

**INSURANCE AND LIFE SETTLEMENT**

**AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: James A. Dunnigan**

Senate Sponsor: Wayne L. Niederhauser

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**LONG TITLE**

**General Description:**

This bill modifies the Insurance Code and in particular the Viatical Settlements Act to change its terminology to Life Settlements Act and to make other substantive changes.

**Highlighted Provisions:**

This bill:

- ▶ addresses insurable interest;
- ▶ modifies the terminology related to a viatical settlement to terminology related to a life settlement;
- ▶ modifies definitions;
- ▶ defines "stranger-originated life insurance" and prohibits activities related to stranger-originated life insurance;
- ▶ prohibits a life settlement from requiring that the life settlement be construed according to the laws of another jurisdiction;
- ▶ prohibits a life settlement from removing jurisdiction from state courts;
- ▶ modifies requirements to obtain a life settlement provider license;
- ▶ expands the grounds for when a commissioner may refuse to issue, suspend, revoke, or refuse to renew a life settlement producer or provider license;
- ▶ modifies language related to reporting;
- ▶ addresses verification of coverage;



- 28           ▶ modifies provisions related to rescission of a life settlement;
- 29           ▶ addresses establishing when the requirements of a life settlement are met;
- 30           ▶ modifies the process for holding the proceeds of a life settlement;
- 31           ▶ modifies prohibited acts;
- 32           ▶ modifies what constitutes fraud;
- 33           ▶ modifies requirements related to reporting fraud and immunity for reporting fraud;
- 34           ▶ limits imposition of criminal penalties on an owner; and
- 35           ▶ makes technical and conforming amendments.

36 **Monies Appropriated in this Bill:**

37           None

38 **Other Special Clauses:**

39           This bill provides revisor instructions.

40 **Utah Code Sections Affected:**

41 **AMENDS:**

- 42           **31A-2-205**, as last amended by Laws of Utah 2007, Chapter 307
- 43           **31A-21-104**, as last amended by Laws of Utah 2008, Chapter 263
- 44           **31A-23a-105**, as last amended by Laws of Utah 2008, Chapter 345
- 45           **31A-23a-111**, as last amended by Laws of Utah 2008, Chapters 345 and 382
- 46           **31A-23a-117**, as last amended by Laws of Utah 2007, Chapter 307
- 47           **31A-27a-104**, as enacted by Laws of Utah 2007, Chapter 309
- 48           **31A-36-101**, as enacted by Laws of Utah 2003, Chapter 81
- 49           **31A-36-102**, as last amended by Laws of Utah 2007, Chapter 307
- 50           **31A-36-103**, as enacted by Laws of Utah 2003, Chapter 81
- 51           **31A-36-104**, as last amended by Laws of Utah 2008, Chapter 382
- 52           **31A-36-105**, as last amended by Laws of Utah 2007, Chapter 307
- 53           **31A-36-106**, as last amended by Laws of Utah 2007, Chapter 307
- 54           **31A-36-107**, as last amended by Laws of Utah 2007, Chapter 307
- 55           **31A-36-108**, as last amended by Laws of Utah 2007, Chapter 307
- 56           **31A-36-109**, as last amended by Laws of Utah 2007, Chapter 307
- 57           **31A-36-110**, as last amended by Laws of Utah 2007, Chapter 307
- 58           **31A-36-111**, as last amended by Laws of Utah 2007, Chapter 307

- 59           **31A-36-112**, as last amended by Laws of Utah 2007, Chapter 307
- 60           **31A-36-113**, as last amended by Laws of Utah 2007, Chapter 307
- 61           **31A-36-114**, as enacted by Laws of Utah 2003, Chapter 81
- 62           **31A-36-115**, as last amended by Laws of Utah 2008, Chapter 382
- 63           **31A-36-116**, as enacted by Laws of Utah 2003, Chapter 81
- 64           **31A-36-117**, as last amended by Laws of Utah 2008, Chapter 382
- 65           **31A-36-118**, as enacted by Laws of Utah 2003, Chapter 81
- 66           **31A-36-119**, as last amended by Laws of Utah 2008, Chapter 382
- 67           **61-1-13**, as last amended by Laws of Utah 2008, Chapter 382
- 68           **64-13-39.5**, as last amended by Laws of Utah 2008, Chapter 382



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

71           Section 1. Section **31A-2-205** is amended to read:

72           **31A-2-205. Examination costs.**

73           (1) (a) Except as provided in Subsection (3), an examinee that is one of the following  
 74 shall reimburse the department for the reasonable costs of examinations made under Sections  
 75 31A-2-203 and 31A-2-204:

- 76           (i) an insurer;
- 77           (ii) a rate service organization;
- 78           (iii) a subsidiary of an insurer or rate service organization; or
- 79           (iv) a [~~viatical~~] life settlement provider.
- 80           (b) The following costs shall be reimbursed under this Subsection (1):
- 81           (i) actual travel expenses;
- 82           (ii) reasonable living expense allowance;
- 83           (iii) compensation at reasonable rates for all professionals reasonably employed for the  
 84 examination under Subsection (4);
- 85           (iv) the administration and supervisory expense of:
- 86           (A) the department; and
- 87           (B) the attorney general's office; and
- 88           (v) an amount necessary to cover fringe benefits authorized by the commissioner or  
 89 provided by law.

90 (c) In determining rates, the commissioner shall consider the rates recommended and  
91 outlined in the examination manual sponsored by the National Association of Insurance  
92 Commissioners.

93 (d) This Subsection (1) applies to a surplus lines producer to the extent that the  
94 examinations are of the surplus line producer's surplus lines business.

95 (2) An insurer requesting the examination of one of its producers shall pay the cost of  
96 the examination. Otherwise, the department shall pay the cost of examining a licensee other  
97 than those specified under Subsection (1).

98 (3) (a) On the examinee's request or at the commissioner's discretion, the department  
99 may pay all or part of the costs of an examination whenever the commissioner finds that  
100 because of the frequency of examinations or the financial condition of the examinee,  
101 imposition of the costs would place an unreasonable burden on the examinee.

102 (b) The commissioner shall include in the commissioner's annual report information  
103 about any instance in which the commissioner has applied this Subsection (3).

104 (4) (a) A technical expert employed under Subsection 31A-2-203(3) shall present to the  
105 commissioner a statement of all expenses incurred by the technical expert in conjunction with  
106 an examination.

107 (b) The examined insurer shall, at the commissioner's direction, pay to a technical  
108 expert:

- 109 (i) (A) actual travel expenses;
- 110 (B) reasonable living expenses; and
- 111 (C) compensation; and
- 112 (ii) for expenses necessarily incurred as approved by the commissioner.

113 (c) The examined insurer shall reimburse the department for:

- 114 (i) a department examiner's:
  - 115 (A) actual travel expenses; and
  - 116 (B) reasonable living expenses; and
- 117 (ii) the compensation of department examiners involved in the examination.

118 (d) (i) The examined insurer shall certify the consolidated account of all charges and  
119 expenses for the examination.

120 (ii) The examined insurer shall:

- 121 (A) retain a copy of the consolidated account; and
  - 122 (B) file a copy of the consolidated account with the department as a public record.
  - 123 (e) An annual report of examination charges paid by examined insurers directly to  
124 persons employed under Subsection 31A-2-203(3) or to department examiners shall be  
125 included with the department's budget request.
  - 126 (f) Amounts paid directly by examined insurers to persons employed under Subsection  
127 31A-2-203(3) or to department examiners may not be deducted from the department's  
128 appropriation.
  - 129 (5) (a) The amount payable under Subsection (1) is due ten days after the day on which  
130 the examinee is served with a detailed account of the costs.
  - 131 (b) Payments received by the department under this Subsection (5) shall be handled as  
132 provided by Section 31A-3-101.
  - 133 (6) (a) The commissioner may require an examinee under Subsection (1), or an insurer  
134 requesting an examination under Subsection (2), either before or during an examination, to  
135 make deposits with the state treasurer to pay the costs of examination.
  - 136 (b) Any deposit made under this Subsection (6) shall be held in trust by the state  
137 treasurer until applied to pay the department the costs payable under this section.
  - 138 (c) If a deposit made under this Subsection (6) exceeds examination costs, the state  
139 treasurer shall refund the surplus.
  - 140 (7) A domestic insurer may offset the examination expenses paid under this section  
141 against premium taxes under Subsection 59-9-102(2).
- 142 Section 2. Section **31A-21-104** is amended to read:
- 143 **31A-21-104. Insurable interest and consent -- Scope.**
- 144 (1) As used in this chapter:
    - 145 (a) For purposes of this section, "exchange" means an exchange made pursuant to  
146 Section 1035, Internal Revenue Code, as may be amended.
    - 147 (b) "Insurable interest" in a person means the following, including a circumstance  
148 described in Subsection (3):
      - 149 (i) for a person closely related by blood or by law, a substantial interest engendered by  
150 love and affection; or
      - 151 (ii) in the case of a person not described in Subsection (1)(b)(i), a lawful and

152 substantial interest in having the life, health, and bodily safety of the person insured continue.

