatical Settlements Act.

14 (iii) The insurer that issued the policy being viaticated
15 shall not be responsible for any act or omission of a viatical
16 settlement broker or viatical settlement provider arising out
17 of or in connection with the viatical settlement transaction
18 unless the insurer receives compensation for the placement of a
19 viatical settlement contract from the viatical settlement provider
20 or viatical settlement broker in connection with the viatical
21 settlement contract.

22 (c) A licensed attorney, a certified public accountant,
23 or a financial planner accredited by a nationally recognized
24 accreditation agency who is retained to represent the viator and
25 whose compensation is not paid directly or indirectly by the

1 viatical settlement provider may negotiate viatical settlement
2 contracts on behalf of the viator without having to obtain a
3 license as a viatical settlement broker.

4 (2) Application for a viatical settlement provider or
5 viatical settlement broker license shall be made to the director
6 by the applicant on a form prescribed by the director. The
7 viatical settlement broker application shall be accompanied by a
8 fee established by the director of not to exceed forty dollars. The
9 viatical settlement provider application shall be accompanied by a
10 fee established by the director of not to exceed one thousand five
11 hundred dollars.

12 (3) All viatical settlement broker licenses shall expire
13 on the last day of the month of the licensed person's birthday in
14 the first year after issuance in which his or her age is divisible
15 by two and may be renewed upon payment of a fee established by
16 the director not to exceed forty dollars. All viatical settlement
17 provider licenses shall expire on the last day of April in each
18 year and may be renewed upon payment of a renewal fee established
19 by the director not to exceed one hundred dollars. Failure to pay
20 the fee by the renewal date results in expiration of the license.

21 (4) The applicant shall provide information on forms
22 required by the director. The director shall have authority, at any
23 time, to require the applicant to fully disclose the identity of
24 all stockholders, partners, officers, members, and employees, and
25 the director may, in the exercise of the director's discretion,

1 refuse to issue a license in the name of a legal entity if
2 not satisfied that any stockholder, partner, officer, member,
3 or employee thereof who may materially influence the applicant's
4 conduct meets the standards of the Viatical Settlements Act.

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

10 (6) Upon the filing of an application and the payment
11 of the license fee, the director shall make an investigation of
12 each applicant and issue a license if the director finds that the
13 applicant:

14 (a) If a viatical settlement provider, provides a
15 detailed plan of operation;

16 (b) Is competent and trustworthy and intends to act in
17 good faith in the capacity for which application for a license is
18 made;

19 (c) Has a good business reputation and has had
20 experience, training, or education so as to be qualified in the
21 business for which application for a license is made;

22 (d) If a viatical settlement broker or viatical
23 settlement provider, has demonstrated evidence of financial
24 responsibility in a format prescribed by the director through
25 either a surety bond executed and issued by an insurer authorized

1 to issue surety bonds in this state or a deposit of cash,
2 certificates of deposit, or securities or any combination thereof
3 in the amount of two hundred fifty thousand dollars;

4 (i) The director may ask for evidence of financial
5 responsibility at any time the director deems necessary;

6 (ii) Any surety bond issued pursuant to subdivision (d)
7 of this subsection shall be in the favor of this state and shall
8 specifically authorize recovery by the director on behalf of any
9 person in this state who has sustained damages as a result of an
10 erroneous act, failure to act, conviction of fraud, or conviction
11 of unfair practices of the viatical settlement provider or viatical
12 settlement broker; and

13 (iii) Notwithstanding any provision of this section to
14 the contrary, the director shall accept as evidence of financial
15 responsibility proof that financial instruments in accordance with
16 the requirements of subdivision (d) of this subsection have been
17 filed with a state where the applicant is licensed as a viatical
18 settlement provider or viatical settlement broker;

19 ~~(d)~~ (e) If a legal entity, provides a certificate of good
20 standing from the state of its domicile; and

21 ~~(e)~~ (f) If a viatical settlement provider or viatical
22 settlement broker, provides an antifraud plan that meets the
23 requirements of subsection (7) of section 44-1112.

24 (7) A licensee shall provide to the director new
25 or revised information about officers, ten-percent or more

1 stockholders, partners, directors, members, or designated employees
2 within thirty days after the change.

3 (8) An individual licensed as a viatical settlement
4 broker shall complete on a biennial basis fifteen hours of
5 training related to viatical settlements and viatical settlement
6 transactions, except that a life insurance producer who is
7 operating as a viatical settlement broker pursuant to subsection
8 (1) of this section shall not be subject to the requirements of
9 this subsection.

10 Sec. 4. Section 44-1104, Revised Statutes Supplement,
11 2007, is amended to read:

12 44-1104 (1) The director may suspend, revoke, or refuse
13 to issue or renew a license issued under the Viatical Settlements
14 Act or that of a life insurance producer operating as a viatical
15 settlement broker under subdivision (1)(b) of section 44-1103 if
16 the director finds that:

17 (a) There was any material misrepresentation in the
18 application for the license;

19 (b) The applicant or licensee or any officer, partner,
20 member, or key management personnel is subject to a final
21 administrative action or is otherwise shown to be untrustworthy
22 or incompetent;

23 (c) The viatical settlement provider demonstrates a
24 pattern of unreasonable payments to viators;

25 (d) The applicant or licensee or any officer, partner,

1 member, or key management personnel has been found guilty of, or
2 has pleaded guilty or nolo contendere to, any felony or a Class
3 I, II, or III misdemeanor, regardless of whether a judgment of
4 conviction has been entered by the court;

5 (e) The viatical settlement provider has entered into any
6 viatical settlement contract that has not been approved pursuant to
7 the Viatical Settlements Act;

8 (f) The viatical settlement broker or viatical settlement
9 provider has failed to honor contractual obligations set out in a
10 viatical settlement contract;

11 (g) The licensee no longer meets the requirements for
12 initial licensure;

13 (h) The viatical settlement provider has assigned,
14 transferred, or pledged a viaticated policy to a person other
15 than a viatical settlement provider licensed in this state, a
16 viatical settlement purchaser, an accredited investor or qualified
17 institutional buyer as defined ~~respectively in Regulation D, Rule~~
18 ~~501, or in~~ Rule 144A of the federal Securities Act of 1933, as
19 the act existed on ~~September 1, 2001,~~ January 1, 2008, a financing
20 entity, a special purpose entity, or a related provider trust;

21 (i) The applicant or licensee or any officer, partner,
22 member, or key management personnel has violated any provision of
23 the Viatical Settlements Act or has otherwise engaged in bad faith
24 conduct with one or more viators; or

25 (j) The licensee has failed to respond to the department

1 within fifteen working days after receipt of an inquiry from the
2 department.

3 (2) The director may suspend or revoke a license pursuant
4 to subsection (1) of this section after notice and a hearing held
5 in accordance with the Administrative Procedure Act.

