

1 **VIATICAL SETTLEMENTS**

2 2003 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Brent D. Parker**

5 **This act modifies the Insurance Code by allowing viatical settlements regardless of**
6 **whether the viator is terminally ill. The act provides for licensing and examinations of**
7 **producers and providers of viatical settlements. The act provides guidelines in relation to**
8 **viatical settlements for reporting, disclosure, advertising, fraud, and other general**
9 **requirements. The act provides criminal penalties for violations. The act modifies the**
10 **Securities Division - Real Estate Division Code by defining a viatical settlement interest**
11 **as a security.**

12 This act affects sections of Utah Code Annotated 1953 as follows:

13 AMENDS:

14 **31A-21-104**, as last amended by Chapter 308, Laws of Utah 2002

15 **31A-23-203**, as last amended by Chapter 116, Laws of Utah 2001

16 **31A-23-204**, as last amended by Chapter 308, Laws of Utah 2002

17 **61-1-13**, as last amended by Chapter 160, Laws of Utah 1997

18 ENACTS:

19 **31A-23-221**, Utah Code Annotated 1953

20 **31A-36-101**, Utah Code Annotated 1953

21 **31A-36-102**, Utah Code Annotated 1953

22 **31A-36-103**, Utah Code Annotated 1953

23 **31A-36-104**, Utah Code Annotated 1953

24 **31A-36-105**, Utah Code Annotated 1953

25 **31A-36-106**, Utah Code Annotated 1953

26 **31A-36-107**, Utah Code Annotated 1953

27 **31A-36-108**, Utah Code Annotated 1953



- 28 **31A-36-109**, Utah Code Annotated 1953
- 29 **31A-36-110**, Utah Code Annotated 1953
- 30 **31A-36-111**, Utah Code Annotated 1953
- 31 **31A-36-112**, Utah Code Annotated 1953
- 32 **31A-36-113**, Utah Code Annotated 1953
- 33 **31A-36-114**, Utah Code Annotated 1953
- 34 **31A-36-115**, Utah Code Annotated 1953
- 35 **31A-36-116**, Utah Code Annotated 1953
- 36 **31A-36-117**, Utah Code Annotated 1953
- 37 **31A-36-118**, Utah Code Annotated 1953
- 38 **31A-36-119**, Utah Code Annotated 1953

39 *Be it enacted by the Legislature of the state of Utah:*

40 Section 1. Section **31A-21-104** is amended to read:

41 **31A-21-104. Insurable interest and consent.**

42 (1) (a) An insurer may not knowingly provide insurance to a person who does not have
43 or expect to have an insurable interest in the subject of the insurance.

44 (b) A person may not knowingly procure, directly, by assignment, or otherwise, an
45 interest in the proceeds of an insurance policy unless that person has or expects to have an
46 insurable interest in the subject of the insurance.

47 (c) Except as provided in Subsections (6), (7), and (8), any insurance provided in
48 violation of this Subsection (1) is subject to Subsection (5).

49 (2) As used in this chapter:

50 (a) (i) "Insurable interest" in a person means:

51 (A) for persons closely related by blood or by law, a substantial interest engendered by
52 love and affection; or

53 (B) in the case of other persons, a lawful and substantial interest in having the life,
54 health, and bodily safety of the person insured continue.

55 (ii) Policyholders in group insurance contracts do not need an insurable interest if
56 certificate holders or persons other than group policyholders who are specified by the
57 certificate holders are the recipients of the proceeds of the policies.

58 (iii) Each person has an unlimited insurable interest in the person's own life and health.

59 (iv) A shareholder or partner has an insurable interest in the life of other shareholders
60 or partners for purposes of insurance contracts that are an integral part of a legitimate buy-sell
61 agreement respecting shares or a partnership interest in the business.

62 (v) Subject to Subsection (9), an employer or an employer sponsored trust for the
63 benefit of the employer's employees:

64 (A) has an insurable interest in the lives of the employer's:

65 (I) directors;

66 (II) officers;

67 (III) managers;

68 (IV) nonmanagement employees; and

69 (V) retired employees; and

70 (B) may insure the lives listed in Subsection (2)(a)(v)(A):

71 (I) on an individual or group basis; and

72 (II) with the written consent of the insured.

73 (b) "Insurable interest" in property or liability means any lawful and substantial
74 economic interest in the nonoccurrence of the event insured against.

75 (c) "Viatical settlement" ~~[means a written contract:]~~ is as defined in Section
76 31A-36-102.

77 ~~[(i) entered into by a person who is the policyholder of a life insurance policy insuring~~
78 ~~the life of a terminally ill person;]~~

79 ~~[(ii) under which the insured assigns, transfers ownership, irrevocably designates a~~
80 ~~specific person or otherwise alienates all control and right in the insurance policy to another~~
81 ~~person; and]~~

82 ~~[(iii) the proceeds or a part of the proceeds of the contract is paid to the policyholder of~~
83 ~~the insurance policy or the policyholder's designee prior to the death of the subject.]~~

84 (3) (a) Except as provided in Subsection (4), an insurer may not knowingly issue an
85 individual life or accident and health insurance policy to a person other than the one whose life
86 or health is at risk unless that person, who is 18 years of age or older and not under
87 guardianship under Title 75, Chapter 5, Protection of Persons Under Disability and Their
88 Property, has given written consent to the issuance of the policy.

89 (b) A person shall express consent:

90 (i) by signing an application for the insurance with knowledge of the nature of the
91 document; or

92 (ii) in any other reasonable way.

93 (c) Any insurance provided in violation of this Subsection (3) is subject to Subsection
94 (5).

95 (4) (a) A life or accident and health insurance policy may be taken out without consent
96 in a circumstance described in this Subsection (4)(a).

97 (i) A person may obtain insurance on a dependent who does not have legal capacity.

98 (ii) A creditor may, at the creditor's expense, obtain insurance on the debtor in an
99 amount reasonably related to the amount of the debt.

100 (iii) A person may obtain life and accident and health insurance on an immediate
101 family member who is living with or dependent on the person.

102 (iv) A person may obtain an accident and health insurance policy on others that would
103 merely indemnify the policyholder against expenses the person would be legally or morally
104 obligated to pay.

105 (v) The commissioner may adopt rules permitting issuance of insurance for a limited
106 term on the life or health of a person serving outside the continental United States who is in the
107 public service of the United States, if the policyholder is related within the second degree by
108 blood or by marriage to the person whose life or health is insured.

109 (b) Consent may be given by another in a circumstance described in this Subsection
110 (4)(b).

111 (i) A parent, a person having legal custody of a minor, or a guardian of a person under
112 Title 75, Chapter 5, Protection of Persons Under Disability and Their Property, may consent to
113 the issuance of a policy on a dependent child or on a person under guardianship under Title 75,
114 Chapter 5, Protection of Persons Under Disability and Their Property.

115 (ii) A grandparent may consent to the issuance of life or accident and health insurance
116 on a grandchild.

117 (iii) A court of general jurisdiction may give consent to the issuance of a life or
118 accident and health insurance policy on an ex parte application showing facts the court
119 considers sufficient to justify the issuance of that insurance.

120 (5) (a) An insurance policy is not invalid because the policyholder lacks insurable

121 interest or because consent has not been given.

122 (b) Notwithstanding Subsection (5)(a), a court with appropriate jurisdiction may:

123 (i) order the proceeds to be paid to some person who is equitably entitled to the
124 proceeds, other than the one to whom the policy is designated to be payable; or

125 (ii) create a constructive trust in the proceeds or a part of the proceeds on behalf of
126 such a person, subject to all the valid terms and conditions of the policy other than those
127 relating to insurable interest or consent.

128 (6) This section does not prevent any organization described under 26 U.S.C. Sec.
129 501(c)(3), (e), or (f), as amended, and the regulations made under this section, and which is
130 regulated under Title 13, Chapter 22, Charitable Solicitations Act, from soliciting and
131 procuring, by assignment or designation as beneficiary, a gift or assignment of an interest in
132 life insurance on the life of the donor or assignor or from enforcing payment of proceeds from
133 that interest.