153 (c) "Insurable interest" in property or liability means any lawful and substantial  
154 economic interest in the nonoccurrence of the event insured against.

155 (d) [~~"Viatical"~~] "Life settlement" is as defined in Section 31A-36-102.

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

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

161 (c) In the case of life insurance, the insurable interest requirements of Subsections  
162 (2)(a) and (b):

163 (i) are satisfied if the requirements are met:

164 (A) at the effective date of the insurance policy; and

165 (B) at the time of a later procurement, if any, of an interest in the proceeds of an  
166 insurance policy; and

167 (ii) do not need to be met at the time that proceeds of an insurance policy are payable if  
168 the requirements are met at the times specified in Subsection (2)(c)(i).

169 (d) Except as provided in Subsections (7) and (8), insurance provided in violation of  
170 this Subsection (2) is subject to Subsection (6).

171 (e) A policy holder in a group insurance policy does not need an insurable interest if a  
172 certificate holder or a person other than the group policyholder who is specified by the  
173 certificate holder is the recipient of the proceeds of the group insurance policy.

174 (3) The following is a nonexhaustive list of insurable interests:

175 (a) [~~Each~~] A person has an unlimited insurable interest in that person's own life and  
176 health.

177 (b) A shareholder, member, or partner has an insurable interest in the life of another  
178 shareholder, member, or partner for purposes of an insurance contract that is an integral part of  
179 a legitimate buy-sell agreement respecting shares, membership interests, or partnership  
180 interests in the business.

181 (c) (i) A trust has an insurable interest in the subject of the insurance to the extent that  
182 [~~a beneficiary~~] all beneficiaries of the trust [~~has the~~] have an insurable interest.

183           (ii) A trust violates this section if the trust:  
184           (A) is created to give the appearance of an insurable interest, but an insurable interest  
185 does not exist; and

186           (B) is used to initiate a policy for an investor or other person who has no insurable  
187 interest in the insured.

188           (d) (i) Subject to Subsection (3)(d)(v), an employer or an employer sponsored trust:

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

190           (I) directors;

191           (II) officers;

192           (III) managers;

193           (IV) nonmanagement employees; and

194           (V) retired employees; and

195           (B) may insure a life listed in Subsection (3)(d)(i)(A):

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

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

198           (ii) (A) A trustee of a trust established by an employer for the sole benefit of the  
199 employer has the same insurable interest in the life and health of any person as does the  
200 employer.

201           (B) Without limiting the general principle in Subsection (3)(d)(ii)(A), a trustee of a  
202 trust established by an employer that provides life, health, disability, retirement, or similar  
203 benefits to an individual identified in Subsection (3)(d)(i)(A) has an insurable interest in the  
204 life of the individual described in Subsection (3)(d)(i)(A) for whom the benefits are provided.

205           (iii) (A) For the purpose of exchanging life insurance, an individual described in  
206 Subsection (3)(d)(i)(A) includes an individual who was formerly included under Subsection  
207 (3)(d)(i)(A) if the life insurance to be exchanged:

208           (I) is purchased or acquired while the individual is a current director, officer, manager,  
209 or employee; and

210           (II) is exchanged for life insurance in an amount that does not exceed the amount of the  
211 insurance being exchanged.

212           (B) Written consent of an individual described in this Subsection (3)(d)(iii) is not  
213 required at the time of the exchange of the life insurance.

214 (C) This Subsection (3)(d)(iii) shall be interpreted in a manner consistent with  
215 Subsection (2)(c).

216 (iv) (A) If an employer or trustee establishes an insurable interest as provided in this  
217 Subsection (3)(d) and all of the employer's business is acquired, purchased, merged into, or  
218 otherwise transferred to a subsequent employer, the insurable interest of the original employer  
219 or trustee in an individual described in Subsection (3)(d)(i)(A) is automatically transferred to:

220 (I) the subsequent employer; or

221 (II) the trustee of a trust established by the subsequent employer for the subsequent  
222 employer's sole benefit.

223 (B) A subsequent employer or a trustee of a trust described in Subsection  
224 (3)(d)(iv)(A)(II) may exchange life insurance that is purchased or acquired in an individual  
225 described in Subsection (3)(d)(i)(A) by the original employer or trustee without establishing a  
226 new insurable interest at the time of the exchange of the insurance.

227 (v) The extent of an employer's or employer sponsored trust's insurable interest for a  
228 nonmanagement or retired employee under Subsection (3)(d)(i) is limited to an amount  
229 commensurate with the employer's unfunded liabilities at the time insurance on the  
230 nonmanagement or retired employee is procured.

231 (4) (a) Except as provided in Subsection (5), an insurer may not knowingly issue an  
232 individual life or accident and health insurance policy to a person other than the one whose life  
233 or health is at risk unless that person:

234 (i) is 18 years of age or older;

235 (ii) is not under guardianship under Title 75, Chapter 5, Protection of Persons Under  
236 Disability and Their Property; and

237 (iii) gives written consent to the issuance of the policy.

238 (b) A person shall express consent:

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

241 (ii) in any other reasonable way.

242 (c) Insurance provided in violation of this Subsection (4) is subject to Subsection (6).

243 (5) (a) A life or accident and health insurance policy may be taken out without consent  
244 in a circumstance described in this Subsection (5)(a).



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

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

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

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

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

257 (b) Consent may be given by another in a circumstance described in this Subsection  
258 (5)(b).

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

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

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

268 (6) (a) An insurance policy is not invalid because:

269 (i) the insurance policy is issued or procured in violation of Subsection (2); or

270 (ii) consent has not been given.

271 (b) Notwithstanding Subsection (6)(a), a court with appropriate jurisdiction may:

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

274 (ii) create a constructive trust in the proceeds or a part of the proceeds on behalf of a  
275 person who is equitably entitled to the proceeds, subject to all the valid terms and conditions of

276 the policy other than those relating to insurable interest or consent.

277 (7) This section does not prevent an organization described under Section 501(c)(3),  
 278 (e), or (f), Internal Revenue Code, as amended, and the regulations made under this section,  
 279 and which is regulated under Title 13, Chapter 22, Charitable Solicitations Act, from soliciting  
 280 and procuring, by assignment or designation as beneficiary, a gift or assignment of an interest  
 281 in life insurance on the life of the donor or assignor or from enforcing payment of proceeds  
 282 from that interest.

283 (8) (a) Subsection (8)(b) applies if:

284 ~~[(8) An]~~ (i) an insurance policy is transferred pursuant to a life settlement in  
 285 accordance with Chapter 36, [Viatical] Life Settlements Act[-]; and

286 (ii) before the transfer described in Subsection (8)(a)(i) the insurable interest  
 287 requirements of Subsection (2)(c)(i) are met for the insurance policy.

288 (b) An insurance policy described in Subsection (8)(a) is not subject to Subsection  
 289 (6)(b) and nothing [else] in this section [shall prevent] prevents:

290 ~~[(a) a policyholder]~~ (i) an owner of life insurance, whether or not the ~~[policyholder]~~  
 291 owner is also the subject of the insurance, from entering into a ~~[viatical]~~ life settlement;

292 ~~[(b)]~~ (ii) a [person] life settlement producer from soliciting a person to enter into a  
 293 ~~[viatical]~~ life settlement;

294 ~~[(c)]~~ (iii) a person from enforcing payment of proceeds from the interest obtained under  
 295 a ~~[viatical]~~ life settlement; or

296 ~~[(d)]~~ (iv) ~~H→ [a [viatical] life settlement provider, a [viatical] life settlement purchaser, a~~  
 297 ~~financing entity, a related provider trust, or a special purpose entity from executing] the execution:~~

297a (A) of ~~←H~~ any of the

298 following with respect to the death benefit or ownership of any portion of a ~~[viaticated]~~ settled  
 299 policy as provided for in Section 31A-36-109:

300 ~~[(i)]~~ H→ ~~[(A)]~~ (I) ~~←H~~ an assignment;

301 ~~[(ii)]~~ H→ ~~[(B)]~~ (II) ~~←H~~ a sale;

302 ~~[(iii)]~~ H→ ~~[(C)]~~ (III) ~~←H~~ a transfer;

303 ~~[(iv)]~~ H→ ~~[(D)]~~ (IV) ~~←H~~ a devise; or

304 ~~[(v)]~~ H→ ~~[(E)]~~ (V) ~~←H~~ a bequest H→ [-] ; and

304a (B) by any of the following:

304b (I) a life settlement provider;

304c (II) a life settlement purchaser;

304d (III) a financing entity;

304e (IV) a related provider trust;

304f (V) a special purpose entity; ~~S→ [or] ←S~~

304g (VI) a qualified institutional buyer as defined in Rule 144A, 17 C.F.R.

304h Sec. 230.144A ~~S→ [-] ; or~~

304i (VII) an accredited investor as defined in Regulation D, Rule 501, 17 C.F.R. Sec. 230.501. ~~←S ←H~~

305 (9) (a) The insurable interests described in this section:

306 (i) are not exclusive;

307 (ii) are cumulative of an insurable interest that is not expressly included in this section  
308 but exists in common law; and

309 (iii) are not in lieu of an insurable interest that is not expressly included in this section  
310 but exists in common law.