6 (3) If the director denies a license application or
7 refuses to renew a license pursuant to subsection (1) of this
8 section, he or she shall notify the applicant or licensee of the
9 reason for such denial or refusal of renewal. The applicant or
10 licensee has thirty days after receipt of such notification to
11 demand a hearing. The hearing shall be held within thirty days
12 after receipt of such demand by the director and shall be held in
13 accordance with the Administrative Procedure Act.

14 Sec. 5. Section 44-1105, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 44-1105 A person shall not use a viatical settlement
17 contract form or provide to a viator a disclosure statement
18 form in this state unless first filed with and approved by the
19 director. The director shall disapprove a viatical settlement
20 contract form or disclosure statement form if, in the director's
21 opinion, the contract or provisions contained therein fail to meet
22 the requirements of sections 44-1108, 44-1109, and 44-1111 and
23 subsection (2) of section 44-1112 or are unreasonable, contrary to
24 the interest of the public, or otherwise misleading or unfair to
25 the viator. At the director's discretion, the director may require

1 the submission of advertising material.

2 Sec. 6. Section 44-1106, Reissue Revised Statutes of
3 Nebraska, is amended to read:

4 44-1106 (1) Each viatical settlement provider shall file
5 with the director on or before March 1 of each year an annual
6 statement containing such information as the director may prescribe
7 by rule and regulation. Such information shall be limited to only
8 those transactions where the viator is a resident of this state.
9 Individual transaction data regarding the business of viatical
10 settlements or data that could compromise the privacy of personal,
11 financial, or health information of the viator or insured shall be
12 filed with the director on a confidential basis.

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

20 (a) Is necessary to effect a viatical settlement between
21 the viator and a viatical settlement provider and the viator and
22 insured have provided prior written consent to the disclosure;

23 (b) Is provided in response to an investigation or
24 examination by the director or any other governmental officer or
25 agency or pursuant to the requirements of subsection (3) of section

1 44-1112;

2 (c) Is a term of or condition to the transfer of a policy
3 by one viatical settlement provider to another viatical settlement
4 provider;

5 (d) Is necessary to permit a financing entity, related
6 provider trust, or special purpose entity to finance the purchase
7 of policies by a viatical settlement provider and the viator and
8 insured have provided prior written consent to the disclosure;

9 (e) Is necessary to allow the viatical settlement
10 provider or viatical settlement broker or his or her authorized
11 representative to make contacts for the purpose of determining
12 health status; or

13 (f) Is required to purchase stop-loss or financial
14 guaranty coverage.

15 Sec. 7. Section 44-1107, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 44-1107 (1)(a) The director may conduct an examination
18 of a licensee under the Viatical Settlements Act as often as the
19 director, in his or her sole discretion, deems appropriate. In
20 scheduling and determining the nature, scope, and frequency of
21 examination, the director shall consider such matters as consumer
22 complaints, results of financial statement analyses and ratios,
23 changes in management or ownership, actuarial opinions, reports
24 of independent certified public accountants, and other relevant
25 criteria as determined by the director.

1 (b) For purposes of completing an examination of a
2 licensee under the act, the director may examine or investigate any
3 person or the business of any person, insofar as the examination or
4 investigation is, in the sole discretion of the director, necessary
5 or material to the examination of the licensee.

6 (c) In lieu of an examination under the act of any
7 foreign or alien licensee licensed in this state, the director may,
8 in his or her sole discretion, accept an examination report on the
9 licensee as prepared by the director for the licensee's state of
10 domicile or port-of-entry state.

11 (d) As far as is practical, the examination of a
12 foreign or alien licensee shall be made in cooperation with
13 the insurance regulatory officials of other states in which the
14 licensee transacts business.

15 (2)(a) A person required to be licensed under the act
16 shall for five years retain copies of all:

17 (i) Proposed, offered, or executed contracts, purchase
18 agreements, underwriting documents, policy forms, and applications
19 from the date of the proposal, offer, or execution of the
20 contract, purchase agreement, underwriting document, policy form,
21 or application, whichever is later;

22 (ii) Checks, drafts, or other evidence and documentation
23 related to the payment, transfer, deposit, or release of funds from
24 the date of the transaction; and

25 (iii) Other records and documents related to the

1 requirements of the act.

2 (b) This section does not relieve a person of the
3 obligation to produce documents under subdivision (a) of this
4 subsection to the director after the retention period has expired
5 if the person has retained the documents.

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

11 (3) (a) Upon determining that an examination should be
12 conducted, the director shall appoint one or more examiners
13 to perform the examination and instruct them as to the scope
14 of the examination. In conducting the examination, the examiner
15 shall observe those guidelines and procedures set forth in
16 the Examiners' Handbook adopted by the National Association of
17 Insurance Commissioners. The director may also employ such other
18 guidelines or procedures as he or she deems appropriate.

19 (b) Every licensee or person from whom information
20 is sought and its officers, directors, employees, and agents
21 shall provide to the examiner timely, convenient, and free
22 access at all reasonable hours at its offices to all books,
23 records, accounts, papers, documents, assets, and computer or
24 other recordings relating to the property, assets, business, and
25 affairs of the licensee being examined. The officers, directors,

1 employees, and agents of the licensee or person shall facilitate
2 the examination and aid in the examination so far as it is in
3 their power to do so. The refusal of a licensee, by its officers,
4 directors, employees, or agents, to submit to examination or to
5 comply with any reasonable written request of the director shall
6 be grounds for the suspension, refusal, or nonrenewal of any
7 license or authority held by the licensee to engage in the viatical
8 settlement business or other business subject to the director's
9 jurisdiction. Any proceedings for the suspension, revocation, or
10 refusal of any license or authority shall be conducted pursuant to
11 the Administrative Procedure Act.

12 (c) The director may issue subpoenas, administer oaths,
13 and examine under oath any person as to any matter pertinent
14 to the examination. Upon the failure or refusal of a person to
15 obey a subpoena, the director may petition a court of competent
16 jurisdiction, and upon proper showing, the court may enter an order
17 compelling the witness to appear and testify or produce documentary
18 evidence. Failure to obey the court order shall be punishable as
19 contempt of court. A person who is subpoenaed shall attend as a
20 witness at the place specified in the subpoena anywhere within the
21 state. He or she shall be entitled to the same fees and mileage,
22 if claimed, as a witness in the district court, with mileage
23 to be computed at the rate provided in section 81-1176, which
24 fees, mileage, and actual expense, if any, necessarily incurred in
25 securing the attendance of witnesses, and their testimony, shall be

1 itemized, charged against, and paid by the licensee being examined.

2 (d) When making an examination under the Viatical
3 Settlements Act, the director may retain attorneys, appraisers,
4 independent actuaries, independent certified public accountants,
5 or other professionals and specialists as examiners, the cost of
6 which will be borne by the licensee that is the subject of the
7 examination.

