

Representative James A. Dunnigan proposes the following substitute bill:

VIATICAL SETTLEMENT ACT

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: James A. Dunnigan

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

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

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 is competent and
39 trustworthy to engage in the business of providing viatical settlements by experience, training,
40 or education.

41 [~~2~~] (3) In addition to the requirements in Sections 31A-23a-111, 31A-23a-112 and
42 31A-23a-113, the commissioner may refuse to issue, suspend, revoke, or refuse to renew the
43 license of a provider of viatical settlements or producer of viatical settlements if the
44 commissioner finds that:

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

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

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

51 (A) a felony; or

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

53 (ii) violated any provision of this chapter; or

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

56 (c) a provider of viatical settlements has entered into a viatical settlement not approved

57 under this chapter;

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

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

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

63 (ii) a purchaser of the viatical settlement;

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

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

67 (v) a financing entity;

68 (vi) a special purpose entity; or

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

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

72 ~~[(3)]~~ (4) If the commissioner denies a license application or suspends, revokes, or
73 refuses to renew the license of a provider of viatical settlements or producer of viatical
74 settlements, the commissioner shall conduct an adjudicative proceeding under Title 63, Chapter
75 46b, Administrative Procedures Act.

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

77 **31A-36-119. Authority to make rules.**

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

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

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

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

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