311 (b) The inclusion of an insurable interest in this section may not be considered to be  
312 excluding another insurable interest that is similar to the insurable interest included in this  
313 section.

314 (c) (i) The recognition of an insurable interest in this section by Chapter 89, Laws of  
315 Utah 2007, does not imply or create a presumption that the insurable interest did not exist  
316 before April 30, 2007.

317 (ii) An insurable interest shall be presumed with respect to a life insurance policy  
318 issued before April 30, 2007 to a person whose insurable interest is recognized in this section  
319 by Chapter 89, Laws of Utah 2007.

320 Section 3. Section **31A-23a-105** is amended to read:

321 **31A-23a-105. General requirements for individual and agency license issuance**  
322 **and renewal.**

323 (1) The commissioner shall issue or renew a license to act as a producer, limited line  
324 producer, customer service representative, consultant, managing general agent, or reinsurance  
325 intermediary to any person who, as to the license type and line of authority classification  
326 applied for under Section 31A-23a-106:

327 (a) satisfies the application requirements under Section 31A-23a-104;

328 (b) satisfies the character requirements under Section 31A-23a-107;

329 (c) satisfies any applicable continuing education requirements under Section  
330 31A-23a-202;

331 (d) satisfies any applicable examination requirements under Section 31A-23a-108;

332 (e) satisfies any applicable training period requirements under Section 31A-23a-203;

333 (f) if a nonresident:

334 (i) complies with Section 31A-23a-109; and

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

336 (g) if an applicant for a title insurance producer license, satisfies the requirements of  
337 Sections 31A-23a-203 and 31A-23a-204;

338 (h) if an applicant for a license to act as a ~~viatical~~ life settlement provider or ~~viatical~~  
339 life settlement producer, satisfies the requirements of Section 31A-23a-117; and

340 (i) pays the applicable fees under Section 31A-3-103.

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

342 (i) an applicant for a pending:

343 (A) individual or agency producer license;

344 (B) limited line producer license;

345 (C) customer service representative license;

346 (D) consultant license;

347 (E) managing general agent license; or

348 (F) reinsurance intermediary license; or

349 (ii) a licensed:

350 (A) individual or agency producer;

351 (B) limited line producer;

352 (C) customer service representative;

353 (D) consultant;

354 (E) managing general agent; or

355 (F) reinsurance intermediary.

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

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

358 (A) in another jurisdiction; or

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

360 (ii) any criminal prosecution taken against the person in any jurisdiction.

361 (c) The report required by Subsection (2)(b) shall:

362 (i) be filed:

363 (A) at the time the person files the application for an individual or agency license; and

364 (B) for an action or prosecution that occurs on or after the day on which the person

365 files the application:

366 (I) for an administrative action, within 30 days of the final disposition of the  
367 administrative action; or

368 (II) for a criminal prosecution, within 30 days of the initial appearance before a court;

369 and

370 (ii) include a copy of the complaint or other relevant legal documents related to the  
371 action or prosecution described in Subsection (2)(b).

372 (3) (a) The department may require a person applying for a license or for consent to  
373 engage in the business of insurance to submit to a criminal background check as a condition of  
374 receiving a license or consent.

375 (b) A person, if required to submit to a criminal background check under Subsection  
376 (3)(a), shall:

377 (i) submit a fingerprint card in a form acceptable to the department; and

378 (ii) consent to a fingerprint background check by:

379 (A) the Utah Bureau of Criminal Identification; and

380 (B) the Federal Bureau of Investigation.

381 (c) For a person who submits a fingerprint card and consents to a fingerprint  
382 background check under Subsection (3)(b), the department may request:

383 (i) criminal background information maintained pursuant to Title 53, Chapter 10, Part  
384 2, Bureau of Criminal Identification, from the Bureau of Criminal Identification; and

385 (ii) complete Federal Bureau of Investigation criminal background checks through the  
386 national criminal history system.

387 (d) Information obtained by the department from the review of criminal history records  
388 received under this Subsection (3) shall be used by the department for the purposes of:

389 (i) determining if a person satisfies the character requirements under Section  
390 31A-23a-107 for issuance or renewal of a license;

391 (ii) determining if a person has failed to maintain the character requirements under  
392 Section 31A-23a-107; and

393 (iii) preventing persons who violate the federal Violent Crime Control and Law  
394 Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034, from engaging in the business of  
395 insurance in the state.

396 (e) If the department requests the criminal background information, the department  
397 shall:

398 (i) pay to the Department of Public Safety the costs incurred by the Department of  
399 Public Safety in providing the department criminal background information under Subsection

400 (3)(c)(i);

401 (ii) pay to the Federal Bureau of Investigation the costs incurred by the Federal Bureau  
402 of Investigation in providing the department criminal background information under  
403 Subsection (3)(c)(ii); and

404 (iii) charge the person applying for a license, for renewal of a license, or for consent to  
405 engage in the business of insurance a fee equal to the aggregate of Subsections (3)(e)(i) and (ii).

406 (4) To become a resident licensee in accordance with Section 31A-23a-104 and this  
407 section, a person licensed as one of the following in another state who moves to this state shall  
408 apply within 90 days of establishing legal residence in this state:

409 (a) insurance producer;

410 (b) limited line producer;

411 (c) customer service representative;

412 (d) consultant;

413 (e) managing general agent; or

414 (f) reinsurance intermediary.

415 (5) Notwithstanding the other provisions of this section, the commissioner may:

416 (a) issue a license to an applicant for a license for a title insurance line of authority only  
417 with the concurrence of the Title and Escrow Commission; and

418 (b) renew a license for a title insurance line of authority only with the concurrence of  
419 the Title and Escrow Commission.

420 Section 4. Section **31A-23a-111** is amended to read:

421 **31A-23a-111. Revocation, suspension, surrender, lapsing, limiting, or otherwise**  
422 **terminating a license -- Rulemaking for renewal or reinstatement.**

423 (1) A license type issued under this chapter remains in force until:

424 (a) revoked or suspended under Subsection (5);

425 (b) surrendered to the commissioner and accepted by the commissioner in lieu of  
426 administrative action;

427 (c) the licensee dies or is adjudicated incompetent as defined under:

428 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

429 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and  
430 Minors;

431 (d) lapsed under Section 31A-23a-113; or

432 (e) voluntarily surrendered.

433 (2) The following may be reinstated within one year after the day on which the license  
434 is inactivated:

435 (a) a lapsed license; or

436 (b) a voluntarily surrendered license.

437 (3) Unless otherwise stated in the written agreement for the voluntary surrender of a  
438 license, submission and acceptance of a voluntary surrender of a license does not prevent the  
439 department from pursuing additional disciplinary or other action authorized under:

440 (a) this title; or

441 (b) rules made under this title in accordance with Title 63G, Chapter 3, Utah  
442 Administrative Rulemaking Act.

443 (4) A line of authority issued under this chapter remains in force until:

444 (a) the qualifications pertaining to a line of authority are no longer met by the licensee;

445 or

446 (b) the supporting license type:

447 (i) is revoked or suspended under Subsection (5); or

448 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of  
449 administrative action.

450 (5) (a) If the commissioner makes a finding under Subsection (5)(b), after an  
451 adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act, the  
452 commissioner may:

453 (i) revoke:

454 (A) a license; or

455 (B) a line of authority;

456 (ii) suspend for a specified period of 12 months or less:

457 (A) a license; or

458 (B) a line of authority; or

459 (iii) limit in whole or in part:

460 (A) a license; or

461 (B) a line of authority.

- 462 (b) The commissioner may take an action described in Subsection (5)(a) if the
- 463 commissioner finds that the licensee:
- 464 (i) is unqualified for a license or line of authority under Sections 31A-23a-104 and
- 465 31A-23a-105;
- 466 (ii) violates:
- 467 (A) an insurance statute;
- 468 (B) a rule that is valid under Subsection 31A-2-201(3); or
- 469 (C) an order that is valid under Subsection 31A-2-201(4);
- 470 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
- 471 delinquency proceedings in any state;
- 472 (iv) fails to pay any final judgment rendered against the person in this state within 60
- 473 days after the day on which the judgment became final;
- 474 (v) fails to meet the same good faith obligations in claims settlement that is required of
- 475 admitted insurers;
- 476 (vi) is affiliated with and under the same general management or interlocking
- 477 directorate or ownership as another insurance producer that transacts business in this state
- 478 without a license;
- 479 (vii) refuses:
- 480 (A) to be examined; or
- 481 (B) to produce its accounts, records, and files for examination;
- 482 (viii) has an officer who refuses to:
- 483 (A) give information with respect to the insurance producer's affairs; or
- 484 (B) perform any other legal obligation as to an examination;
- 485 (ix) provides information in the license application that is:
- 486 (A) incorrect;
- 487 (B) misleading;
- 488 (C) incomplete; or
- 489 (D) materially untrue;
- 490 (x) violates an insurance law, valid rule, or valid order of another state's insurance
- 491 department;
- 492 (xi) obtains or attempts to obtain a license through misrepresentation or fraud;