8 (e) Nothing contained in the act shall be construed
9 to limit the director's authority to terminate or suspend an
10 examination in order to pursue other legal or regulatory action
11 pursuant to the insurance laws of this state. Findings of fact and
12 conclusions of law made pursuant to any examination shall be prima
13 facie evidence in any legal or regulatory action.

14 (f) Nothing contained in the act shall be construed to
15 limit the director's authority to use, and, if appropriate, to make
16 public, any final or preliminary examination report, any examiner
17 or licensee workpapers or other documents, or any other information
18 discovered or developed during the course of any examination in the
19 furtherance of any legal or regulatory action which the director
20 may, in his or her sole discretion, deem appropriate.

21 (4)(a) Examination reports shall be comprised of only
22 facts appearing upon the books, records, or other documents of
23 the licensee or its agents or other persons examined, or as
24 ascertained from the testimony of its officers or agents or other
25 persons examined concerning its affairs, and such conclusions and

1 recommendations as the examiners find reasonably warranted from the
2 facts.

3 (b) No later than forty-five days following completion
4 of the examination, the examiner in charge shall file with the
5 director a verified written report of examination under oath. Upon
6 receipt of the verified report, the director shall transmit the
7 report to the licensee examined, together with a notice that shall
8 afford the licensee examined a reasonable opportunity of not more
9 than thirty days to make a written submission or rebuttal with
10 respect to any matters contained in the examination report.

11 (c) Within thirty days after the end of the period
12 allowed for the receipt of written submissions or rebuttals, the
13 director shall fully consider and review the report, together with
14 any written submissions or rebuttals and any relevant portions of
15 the examiner's workpapers, and shall:

16 (i) Adopt the examination report as submitted or with
17 modifications or corrections. If the examination report reveals
18 that the licensee is operating in violation of any law, rule,
19 regulation, or prior order of the director, the director may order
20 the licensee to take any action the director considers necessary
21 and appropriate to cure such violation; or

22 (ii) Reject the examination report with directions to
23 the examiner to reopen the examination for purposes of obtaining
24 additional data, documentation, or information and to resubmit a
25 report pursuant to subdivision (4) (b) of this section.

1 (d) Any licensee aggrieved by any action of the director
2 pursuant to subdivision (4)(c) of this section may, within ten
3 days after such action, make written request to the director for a
4 hearing. Upon receipt of the licensee's request for a hearing, the
5 director shall provide notice of the hearing no less than ten nor
6 more than thirty days after the date of the licensee's request. The
7 notice shall identify the subject of the hearing and the specific
8 issues.

9 (e) Any hearing on an examination report shall be held in
10 accordance with the Administrative Procedure Act.

11 (f) The examination report, with any modifications and
12 corrections thereof, shall be accepted by the director and filed
13 for public inspection immediately after the expiration of the
14 times specified in subdivision (4)(d) of this section in the
15 event that the licensee has not requested a hearing. Within
16 thirty days after the filing of the examination report for public
17 inspection, the licensee shall file affidavits executed by each of
18 its directors stating under oath that they have received a copy of
19 the examination report and related orders.

20 (5)(a) Names and individual identification data for all
21 viators shall be considered private and confidential information
22 and shall not be disclosed by the director unless required by law.

23 (b) Except as otherwise provided in the Viatical
24 Settlements Act, all examination reports, working papers, recorded
25 information, documents, and copies thereof produced by, obtained

1 by, or disclosed to the director or any other person in the
2 course of an examination made under the act, or in the course
3 of analysis or investigation by the director of the financial
4 condition or market conduct of a licensee, shall be confidential
5 by law and privileged, shall not be subject to disclosure pursuant
6 to sections 84-712 to 84-712.09, shall not be subject to subpoena,
7 and shall not be subject to discovery or admissible in evidence in
8 any private civil action. The director is authorized to use the
9 documents, materials, communications, or other information in the
10 furtherance of any regulatory or legal action brought as part of
11 the director's official duties.

12 (c) Documents, materials, communications, or other
13 information, including all working papers and copies thereof,
14 in the possession or control of the National Association of
15 Insurance Commissioners and its affiliates and subsidiaries shall
16 be confidential by law and privileged, shall not be subject to
17 subpoena, and shall not be subject to discovery or admissible in
18 evidence in any private civil action if they are:

19 (i) Created, produced, or obtained by or disclosed to the
20 National Association of Insurance Commissioners and its affiliates
21 and subsidiaries in the course of assisting an examination made
22 under the act or the law of another state or jurisdiction that
23 is substantially similar to the act or assisting the director or
24 the chief insurance regulatory official of another state in the
25 analysis or investigation of the financial condition or market

1 conduct of a licensee; or

2 (ii) Disclosed to the National Association of Insurance
3 Commissioners and its affiliates and subsidiaries under subdivision
4 (e) of this subsection by the director or the chief insurance
5 regulatory official of another state.

6 (d) Neither the director nor any person that received
7 the documents, materials, communications, or other information
8 while acting under the authority of the director, including the
9 National Association of Insurance Commissioners and its affiliates
10 and subsidiaries, shall be permitted to testify in any private
11 civil action concerning any confidential documents, materials,
12 communications, or other information subject to this subsection.

13 (e) In order to assist in the performance of his or her
14 duties, the director:

15 (i) May share documents, materials, communications,
16 or other information, including the confidential and privileged
17 documents, materials, communications, or other information subject
18 to this subsection, with other state, federal, foreign, and
19 international regulatory agencies, with the National Association
20 of Insurance Commissioners and its affiliates and subsidiaries,
21 and with state, federal, foreign, and international law
22 enforcement authorities, if the recipient agrees to maintain the
23 confidentiality and privileged status of the documents, materials,
24 communications, or other information;

25 (ii) May receive documents, materials, communications, or

1 other information, including otherwise confidential and privileged
2 documents, materials, communications, or other information,
3 from the National Association of Insurance Commissioners and
4 its affiliates and subsidiaries, and from regulatory and law
5 enforcement officials of other foreign or domestic jurisdictions,
6 and shall maintain as confidential or privileged any documents,
7 materials, communications, or other information received with
8 notice or the understanding that it is confidential or privileged
9 under the laws of the jurisdiction that is the source of the
10 documents, materials, communications, or other information; and

11 (iii) May enter into agreements governing sharing and use
12 of information consistent with this subsection.

13 (f) No waiver of any applicable privilege or claim of
14 confidentiality in the documents, materials, communications, or
15 other information shall occur as a result of disclosure to the
16 director under this section or as a result of sharing as authorized
17 in subdivision ~~(d)~~ (e) of this subsection.

18 (g) A privilege established under the law of any state
19 or jurisdiction that is substantially similar to the privilege
20 established under this subsection shall be available and enforced
21 in any proceeding in, and in any court of, this state.