134 (7) This section does not prevent:

135 (a) any policyholder of life insurance, whether or not the policyholder is also the
136 subject of the insurance, from entering into a viatical settlement;

137 (b) any person from soliciting a person to enter into a viatical settlement; ~~or~~

138 (c) a person from enforcing payment of proceeds from the interest obtained under a
139 viatical settlement~~[-]; or~~

140 (d) a provider of viatical settlements, a purchaser of a viatical settlement, a financing
141 entity, a related provider trust, or a special purpose entity from executing any of the following
142 with respect to the death benefit or ownership of any portion of a viaticated policy as provided
143 for in Section 31A-36-109:

144 (i) an assignment;

145 (ii) a sale;

146 (iii) a transfer;

147 (iv) a devise; or

148 (v) a bequest.

149 (8) Notwithstanding Subsection (1), an insurer authorized under this title to issue a
150 workers' compensation policy may issue a workers' compensation policy to a sole
151 proprietorship, corporation, or partnership that elects not to include any owner, corporate

152 officer, or partner as an employee under the policy even if at the time the policy is issued the
153 sole proprietorship, corporation, or partnership has no employees.

154 (9) The extent of an employer's or employer sponsored trust's insurable interest for a
155 nonmanagement and retired employee under Subsection (2)(a)(v) is limited to an amount
156 commensurate with the employer's unfunded liabilities.

157 Section 2. Section **31A-23-203** is amended to read:

158 **31A-23-203. General requirements for license issuance and renewal.**

159 (1) The commissioner shall issue or renew a license to act as an agent, broker, or
160 consultant to any person who, as to the license classification applied for under Section
161 31A-23-204:

162 (a) has satisfied the character requirements under Section 31A-23-205;

163 (b) has satisfied any applicable continuing education requirements under Section
164 31A-23-206;

165 (c) has satisfied any applicable examination requirements under Section 31A-23-207;

166 (d) has satisfied any applicable training period requirements under Section
167 31A-23-208;

168 (e) if a nonresident:

169 (i) has complied with Section 31A-23-209; and

170 (ii) holds an active similar license in that person's state of residence;

171 (f) as to applicants for licenses to act as title insurance agents, has satisfied the
172 requirements of Section 31A-23-211; ~~and~~

173 (g) as to applicants for licenses to act as providers or producers of viatical settlements,
174 has satisfied the requirements of Section 31A-23-221; and

175 ~~(g)~~ (h) has paid the applicable fees under Section 31A-3-103.

176 (2) (a) This Subsection (2) applies to the following persons:

177 (i) an applicant for a pending producer's license; or

178 (ii) a licensed producer.

179 (b) A person described in Subsection (2)(a) shall report to the commissioner:

180 (i) any administrative action taken against the person:

181 (A) in another jurisdiction; or

182 (B) by another regulatory agency in this state; and

183 (ii) any criminal prosecution taken against the person in any jurisdiction.
184 (c) The report required by Subsection (2)(b) shall:
185 (i) be filed:
186 (A) at the time the person files the application for a producer's license; or
187 (B) within 30 days of the initiation of an action or prosecution described in Subsection
188 (2)(b); and
189 (ii) include a copy of the complaint or other relevant legal documents related to the
190 action or prosecution described in Subsection (2)(b).
191 (3) (a) The department may request:
192 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part
193 2, from the Bureau of Criminal Identification; and
194 (ii) complete Federal Bureau of Investigation criminal background checks through the
195 national criminal history system.
196 (b) Information obtained by the department from the review of criminal history records
197 received under Subsection (3)(a) shall be used by the department for the purposes of:
198 (i) determining if a person satisfies the character requirements under Section
199 31A-23-205 for issuance or renewal of a license;
200 (ii) determining if a person has failed to maintain the character requirements under
201 Section 31A-23-205; and
202 (iii) preventing persons who violate the federal Violent Crime Control and Law
203 Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034, from engaging in the business of
204 insurance in the state.
205 (c) If the department requests the criminal background information, the department
206 shall:
207 (i) pay to the Department of Public Safety the costs incurred by the Department of
208 Public Safety in providing the department criminal background information under Subsection
209 (3)(a)(i);
210 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau
211 of Investigation in providing the department criminal background information under
212 Subsection (3)(a)(ii); and
213 (iii) charge the person applying for a license or for renewal of a license a fee equal to

214 the aggregate of Subsections (3)(c)(i) and (ii).

215 Section 3. Section **31A-23-204** is amended to read:

216 **31A-23-204. License classifications.**

217 A resident or nonresident license issued under this chapter shall be issued under the
218 classifications described under Subsections (1) through (6). These classifications are intended
219 to describe the matters to be considered under any education, examination, and training
220 required of license applicants under Sections 31A-23-206 through 31A-23-208.

221 (1) An agent and broker license classification includes:

222 (a) life insurance, including nonvariable contracts;

223 (b) variable contracts;

224 (c) accident and health insurance, including contracts issued to policyholders under
225 Chapter 7 or 8;

226 (d) property/liability insurance, which includes:

227 (i) property insurance;

228 (ii) liability insurance;

229 (iii) surety and other bonds; and

230 (iv) policies containing any combination of these coverages;

231 (e) title insurance under one of the following categories:

232 (i) search, including authority to act as a title marketing representative;

233 (ii) escrow, including authority to act as a title marketing representative;

234 (iii) search and escrow, including authority to act as a title marketing representative;

235 and

236 (iv) title marketing representative only;

237 (f) workers' compensation insurance; and

238 (g) personal lines.

239 (2) A limited license classification includes:

240 (a) limited line credit insurance;

241 (b) travel insurance;

242 (c) motor club insurance;

243 (d) car rental related insurance;

244 (e) legal expense insurance;

- 245 (f) bail bond agent; [~~and~~]
246 (g) customer service representative[-]; and
247 (h) viatical settlements.
- 248 (3) A consultant license classification includes:
249 (a) life insurance, including nonvariable contracts;
250 (b) variable contracts;
251 (c) accident and health insurance, including contracts issued to policyholders under
252 Chapter 7 or 8;
- 253 (d) property/liability insurance, which includes:
254 (i) property insurance;
255 (ii) liability insurance;
256 (iii) surety and other bonds; and
257 (iv) policies containing any combination of these coverages; and
258 (e) workers' compensation insurance.
- 259 (4) A holder of licenses under Subsections (1)(a) and (1)(c) has all qualifications
260 necessary to act as a holder of a license under Subsection (2)(a).
- 261 (5) (a) Upon satisfying the additional applicable requirements, a holder of a brokers
262 license may obtain a license to act as a surplus lines broker.
- 263 (b) A license to act as a surplus lines broker gives the holder the authority to arrange
264 insurance contracts with unauthorized insurers under Section 31A-15-103, but only as to the
265 types of insurance under Subsection (1) for which the broker holds a brokers license.
- 266 (6) The commissioner may by rule recognize other agent, broker, limited license, or
267 consultant license classifications as to kinds of insurance not listed under Subsections (1), (2),
268 and (3).
- 269 Section 4. Section **31A-23-221** is enacted to read:
- 270 **31A-23-221. Special requirements for providers and producers of viatical**
271 **settlements.**
- 272 (1) Providers and producers of viatical settlements shall be licensed in accordance with
273 this title, with the additional requirements listed in this section.
- 274 (2) Providers of viatical settlements shall:
275 (a) provide a detailed plan of operation with their initial license application and with

276 each renewal application;

277 (b) if a legal entity, provide a certificate of good standing from the state of its domicile;

278 and

279 (c) provide an antifraud plan that meets the requirements of Section 31A-36-117.

280 (3) Providers and producers of viatical settlements shall provide with their initial

281 license application information describing their viatical settlement experience, training, and

282 education.

283 (4) A provider or producer of viatical settlements shall provide to the commissioner,

284 within 30 days after a change occurs, new or revised information concerning any of the

285 following:

286 (a) officers;

287 (b) holders of more than 10% of its stock;

288 (c) partners;

289 (d) directors;

290 (e) members; and

291 (f) designated employees.

292 Section 5. Section **31A-36-101** is enacted to read:

293 **CHAPTER 36. VIATICAL SETTLEMENTS ACT**

294 **31A-36-101. Title.**

295 This chapter is known as the "Viatical Settlements Act."

296 Section 6. Section **31A-36-102** is enacted to read:

297 **31A-36-102. Definitions.**

298 As used in this chapter:

299 (1) (a) "Advertising" means any communication placed before the public to:

300 (i) create an interest in viatical settlements; or

301 (ii) induce a person to sell a policy or an interest in a policy pursuant to a viatical

302 settlement.