493 (xii) improperly withholds, misappropriates, or converts any monies or properties  
494 received in the course of doing insurance business;

495 (xiii) intentionally misrepresents the terms of an actual or proposed:  
496 (A) insurance contract;  
497 (B) application for insurance; or  
498 (C) ~~vatical~~ life settlement;

499 (xiv) is convicted of a felony;  
500 (xv) admits or is found to have committed an insurance unfair trade practice or fraud;  
501 (xvi) in the conduct of business in this state or elsewhere:  
502 (A) uses fraudulent, coercive, or dishonest practices; or  
503 (B) demonstrates incompetence, untrustworthiness, or financial irresponsibility;

504 (xvii) has an insurance license, or its equivalent, denied, suspended, or revoked in  
505 another state, province, district, or territory;  
506 (xviii) forges another's name to:  
507 (A) an application for insurance; or  
508 (B) a document related to an insurance transaction;

509 (xix) improperly uses notes or another reference material to complete an examination  
510 for an insurance license;

511 (xx) knowingly accepts insurance business from an individual who is not licensed;  
512 (xxi) fails to comply with an administrative or court order imposing a child support  
513 obligation;

514 (xxii) fails to:  
515 (A) pay state income tax; or  
516 (B) comply with an administrative or court order directing payment of state income  
517 tax;

518 (xxiii) violates or permits others to violate the federal Violent Crime Control and Law  
519 Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034; or  
520 (xxiv) engages in a method or practice in the conduct of business that endangers the  
521 legitimate interests of customers and the public.

522 (c) For purposes of this section, if a license is held by an agency, both the agency itself  
523 and any ~~natural person~~ individual named on the license are considered to be the holders of the

524 license.

525 (d) If [~~a natural person~~] an individual named on the agency license commits an act or  
526 fails to perform a duty that is a ground for suspending, revoking, or limiting the [~~natural~~  
527 ~~person's~~] individual's license, the commissioner may suspend, revoke, or limit the license of:

528 (i) the [~~natural person~~] individual;

529 (ii) the agency, if the agency:

530 (A) is reckless or negligent in its supervision of the [~~natural person~~] individual; or

531 (B) knowingly participates in the act or failure to act that is the ground for suspending,  
532 revoking, or limiting the license; or

533 (iii) (A) the [~~natural person~~] individual; and

534 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).

535 (6) A licensee under this chapter is subject to the penalties for acting as a licensee  
536 without a license if:

537 (a) the licensee's license is:

538 (i) revoked;

539 (ii) suspended;

540 (iii) limited;

541 (iv) surrendered in lieu of administrative action;

542 (v) lapsed; or

543 (vi) voluntarily surrendered; and

544 (b) the licensee:

545 (i) continues to act as a licensee; or

546 (ii) violates the terms of the license limitation.

547 (7) A licensee under this chapter shall immediately report to the commissioner:

548 (a) a revocation, suspension, or limitation of the person's license in another state, the  
549 District of Columbia, or a territory of the United States;

550 (b) the imposition of a disciplinary sanction imposed on that person by another state,  
551 the District of Columbia, or a territory of the United States; or

552 (c) a judgment or injunction entered against that person on the basis of conduct  
553 involving:

554 (i) fraud;

- 555 (ii) deceit;  
556 (iii) misrepresentation; or  
557 (iv) a violation of an insurance law or rule.

558 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a  
559 license in lieu of administrative action may specify a time, not to exceed five years, within  
560 which the former licensee may not apply for a new license.

561 (b) If no time is specified in the order or agreement described in Subsection (8)(a), the  
562 former licensee may not apply for a new license for five years from the day on which the order  
563 or agreement is made without the express approval by the commissioner.

564 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of  
565 a license issued under this part if so ordered by a court.

566 (10) The commissioner shall by rule prescribe the license renewal and reinstatement  
567 procedures in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

568 Section 5. Section **31A-23a-117** is amended to read:

569 **31A-23a-117. Special requirements for life settlement providers and producers.**

570 (1) A [~~viatical~~] life settlement provider or [~~viatical~~] life settlement producer shall be  
571 licensed in accordance with this title, with the additional requirements listed in this section.

572 (2) A [~~viatical~~] life settlement provider shall provide to the commissioner:

573 (a) a detailed plan of operation with the [~~viatical~~] life settlement provider's:

574 (i) initial license application; and

575 (ii) renewal application;

576 (b) a copy of the [~~viatical~~] life settlement provider's most current audited financial  
577 statement; [~~and~~]

578 (c) an antifraud plan that meets the requirements of Section 31A-36-117[-]; and

579 (d) a bond or other form of assurance of financial responsibility as provided under rules  
580 made in accordance with Section 31A-36-119.

581 (3) A [~~viatical~~] life settlement provider shall provide with the [~~viatical~~] life settlement  
582 provider's initial license application information describing the [~~viatical~~] life settlement  
583 provider's [~~viatical~~] life settlement experience, training, and education.

584 (4) A [~~viatical~~] life settlement provider shall provide to the commissioner, within 30  
585 days after a change occurs, new or revised information concerning any of the following:

- 586 (a) officers;
- 587 (b) holders of more than 10% of its stock;
- 588 (c) partners;
- 589 (d) directors;
- 590 (e) members; and
- 591 (f) designated employees.

592 Section 6. Section **31A-27a-104** is amended to read:

593 **31A-27a-104. Persons covered.**

594 (1) This chapter applies to:

- 595 (a) an insurer who:
  - 596 (i) is doing, or has done, an insurance business in this state; and
  - 597 (ii) against whom a claim arising from that business may exist;
- 598 (b) a person subject to examination by the commissioner;
- 599 (c) an insurer who purports to do an insurance business in this state;
- 600 (d) an insurer who has an insured who is resident in this state; and
- 601 (e) in addition to Subsections (1)(a) through (d), a person doing business as follows:
  - 602 (i) under Chapter 6a, Service Contracts;
  - 603 (ii) under Chapter 7, Nonprofit Health Service Insurance Corporations;
  - 604 (iii) under Chapter 8a, Health Discount Program Consumer Protection Act;
  - 605 (iv) under Chapter 9, Insurance Fraternal;
  - 606 (v) under Chapter 11, Motor Clubs;
  - 607 (vi) under Chapter 13, Employee Welfare Funds and Plans;
  - 608 (vii) under Chapter 15, Unauthorized Insurers, Surplus Lines, and Risk Retention
  - 609 Groups;
  - 610 (viii) as a bail bond surety company under Chapter 35, Bail Bond Act;
  - 611 (ix) under Chapter 37, Captive Insurance Companies Act;
  - 612 (x) a title insurance company;
  - 613 (xi) a prepaid health care delivery plan; and
  - 614 (xii) a person not described in Subsections (1)(e)(i) through (xi) that is organized or
  - 615 doing insurance business, or in the process of organizing with the intent to do insurance
  - 616 business in this state.

617 (2) Notwithstanding Sections 31A-1-301 and 31A-27a-102, this chapter does not apply  
618 to a person licensed by the insurance commissioner as one or more of the following in this state  
619 unless the person engages in the business of insurance as an insurer:

- 620 (a) an insurance agency;
- 621 (b) an insurance producer;
- 622 (c) a limited line producer;
- 623 (d) a customer service representative;
- 624 (e) an insurance consultant;
- 625 (f) a managing general agent;
- 626 (g) reinsurance intermediary;
- 627 (h) a title insurance producer;
- 628 (i) a third party administrator;
- 629 (j) an insurance adjustor;
- 630 (k) a ~~[viatical]~~ life settlement provider; or
- 631 (l) a ~~[viatical]~~ life settlement producer.

632 Section 7. Section **31A-36-101** is amended to read:

633 **CHAPTER 36. LIFE SETTLEMENTS ACT**

634 **31A-36-101. Title.**

635 This chapter is known as the ~~["Viatical"]~~ "Life Settlements Act."

636 Section 8. Section **31A-36-102** is amended to read:

637 **31A-36-102. Definitions.**

638 As used in this chapter:

639 (1) (a) "Advertising" means ~~[any]~~ a communication placed before the public to:

640 (i) create an interest in ~~[viatical settlements]~~ a life settlement; or

641 (ii) induce a person ~~[to sell]~~ pursuant to a life settlement to sell, assign, devise, bequest,  
642 or transfer the death benefit or ownership of:

643 (A) a policy; or

644 (B) an interest in a policy ~~[pursuant to a viatical settlement].~~

645 (b) "Advertising" includes the following, if the requirements of Subsection (1)(a) are  
646 met:

647 (i) ~~[any]~~ a written, electronic, or printed communication;

648 (ii) ~~[any]~~ a communication by means of a recorded telephone ~~[messages]~~ message;

649 (iii) ~~[any]~~ a communication transmitted on radio, television, the Internet, or similar  
650 communications media; and

651 (iv) a film ~~[strips]~~ strip, motion ~~[pictures, and videos.]~~ picture, or video.