22 (h) Nothing contained in the act shall prevent or be
23 construed as prohibiting the director from disclosing the content
24 of an examination report, preliminary report or results, or
25 any matter relating thereto to the director or chief insurance

1 regulatory official of any other state or country, to any law
2 enforcement official of this state or any other state, to any
3 agency of the federal government at any time, or to the National
4 Association of Insurance Commissioners so long as the agency or
5 office receiving the examination report or matters relating thereto
6 agrees in writing to hold the examination report or matters
7 confidential and in a manner consistent with the act.

8 (6) (a) An examiner may not be appointed by the director
9 if the examiner, either directly or indirectly, has a conflict
10 of interest or is affiliated with the management of or owns a
11 pecuniary interest in any person subject to examination under the
12 Viatical Settlements Act. This subsection shall not be construed to
13 automatically preclude an examiner from being:

14 (i) A viator;

15 (ii) An insured in a viaticated insurance policy; or

16 (iii) A beneficiary in an insurance policy that is
17 proposed to be viaticated.

18 (b) Notwithstanding the requirements of this subsection,
19 the director may retain from time to time, on an individual basis,
20 qualified actuaries, certified public accountants, or other similar
21 individuals who are independently practicing their professions,
22 even though these persons may from time to time be similarly
23 employed or retained by persons subject to examination under the
24 act.

25 (7) The reasonable expenses of the examination of a

1 licensee conducted under the Viatical Settlements Act shall be
2 fixed and determined by the director who shall collect the same
3 from the licensee examined. The licensee shall reimburse the
4 amount thereof upon presentation of a statement by the director.
5 Reimbursement shall be limited to a reasonable allocation for the
6 salary of each examiner plus actual expenses. All money collected
7 by the director for examination of licensees shall be remitted in
8 accordance with section 44-116.

9 (8) (a) No cause of action shall arise nor shall
10 any liability be imposed against the director, the director's
11 authorized representatives, or any examiner appointed by the
12 director for any statements made or conduct performed in good faith
13 while carrying out the provisions of the Viatical Settlements Act.

14 (b) No cause of action shall arise nor shall any
15 liability be imposed against any person for the act of
16 communicating or delivering information or data to the director or
17 the director's authorized representative or an examiner pursuant to
18 an examination made under the act, if the act of communication or
19 delivery was performed in good faith and without fraudulent intent
20 or the intent to deceive. This subdivision does not abrogate or
21 modify in any way common-law or statutory privilege or immunity
22 heretofore enjoyed by any person identified in this subsection.

23 (c) A person identified in this subsection is entitled
24 to an award of attorney's fees and costs if he or she is the
25 prevailing party in a civil cause of action for libel, slander,

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

7 (9) The director may investigate suspected fraudulent
8 viatical settlement acts and persons engaged in the business of
9 viatical settlements.

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

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

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

23 (b) Some or all of the proceeds of the viatical
24 settlement may be taxable under federal income tax laws and
25 state franchise and income tax laws, and assistance should be

1 sought from a professional tax advisor;

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

4 (d) Receipt of the proceeds from a viatical settlement
5 may adversely effect the viator's eligibility for medicaid or other
6 government benefits or entitlements, and advice should be obtained
7 from the appropriate government agencies;

8 (e) A viatical settlement broker represents exclusively
9 the viator, not the insurer or the viatical settlement provider,
10 and owes a fiduciary duty to the viator, including a duty to act
11 according to the viator's instructions and in the best interest of
12 the viator;

13 ~~(e)~~ (f) The viator has the right to rescind the viatical
14 settlement contract for fifteen before the earlier of sixty
15 calendar days after the date on which the viatical settlement
16 contract is executed by all parties or thirty calendar days after
17 receipt of the viatical settlement proceeds by have been paid
18 to the viator as provided in subsection (3) of section 44-1109.
19 Rescission, if exercised by the viator, is effective only if
20 both notice of the rescission is given and the viator repays
21 all proceeds and any premiums, loans, and loan interest paid on
22 account of the viatical settlement within the rescission period.
23 If the insured dies during the rescission period, the viatical
24 settlement contract shall be deemed to have been rescinded by the
25 viator or the viator's estate. If a viatical settlement contract is

1 rescinded, all viatical settlement proceeds and any premiums paid
2 by the viatical settlement provider or purchaser shall be repaid to
3 the viatical settlement provider or purchaser within sixty days of
4 such rescission;

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

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

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

19 ~~(h)~~ The (j) Following the execution of a viatical
20 settlement contract, the insured may be contacted by either
21 the viatical settlement provider or broker or its authorized
22 representative for the purpose of determining the insured's health
23 status and to confirm the insured's residential or business street
24 address and telephone number, or as otherwise provided under the
25 Viatical Settlements Act. This contact is limited to once every

1 six months if the insured has a life expectancy of more than one
2 year, and no more than once every three months if the insured
3 has a life expectancy of one year or less. ~~For purposes of this~~
4 ~~subdivision, authorized representative does not include a viatical~~
5 ~~settlement purchaser.~~ All such contacts shall be made only by a
6 viatical settlement provider licensed in the state in which the
7 viator resided at the time of the viatical settlement or by the
8 authorized representative of the viatical settlement provider.

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

21 (2) A viatical settlement provider shall provide the
22 viator with at least the following disclosures no later than the
23 date the viatical settlement contract is signed by all parties.
24 The disclosures shall be conspicuously displayed in the viatical
25 settlement contract or in a separate document signed by the viator

1 ~~and the viatical settlement provider or viatical settlement broker~~
2 and provide the following information:

3 (a) The affiliation, if any, between the viatical
4 settlement provider and the issuer of the insurance policy to be
5 viaticated;

6 (b) The name, business address, and telephone number of
7 the viatical settlement provider;

8 (c) ~~The amount and method of calculating the viatical~~
9 ~~settlement broker's compensation. Compensation includes anything~~
10 ~~of value paid or given to a viatical settlement broker for~~
11 ~~the placement of a policy;~~ Any affiliations or contractual
12 arrangements between the viatical settlement provider and the
13 viatical settlement purchaser;

14 (d) If an insurance policy to be viaticated has been
15 issued as a joint policy or involves family riders or any coverage
16 of a life other than the insured under the policy to be viaticated,
17 there is the possibility of a loss of coverage on the other lives
18 under the policy, and consultation with an insurance producer or
19 the insurer issuing the policy for advice on the proposed viatical
20 settlement is advised;

21 (e) The dollar amount of the current death benefit
22 payable to the viatical settlement provider under the policy or
23 certificate and, if known, the availability of any additional
24 guaranteed insurance benefits, the dollar amount of any accidental
25 death and dismemberment benefits under the policy or certificate,

1 and the ~~viatical settlement provider's~~ extent to which the viator's
2 interest in those benefits will be transferred as a result of the
3 viatical settlement contract; and

4 (f) The Whether the funds will be escrowed with an
5 independent third party during the transfer process, and if
6 so, provide the name, business address, and telephone number
7 of the independent third-party escrow agent. The viator or owner
8 may inspect or receive copies of the relevant escrow or trust
9 agreements or documents.