303 (b) "Advertising" includes the following, if the requirements of Subsection (1)(a) are

304 met:

305 (i) any written, electronic, or printed communication;

306 (ii) any communication by means of recorded telephone messages;

- 307 (iii) any communication transmitted on radio, television, the Internet, or similar
308 communications media; and
- 309 (iv) film strips, motion pictures, and videos.
- 310 (2) "Business of viatical settlements" includes the following:
- 311 (a) offering a viatical settlement;
312 (b) solicitation of a viatical settlement;
313 (c) negotiation of a viatical settlement;
314 (d) procurement of a viatical settlement;
315 (e) effectuation of a viatical settlement;
316 (f) purchasing a viatical settlement;
317 (g) investing in a viatical settlement;
318 (h) financing a viatical settlement;
319 (i) monitoring a viatical settlement;
320 (j) tracking a viatical settlement;
321 (k) underwriting a viatical settlement;
322 (l) selling a viatical settlement;
323 (m) transferring a viatical settlement;
324 (n) assigning a viatical settlement;
325 (o) pledging a viatical settlement; and
326 (p) otherwise hypothecating viatical settlements.
- 327 (3) "Chronically ill" means:
- 328 (a) being unable to perform at least two activities of daily living, such as eating,
329 toileting, moving from one place to another, bathing, dressing, or continence;
- 330 (b) requiring substantial supervision for protection from threats to health and safety
331 because of severe cognitive impairment; or
- 332 (c) having a level of disability similar to that described in Subsection (3)(a).
- 333 (4) (a) "Financing entity" means a person:
- 334 (i) that has direct ownership in a policy that is the subject of the viatical settlement;
335 (ii) whose principal activity related to the transaction is providing money to effect the
336 viatical settlement; and
- 337 (iii) that has an agreement in writing with one or more licensed providers of viatical

338 settlements to finance the acquisition of one or more viatical settlements.

339 (b) "Financing entity" includes, if the requirements of Subsection (5)(a) are met, the
340 following:

341 (i) an underwriter;

342 (ii) a placement agent;

343 (iii) an enhancer of credit;

344 (iv) a lender;

345 (v) a purchaser of securities; and

346 (vi) a purchaser of a policy from a provider of viatical settlements.

347 (c) "Financing entity" does not include a nonaccredited investor or a purchaser of
348 viatical settlements.

349 (5) "Policy" means:

350 (a) an individual or group policy;

351 (b) a group certificate; or

352 (c) a contract or arrangement of life insurance, whether or not delivered or issued for
353 delivery in Utah:

354 (i) affecting the rights of a resident of Utah; or

355 (ii) bearing a reasonable relation to Utah.

356 (6) (a) "Producer of viatical settlements" means a person that on behalf of a viator and
357 for consideration offers or attempts to negotiate a viatical settlement between the viator and
358 one or more providers of viatical settlements.

359 (b) "Producer of viatical settlements" does not include an attorney licensed to practice
360 law in any state, certified public accountant, or financial planner accredited by a nationally
361 recognized accrediting agency:

362 (i) that is retained by the viator; and

363 (ii) whose compensation is not paid directly or indirectly by a provider or purchaser of
364 viatical settlements.

365 (7) (a) "Provider of viatical settlements" means a person other than a viator that enters
366 into or effectuates a viatical settlement.

367 (b) "Provider of viatical settlements" does not include:

368 (i) a licensed lender that takes an assignment of a policy as security for a loan,

- 369 including a:
- 370 (A) bank;
- 371 (B) savings bank;
- 372 (C) savings and loan association;
- 373 (D) credit union; or
- 374 (E) other licensed lender;
- 375 (ii) the issuer of a policy providing accelerated benefits pursuant to the policy;
- 376 (iii) an authorized or eligible insurer that provides stop-loss coverage to:
- 377 (A) a provider of viatical settlements;
- 378 (B) a purchaser of viatical settlements;
- 379 (C) a financing entity;
- 380 (D) a special purpose entity; or
- 381 (E) a related provider trust;
- 382 (iv) a natural person that enters or effectuates no more than one agreement in a
- 383 calendar year for the transfer of policies for a value less than the expected death benefit;
- 384 (v) a financing entity;
- 385 (vi) a special purpose entity;
- 386 (vii) a related provider trust;
- 387 (viii) a purchaser of viatical settlements; or
- 388 (ix) any of the following that purchases a viaticated policy from a provider of viatical
- 389 settlements:
- 390 (A) an accredited investor as defined in Regulation D, Rule 501, 17 C.F.R. Sec.
- 391 230.501; or
- 392 (B) a qualified institutional buyer as defined in Rule 144A, 17 C.F.R. Sec. 230.144A.
- 393 (8) (a) "Purchaser of viatical settlements" means a person that, to derive an economic
- 394 benefit:
- 395 (i) gives a sum of money as consideration for a policy or an interest in the death
- 396 benefits of a policy; or
- 397 (ii) owns, acquires, or is entitled to a beneficial interest in a trust that:
- 398 (A) owns a viatical settlement contract; or
- 399 (B) is the beneficiary of a policy that has been or will be the subject of a viatical

400 settlement.

401 (b) "Purchaser of viatical settlements" does not include:

402 (i) a licensee under this chapter;

403 (ii) an accredited investor as defined in Regulation D, Rule 501, 17 C.F.R. Sec.

404 230.501;

405 (iii) qualified institutional buyer as defined in Rule 144A, 17 C.F.R. Sec. 230.144A;

406 (iv) a financing entity;

407 (v) a special purpose entity; or

408 (vi) a related provider trust.

409 (9) "Related provider trust" means a trust established by a licensed provider of viatical

410 settlements or a financing entity solely to hold the ownership of or beneficial interests in

411 purchased policies in connection with financing.

412 (10) "Special purpose entity" means an organization formed by a licensed provider of

413 viatical settlements solely to enable the provider to gain access to institutional markets for

414 capital.

415 (11) "Terminally ill" means having a condition that reasonably may be expected to

416 result in death within 24 months.

417 (12) (a) "Viatical settlement" means a written agreement for the payment of anything of

418 value, which is less than the expected death benefit of the policy, in exchange for the viator's

419 assignment, sale, transfer, devise, or bequest of the death benefit or ownership of any portion of

420 a policy.

421 (b) "Viatical settlement" includes:

422 (i) an agreement with a viator for a loan or other financing secured primarily by a

423 policy; and

424 (ii) an agreement with a viator to transfer ownership or change the beneficiary in the

425 future, regardless of the date of payment to the viator.

426 (c) "Viatical settlement" does not include:

427 (i) a loan by an insurer pursuant to the terms of a policy; or

428 (ii) a loan secured by the cash value of a policy.

429 (13) "Viaticated policy" means a policy that has been acquired by a provider of viatical

430 settlements pursuant to a viatical settlement.

431 (14) (a) "Viator" means any of the following that seeks to enter into a viatical
432 settlement:

433 (i) the owner of a policy; or

434 (ii) the holder of a certificate of insurance under a policy of group insurance.

435 (b) "Viator" is not limited to a person that is terminally ill or chronically ill except
436 where that limitation is expressly provided.

437 (c) "Viator" does not include:

438 (i) a licensee under this chapter;

439 (ii) an accredited investor as defined in Regulation D, Rule 501, 17 C.F.R. Sec.
440 230.501;

441 (iii) qualified institutional buyer as defined in Rule 144A, 17 C.F.R. Sec. 230.144A;

442 (iv) a financing entity;

443 (v) a special purpose entity; or

444 (vi) a related provider trust.

445 Section 7. Section **31A-36-103** is enacted to read:

446 **31A-36-103. Law governing.**

447 If there is more than one viator on a single policy and the viators are residents of
448 different states, the law of the state in which the viator having the largest percentage ownership
449 resides governs the viatical settlement. If the viators own equal fractions of a policy, the
450 viators may agree in writing that the law of the state in which one resides governs the viatical
451 settlement.

452 Section 8. Section **31A-36-104** is enacted to read:

453 **31A-36-104. License requirements, revocation, and denial.**

454 (1) A person may not, without first obtaining a license from the commissioner, operate
455 in or from this state as a provider or producer of viatical settlements. Viatical settlements are
456 included within the scope of the life insurance producer line of authority.