652 (2) "Business of ~~[viatical]~~ life settlements" includes the following:

653 (a) offering a ~~[viatical]~~ life settlement;

654 (b) soliciting a ~~[viatical]~~ life settlement;

655 (c) negotiating a ~~[viatical]~~ life settlement;

656 (d) procuring a ~~[viatical]~~ life settlement;

657 (e) effectuating a ~~[viatical]~~ life settlement;

658 (f) purchasing a ~~[viatical]~~ life settlement;

659 (g) investing in a ~~[viatical]~~ life settlement;

660 (h) financing a ~~[viatical]~~ life settlement;

661 (i) monitoring a ~~[viatical]~~ life settlement;

662 (j) tracking a ~~[viatical]~~ life settlement;

663 (k) underwriting a ~~[viatical]~~ life settlement;

664 (l) selling a ~~[viatical]~~ life settlement;

665 (m) transferring a ~~[viatical]~~ life settlement;

666 (n) assigning a ~~[viatical]~~ life settlement;

667 (o) pledging a ~~[viatical]~~ life settlement; ~~[and]~~

668 (p) ~~[otherwise]~~ hypothecating a ~~[viatical]~~ life settlement~~[-]; or~~

669 (q) in any other manner acquiring an interest in a policy by means of a life settlement.

670 (3) "Chronically ill" means:

671 (a) being unable to perform at least two activities of daily living, such as eating,

672 toileting, moving from one place to another, bathing, dressing, or continence;

673 (b) requiring substantial supervision for protection from threats to health and safety

674 because of severe cognitive impairment; or

675 (c) having a level of disability similar to that described in Subsection (3)(a).

676 (4) "Depository institution" is as defined in Section 7-1-103.

677 ~~[(4)]~~ (5) (a) "Financing entity" means a person:

678 (i) who has direct ownership in a policy that is the subject of a ~~[viatical]~~ life settlement;

679 (ii) whose principal activity related to a ~~[viatical]~~ life settlement is providing money to  
 680 effect the ~~[viatical]~~ life settlement or the purchase of one or more settled policies; and

681 (iii) who has an agreement in writing with one or more licensed ~~[viatical]~~ life  
 682 settlement providers to finance the acquisition of one or more ~~[viatical]~~ life settlements.

683 (b) "Financing entity" includes, if the requirements of Subsection ~~[(4)]~~ (5)(a) are met,  
 684 the following:

685 (i) an underwriter;

686 (ii) a placement agent;

687 (iii) an enhancer of credit;

688 (iv) a lender;

689 (v) a purchaser of securities; and

690 (vi) a purchaser of a policy from a ~~[viatical]~~ life settlement provider.

691 (c) "Financing entity" does not include:

692 (i) a nonaccredited investor; or

693 (ii) a ~~[viatical]~~ life settlement purchaser.

694 ~~[(5)]~~ (6) "Form" means, in addition to a form as defined in Section 31A-1-301:

695 (a) a ~~[viatical]~~ life settlement;

696 (b) a disclosure to ~~[a viator]~~ an owner;

697 (c) a notice of intent to ~~[viacicate]~~ settle; or

698 (d) a verification of coverage.

699 (7) "Life expectancy" means the mean number of months an individual insured under a  
 700 policy to be settled can be expected to live considering medical records and appropriate  
 701 experiential data.

702 ~~[(11)]~~ (8) (a) ~~["Viatical"]~~ "Life settlement" means a written agreement:

703 (i) between an owner and a life settlement provider; and

704 (ii) for the payment of anything of value, [which] that is less than the expected death  
 705 benefit of the policy, in exchange for the [viator's assignment, sale, transfer, devise, or bequest  
 706 of] owner assigning, selling, transferring, devising, releasing, or bequeathing, at the time of or  
 707 after the exchange, the death benefit or ownership of;

708 (A) any portion of a policy[-]; or

709 (B) a beneficial interest in the policy.

710 (b) [~~"Viatical~~] "Life settlement" includes:

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

712 ~~policy; and]~~

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

714 ~~future, regardless of the date of payment to the viator.]~~

715 [~~(c) "Viatical~~]

716 (i) the transfer for compensation or value of ownership or beneficial interest in a trust

717 or other entity that owns a policy if the trust or other entity is formed or operated for the

718 principal purpose of acquiring one or more policies; or

719 (ii) a premium finance loan made for a policy by a lender to an owner on, before, or

720 after the date of issuance of the policy if the owner:

721 (A) receives on the date of the premium finance loan a guarantee of a future life

722 settlement value of the policy; or

723 (B) agrees on the date of the premium finance loan to sell the policy or any portion of

724 the policy's death benefit on a date following the issuance of the policy.

725 (c) An agreement described in Subsection (8)(a) is a "life settlement" even if it is

726 referred to by a different name, including:

727 (i) a "viatical settlement"; or

728 (ii) a "senior settlement."

729 (d) "Life settlement" does not include:

730 (i) a loan or accelerated death benefit by an insurer pursuant to the terms of a policy;

731 [or]

732 [~~(ii) a loan secured by the cash value of a policy.]~~

733 (ii) loan proceeds that are used solely to pay:

734 (A) premiums for a policy; and

735 (B) the loan costs or other expenses incurred by the lender, including:

736 (I) interest;

737 (II) an arrangement fee;

738 (III) a use fee;

739 (IV) closing costs;

740 (V) attorney fees and expenses;



741 (VI) trustee fees and expenses; and  
742 (VII) third party collateral provider fees and expenses, including fees payable to a letter  
743 of credit issuer;  
744 (iii) (A) a loan made by a licensed lender in which the licensed lender takes an interest  
745 in a policy solely to secure repayment of a loan; or  
746 (B) the transfer of a policy by a lender, if:  
747 (I) the loan is:  
748 (Aa) a loan described in Subsection (8)(d)(iii)(A); or  
749 (Ba) a premium finance loan that is not a life settlement;  
750 (II) the loan is defaulted on;  
751 (III) the policy is transferred; and  
752 (IV) neither the default itself nor the transfer of the policy in connection with the  
753 default is pursuant to an agreement with any other person for the purpose of evading regulation  
754 under this chapter;  
755 (iv) an agreement where all the participants in the agreement:  
756 (A) (I) are closely related to the insured by blood or law; or  
757 (II) have a lawful substantial economic interest in the continued life, health, and bodily  
758 safety of the person insured; and  
759 (B) are trusts established primarily for the benefit of the participants in the agreement;  
760 (v) a designation, consent, or agreement by an insured who is an employee of an  
761 employer in connection with the purchase by the employer, or trust established by the  
762 employer, of life insurance on the life of the employee; or  
763 (vi) a business succession planning arrangement not made for the purpose of evading  
764 regulation under this chapter:  
765 (A) (I) between one or more shareholders in a corporation; or  
766 (II) between a corporation and:  
767 (Aa) one or more of its shareholders; or  
768 (Bb) one or more trusts established by its shareholders;  
769 (B) (I) between one or more partners in a partnership; or  
770 (II) between a partnership and:  
771 (Aa) one or more of its partners; or

- 772 (Bb) one or more trusts established by its partners; or
- 773 (C) (I) between one or more members in a limited liability company; or
- 774 (II) between a limited liability company and:
- 775 (Aa) one or more of its members; or
- 776 (Bb) one or more trusts established by its members.

777 ~~[(12)]~~ (9) (a) ~~["Viatical"]~~ "Life settlement producer" means a person licensed in the state  
 778 as a life insurance producer that on behalf of ~~[a viator]~~ an owner and for consideration offers or  
 779 attempts to negotiate a ~~[viatical]~~ life settlement between the ~~[viator]~~ owner and one or more  
 780 ~~[viatical]~~ life settlement providers.

781 (b) ~~["Viatical"]~~ "Life settlement producer" does not include an attorney licensed to  
 782 practice law in any state, a certified public accountant, or a financial planner accredited by a  
 783 nationally recognized accrediting agency:

- 784 (i) that is retained ~~[by the viator]~~ to represent an owner; and
- 785 (ii) whose compensation is not paid directly or indirectly by:
- 786 (A) a ~~[viatical]~~ life settlement provider; or
- 787 (B) a ~~[viatical]~~ life settlement purchaser.

788 ~~[(13)]~~ (10) (a) ~~["Viatical"]~~ "Life settlement provider" means a person other than ~~[a~~  
 789 ~~viator]~~ an owner that enters into or effectuates a ~~[viatical]~~ life settlement.