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

16 (a) The name, business address, and telephone number of
17 the viatical settlement broker;

18 (b) A full, complete, and accurate description of all
19 offers, counter-offers, acceptances, and rejections relating to the
20 proposed viatical settlement contract;

21 (c) A written disclosure of any affiliations or
22 contractual arrangements between the viatical settlement broker and
23 any person making an offer in connection with the proposed viatical
24 settlement contracts;

25 (d) 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; and

4 (e) If any portion of the viatical settlement broker's
5 compensation is taken from a proposed viatical settlement offer,
6 the viatical settlement broker shall disclose the total amount of
7 the viatical settlement offer and the percentage of the viatical
8 settlement offer comprised by the viatical settlement broker's
9 compensation.

10 ~~(3)~~ (4) If the viatical settlement provider transfers
11 ownership or changes the beneficiary of the insurance policy, the
12 provider shall communicate in writing the change in ownership or
13 beneficiary to the insured within twenty days after the change.

14 Sec. 9. Before the initiation of a plan, transaction, or
15 series of transactions, a viatical settlement broker or viatical
16 settlement provider shall fully disclose to an insurer a plan,
17 transaction, or series of transactions to which the viatical
18 settlement broker or viatical settlement provider is a party, to
19 originate, renew, continue, or finance a life insurance policy with
20 the insurer for the purpose of engaging in the business of viatical
21 settlements at anytime prior to or during the first five years
22 after issuance of the policy.

23 Sec. 10. Section 44-1109, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 44-1109 (1)(a) A viatical settlement provider entering

1 into a viatical settlement contract shall first obtain:

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

6 (ii) A document in which the insured consents, as
7 required in subsection (2) of section 44-1106, to the release
8 of his or her medical records to a viatical settlement provider, a
9 viatical settlement broker, and the insurance company that issued
10 the life insurance policy covering the life of the insured.

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

20 (c) The viatical settlement provider shall deliver a copy
21 of the medical release required under subdivision (a)(ii) of this
22 subsection, a copy of the viator's application for the viatical
23 settlement contract, the notice required under subdivision (b) of
24 this subsection, and a request for verification of coverage to the
25 insurer that issued the life insurance policy that is the subject

1 of the viatical transaction. The National Association of Insurance
2 Commissioners' form for verification of coverage shall be used
3 unless ~~standards for verification are~~ another form is developed and
4 approved by the director.

5 (d) The insurer shall respond to a request for
6 verification of coverage submitted on an approved form by a
7 viatical settlement provider or viatical settlement broker within
8 thirty calendar days after the date the request is received and
9 shall indicate whether, based on the medical evidence and documents
10 provided, the insurer intends to pursue an investigation at this
11 time regarding the validity of the insurance contract or possible
12 fraud. The insurer shall accept a request for verification of
13 coverage made on a National Association of Insurance Commissioners'
14 form or any other form approved by the director. The insurer shall
15 accept an original, facsimile, or electronic copy of such request
16 and any accompanying authorization signed by the viator. Failure
17 by the insurer to meet its obligations under this subsection shall
18 be a violation of subsection (3) of section 44-1110 and section
19 44-1115.

20 (e) Prior to or at the time of execution of the viatical
21 settlement contract, the viatical settlement provider shall obtain
22 a witnessed document in which the viator consents to the viatical
23 settlement contract and represents that the viator has a full and
24 complete understanding of the viatical settlement contract, that
25 the viator has a full and complete understanding of the benefits

1 of the life insurance policy, that the viator acknowledges he or
2 she is entering into the viatical settlement contract freely and
3 voluntarily, and, for persons with a terminal or chronic illness or
4 condition, that the viator acknowledges the insured has a terminal
5 or chronic illness and the terminal or chronic illness or condition
6 was diagnosed after the life insurance policy was issued.

7 (f) If a viatical settlement broker performs any of the
8 activities listed in this subsection on behalf of the viatical
9 settlement provider, the provider is deemed to have fulfilled the
10 requirements of this section.

11 (2) All medical information solicited or obtained by any
12 licensee shall be subject to the applicable provisions of state law
13 relating to confidentiality of medical information.

14 (3) All viatical settlement contracts entered into in
15 this state shall provide the viator with an ~~unconditional~~ absolute
16 right to rescind the contract for fifteen before the earlier
17 of sixty calendar days after the date on which the viatical
18 settlement contract is executed by all parties or thirty calendar
19 days from the receipt of after the viatical settlement proceeds
20 have been sent to the viator as provided in subsection (5)
21 of this section. Rescission by the viator may be conditioned
22 on the viator both giving notice and repaying to the viatical
23 settlement provider within the rescission period all proceeds of
24 the settlement and any premiums, loans, and loan interest paid
25 by or on behalf of the viatical settlement provider in connection

1 with or as a consequence of the viatical settlement. If the
2 insured dies during the rescission period, the viatical settlement
3 contract shall be deemed to have been rescinded. If a viatical
4 settlement contract is rescinded, all viatical settlement proceeds
5 and any premiums, loans, and loan interest that have been paid
6 by the viatical settlement provider or purchaser shall be repaid
7 to the viatical settlement provider or purchaser within sixty
8 days of such rescission. In the event of any rescission, if
9 the viatical settlement provider has paid commissions or other
10 compensation to a viatical settlement broker in connection with the
11 rescinded transaction, the viatical settlement broker shall refund
12 all such commissions and compensation to the viatical settlement
13 provider within five business days following receipt of a written
14 demand from the viatical settlement provider, which demand shall
15 be accompanied by either the viator's notice of rescission if
16 rescinded at the election of the viator or notice of the death of
17 the insured if rescinded by reason of death of the insured within
18 the applicable rescission period.

19 (4) The viatical settlement provider shall instruct the
20 viator to send the executed documents required to effect the change
21 in ownership, assignment, or change in beneficiary directly to
22 the independent escrow agent. Within three business days after
23 the date the escrow agent receives the documents or after the
24 date the viatical settlement provider receives the documents if
25 the viator erroneously provides the documents directly to the

1 provider, the provider shall pay or transfer the proceeds of the
2 viatical settlement into an escrow or trust account maintained in
3 a state-chartered or federally chartered financial institution
4 whose deposits are insured by the Federal Deposit Insurance
5 Corporation. Upon payment of the settlement proceeds into the
6 escrow account, the escrow agent shall deliver the original change
7 in ownership, assignment, or change in beneficiary forms to the
8 viatical settlement provider or related provider trust or other
9 designated representative of the viatical settlement provider. Upon
10 the escrow agent's receipt of the acknowledgment of the properly
11 completed transfer of ownership, assignment, or designation of
12 beneficiary from the insurance company, the escrow agent shall pay
13 the settlement proceeds to the viator.