457 (2) In addition to the requirements in Sections 31A-23-216 and 31A-23-217, the
458 commissioner may refuse to issue, suspend, revoke, or refuse to renew the license of a provider
459 or producer of viatical settlements if the commissioner finds that:

460 (a) a provider of viatical settlements demonstrates a pattern of unreasonable payments
461 to viators;

462 (b) the applicant or licensee, or an officer, partner, member, or key management
463 personnel:

464 (i) has, whether or not a judgment of conviction has been entered by the court, been
465 found guilty of, or pleaded guilty or nolo contendere to:

466 (A) a felony; or

467 (B) a misdemeanor involving fraud or moral turpitude; or

468 (ii) violated any provision of this chapter;

469 (c) a provider of viatical settlements has entered into a viatical settlement not approved
470 under this chapter;

471 (d) a provider of viatical settlements has failed to honor obligations of a viatical
472 settlement; or

473 (e) a provider of viatical settlements has assigned, transferred, or pledged a viaticated
474 policy to a person other than:

475 (i) a provider of viatical settlements licensed under this chapter;

476 (ii) a purchaser of the viatical settlement;

477 (iii) an accredited investor as defined in Regulation D, Rule 501, 17 C.F.R. Sec.
478 230.501;

479 (iv) qualified institutional buyer as defined in Rule 144A, 17 C.F.R. Sec. 230.144A;

480 (v) a financing entity;

481 (vi) a special purpose entity; or

482 (vii) a related provider trust.

483 (3) If the commissioner denies a license application or suspends, revokes, or refuses to
484 renew the license of a provider or producer of viatical settlements, the commissioner shall
485 conduct an adjudicative proceeding under Title 63, Chapter 46b, Administrative Procedures
486 Act.

487 Section 9. Section **31A-36-105** is enacted to read:

488 **31A-36-105. Filing and use of forms for viatical settlement and disclosure.**

489 (1) Unless the form has been filed with the commissioner under Subsection
490 31A-21-201(1), a person may not use a form for a:

491 (a) viatical settlement;

492 (b) disclosure to the viator;

493 (c) notice of intent to viaticate;

494 (d) verification of coverage; or

495 (e) application.

496 (2) The commissioner may prohibit the use of a form submitted under Subsection (1)

497 pursuant to Subsection 31A-21-201(3).

498 (3) The commissioner may require the submission of advertising material before its

499 use.

500 Section 10. Section **31A-36-106** is enacted to read:

501 **31A-36-106. Reporting requirements and privacy.**

502 (1) Each licensee under this chapter shall file with the commissioner on or before

503 March 1 of each year an annual statement containing such information as the commissioner

504 prescribes under Section 31A-36-119, provided, however, that the information shall be limited

505 to those transactions where the viator is a resident of Utah.

506 (2) Except as otherwise allowed or required by law, the following may not disclose the

507 identity, financial information, or medical information of an insured to any other person:

508 (a) a provider of viatical settlements;

509 (b) a producer of viatical settlements;

510 (c) a producer of insurance;

511 (d) an information bureau;

512 (e) a rating agency or company; or

513 (f) any other person knowing the identity of an insured.

514 (3) Notwithstanding Subsection (2), a person may disclose the identity of an insured if

515 the disclosure is:

516 (a) necessary to effect a viatical settlement between the viator and a provider of viatical

517 settlements and both the viator and the insured have given prior written consent to the

518 disclosure;

519 (b) furnished in response to an investigation or examination by the commissioner or

520 another governmental officer or agency;

521 (c) furnished pursuant to Section 31A-36-114;

522 (d) a term of or condition to the transfer of a policy by one provider of viatical

523 settlements to another provider;

524 (e) necessary to permit a financing entity, related provider trust, or special purpose
525 entity to finance the purchase of a policy by a provider of viatical settlements and the insured
526 has given prior written consent to the disclosure;

527 (f) necessary to allow the provider or producer of viatical settlements or their
528 authorized representatives to make contacts to determine the health status of the viator; or

529 (g) required to purchase stop-loss coverage.

530 Section 11. Section **31A-36-107** is enacted to read:

531 **31A-36-107. Examinations and retention of records.**

532 (1) The commissioner may conduct an examination of a licensee under this chapter in
533 accordance with Sections 31A-2-203, 31A-2-203.5, 31A-2-204, and 31A-2-205.

534 (2) A person required to be licensed under this chapter shall retain for five years copies
535 of all:

536 (a) the following records, whether proposed, offered, or executed, from the date of the
537 proposal, offer, or execution, whichever is later:

538 (i) contracts;

539 (ii) purchase agreements;

540 (iii) underwriting documents;

541 (iv) policy forms; and

542 (v) applications;

543 (b) checks, drafts, and other evidence or documentation relating to the payment,
544 transfer, or release of money, from the date of the transaction; and

545 (c) records and documents related to the requirements of this chapter.

546 (3) This section does not relieve a person of the obligation to produce a document
547 described in Subsection (1) to the commissioner after the expiration of the relevant period if
548 the person has retained the document.

549 (4) Records required by this section to be retained must be legible and complete. They
550 may be retained in any form or by any process that accurately reproduces or is a durable
551 medium for the reproduction of the record.

552 (5) An examiner may not be appointed by the commissioner if the examiner, either
553 directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a
554 pecuniary interest in any person subject to examination under this chapter. This section does

555 not automatically preclude an examiner from being:

556 (a) a viator;

557 (b) an insured in a viaticated policy; or

558 (c) a beneficiary in a policy that is proposed to be viaticated.

559 (6) (a) Examinees under this section shall reimburse the cost of any examination to the
560 department consistent with Section 31A-2-205.

561 (b) Notwithstanding Subsection (6)(a), individual producers of viatical settlements are
562 not subject to Section 31A-2-205.

563 Section 12. Section **31A-36-108** is enacted to read:

564 **31A-36-108. Required disclosures.**

565 (1) With each application for a viatical settlement, a provider or producer of viatical
566 settlements shall furnish to the viator any disclosures the commissioner may require under
567 Section 31A-36-119, in a separate document signed by the viator and the provider or producer,
568 no later than the time the application for the viatical settlement is signed by all the parties.

569 (2) A provider of viatical settlements shall furnish to the viator any disclosures the
570 commissioner may require under Section 31A-36-119, conspicuously displayed in the viatical
571 settlement or in a separate document signed by the viator and the provider of viatical
572 settlements, no later than the time the viatical settlement is signed by all parties.

573 Section 13. Section **31A-36-109** is enacted to read:

574 **31A-36-109. General requirements.**

575 (1) If a provider of viatical settlements transfers ownership or changes the beneficiary
576 of a viaticated policy, the provider shall inform the insured of the transfer or change within 20
577 calendar days.

578 (2) A provider of viatical settlements that enters a viatical settlement shall first obtain:

579 (a) if the viator is the insured, a written statement from a licensed attending physician
580 that the viator is of sound mind and under no constraint or undue influence to enter a viatical
581 settlement;

582 (b) a witnessed document in which the viator represents that:

583 (i) the viator has a full and complete understanding of the viatical settlement and the
584 benefits of the policy;

585 (ii) the viator has entered the viatical settlement freely and voluntarily; and

586 (iii) if applicable, the insured is terminally ill or chronically ill and that the illness was
587 diagnosed after the policy was issued; and

588 (c) a document in which the insured consents to the release of the insured's medical
589 records to:

590 (i) a provider of viatical settlements;

591 (ii) a producer of viatical settlements; and

592 (iii) the insurer that issued the policy covering the insured.

593 (3) Within 20 calendar days after a viator executes documents necessary to transfer
594 rights under a policy, or enters into an agreement in any form, express or implied, to viaticate
595 the policy, the provider of viatical settlements shall give written notice to the issuer of the
596 policy that the policy has or will become viaticated. The notice must be accompanied by a
597 copy of the documents required by Subsection (4).

598 (4) The provider of viatical settlements shall deliver a copy of the following to the
599 insurer that issued the policy that is the subject of the viatical settlement:

600 (a) the medical release required under Subsection (2)(c);

601 (b) a copy of the viator's application for the viatical settlement; and

602 (c) the notice required under Subsection (3).