790 (b) ~~["Viatical"]~~ "Life settlement provider" does not include:

- 791 (i) a licensed lender that takes an assignment of a policy as security for a loan,  
 792 including a:

- 793 ~~[(A) bank;]~~
- 794 ~~[(B) savings bank;]~~
- 795 ~~[(C) savings and loan association;]~~
- 796 ~~[(D) credit union; or]~~
- 797 ~~[(E) other licensed lender;]~~

- 798 (A) depository institution; or
- 799 (B) lender that makes a premium finance loan that is not described in Subsection

800 (8)(b)(ii):

- 801 (ii) the issuer of a policy ~~[providing accelerated benefits pursuant to the policy];~~
- 802 (iii) an authorized or eligible insurer that provides stop-loss coverage to:

- 803 (A) a ~~[viatical]~~ life settlement provider;
- 804 (B) a ~~[viatical]~~ life settlement purchaser;
- 805 (C) a financing entity;
- 806 (D) a special purpose entity; or
- 807 (E) a related provider trust;
- 808 ~~[(iv) a natural person that enters or effectuates no more than one agreement in a~~
- 809 ~~calendar year for the transfer of policies for a value less than the expected death benefit;]~~
- 810 ~~[(v)]~~ (iv) a financing entity;
- 811 ~~[(vi)]~~ (v) a special purpose entity;
- 812 ~~[(vii)]~~ (vi) a related provider trust;
- 813 ~~[(viii)]~~ (vii) a ~~[viatical]~~ life settlement purchaser; or
- 814 ~~[(ix) any of the following that purchases a viaticated policy from a viatical settlement~~
- 815 ~~provider:]~~
- 816 ~~[(A) an accredited investor as defined in Regulation D, Rule 501, 17 C.F.R. Sec.~~
- 817 ~~230.501; or]~~
- 818 ~~[(B)]~~ (viii) a qualified institutional buyer as defined in Rule 144A, 17 C.F.R. Sec.
- 819 230.144A that purchases a settled policy from a life settlement provider.
- 820 ~~[(14)]~~ (11) (a) ~~["Viatical"]~~ "Life settlement purchaser" means a person that, to derive an
- 821 economic benefit:
- 822 (i) ~~[gives]~~ provides a sum of money as consideration for a policy or an interest in the
- 823 death benefits of a policy; or
- 824 (ii) owns, acquires, or is entitled to a beneficial interest in a trust that:
- 825 (A) owns a ~~[viatical]~~ life settlement ~~[contract]~~; or
- 826 (B) is the beneficiary of a policy that has been or will be the subject of a ~~[viatical]~~ life
- 827 settlement.
- 828 (b) ~~["Viatical"]~~ "Life settlement purchaser" does not include:
- 829 (i) a ~~[viatical]~~ life settlement provider;
- 830 (ii) a ~~[viatical]~~ life settlement producer;
- 831 (iii) an accredited investor as defined in Regulation D, Rule 501, 17 C.F.R. Sec.
- 832 230.501;
- 833 (iv) a qualified institutional buyer as defined in Rule 144A, 17 C.F.R. Sec. 230.144A;

- 834 (v) a financing entity;
- 835 (vi) a special purpose entity; or
- 836 (vii) a related provider trust.
- 837 ~~[(15)]~~ (12) (a) ~~["Viator"]~~ "Owner" means any of the following ~~[that]~~ who resides in this
- 838 state and seeks to enter into a ~~[viatical]~~ life settlement:
- 839 (i) the owner of a policy; or
- 840 (ii) the holder of a certificate of insurance under a policy of group insurance.
- 841 (b) ~~["Viator"]~~ "Owner" is not limited to a person ~~[that]~~ who is terminally ill or
- 842 chronically ill except ~~[where that]~~ when the limitation is expressly provided in this chapter.
- 843 (c) ~~["Viator"]~~ "Owner" does not include:
- 844 (i) a ~~[viatical]~~ life settlement provider;
- 845 (ii) a ~~[viatical]~~ life settlement producer;
- 846 ~~[(iii) an accredited investor as defined in Regulation D, Rule 501, 17 C.F.R. Sec.~~
- 847 ~~230.501;]~~
- 848 ~~[(iv)]~~ (iii) a qualified institutional buyer as defined in Rule 144A, 17 C.F.R. Sec.
- 849 230.144A;
- 850 ~~[(v)]~~ (iv) a financing entity;
- 851 ~~[(vi)]~~ (v) a special purpose entity; or
- 852 ~~[(vii)]~~ (vi) a related provider trust.
- 853 ~~[(6)]~~ (13) "Policy" means:
- 854 (a) an individual or group life insurance policy;
- 855 (b) a group certificate for life insurance; or
- 856 (c) a contract or arrangement of life insurance, whether or not delivered or issued for
- 857 delivery in Utah:
- 858 (i) affecting the rights of a resident of Utah; or
- 859 (ii) bearing a reasonable relation to Utah.
- 860 (14) "Premium finance loan" is a loan made primarily for the purpose of making
- 861 premium payments on a policy if the loan is secured by an interest in the policy.
- 862 ~~[(7)]~~ (15) "Related provider trust" means a trust established by a licensed ~~[viatical]~~ life
- 863 settlement provider or a financing entity solely to hold the ownership of or beneficial interests
- 864 in purchased policies in connection with financing.

865 ~~[(10) "Viaticated"]~~ (16) "Settled policy" means a policy that ~~[has been]~~ is acquired by a  
 866 ~~H→~~ [viatical] life ~~←H~~ settlement provider pursuant to a ~~[viatical] life~~ settlement.

867 ~~[(8)]~~ (17) "Special purpose entity" means an ~~[organization]~~ entity formed by a licensed  
 868 ~~[viatical] life~~ settlement provider solely to enable the life settlement provider to gain access to  
 869 institutional markets for capital.

870 (18) (a) "Stranger-originated life insurance" means an act, practice, or arrangement to  
 871 initiate a policy for the benefit of a third party investor or other person who has no insurable  
 872 interest in the insured resulting in the requirements of Section 31A-21-104 not being met.

873 (b) "Stranger-originated life insurance" includes when:

874 (i) a policy is purchased with resources or guarantees from or through a person who, at  
 875 the time of policy origination, could not lawfully initiate the policy itself; and

876 (ii) at the time of policy origination, there is an agreement, whether oral or written, to  
 877 directly or indirectly transfer to a third party the ownership of a policy, policy benefits, or both.

878 (c) "Stranger-originated life insurance" does not include:

879 (i) a life settlement that complies with:

880 (A) this chapter; and

881 (B) Section 31A-21-104; or

882 (ii) an act, practice, or arrangement described in Subsection (8)(d).

883 ~~[(9)]~~ (19) "Terminally ill" means having a condition that reasonably may be expected  
 884 to result in death within 24 months.

885 Section 9. Section **31A-36-103** is amended to read:

886 **31A-36-103. Law governing.**

887 (1) If there is more than one ~~[viator]~~ owner on a single policy and the ~~[viators]~~ owners  
 888 are residents of different states, the law of the state in which the ~~[viator]~~ owner having the  
 889 largest percentage ownership resides governs the ~~[viatical] life~~ settlement. If the ~~[viators]~~  
 890 owners own equal fractions of a policy, the ~~[viators]~~ owners may agree in writing that the law  
 891 of the state in which one resides governs the ~~[viatical] life~~ settlement.

892 (2) A life settlement that is subject to this chapter may not:

893 (a) require that the life settlement be construed according to the laws of another  
 894 jurisdiction; or

895 (b) deprive a court of competent jurisdiction in Utah to have jurisdiction over an

896 action.

897 Section 10. Section **31A-36-104** is amended to read:

898 **31A-36-104. License requirements, revocation, and denial.**

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

901 (i) a [~~viatical~~] life settlement provider; or

902 (ii) a [~~viatical~~] life settlement producer.

903 (b) [~~Viatical settlements are~~] A life settlement is included within the scope of the life  
904 insurance producer line of authority.

905 (2) (a) To obtain a license as a [~~viatical~~] life settlement provider, an applicant shall:

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

907 (ii) file an application; [~~and~~]

908 (iii) pay the license fee[-]; and

909 (iv) provide evidence of financial responsibility.

910 (b) If an applicant for a life settlement provider license complies with Subsection (2)(a)  
911 and Section 31A-23a-117, the commissioner shall investigate the applicant and issue a life  
912 settlement provider license if the commissioner finds that the applicant is competent and  
913 trustworthy to engage in the business of providing [~~viatical~~] life settlements by experience,  
914 training, or education.

915 (3) In addition to the requirements in Sections 31A-23a-111, 31A-23a-112 and  
916 31A-23a-113, the commissioner may refuse to issue, suspend, revoke, or refuse to renew the  
917 license of a [~~viatical~~] life settlement provider or [~~viatical~~] life settlement producer if the  
918 commissioner finds that:

919 (a) a [~~viatical~~] life settlement provider demonstrates a pattern of unreasonable  
920 payments to [~~viators~~] owners;

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

923 (i) [~~has~~] is, whether or not a judgment of conviction [~~has been~~] is entered by the court,  
924 [~~been~~] found guilty of, or [~~pleaded~~] pleads guilty or nolo contendere to:

