

**VIATICAL SETTLEMENT ACT**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: James A. Dunnigan**

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**LONG TITLE**

**General Description:**

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

**Highlighted Provisions:**

This bill:

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

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

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

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

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

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

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

(1) (a) A person may not, without first obtaining a license from the commissioner, operate in or from this state as:

(i) a provider of viatical settlements; or

(ii) a producer of viatical settlements.

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

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

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

(ii) file an application; and

(iii) pay the license fee.

(b) If an applicant complies with Subsection (2)(a), the commissioner shall investigate the applicant and issue a license if the commissioner finds that the applicant is competent and trustworthy to engage in the business of providing viatical settlements by experience, training, or education.

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

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

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

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

(A) a felony; or

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

(ii) violated any provision of this chapter; or

(iii) has been subject to a final administrative action by another state or federal jurisdiction.

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

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

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

- (i) a provider of viatical settlements licensed under this chapter;
- (ii) a purchaser of the viatical settlement;
- (iii) an accredited investor as defined in Regulation D, Rule 501, 17 C.F.R. Sec. 230.501;
- (iv) a qualified institutional buyer as defined in Rule 144A, 17 C.F.R. Sec. 230.144A;
- (v) a financing entity;
- (vi) a special purpose entity; or
- (vii) a related provider trust~~[-];~~ or

(f) a provider of viatical settlements has failed to maintain a standard set forth in Subsection (2)(b).

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

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

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

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

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

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

(3) establish appropriate licensing requirements, fees, and standards for continued

licensure for:

(a) providers of viatical settlements; and

(b) producers of viatical settlements;

(4) require a bond or otherwise ensure financial accountability of:

(a) providers of viatical settlements; and

(b) producers of viatical settlements;

(5) govern the relationship of insurers with providers of viatical settlements and producers of viatical settlements during the viatication of a policy;

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

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

[and]

(8) determine the information to be provided to the commissioner under Section 31A-36-114 and the manner of providing the information[-];

(9) determine additional acts or practices that are prohibited under Section 31A-36-111;

(10) establish payment requirements for the payments in Section 31A-36-110; and

(11) establish the filing procedure for the forms listed in Subsection 31A-36-105(1).