603 (5) The insurer shall complete and return a request for verification of coverage not later
604 than 30 calendar days after the date the request is received. In its response the insurer shall
605 indicate whether the insurer intends to pursue an investigation regarding the validity of the
606 insurance contract.

607 (6) All medical information solicited or obtained by a licensee under this chapter is
608 subject to:

609 (a) other laws of this state relating to the confidentiality of the information; and

610 (b) a rule relating to privacy of medical or personal information promulgated by the
611 commissioner under Title V, Section 505 of the Gramm-Leach-Bliley Act of 1999, 15 U.S.C.
612 Sec. 6805.

613 (7) A viatical settlement entered into in this state must reserve to the viator an
614 unconditional right to terminate the viatical settlement within 15 calendar days after the viator
615 receives the proceeds of the settlement. If the insured dies during that period, the settlement is
616 terminated and all proceeds, premiums, loans, and loan interest that have been paid by the

617 provider or purchaser of the viatical settlement must be repaid to the provider or purchaser of
618 the viatical settlement.

619 (8) (a) Contact with an insured to determine the health status of the insured after a
620 viatical settlement may be made only by a provider or producer of viatical settlements that is
621 licensed in this state, or its authorized representative, and no more than:

622 (i) once every three months if the insured has a life expectancy of one year or more; or

623 (ii) once every month if the insured has a life expectancy of less than one year.

624 (b) The provider or producer of viatical settlements shall explain the procedure for the
625 contacts allowed under this Subsection (8) to the viator when the application for the viatical
626 settlement is signed by all parties.

627 (c) The limitations of this Subsection (8) do not apply to contacts for purposes other
628 than determining health status.

629 (d) A provider or producer of viatical settlements is responsible for the acts of its
630 authorized representative in violation of this Subsection (8).

631 (9) The trustee of a related provider trust must agree in writing with the provider of
632 viatical settlements that:

633 (a) the provider is responsible for ensuring compliance with all statutory and regulatory
634 requirements; and

635 (b) the trustee will make all records and files related to viatical settlements available to
636 the commissioner as if those records and files were maintained directly by the provider.

637 (10) Regardless of the method of compensation, a producer of viatical settlements:

638 (a) represents only the viator; and

639 (b) owes a fiduciary duty to the viator to act according to the viator's instructions and in
640 the best interest of the viator.

641 Section 14. Section **31A-36-110** is enacted to read:

642 **31A-36-110. Payment and document requirements.**

643 (1) A provider of viatical settlements shall instruct the viator to send the executed
644 documents required to effect the change in ownership or assignment or change of beneficiary
645 of the affected policy to a designated independent escrow agent. Within three business days
646 after the date the escrow agent receives the documents, or within three business days after the
647 provider of viatical settlements receives the documents if by mistake they are sent directly to

648 the provider of viatical settlements, the escrow agent shall deposit the proceeds of the
649 settlement into an escrow or trust account maintained in a regulated financial institution whose
650 deposits are insured by a federal deposit insurer.

651 (2) Upon completion of the requirements of Subsection (1), the escrow agent shall
652 deliver to the provider of viatical settlements the original documents executed by the viator.
653 Upon the provider's receipt from the insurer of an acknowledgment of the change in ownership
654 or assignment or change of beneficiary of the affected policy, the provider of viatical
655 settlements shall instruct the escrow agent to pay the proceeds of the settlement to the viator.

656 (3) Payment to the viator must be made within three business days after the date the
657 provider of viatical settlements received the acknowledgment from the insurer. Failure to
658 make the payment within that time makes the viatical settlement voidable by the viator for lack
659 of consideration until payment is tendered to and accepted by the viator.

660 Section 15. Section **31A-36-111** is enacted to read:

661 **31A-36-111. Prohibited acts.**

662 (1) A viator may not enter into a viatical settlement within two years after the date of
663 issuance of the policy to which the settlement relates unless the viator certifies to the provider
664 of viatical settlements that one of the following is satisfied:

665 (a) the policy was issued upon the viator's exercise of conversion rights arising out of a
666 group or individual policy, provided:

667 (i) the total time covered under the conversion policy plus the time covered under the
668 prior policy is at least 24 months; and

669 (ii) the time covered under a group policy, calculated without regard to any change in
670 insurance carriers, has been continuous and under the same group sponsorship;

671 (b) the viator is a charitable organization exempt from taxation under 26 U.S.C. Sec.
672 501(c)(3);

673 (c) the viator is not a natural person; or

674 (d) the viator submits to the provider of viatical settlements independent evidence that
675 within the two-year period:

676 (i) the viator or insured is terminally ill;

677 (ii) the viator or insured is chronically ill;

678 (iii) the spouse of the viator has died;

- 679 (iv) the viator has divorced the viator's spouse;
680 (v) the viator has retired from full-time employment;
681 (vi) the viator has become physically or mentally disabled and a physician determines
682 that the disability precludes the viator from maintaining full-time employment;
683 (vii) (A) the viator was the employer of the insured when the policy or certificate was
684 issued; and
685 (B) the employment relationship has terminated;
686 (viii) a final judgment or order has been entered or issued by a court of competent
687 jurisdiction, on the application of a creditor of the viator:
688 (A) adjudging the viator bankrupt or insolvent;
689 (B) approving a petition for reorganization of the viator; or
690 (C) appointing a receiver, trustee, or liquidator for all or a substantial part of the
691 viator's assets;
692 (ix) the viator experiences a significant decrease in income that is unexpected and
693 impairs the viator's reasonable ability to pay the policy premium;
694 (x) the viator disposes of the viator's ownership in a closely held corporation; or
695 (xi) the insured disposes of the insured's ownership in a closely held corporation.
696 (2) When the provider of viatical settlements submits a request to the insurer to verify
697 coverage, the provider of viatical settlements shall submit to the insurer the following:
698 (a) copies of the independent evidence required under Subsection (1)(d); and
699 (b) documents required under Subsection 31A-36-109(2).
700 (3) If a provider of viatical settlements submits to an insurer a copy of the owner's or
701 insured's certification that one of the events described in Subsection (1)(d) has occurred, the
702 certification conclusively establishes that the viatical settlement satisfies the requirements of
703 this section, and the insurer shall timely respond to the provider's request to effect a transfer of
704 the policy.

705 Section 16. Section **31A-36-112** is enacted to read:

706 **31A-36-112. Advertising regulations.**

- 707 (1) (a) Each licensee under this chapter shall establish and continuously maintain a
708 system of control over the content, form, and method of dissemination of all advertisements of
709 its contracts and services.

710 (b) Each advertisement is the responsibility of the licensee as well as the person that
711 creates or presents it.

712 (c) A system of control must include at least annual notification to persons authorized
713 by the licensee that disseminate advertisements of the requirements and procedures for
714 approval before use of any advertisements not furnished by the licensee.

715 (2) An advertisement must be truthful and not misleading in fact or by implication, as
716 determined by the commissioner from the overall impression it may reasonably be expected to
717 create upon a person of average education or intelligence in the segment of the public to which
718 it is directed.

719 (3) False or misleading statements are not remedied by:

720 (a) making a viatical settlement available for inspection before it is consummated; or

721 (b) offering to refund payment if the viator is not satisfied within the period prescribed
722 in Subsection 31A-36-109(7).

723 Section 17. Section **31A-36-113** is enacted to read:

724 **31A-36-113. Fraud.**

725 (1) As used in this section:

726 (a) "Recklessly" means engaging in conduct:

727 (i) where a person knows or should have known of a substantial likelihood of the
728 existence of the relevant facts or risks; and

729 (ii) involving a significant deviation from acceptable standards of conduct.