925 (A) a felony; or

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

- 927 (ii) ~~[violated any provision of]~~ violates this chapter; or
- 928 (iii) ~~[has been]~~ is subject to a final administrative action by another state or federal
- 929 jurisdiction.
- 930 (c) a ~~[viatical]~~ life settlement provider ~~[has entered]~~ enters into a ~~[viatical]~~ life
- 931 settlement not approved under this chapter;
- 932 (d) a ~~[viatical]~~ life settlement provider ~~[has failed]~~ fails to honor obligations of a
- 933 ~~[viatical]~~ life settlement;
- 934 (e) a ~~[viatical]~~ life settlement provider ~~[has assigned, transferred, or pledged a~~
- 935 ~~viaticated]~~ assigns, transfers, or pledges a settled policy to a person other than:
- 936 (i) a ~~[viatical]~~ life settlement provider licensed under this chapter;
- 937 (ii) a ~~[viatical]~~ life settlement purchaser;
- 938 (iii) an accredited investor as defined in Regulation D, Rule 501, 17 C.F.R. Sec.
- 939 230.501;
- 940 (iv) a qualified institutional buyer as defined in Rule 144A, 17 C.F.R. Sec. 230.144A;
- 941 (v) a financing entity;
- 942 (vi) a special purpose entity; or
- 943 (vii) a related provider trust; ~~[or]~~
- 944 (f) a ~~[viatical]~~ life settlement provider ~~[has failed]~~ fails to maintain a standard set forth
- 945 in Subsection (2)(b)[-];
- 946 (g) an applicant or licensee has a material misrepresentation in an initial or renewal
- 947 application for a license; or
- 948 (h) the licensee engages in bad faith conduct with one or more owners.
- 949 (4) If the commissioner denies a license application or suspends, revokes, or refuses to
- 950 renew the license of a ~~[viatical]~~ life settlement provider or ~~[viatical]~~ life settlement producer,
- 951 the commissioner shall conduct an adjudicative proceeding under Title 63G, Chapter 4,
- 952 Administrative Procedures Act.
- 953 Section 11. Section **31A-36-105** is amended to read:
- 954 **31A-36-105. Filing and use of forms for life settlement and disclosure.**
- 955 (1) A person may not use a form unless the form ~~[has been]~~ is filed with the
- 956 commissioner under Subsection 31A-21-201(1).
- 957 (2) The commissioner may prohibit the use of a form submitted under Subsection (1)

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

959 (3) The commissioner may require the submission of advertising material before its  
960 use.

961 Section 12. Section **31A-36-106** is amended to read:

962 **31A-36-106. Reporting requirements and privacy.**

963 (1) (a) Subject to Subsection (1)(b), ~~[each viatical]~~ a life settlement provider shall file  
964 with the commissioner on or before March 1 of each year an annual ~~[statement]~~ report  
965 containing the information the commissioner prescribes under Section 31A-36-119.

966 (b) Notwithstanding Subsection (1)(a), the commissioner shall only require the  
967 information for those transactions ~~[where the viator is a resident of Utah]~~ that involve an  
968 owner.

969 (2) Except as otherwise allowed or required by law, the following may not disclose the  
970 identity, financial information, or medical information of an insured to any other person:

- 971 (a) a ~~[viatical]~~ life settlement provider;
- 972 (b) a ~~[viatical]~~ life settlement producer;
- 973 (c) a producer of insurance;
- 974 (d) an information bureau;
- 975 (e) a rating agency or company; or
- 976 (f) any other person knowing the identity of an insured.

977 (3) Notwithstanding Subsection (2), a person may disclose the identity of an insured if  
978 the disclosure is:

979 (a) necessary to effect a ~~[viatical]~~ life settlement between ~~[the viator]~~ an owner and a  
980 ~~[viatical]~~ life settlement provider and both the ~~[viator]~~ owner and the insured ~~[have given]~~ give  
981 prior written consent to the disclosure;

982 (b) furnished in response to an investigation or examination by the commissioner or  
983 another governmental officer or agency;

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

985 (d) a term of or condition to the transfer of a policy by one ~~[viatical]~~ life settlement  
986 provider to another ~~[viatical]~~ life settlement provider;

987 (e) necessary to permit a financing entity, related provider trust, or special purpose  
988 entity to finance the purchase of a policy by a ~~[viatical]~~ life settlement provider and the insured



989 ~~[has given]~~ gives prior written consent to the disclosure;

990 (f) necessary to allow the ~~[viatical]~~ life settlement provider or ~~[viatical]~~ life settlement  
 991 producer or the ~~[viatical]~~ life settlement provider's or ~~[viatical]~~ life settlement producer's  
 992 authorized representatives to make ~~[contacts]~~ a contact to determine the health status of ~~[the~~  
 993 ~~viator]~~ an ~~H→~~ [owner] insured ~~←H~~ ; or

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

995 Section 13. Section **31A-36-107** is amended to read:

996 **31A-36-107. Examinations and retention of records.**

997 (1) The commissioner may conduct an examination of a ~~[viatical]~~ life settlement  
 998 provider or ~~[viatical]~~ life settlement producer in accordance with Sections 31A-2-203,  
 999 31A-2-203.5, 31A-2-204, and 31A-2-205.

1000 (2) A ~~[viatical]~~ life settlement provider or ~~[viatical]~~ life settlement producer shall retain  
 1001 for five years copies of ~~[aH]~~:

1002 (a) the following records, whether proposed, offered, or executed, from the later of the  
 1003 date of the proposal, offer, or execution:

1004 (i) contracts;

1005 (ii) purchase agreements;

1006 (iii) underwriting documents;

1007 (iv) policy forms; and

1008 (v) applications;

1009 (b) checks, drafts, and other evidence or documentation relating to the payment,  
 1010 transfer, or release of money, from the date of the transaction; and

1011 (c) records and documents related to the requirements of this chapter.

1012 (3) This section does not relieve a person of the obligation to produce a document  
 1013 described in Subsection (2) to the commissioner after the expiration of the relevant period if  
 1014 the person has retained the document.

1015 (4) ~~[Records]~~ A record required by this section to be retained:

1016 (a) must be legible and complete~~[-They]~~; and

1017 (b) may be retained in any form or by any process that accurately reproduces or is a  
 1018 durable medium for the reproduction of the record.

1019 (5) An examiner may not be appointed by the commissioner if the examiner, either

1020 directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a  
1021 pecuniary interest in ~~[any]~~ a person subject to examination under this chapter. This Subsection  
1022 (5) does not automatically preclude an examiner from being:

1023 (a) ~~[a viator]~~ an owner;

1024 (b) an insured in a ~~[viaticated]~~ settled policy; or

1025 (c) a beneficiary in a policy that is proposed to be ~~[viaticated]~~ settled.

1026 (6) (a) ~~[Examinees]~~ An examinee under this section shall reimburse the cost of ~~[any]~~  
1027 an examination to the department consistent with Section 31A-2-205.

1028 (b) Notwithstanding Subsection (6)(a), an individual ~~[viaticat]~~ life settlement producer  
1029 is not subject to Section 31A-2-205.

1030 Section 14. Section **31A-36-108** is amended to read:

1031 **31A-36-108. Required disclosures.**

1032 (1) With ~~[each]~~ an application for a ~~[viaticat]~~ life settlement, a ~~[viaticat]~~ life settlement  
1033 provider or ~~[viaticat]~~ life settlement producer shall furnish to the ~~[viator any]~~ owner the  
1034 disclosures the commissioner may require under Section 31A-36-119, in a separate document  
1035 signed by the ~~[viator]~~ owner and the ~~[viaticat]~~ life settlement provider or ~~[viaticat]~~ life  
1036 settlement producer, no later than the time the application for the ~~[viaticat]~~ life settlement is  
1037 signed by all the ~~[parties]~~ participants in the life settlement.

1038 (2) A ~~[viaticat]~~ life settlement provider shall furnish to the ~~[viator any]~~ owner the  
1039 disclosures the commissioner may require under Section 31A-36-119, conspicuously displayed  
1040 in the ~~[viaticat]~~ life settlement or in a separate document signed by the ~~[viator]~~ owner and the  
1041 ~~[viaticat]~~ life settlement provider, no later than the time the ~~[viaticat]~~ life settlement is signed  
1042 by all ~~[parties]~~ participants in the life settlement.

1043 Section 15. Section **31A-36-109** is amended to read:

1044 **31A-36-109. General requirements.**

1045 (1) If a ~~[viaticat]~~ life settlement provider transfers ownership or changes the beneficiary  
1046 of a ~~[viaticated]~~ settled policy, the ~~[viaticat]~~ life settlement provider shall inform the insured of  
1047 the transfer or change within 20 calendar days.

1048 (2) A ~~[viaticat]~~ life settlement provider that enters a ~~[viaticat]~~ life settlement shall first  
1049 obtain:

1050 (a) if the ~~[viator]~~ owner is the insured, a written statement from a licensed attending

1051 physician that the ~~[viator]~~ owner is of sound mind and under no constraint or undue influence  
1052 to enter a ~~[viatical]~~ life settlement;

1053 (b) a witnessed document in which the ~~[viator]~~ owner represents that:

1054 (i) the ~~[viator]~~ owner has a full and complete understanding of the ~~[viatical]~~ life  
1055 settlement and the benefits of the policy;

1056 (ii) the ~~[viator]~~ owner has entered the ~~[viatical]~~ life settlement freely and voluntarily;  
1057 and

1058 (iii) if applicable, the insured is terminally ill or chronically ill and that the illness was  
1059 diagnosed after the policy was issued; and

1060 (c) a document in which the insured consents to the release of the insured's medical  
1061 records to:

1062 (i) a ~~[viatical]~~ life settlement provider;

1063 (ii) a ~~[viatical]~~ life settlement producer; and

1064 (iii) the insurer that issued the policy covering the insured.