14 (5) Failure to tender consideration to the viator for
15 the viatical settlement contract within the time set forth in
16 the disclosure pursuant to subdivision (1)(g) of section 44-1108
17 renders the viatical settlement contract voidable by the viator for
18 lack of consideration until the time consideration is tendered to
19 and accepted by the viator. Funds shall be deemed as sent by a
20 viatical settlement provider to a viator as of the date that the
21 escrow agent either releases funds for wire transfer to the viator
22 or sends a check for delivery to the viator by the United States
23 Postal Service or other nationally recognized delivery service.

24 (6) Contacts with the insured for the purpose of
25 determining the health status of the insured by the viatical

1 settlement provider or viatical settlement broker after the
2 viatical settlement has occurred shall only be made by the viatical
3 settlement provider or viatical settlement broker licensed in this
4 state or its authorized representatives and shall be limited to
5 once every six months for insureds with a life expectancy of
6 more than one year and to no more than once every three months
7 for insureds with a life expectancy of one year or less. The
8 provider or broker shall explain the procedure for these contacts
9 at the time the viatical settlement contract is entered into. The
10 limitations set forth in this subsection shall not apply to any
11 contacts with an insured for reasons other than determining the
12 insured's health status. Viatical settlement providers and viatical
13 settlement brokers shall be responsible for the actions of their
14 authorized representatives.

15 Sec. 11. Section 44-1110, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 44-1110 (1) It is a violation of the Viatical Settlements
18 Act for any person to enter into a viatical settlement contract
19 at any time prior to the application or issuance of a policy
20 which is the subject of a viatical settlement contract or within
21 a ~~two-year~~ five-year period commencing on the date of issuance of
22 the insurance policy or certificate unless the viator certifies to
23 the viatical settlement provider that one or more of the following
24 conditions have been met within the ~~two-year~~ five-year period:

25 ~~(1)~~ (a) The policy was issued upon the viator's exercise

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

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

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

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

16 ~~(a) (i) The viator or insured is terminally or~~
 17 ~~chronically ill;~~

18 ~~(b) (ii) The viator's spouse died;~~

19 ~~(c) (iii) The viator divorced his or her spouse;~~

20 ~~(d) (iv) The viator retired from full-time employment;~~

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

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

1 ~~terminated;~~

2 ~~(g)~~ (vi) A final order, judgment, or decree was entered
3 by a court of competent jurisdiction, on the application of
4 a creditor of the viator, adjudicating the viator bankrupt or
5 insolvent, or approving a petition seeking reorganization of the
6 viator or appointing a receiver, trustee, or liquidator for all or
7 a substantial part of the viator's assets; and

8 ~~(h)~~ The viator experienced a significant decrease
9 in income that was unexpected and that impaired the viator's
10 reasonable ability to pay the policy premium; ~~or~~

11 ~~(i)~~ The viator or insured disposed of his or her
12 ownership interests in a closely held corporation.

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

17 (i) Policy premiums have been funded exclusively with
18 unencumbered assets, including an interest in the life insurance
19 policy being financed only to the extent of its net cash surrender
20 value, provided by, or fully recourse liability incurred by, the
21 insured or a person described in subdivision (15)(c)(v) of section
22 44-1102;

23 (ii) There is no agreement or understanding with any
24 other person to guarantee any such liability or to purchase or
25 stand ready to purchase the policy, including through an assumption

1 or forgiveness of the loan; and

2 (iii) Neither the insured nor the policy has been
3 evaluated for settlement.

4 (2) Copies of the independent evidence described in
5 subdivision ~~(4)~~ (1)(b) of this section and documents required by
6 subsection (1) of section 44-1109 shall be submitted to the insurer
7 when the viatical settlement provider or other party entering into
8 a viatical settlement contract with a viator submits a request
9 to the insurer for verification of coverage. The copies shall be
10 accompanied by a letter of attestation from the viatical settlement
11 provider that the copies are true and correct copies of the
12 documents received by the viatical settlement provider.

13 (3) If the viatical settlement provider submits to the
14 insurer a copy of the owner's or insured's certification and the
15 independent evidence described in subdivision ~~(4)~~ (1)(b) of this
16 section when the provider submits a request to the insurer to
17 effect the transfer of the policy or certificate to the viatical
18 settlement provider, the copy shall be deemed to conclusively
19 establish that the viatical settlement contract satisfies the
20 requirements of this section and the insurer shall timely respond
21 to the request.

22 (4) No insurer may, as a condition of responding to a
23 request for verification of coverage or effecting the transfer
24 of a policy pursuant to a viatical settlement contract, require
25 that the viator, insured, viatical settlement provider, or viatical

1 settlement broker sign any forms, disclosures, consent, or waiver
2 form that has not been expressly approved by the director for use
3 in connection with viatical settlement contracts in this state.

4 (5) Upon receipt of a properly completed request for
5 change of ownership or beneficiary of a policy, the insurer
6 shall respond in writing within thirty calendar days with written
7 acknowledgment confirming that the change has been effected
8 or specifying the reasons why the requested change cannot be
9 processed. The insurer shall not unreasonably delay effecting
10 change of ownership or beneficiary and shall not otherwise seek to
11 interfere with any viatical settlement contract lawfully entered
12 into in this state.

13 Sec. 12. (1) With respect to any viatical settlement
14 contract or insurance policy, no viatical settlement broker shall
15 knowingly solicit an offer from, effectuate a viatical settlement
16 with, or make a sale to any viatical settlement provider, viatical
17 settlement purchaser, financing entity, or related provider trust
18 that is controlling, controlled by, or under common control with
19 such viatical settlement broker.

20 (2) With respect to any viatical settlement contract or
21 insurance policy, no viatical settlement provider shall knowingly
22 enter into a viatical settlement contract with a viator if,
23 in connection with such viatical settlement contract, anything
24 of value will be paid to a viatical settlement broker that is
25 controlling, controlled by, or under common control with such

1 viatical settlement provider or the viatical settlement purchaser,
2 financing entity, or related provider trust that is involved in
3 such viatical settlement contract.

4 (3) A violation of subsection (1) or (2) of this section
5 shall be a fraudulent viatical settlement act.

6 (4) No viatical settlement provider shall enter into
7 a viatical settlement contract unless the viatical settlement
8 promotional, advertising, and marketing materials as may be
9 prescribed by rule and regulation have been filed with the
10 director. In no event shall any marketing materials expressly
11 reference that the insurance is free for any period of time. The
12 inclusion of any reference in the marketing materials that would
13 cause a viator to reasonably believe that the insurance is free for
14 any period of time shall be considered a violation of the Viatical
15 Settlements Act.

16 (5) No life insurance producer, insurance company,
17 viatical settlement broker, or viatical settlement provider
18 shall make any statement or representation to the applicant or
19 policyholder in connection with the sale or financing of a life
20 insurance policy to the effect that the insurance is free or
21 without cost to the policyholder for any period of time unless
22 provided in the policy.

