

1 **VIATICAL SETTLEMENT ACT**

2 2004 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: James A. Dunnigan**

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6 **LONG TITLE**

7 **General Description:**

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

10 **Highlighted Provisions:**

11 This bill:

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

15 **Monies Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 AMENDS:

21 **31A-36-104**, as enacted by Chapter 81, Laws of Utah 2003

22 **31A-36-119**, as enacted by Chapter 81, Laws of Utah 2003

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

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

26 **31A-36-104. License requirements, revocation, and denial.**

27 (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, trustworthy, 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.

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).

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**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**