

1 **VIATICAL SETTLEMENT ACT**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: James A. Dunnigan**

5

LONG TITLE

6 **General Description:**

7 This bill modifies the Viatical Settlements Act to address licensing and rulemaking
8 provisions.

9 **Highlighted Provisions:**

10 This bill:

- 11 ▶ establishes additional criteria for licensure;
- 12 ▶ provides additional rulemaking authority; and
- 13 ▶ makes technical changes.

14 **Monies Appropriated in this Bill:**

15 None

16 **Other Special Clauses:**

17 None

18 **Utah Code Sections Affected:**

19 AMENDS:

20 **31A-36-104**, as enacted by Chapter 81, Laws of Utah 2003

21 **31A-36-119**, as enacted by Chapter 81, Laws of Utah 2003

22

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

23 Section 1. Section **31A-36-104** is amended to read:

24 **31A-36-104. License requirements, revocation, and denial.**

25 (1) (a) A person may not, without first obtaining a license from the commissioner,



28 operate in or from this state as:

29 (i) a provider of viatical settlements; or

30 (ii) a producer of viatical settlements.

31 (b) Viatical settlements are included within the scope of the life insurance producer
32 line of authority.

33 (2) (a) To obtain a license as a provider of viatical settlements, an applicant shall:

34 (i) comply with Section 31A-23a-117;

35 (ii) file an application; and

36 (iii) pay the license fee.

37 (b) If an applicant complies with Subsection (2)(a), the commissioner shall investigate
38 the applicant and issue a license if the commissioner finds that the applicant:

39 (i) is competent ~~h~~ [;] **TO ENGAGE IN THE BUSINESS OF PROVIDING VIICAL**

39a **SETTLEMENTS BY EXPERIENCE, TRAINING, OR EDUCATION; AND**

39b **~~(ii) IS ~~h~~ trustworthy ~~h~~ [, and intends to act in good faith as a provider of viatical~~**
40 **~~settlements;~~**

41 **~~—— (ii) has a good business reputation; and~~**

42 **~~—— (iii) has had experience, training, or education so as to be qualified as a provider of~~**
43 **~~viatical settlements.] IN THAT THE APPLICANT OR ANY OFFICER, PARTNER, MEMBER, OR KEY~~**

43a **~~MANAGEMENT EMPLOYEE OF THE APPLICANT:~~**

43b **~~(A) HAS NOT ENGAGED IN AN ACT OR PRACTICE SPECIFIED IN SUBSECTIONS (3)(A)~~**
43c **~~THROUGH (E); OR~~**

43d **~~(B) HAS NOT BEEN SUBJECT TO A ~~H~~ [REGULATORY] FINAL ADMINISTRATIVE ~~h~~ ACTION~~**
43d1 **~~BY ANOTHER STATE OR~~**

43e **~~FEDERAL JURISDICTION. ~~h~~~~**

44 ~~[(2)] (3) In addition to the requirements in Sections 31A-23a-111, 31A-23a-112 and~~
45 ~~31A-23a-113, the commissioner may refuse to issue, suspend, revoke, or refuse to renew the~~
46 ~~license of a provider of viatical settlements or producer of viatical settlements if the~~
47 ~~commissioner finds that:~~

48 ~~(a) a provider of viatical settlements demonstrates a pattern of unreasonable payments~~
49 ~~to viators;~~

50 ~~(b) the applicant or licensee, or an officer, partner, member, or key management~~
51 ~~personnel:~~

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

54 ~~(A) a felony; or~~

55 ~~(B) a misdemeanor involving fraud or moral turpitude; or~~

56 ~~(ii) violated any provision of this chapter;~~

57 ~~(c) a provider of viatical settlements has entered into a viatical settlement not approved~~
58 ~~under this chapter;~~

59 (d) a provider of viatical settlements has failed to honor obligations of a viatical
60 settlement; ~~or~~

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

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

64 (ii) a purchaser of the viatical settlement;

65 (iii) an accredited investor as defined in Regulation D, Rule 501, 17 C.F.R. Sec.
66 230.501;

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

68 (v) a financing entity;

69 (vi) a special purpose entity; or

70 (vii) a related provider trust~~[-]; or~~

71 (f) a provider of viatical settlements has failed to maintain a standard set forth in

72 Subsection (2)(b).

73 ~~[(3)]~~ (4) If the commissioner denies a license application or suspends, revokes, or
74 refuses to renew the license of a provider of viatical settlements or producer of viatical
75 settlements, the commissioner shall conduct an adjudicative proceeding under Title 63, Chapter
76 46b, Administrative Procedures Act.

77 Section 2. Section **31A-36-119** is amended to read:

78 **31A-36-119. Authority to make rules.**

79 ~~[The]~~ In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act,
80 the commissioner may adopt rules to:

81 (1) establish the requirements for the annual statement required under Section
82 31A-36-106;

83 (2) establish standards for evaluating the reasonableness of payments under viatical
84 settlements ~~[to persons chronically ill or terminally ill, including the regulation of the rates of~~
85 ~~discount used to determine the amount paid in exchange for an assignment, transfer, sale,~~
86 ~~devise, or bequest of a benefit under a policy];~~

87 (3) establish appropriate licensing requirements, fees, and standards for continued
88 licensure for;

89 (a) providers of viatical settlements; and

- 90 (b) producers of viatical settlements;
- 91 (4) require a bond or otherwise ensure financial accountability of;
- 92 (a) providers of viatical settlements; and
- 93 (b) producers of viatical settlements;
- 94 (5) govern the relationship of insurers with providers of viatical settlements and
- 95 producers of viatical settlements during the viatication of a policy;
- 96 (6) determine the specific disclosures required under Section 31A-36-108;
- 97 (7) determine whether advertising for viatical settlements violates Section 31A-36-112;
- 98 **[and]**
- 99 (8) determine the information to be provided to the commissioner under Section
- 100 31A-36-114 and the manner of providing the information[-];
- 101 (9) determine additional acts or practices that are prohibited under Section
- 102 31A-36-111;
- 103 (10) establish payment requirements for the payments in Section 31A-36-110; and
- 104 (11) establish the filing procedure for the forms listed in Subsection 31A-36-105(1).

Legislative Review Note
as of 12-2-03 9:25 AM

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

Office of Legislative Research and General Counsel