23 Sec. 13. Section 44-1111, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 44-1111 (1) The purpose of this section is to provide

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

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

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

1 or presented the advertisement. A system of control shall include
2 regular routine notification, at least once a year, to agents and
3 others authorized by the licensee who disseminate advertisements of
4 the requirements and procedures for approval prior to the use of
5 any advertisement not furnished by the licensee.

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

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

20 (b) An advertisement shall not omit material information
21 or use words, phrases, statements, references, or illustrations
22 if the omission or use has the capacity, tendency, or effect of
23 misleading or deceiving viators as to the nature or extent of any
24 benefit, loss covered, premium payable, or state or federal tax
25 consequence. The fact that the viatical settlement contract offered

1 is made available for inspection prior to consummation of the sale,
2 or an offer is made to refund the payment if the viator is not
3 satisfied, or that the viatical settlement contract includes a free
4 look period that satisfies or exceeds legal requirements, does not
5 remedy misleading statements.

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

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

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

19 (f)(i) Any testimonial, appraisal, analysis, or
20 endorsement used in an advertisement must be genuine, represent
21 the current opinion of the author, be applicable to the viatical
22 settlement contract, product, or service advertised, and be
23 accurately reproduced with sufficient completeness to avoid
24 misleading or deceiving prospective viators as to the nature or
25 scope of the testimonial, appraisal, analysis, or endorsement. In

1 using a testimonial, an appraisal, an analysis, or an endorsement,
2 the licensee makes as its own all the statements contained therein,
3 and the statements are subject to all the provisions of this
4 section.

5 (ii) If the individual making a testimonial, an
6 appraisal, an analysis, or an endorsement has a financial interest
7 in the ~~viatical settlement provider or~~ party making use of the
8 testimonial, appraisal, analysis, or endorsement either directly
9 or through a related entity as a stockholder, director, officer,
10 employee, or otherwise, or receives any benefit directly or
11 indirectly other than required union scale wages, that fact shall
12 be prominently disclosed in the advertisement.

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

23 (iv) When a testimonial, an appraisal, an analysis, or an
24 endorsement refers to benefits received under a viatical settlement
25 contract, all pertinent information shall be retained for a period

1 of five years after its use.

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

6 (vi) An advertisement shall not disparage insurers,
7 viatical settlement providers, viatical settlement brokers,
8 viatical settlement investment agents, insurance producers,
9 policies, services, or methods of marketing.

10 (vii) The name of the viatical settlement licensee shall
11 be clearly identified in all advertisements about the licensee or
12 its viatical settlement contract, products, or services, and if any
13 specific viatical settlement contract is advertised, the viatical
14 settlement contract shall be identified either by form number or
15 some other appropriate description. If an application is part of
16 the advertisement, the name of the viatical settlement provider
17 shall be shown on the application.

18 (viii) An advertisement shall not use a trade name, group
19 designation, name of the parent company of a licensee, name of a
20 particular division of the licensee, service mark, slogan, symbol,
21 or other device or reference without disclosing the name of the
22 licensee if the advertisement would have the capacity or tendency
23 to mislead or deceive as to the true identity of the licensee, or
24 to create the impression that a company other than the licensee
25 would have any responsibility for the financial obligation under a

1 viatical settlement contract.

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

10 (x) An advertisement may state that a viatical settlement
11 provider is licensed in the state where the advertisement appears
12 if it does not exaggerate that fact or suggest or imply that
13 competing viatical settlement providers may not be licensed. The
14 advertisement may ask the audience to consult the licensee's web
15 site or contact the department to find out if the state requires
16 licensing and, if so, whether the viatical settlement provider is
17 licensed.

18 (xi) An advertisement shall not create the impression
19 that the viatical settlement provider, its financial condition or
20 status, the payment of its claims, or the merits, desirability, or
21 advisability of its viatical settlement contracts are recommended
22 or endorsed by any government entity.

23 (xii) The name of the licensee shall be stated in all of
24 its advertisements. An advertisement shall not use a trade name,
25 any group designation, the name of any affiliate or controlling

1 entity of the licensee, a service mark, a slogan, a symbol, or
2 any other device in a manner that would have the capacity or
3 tendency to mislead or deceive as to the true identity of the
4 actual licensee or create the false impression that an affiliate or
5 controlling entity would have any responsibility for the financial
6 obligation of the licensee.

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

10 (A) Any licensee or its business practices or methods of
11 operation;

12 (B) The merits, desirability, or advisability of any
13 viatical settlement contract or viatical settlement program;

14 (C) Any viatical settlement contract or viatical
15 settlement program; or

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

17 (xiv) If the advertiser emphasizes the speed with which
18 the viatication will occur, the advertising must disclose the
19 average timeframe from completed application to the date of offer
20 and from acceptance of the offer to receipt of the funds by the
21 viator.

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

1 Sec. 14. Section 44-1112, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 44-1112 (1) (a) A person shall not commit a fraudulent
4 viatical settlement act.

5 (b) A person shall not knowingly or intentionally
6 interfere with the enforcement of the provisions of the Viatical
7 Settlements Act or investigations of suspected or actual violations
8 of the act.

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

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

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

23 (3) (a) Any person engaged in the business of viatical
24 settlements having knowledge or a reasonable ~~belief~~ suspicion that
25 a fraudulent viatical settlement act is being, will be, or has been

1 committed shall provide to the director the information required
2 by, and in a manner prescribed by, the director.

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

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

12 (i) The director or the director's employees, agents, or
13 representatives;

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

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

18 (iv) The National Association of Insurance Commissioners,
19 the National Association of Securities Dealers, or the North
20 American Securities Administrators Association, employees, agents,
21 or representatives of any such association, or any other regulatory
22 body overseeing life insurance, viatical settlements, securities,
23 or investment fraud; or

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

1 (b) This subsection does not apply to statements made
2 with actual malice, fraudulent intent, or bad faith. In an action
3 brought against a person for filing a report or furnishing other
4 information concerning a fraudulent viatical settlement act, the
5 party bringing the action shall plead specifically any allegation
6 that this subsection does not apply because the person filing the
7 report or furnishing the information did so with actual malice,
8 fraudulent intent, or bad faith.

9 (c) A person furnishing information as identified in
10 this subsection shall be entitled to an award of attorney's fees
11 and costs if he or she is the prevailing party in a civil
12 cause of action for libel, slander, or any other relevant tort
13 arising out of activities in carrying out the provisions of the
14 Viatical Settlements Act and the party bringing the action was
15 not substantially justified in doing so. For purposes of this
16 section, a proceeding is substantially justified if it had a
17 reasonable basis in law or fact at the time it was initiated.
18 An award granted under this subdivision shall not apply to any
19 person furnishing information concerning his or her own fraudulent
20 viatical settlement acts.