730 (2) A person may not, knowingly or with intent to defraud, to deprive another of
731 property or for pecuniary gain, do or permit its employees or agents to engage in any of the
732 following acts:

733 (a) present, cause to be presented or prepare with knowledge or belief that it will be
734 presented, false information to or by a provider or producer of viatical settlements, a financing
735 entity, an insurer, a provider of insurance or any other person, or to conceal information, as part
736 of, in support of or concerning a fact material to:

737 (i) an application for the issuance of a policy or viatical settlement;

738 (ii) the underwriting of a policy or viatical settlement;

739 (iii) a claim for payment or other benefit under a policy or viatical settlement;

740 (iv) a premium paid on a policy;

- 741 (v) a payment or change of beneficiary or ownership pursuant to a policy or viatical
742 settlement;
- 743 (vi) the reinstatement or conversion of a policy;
- 744 (vii) the solicitation, offer, effectuation, or sale of a policy or viatical settlement;
- 745 (viii) the issuance of written evidence of a policy or viatical settlement; or
- 746 (ix) a financing transaction;
- 747 (b) in furtherance of a fraud or to prevent detection of a fraud:
- 748 (i) remove, conceal, alter, destroy, or sequester from the commissioner assets or
749 records of a licensee under this chapter or other person engaged in the business of viatical
750 settlements;
- 751 (ii) misrepresent or conceal the financial condition of a licensee, a financing entity, an
752 insurer, or other person;
- 753 (iii) transact the business of viatical settlements in violation of this chapter; or
- 754 (iv) file with the commissioner or analogous officer of another jurisdiction a document
755 containing false information or otherwise conceal information about a material fact from the
756 commissioner or analogous officer;
- 757 (c) embezzle, steal, misappropriate, or convert money, premiums, credits, or other
758 property of a provider of viatical settlements, a viator, an insurer, an insured, an owner of a
759 policy, or other person engaged in the business of viatical settlements or insurance;
- 760 (d) recklessly enter into, negotiate, or otherwise deal in a viatical settlement, the
761 subject of which is a policy obtained where the viator or the viator's agent intended to defraud
762 the policy's issuer by:
- 763 (i) presenting false information concerning any fact material to the policy; or
- 764 (ii) concealing, to mislead another, information concerning any fact material to the
765 policy;
- 766 (e) attempt to commit, assist, aid, abet, or conspire to commit an act or omission
767 described in this Subsection (2).
- 768 (3) A person may not knowingly or intentionally interfere with the enforcement of the
769 provisions of this chapter or an investigation of a possible violation of this chapter.
- 770 (4) A person engaged in the business of viatical settlements may not knowingly or
771 intentionally permit any person convicted of a felony involving dishonesty or breach of trust to

772 participate in the business of viatical settlements.

773 (5) An application or contract for a viatical settlement, however transmitted, shall
774 contain the following or a substantially similar statement: "A person that knowingly presents
775 false information in an application for insurance or a viatical settlement is guilty of a crime and
776 may be subject to fines and confinement in prison." The lack of such a statement is not a
777 defense in a prosecution for violation of this section.

778 Section 18. Section **31A-36-114** is enacted to read:

779 **31A-36-114. Reporting of fraud and immunity.**

780 (1) A person engaged in the business of viatical settlements that knows or reasonably
781 believes that a violation of Section 31A-36-113 is being, has been, or will be committed shall
782 provide to the commissioner the information required by, and in a manner prescribed by, the
783 commissioner.

784 (2) Any other person that knows or reasonably believes that a violation of Section
785 31A-36-113 is being, has been, or will be committed may furnish to the commissioner the
786 information required by, and in a manner prescribed by, the commissioner.

787 (3) Except as provided in Subsection (4), a person furnishing information of the kind
788 described in this section is immune from liability and civil action if the information is
789 furnished to or received from:

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

791 (b) federal, state, or local law enforcement or regulatory officials or their employees,
792 agents, or representatives;

793 (c) another person involved in the prevention or detection of violations of Section
794 31A-36-113 or that person's employees, agents, or representatives;

795 (d) the following organizations or their employees, agents, or representatives:

796 (i) the National Association of Insurance Commissioners;

797 (ii) the National Association of Securities Dealers;

798 (iii) the North American Securities Administrators Association; or

799 (iv) another regulatory body overseeing life insurance, viatical settlements, securities,
800 or investment fraud; or

801 (e) the insurer that issued the policy concerned in the information.

802 (4) The immunity provided in Subsection (3) does not extend to a statement made with

803 actual malice. In an action brought against a person for filing a report or furnishing other
804 information concerning a violation of this section, the plaintiff must plead specifically that the
805 defendant acted with actual malice.

806 (5) A person identified in Subsection (3) shall be entitled to an award of attorney's fees
807 and costs if:

808 (a) the person is the prevailing party in a civil cause of action for libel, slander, or any
809 other relevant tort arising out of activities in carrying out the provisions of this chapter; and

810 (b) the action did not have a reasonable basis in law or fact at the time it was initiated.

811 (6) This section does not supplant or modify any other privilege or immunity at
812 common law or under another statute.

813 Section 19. Section **31A-36-115** is enacted to read:

814 **31A-36-115. Confidentiality.**

815 (1) The following shall be classified as protected records under Title 63, Chapter 2,
816 Government Records Access and Management Act:

817 (a) a document or information furnished pursuant to Section 31A-36-114; and

818 (b) a document or information obtained by the commissioner in an investigation of a
819 violation of Section 31A-36-113.

820 (2) Subsection (1) does not prohibit the commissioner from disclosing documents or
821 evidence so furnished or obtained:

822 (a) in an administrative or judicial proceeding to enforce laws administered by the
823 commissioner;

824 (b) to federal, state, or local law enforcement or regulatory agencies;

825 (c) to an organization established to detect and prevent fraudulent viatical settlement
826 acts;

827 (d) to the National Association of Insurance Commissioners; or

828 (e) to a person engaged in the business of viatical settlements that is aggrieved by the
829 violation.

830 (3) Disclosure of a document or evidence under Subsection (2) does not abrogate or
831 modify the privilege granted in Subsection (1).

832 Section 20. Section **31A-36-116** is enacted to read:

833 **31A-36-116. Other law enforcement or regulatory authority.**

834 This chapter does not:

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

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

840 (3) limit the powers granted elsewhere by law to the commissioner or an insurance
841 fraud unit to investigate and examine possible violations of law and to take appropriate action.

842 Section 21. Section **31A-36-117** is enacted to read:

843 **31A-36-117. Antifraud initiatives.**

844 (1) The following shall establish and maintain antifraud initiatives which are
845 reasonably calculated to prevent, detect, and assist in the prosecution of violations of Section
846 31A-36-113:

847 (a) a provider of viatical settlements; and

848 (b) an agency that is a producer of viatical settlements.

849 (2) The commissioner may order, or a licensee may request and the commissioner may
850 approve, modifications of the measures otherwise required under this section, more or less
851 restrictive than those measures, as necessary to protect against fraud.

852 (3) Antifraud initiatives shall include:

853 (a) fraud investigators, that may be either:

854 (i) employees of a provider or producer of viatical settlements; or

855 (ii) independent contractors;

856 (b) an antifraud plan submitted to the commissioner, which shall include:

857 (i) a description of the procedures for:

858 (A) detecting and investigating possible violations of Section 31A-36-113; and

859 (B) resolving material inconsistencies between medical records and applications for
860 insurance;

861 (ii) a description of the procedures for reporting possible violations to the
862 commissioner;

863 (iii) a description of the plan for educating and training underwriters and other
864 personnel against fraud; and

865 (iv) a description or chart of the organizational arrangement of the personnel
866 responsible for detecting and investigating possible violations of Section 31A-36-113 and for
867 resolving material inconsistencies between medical records and applications for insurance.

868 (4) A plan submitted to the commissioner shall be classified as a protected record
869 under Title 63, Chapter 2, Government Records Access and Management Act.

870 Section 22. Section **31A-36-118** is enacted to read:

871 **31A-36-118. Criminal penalties and restitution.**

872 (1) Persons subject to this chapter are subject to:

873 (a) the enforcement penalties and procedures of Section 31A-2-308 for administrative
874 violations of this title;

875 (b) prosecution under Section 76-6-412 for criminal activities involving viatical
876 settlements; or

877 (c) prosecution under Section 31A-31-103 for insurance fraud involving viatical
878 settlements.

879 (2) A person found to be in violation of this chapter may:

880 (a) be ordered to pay restitution to persons aggrieved by the violation;

881 (b) be ordered to pay a forfeiture; or

882 (c) be imprisoned if found guilty of any criminal law by a court of competent
883 jurisdiction.