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

24 (5)(a) The documents and evidence provided pursuant to
25 subsection (4) of this section or obtained by the director in an

1 investigation of suspected or actual fraudulent viatical settlement
2 acts shall be privileged and confidential and shall not be a public
3 record and shall not be subject to discovery or subpoena in a civil
4 or criminal action.

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

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

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

14 (iii) At the discretion of the director, to a person
15 in the business of viatical settlements that is aggrieved by a
16 fraudulent viatical settlement act.

17 (c) Release of documents and evidence under this
18 subsection does not abrogate or modify the privilege granted in
19 this subsection.

20 (6) The Viatical Settlements Act shall not:

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

24 (b) Prevent or prohibit a person from disclosing
25 voluntarily information concerning viatical settlement fraud to a

1 law enforcement or regulatory agency other than the department; or

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

6 ~~(7)~~ (7) (a) Viatical settlement providers and viatical
7 settlement brokers shall have in place antifraud initiatives
8 reasonably calculated to detect, prosecute, and prevent fraudulent
9 viatical settlement acts. At the discretion of the director,
10 the director may order, or a licensee may request and the
11 director may grant, such modifications of the following required
12 initiatives as necessary to ensure an effective antifraud program.
13 The modifications may be more or less restrictive than the required
14 initiatives so long as the modifications may reasonably be expected
15 to accomplish the purpose of this section.

16 (b) Antifraud initiatives shall include:

17 ~~(a)~~ (i) Fraud investigators, who may be viatical
18 settlement provider or viatical settlement broker employees or
19 independent contractors; and

20 ~~(b)~~ (ii) An antifraud plan submitted to the director. The
21 antifraud plan shall include, but not be limited to:

22 ~~(i)~~ (A) A description of the procedures for detecting
23 and investigating possible fraudulent viatical settlement acts and
24 procedures for resolving material inconsistencies between medical
25 records and insurance applications;

1 ~~(ii)~~ (B) A description of the procedures for reporting
2 possible fraudulent viatical settlement acts to the director;

3 ~~(iii)~~ (C) A description of the plan for antifraud
4 education and training of underwriters and other personnel; and

5 ~~(iv)~~ (D) A description or chart outlining the
6 organizational arrangement of the antifraud personnel who are
7 responsible for the investigation and reporting of possible
8 fraudulent viatical settlement acts and investigating unresolved
9 material inconsistencies between medical records and insurance
10 applications.

11 (c) Antifraud plans submitted to the director shall be
12 privileged and confidential, shall not be a public record, and
13 shall not be subject to discovery or subpoena in a civil or
14 criminal action.

15 Sec. 15. Section 44-1113, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 44-1113 (1) In addition to the penalties and other
18 enforcement provisions of the Viatical Settlements Act, if any
19 person violates the act or any rule or regulation implementing the
20 act, the director may seek an injunction in a court of competent
21 jurisdiction and may apply for temporary and permanent orders that
22 the director determines are necessary to restrain the person from
23 committing the violation.

24 (2) Any person damaged by the acts of a person in
25 violation of the act may bring a civil action against the person

1 committing the violation in a court of competent jurisdiction.

2 (3) The director may issue, in accordance with the
3 Administrative Procedure Act, a cease and desist order upon a
4 person that violates any provision of the Viatical Settlements Act,
5 any rule, regulation, or order adopted or issued by the director,
6 or any written agreement entered into between such person and the
7 director.

8 (4) When the director finds that an activity in violation
9 of the act presents an immediate danger to the public that requires
10 an immediate final order, the director may issue an emergency cease
11 and desist order reciting with particularity the facts underlying
12 the findings. The emergency cease and desist order is effective
13 immediately upon service of a copy of the order on the respondent
14 and remains effective for ninety days. If the director begins
15 nonemergency cease and desist proceedings, the emergency cease
16 and desist order remains effective, absent an order by a court
17 of competent jurisdiction pursuant to the Administrative Procedure
18 Act.

19 (5) In addition to the penalties and other enforcement
20 provisions of the Viatical Settlements Act, any person who violates
21 the act is subject to civil penalties of up to one thousand dollars
22 per violation. Imposition of civil penalties shall be pursuant to
23 an order of the director issued under the Administrative Procedure
24 Act. The director's order may require a person found to be in
25 violation of the Viatical Settlements Act to make restitution to

1 persons aggrieved by violations of the act.

2 (6) A person who is found by a court of competent
3 jurisdiction, pursuant to an action initiated by the director, to
4 have committed a fraudulent viatical settlement act, is subject
5 to a civil penalty not to exceed five thousand dollars for the
6 first violation, ten thousand dollars for the second violation, and
7 fifteen thousand dollars for each subsequent violation.

8 (7) A person convicted of a violation of the act by a
9 court of competent jurisdiction shall be guilty of a Class III
10 misdemeanor. A person convicted of a violation of the act shall be
11 ordered to pay restitution to persons aggrieved by the violation.
12 Restitution shall be ordered in addition to a fine or imprisonment,
13 but not in lieu of a fine or imprisonment. A prosecution under this
14 subsection shall be in lieu of an action under subsection (6) of
15 this section.

16 (8) Except for a fraudulent viatical settlement act
17 committed by a viator, the enforcement provisions and penalties of
18 this section shall not apply to a viator.

19 Sec. 16. Section 44-1114, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 44-1114 The director shall have the authority to:

22 (1) Adopt and promulgate rules and regulations to carry
23 out the Viatical Settlements Act;

24 (2) Establish standards for evaluating reasonableness of
25 payments under viatical settlement contracts for persons with a

1 terminal or chronic illness or condition. This authority includes,
2 but is not limited to, regulation of discount rates used to
3 determine the amount paid in exchange for assignment, transfer,
4 sale, devise, or bequest of a benefit under a life insurance policy
5 insuring the life of a person who is chronically ill or terminally
6 ill;

7 (3) Establish appropriate licensing requirements, fees,
8 and standards for continued licensure for viatical settlement
9 providers and brokers;

10 (4) Require a bond or other mechanism for financial
11 accountability for viatical settlement providers and brokers; and

12 (5) Adopt rules and regulations governing the
13 relationship and responsibilities of insurers, viatical settlement
14 providers, and viatical settlement brokers during the viatication
15 of a life insurance policy or certificate.

16 Sec. 17. Section 44-1115, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 44-1115 A violation of the Viatical Settlements Act,
19 including the commission of a fraudulent viatical settlement act,
20 shall be considered an unfair trade practice under the Unfair
21 Insurance Trade Practices Act subject to the penalties contained in
22 the act.

23 Sec. 18. Original sections 44-1101, 44-1103, 44-1105,
24 44-1106, 44-1107, 44-1108, 44-1109, 44-1110, 44-1111, 44-1112,
25 44-1113, 44-1114, and 44-1115, Reissue Revised Statutes of

LB 853

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- 1 Nebraska, and sections 44-1102 and 44-1104, Revised Statutes
- 2 Supplement, 2007, are repealed.