884 Section 23. Section **31A-36-119** is enacted to read:

885 **31A-36-119. Authority to promulgate rules.**

886 The commissioner may adopt rules to:

887 (1) establish the requirements for the annual statement required under Section
888 31A-36-106;

889 (2) establish standards for evaluating the reasonableness of payments under viatical
890 settlements to persons chronically ill or terminally ill, including the regulation of the rates of
891 discount used to determine the amount paid in exchange for an assignment, transfer, sale,
892 devise, or bequest of a benefit under a policy;

893 (3) establish appropriate licensing requirements, fees, and standards for continued
894 licensure for providers and producers of viatical settlements;

895 (4) require a bond or otherwise ensure financial accountability of providers and

896 producers of viatical settlements;

897 (5) govern the relationship of insurers with providers and producers of viatical

898 settlements during the viatication of a policy;

899 (6) determine the specific disclosures required under Section 31A-36-108;

900 (7) determine whether advertising for viatical settlements violates Section 31A-36-112;

901 and

902 (8) determine the information to be provided to the commissioner under Section

903 31A-36-114 and the manner of providing the information.

904 Section 24. Section **61-1-13** is amended to read:

905 **61-1-13. Definitions.**

906 As used in this chapter:

907 (1) "Affiliate" means a person that, directly or indirectly, through one or more
908 intermediaries, controls or is controlled by, or is under common control with a person
909 specified.

910 (2) "Agent" means any individual other than a broker-dealer who represents a
911 broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

912 "Agent" does not include an individual who represents:

913 (a) an issuer, who receives no commission or other remuneration, directly or indirectly,
914 for effecting or attempting to effect purchases or sales of securities in this state, and who:

915 (i) effects transactions in securities exempted by Subsection 61-1-14(1)(a), (b), (c), (i),

916 or (j);

917 (ii) effects transactions exempted by Subsection 61-1-14(2);

918 (iii) effects transactions in a covered security as described in Sections 18(b)(3) and
919 18(b)(4)(D) of the Securities Act of 1933; or

920 (iv) effects transactions with existing employees, partners, officers, or directors of the
921 issuer; or

922 (b) a broker-dealer in effecting transactions in this state limited to those transactions
923 described in Section 15(h)(2) of the Securities Exchange Act of 1934. A partner, officer, or
924 director of a broker-dealer or issuer, or a person occupying a similar status or performing
925 similar functions, is an agent only if he otherwise comes within this definition.

926 (3) "Broker-dealer" means any person engaged in the business of effecting transactions

927 in securities for the account of others or for his own account. "Broker-dealer" does not include:

928 (a) an agent;

929 (b) an issuer;

930 (c) a bank, savings institution, or trust company;

931 (d) a person who has no place of business in this state if:

932 (i) the person effects transactions in this state exclusively with or through:

933 (A) the issuers of the securities involved in the transactions;

934 (B) other broker-dealers; or

935 (C) banks, savings institutions, trust companies, insurance companies, investment
936 companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts,
937 or other financial institutions or institutional buyers, whether acting for themselves or as
938 trustees; or

939 (ii) during any period of 12 consecutive months the person does not direct more than
940 15 offers to sell or buy into this state in any manner to persons other than those specified in
941 Subsection (3)(d)(i), whether or not the offeror or any of the offerees is then present in this
942 state;

943 (e) a general partner who organizes and effects transactions in securities of three or
944 fewer limited partnerships, of which the person is the general partner, in any period of 12
945 consecutive months;

946 (f) a person whose participation in transactions in securities is confined to those
947 transactions made by or through a broker-dealer licensed in this state;

948 (g) a person who is a real estate broker licensed in this state and who effects
949 transactions in a bond or other evidence of indebtedness secured by a real or chattel mortgage
950 or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage,
951 deed or trust, or agreement, together with all the bonds or other evidences of indebtedness
952 secured thereby, is offered and sold as a unit;

953 (h) a person effecting transactions in commodity contracts or commodity options; or

954 (i) other persons as the division, by rule or order, may designate, consistent with the
955 public interest and protection of investors, as not within the intent of this Subsection (3).

956 (4) "Buy" or "purchase" means every contract for purchase of, contract to buy, or
957 acquisition of a security or interest in a security for value.

958 (5) "Commodity" means, except as otherwise specified by the division by rule:

959 (a) any agricultural, grain, or livestock product or byproduct, except real property or
960 any timber, agricultural, or livestock product grown or raised on real property and offered or
961 sold by the owner or lessee of the real property;

962 (b) any metal or mineral, including a precious metal, except a numismatic coin whose
963 fair market value is at least 15% greater than the value of the metal it contains;

964 (c) any gem or gemstone, whether characterized as precious, semi-precious, or
965 otherwise;

966 (d) any fuel, whether liquid, gaseous, or otherwise;

967 (e) any foreign currency; and

968 (f) all other goods, articles, products, or items of any kind, except any work of art
969 offered or sold by art dealers, at public auction or offered or sold through a private sale by the
970 owner of the work.

971 (6) "Commodity contract" means any account, agreement, or contract for the purchase
972 or sale, primarily for speculation or investment purposes and not for use or consumption by the
973 offeree or purchaser, of one or more commodities, whether for immediate or subsequent
974 delivery or whether delivery is intended by the parties, and whether characterized as a cash
975 contract, deferred shipment or deferred delivery contract, forward contract, futures contract,
976 installment or margin contract, leverage contract, or otherwise.

977 (a) Any commodity contract offered or sold shall, in the absence of evidence to the
978 contrary, be presumed to be offered or sold for speculation or investment purposes.

979 (b) (i) A commodity contract shall not include any contract or agreement which
980 requires, and under which the purchaser receives, within 28 calendar days from the payment in
981 good funds any portion of the purchase price, physical delivery of the total amount of each
982 commodity to be purchased under the contract or agreement.

983 (ii) The purchaser is not considered to have received physical delivery of the total
984 amount of each commodity to be purchased under the contract or agreement when the
985 commodity or commodities are held as collateral for a loan or are subject to a lien of any
986 person when the loan or lien arises in connection with the purchase of each commodity or
987 commodities.

988 (7) (a) "Commodity option" means any account, agreement, or contract giving a party

989 to the option the right but not the obligation to purchase or sell one or more commodities or
990 one or more commodity contracts, or both whether characterized as an option, privilege,
991 indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

992 (b) It does not include an option traded on a national securities exchange registered
993 with the United States Securities and Exchange Commission or on a board of trade designated
994 as a contract market by the Commodity Futures Trading Commission.

995 (8) "Director" means the director of the Division of Securities charged with the
996 administration and enforcement of this chapter.

997 (9) "Division" means the Division of Securities established by Section 61-1-18.

998 (10) "Executive director" means the executive director of the Department of
999 Commerce.

1000 (11) "Federal covered adviser" means a person who is registered under Section 203 of
1001 the Investment Advisers Act of 1940 or is excluded from the definition of "investment adviser"
1002 under Section 202(a)(11) of the Investment Advisers Act of 1940.

1003 (12) "Federal covered security" means any security that is a covered security under
1004 Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated thereunder.

1005 (13) "Fraud," "deceit," and "defraud" are not limited to their common-law meanings.

1006 (14) "Guaranteed" means guaranteed as to payment of principal or interest as to debt
1007 securities, or dividends as to equity securities.

1008 (15) (a) "Investment adviser" means any person who, for compensation, engages in the
1009 business of advising others, either directly or through publications or writings, as to the value
1010 of securities or as to the advisability of investing in, purchasing, or selling securities, or who,
1011 for compensation and as a part of a regular business, issues or promulgates analyses or reports
1012 concerning securities.

1013 (b) "Investment adviser" also includes financial planners and other persons who, as an
1014 integral component of other financially related services, provide the foregoing investment
1015 advisory services to others for compensation and as part of a business or who hold themselves
1016 out as providing the foregoing investment advisory services to others for compensation.

1017 (c) "Investment adviser" does not include:

1018 (i) an investment adviser representative;

1019 (ii) a bank, savings institution, or trust company;

1020 (iii) a lawyer, accountant, engineer, or teacher whose performance of these services is
1021 solely incidental to the practice of his profession;

1022 (iv) a broker-dealer or its agent whose performance of these services is solely
1023 incidental to the conduct of its business as a broker-dealer and who receives no special
1024 compensation for them;

1025 (v) a publisher of any bona fide newspaper, news column, news letter, news magazine,
1026 or business or financial publication or service, of general, regular, and paid circulation, whether
1027 communicated in hard copy form, or by electronic means, or otherwise, that does not consist of
1028 the rendering of advice on the basis of the specific investment situation of each client;

1029 (vi) any person who is a federal covered adviser; or

1030 (vii) such other persons not within the intent of this Subsection (15) as the division
1031 may by rule or order designate.

1032 (16) "Investment adviser representative" means any partner, officer, director of, or a
1033 person occupying a similar status or performing similar functions, or other individual, except
1034 clerical or ministerial personnel, who:

1035 (a) (i) is employed by or associated with an investment adviser who is licensed or
1036 required to be licensed under this chapter; or

1037 (ii) has a place of business located in this state and is employed by or associated with a
1038 federal covered adviser; and

1039 (b) does any of the following:

1040 (i) makes any recommendations or otherwise renders advice regarding securities;

1041 (ii) manages accounts or portfolios of clients;

1042 (iii) determines which recommendation or advice regarding securities should be given;

1043 (iv) solicits, offers, or negotiates for the sale of or sells investment advisory services; or

1044 (v) supervises employees who perform any of the foregoing.

1045 (17) (a) "Issuer" means any person who issues or proposes to issue any security or has
1046 outstanding a security that it has issued.

1047 (b) With respect to a preorganization certificate or subscription, "issuer" means the
1048 promoter or the promoters of the person to be organized.

1049 (c) With respect to:

1050 (i) interests in trusts, including but not limited to collateral trust certificates, voting

1051 trust certificates, and certificates of deposit for securities; or

1052 (ii) shares in an investment company without a board of directors, "issuer" means the
1053 person or persons performing the acts and assuming duties of a depositor or manager under the
1054 provisions of the trust or other agreement or instrument under which the security is issued.

1055 (d) With respect to an equipment trust certificate, a conditional sales contract, or
1056 similar securities serving the same purpose, "issuer" means the person by whom the equipment
1057 or property is to be used.

1058 (e) With respect to interests in partnerships, general or limited, "issuer" means the
1059 partnership itself and not the general partner or partners.

1060 (f) With respect to certificates of interest or participation in oil, gas, or mining titles or
1061 leases or in payment out of production under the titles or leases, "issuer" means the owner of
1062 the title or lease or right of production, whether whole or fractional, who creates fractional
1063 interests therein for the purpose of sale.

1064 (18) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

1065 (19) "Person" means an individual, a corporation, a partnership, a limited liability
1066 company, an association, a joint-stock company, a joint venture, a trust where the interests of
1067 the beneficiaries are evidenced by a security, an unincorporated organization, a government, or
1068 a political subdivision of a government.

1069 (20) "Precious metal" means the following, whether in coin, bullion, or other form:

1070 (a) silver;

1071 (b) gold;

1072 (c) platinum;

1073 (d) palladium;

1074 (e) copper; and

1075 (f) such other substances as the division may specify by rule.

1076 (21) "Promoter" means any person who, acting alone or in concert with one or more
1077 persons, takes initiative in founding or organizing the business or enterprise of a person.

1078 (22) (a) "Sale" or "sell" includes every contract for sale of, contract to sell, or
1079 disposition of, a security or interest in a security for value.

1080 (b) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or
1081 solicitation of an offer to buy, a security or interest in a security for value.

1082 (c) The following are examples of the definitions in Subsections (22)(a) and (b):

1083 (i) any security given or delivered with or as a bonus on account of any purchase of a
1084 security or any other thing, is part of the subject of the purchase, and has been offered and sold
1085 for value;

1086 (ii) a purported gift of assessable stock is an offer or sale as is each assessment levied
1087 on the stock;

1088 (iii) an offer or sale of a security that is convertible into, or entitles its holder to acquire
1089 or subscribe to another security of the same or another issuer is an offer or sale of that security,
1090 and also an offer of the other security, whether the right to convert or acquire is exercisable
1091 immediately or in the future;

1092 (iv) any conversion or exchange of one security for another shall constitute an offer or
1093 sale of the security received in a conversion or exchange, and the offer to buy or the purchase
1094 of the security converted or exchanged;

1095 (v) securities distributed as a dividend wherein the person receiving the dividend
1096 surrenders the right, or the alternative right, to receive a cash or property dividend is an offer or
1097 sale;

1098 (vi) a dividend of a security of another issuer is an offer or sale; or

1099 (vii) the issuance of a security under a merger, consolidation, reorganization,
1100 recapitalization, reclassification, or acquisition of assets shall constitute the offer or sale of the
1101 security issued as well as the offer to buy or the purchase of any security surrendered in
1102 connection therewith, unless the sole purpose of the transaction is to change the issuer's
1103 domicile.

1104 (d) The terms defined in Subsections (22)(a) and (b) do not include:

1105 (i) a good faith gift;

1106 (ii) a transfer by death;

1107 (iii) a transfer by termination of a trust or of a beneficial interest in a trust;

1108 (iv) a security dividend not within Subsection (22)(c)(v) or (vi);

1109 (v) a securities split or reverse split; or

1110 (vi) any act incident to a judicially approved reorganization in which a security is
1111 issued in exchange for one or more outstanding securities, claims, or property interests, or
1112 partly in such exchange and partly for cash.

1113 (23) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility
1114 Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal
1115 statutes of those names as amended before or after the effective date of this chapter.

1116 (24) (a) "Security" means any:

1117 (i) note;

1118 (ii) stock;

1119 (iii) treasury stock;

1120 (iv) bond;

1121 (v) debenture;

1122 (vi) evidence of indebtedness;

1123 (vii) certificate of interest or participation in any profit-sharing agreement;

1124 (viii) collateral-trust certificate;

1125 (ix) preorganization certificate or subscription;

1126 (x) transferable share;

1127 (xi) investment contract;

1128 (xii) burial certificate or burial contract;

1129 (xiii) voting-trust certificate;

1130 (xiv) certificate of deposit for a security;

1131 (xv) certificate of interest or participation in an oil, gas, or mining title or lease or in
1132 payments out of production under such a title or lease;

1133 (xvi) commodity contract or commodity option;

1134 (xvii) interest in a limited liability company; ~~[or]~~

1135 (xviii) viatical settlement interest; or

1136 ~~[(xviii)]~~ (xix) in general, any interest or instrument commonly known as a "security,"
1137 or any certificate of interest or participation in, temporary or interim certificate for, receipt for,
1138 guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

1139 (b) "Security" does not include any:

1140 (i) insurance or endowment policy or annuity contract under which an insurance
1141 company promises to pay money in a lump sum or periodically for life or some other specified
1142 period; or

1143 (ii) interest in a limited liability company in which the limited liability company is

1144 formed as part of an estate plan where all of the members are related by blood or marriage,
1145 there are five or fewer members, or the person claiming this exception can prove that all of the
1146 members are actively engaged in the management of the limited liability company. Evidence
1147 that members vote or have the right to vote, or the right to information concerning the business
1148 and affairs of the limited liability company, or the right to participate in management, shall not
1149 establish, without more, that all members are actively engaged in the management of the
1150 limited liability company.

1151 (25) "State" means any state, territory, or possession of the United States, the District
1152 of Columbia, and Puerto Rico.

1153 (26) (a) "Viatical settlement interest" means the entire interest or any fractional interest
1154 in any of the following that is the subject of a viatical settlement:

1155 (i) a life insurance policy; or

1156 (ii) the death benefit under a life insurance policy.

1157 (b) "Viatical settlement interest" does not include the initial purchase from the viator
1158 by a provider of viatical settlements.

1159 [~~26~~] (27) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive
1160 of legal holidays listed in Section 63-13-2.

1161 [~~27~~] (28) A term not defined in Section 61-1-13 shall have the meaning as established
1162 by division rule. The meaning of a term neither defined in this section nor by rule of the
1163 division shall be the meaning commonly accepted in the business community.

Legislative Review Note

as of 8-26-02 10:13 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Interim Committee Note

as of 12-11-02 10:43 AM

The Business and Labor Interim Committee recommended this bill.

State Impact

This bill will cost \$850 in the first year and \$1,700 in subsequent years. (Fees are assessed on the calendar year). The bill will generate enough revenue to the General Fund to off-set the increased costs.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
General Fund	\$850	\$1,700	\$850	\$1,700
TOTAL	\$850	\$1,700	\$850	\$1,700

Individual and Business Impact

No fiscal impact.