1065 (3) Within 20 calendar days after ~~[a viator]~~ an owner executes documents necessary to  
1066 transfer rights under a policy, or enters into an agreement in any form, express or implied, to  
1067 ~~[viacicate]~~ settle the policy, the ~~[viatical]~~ life settlement provider shall give written notice to the  
1068 issuer of the policy that the policy has or will become ~~[viaticated]~~ settled. The notice must be  
1069 accompanied by a copy of the documents required by Subsection (4).

1070 (4) The ~~[viatical]~~ life settlement provider shall deliver a copy of the following to the  
1071 insurer that issued the policy that is the subject of the ~~[viatical]~~ life settlement:

1072 (a) the medical release required under Subsection (2)(c);

1073 (b) a copy of the ~~[viator's]~~ owner's application for the ~~[viatical]~~ life settlement; and

1074 (c) the notice required under Subsection (3).

1075 (5) ~~[The]~~ (a) An insurer shall complete and return a request for verification of  
1076 coverage not later than 30 calendar days after the ~~[date]~~ day on which the request is received.  
1077 In its response, the insurer shall indicate whether the insurer intends to pursue an investigation  
1078 regarding the validity of the insurance contract.

1079 (b) An insurer may not require that a person making request under Subsection (5)(a)  
1080 provide the insurer additional information in order for the insurer to comply with Subsection  
1081 (5)(a), if the person provides the insurer:

1082 (i) a request for verification of coverage made on an original, facsimile, or electronic  
1083 copy of a verification of coverage for a policy document adopted by the commissioner by rule  
1084 made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

1085 (ii) an authorization that accompanies the verification described in Subsection (5)(b)(i)  
1086 signed by the owner.

1087 (6) ~~[All medical]~~ Medical information solicited or obtained by a ~~[viatical]~~ life  
1088 settlement provider or ~~[viatical]~~ life settlement producer is subject to:

1089 (a) other laws of this state relating to the confidentiality of the information; and

1090 (b) a rule relating to privacy of medical or personal information promulgated by the  
1091 commissioner under Title V, Section 505 of the Gramm-Leach-Bliley Act of 1999, 15 U.S.C.  
1092 Sec. 6805.

1093 (7) (a) (i) A ~~[viatical]~~ life settlement entered into in this state must reserve to the  
1094 ~~[viator]~~ owner an unconditional right to ~~[terminate]~~ rescind the ~~[viatical]~~ life settlement within  
1095 ~~[+5]~~ the rescission period provided for in this Subsection (7).

1096 (ii) The rescission period ends 15 calendar days after [the viator] the day on which the  
1097 owner receives the proceeds of the [viatical] life settlement.

1098 (iii) Rescission by an owner may be conditioned on the owner giving notice and  
1099 repaying to the life settlement provider within the rescission period all proceeds of the life  
1100 settlement and any premium, loan, or loan interest paid by or on behalf of the life settlement  
1101 provider in connection with or as a consequence of the life settlement.

1102 (b) If the insured dies during ~~[that]~~ the rescission period, the ~~[viatical]~~ life settlement is  
1103 ~~[terminated and all]~~ considered to be rescinded if the proceeds, premiums, loans, and loan  
1104 interest [that have been] paid by the [viatical] life settlement provider or [viatical] life  
1105 settlement purchaser [must be repaid to the viatical settlement provider or viatical settlement  
1106 purchaser] are repaid within 60 calendar days of the day on which the insured dies.

1107 (8) (a) Contact with an insured to determine the health status of the insured after a  
1108 ~~[viatical]~~ life settlement may be made only by a ~~[viatical]~~ life settlement provider or ~~[viatical]~~  
1109 life settlement producer that is licensed in this state, or its authorized representative, and no  
1110 more than:

1111 (i) once every three months if the insured has a life expectancy of one year or more; or

1112 (ii) once every month if the insured has a life expectancy of less than one year.

1113 (b) ~~[The viatical]~~ A life settlement provider or ~~[viatical]~~ life settlement producer shall  
1114 explain the procedure for the contacts allowed under this Subsection (8) to the ~~[viator]~~ owner  
1115 when the application for the ~~[viatical]~~ life settlement is signed by all ~~[parties]~~ participants in  
1116 the life settlement.

1117 (c) The limitations of this Subsection (8) do not apply to contacts for purposes other  
1118 than determining health status.

1119 (d) A ~~[viatical]~~ life settlement provider or ~~[viatical]~~ life settlement producer is  
1120 responsible for the acts of its authorized representative in violation of this Subsection (8).

1121 (9) The trustee of a related provider trust must agree in writing with the ~~[viatical]~~ life  
1122 settlement provider that:

1123 (a) the ~~[viatical]~~ life settlement provider is responsible for ensuring compliance with all  
1124 statutory and regulatory requirements; and

1125 (b) the trustee will make all records and files related to ~~[viatical]~~ life settlements  
1126 available to the commissioner as if those records and files were maintained directly by the  
1127 ~~[viatical]~~ life settlement provider.

1128 (10) Regardless of the method of compensation, a ~~[viatical]~~ life settlement producer:

1129 (a) represents only the ~~[viator]~~ owner; and

1130 (b) owes a fiduciary duty to the ~~[viator]~~ owner to act according to the ~~[viator's]~~ owner's  
1131 instructions and in the best interest of the ~~[viator:]~~ owner.

1132 Section 16. Section **31A-36-110** is amended to read:

1133 **31A-36-110. Payment and document requirements.**

1134 (1) (a) A ~~[viatical]~~ life settlement provider shall instruct the ~~[viator]~~ owner to send the  
1135 executed documents required to effect the change in ownership or assignment or change of  
1136 beneficiary of the affected policy to a designated independent escrow agent.

1137 (b) Within three business days after the day on which the escrow agent receives the  
1138 documents, or within three business days after the day on which the ~~[viatical]~~ life settlement  
1139 provider receives the documents if by mistake they are sent directly to the ~~[viatical]~~ life  
1140 settlement provider, the ~~[escrow agent]~~ life settlement provider shall deposit the proceeds of  
1141 the life settlement into an escrow or trust account ~~[maintained in a regulated financial~~  
1142 ~~institution whose deposits are insured by a federal deposit insurer]~~ of the escrow agent in a  
1143 federally insured depository institution.

1144 (2) (a) Upon completion of the requirements of Subsection (1), the escrow agent shall  
 1145 deliver ~~[to the viatical settlement provider]~~ the original documents executed by the ~~[viator.]~~  
 1146 owner to:

1147 (i) the life settlement provider; or

1148 (ii) a related provider trust or other designated representative of the life settlement  
 1149 provider.

1150 (b) Upon the ~~[viatical]~~ life settlement provider's receipt from the insurer of an  
 1151 acknowledgment of the change in ownership or assignment or change of beneficiary of the  
 1152 affected policy, the ~~[viatical]~~ life settlement provider shall instruct the escrow agent to pay the  
 1153 proceeds of the life settlement to the ~~[viator]~~ owner.

1154 (3) Payment to the ~~[viator]~~ owner must be made within three business days after the  
 1155 day on which the ~~[viatical]~~ life settlement provider receives the acknowledgment from the  
 1156 insurer. Failure to make the payment within that time makes the ~~[viatical]~~ life settlement  
 1157 voidable by the ~~[viator]~~ owner for lack of consideration until payment is tendered to and  
 1158 accepted by the ~~[viator]~~ owner.

1159 Section 17. Section **31A-36-111** is amended to read:

1160 **31A-36-111. Prohibited acts.**

1161 (1) ~~[A viator]~~ An owner may not enter into a ~~[viatical]~~ life settlement at any time  
 1162 before the application or issuance of a policy.

1163 (2) An owner may not enter into a life settlement within two years after the date of  
 1164 issuance of the policy to which the life settlement relates unless the ~~[viator]~~ owner certifies to  
 1165 the ~~[viatical]~~ life settlement provider that one of the following is satisfied:

1166 (a) the policy was issued upon the ~~[viator's]~~ owner's exercise of conversion rights  
 1167 arising out of a group or individual policy~~[, provided]~~ if:

1168 (i) the total time covered under the conversion policy plus the time covered under the  
 1169 prior policy is at least 24 months; and

1170 (ii) the time covered under a group policy, calculated without regard to any change in  
 1171 insurance carriers, ~~[has been]~~ is continuous and under the same group sponsorship; or

1172 ~~[(b) the viator is a charitable organization exempt from taxation under 26 U.S.C. Sec.~~  
 1173 ~~501(c)(3);]~~

1174 ~~[(c) the viator is not a natural person; or]~~

1175           ~~[(d)]~~ (b) the ~~[viator]~~ owner submits to the ~~[viatical]~~ life settlement provider  
1176 independent evidence that within the two-year period:

1177           (i) the ~~[viator]~~ owner or insured is terminally ill;

1178           (ii) the ~~[viator]~~ owner or insured is chronically ill;

1179           (iii) the spouse of the ~~[viator has died]~~ owner dies;

1180           (iv) the ~~[viator has divorced the viator's]~~ owner divorces the owner's spouse;

1181           (v) the ~~[viator has retired]~~ owner retires from full-time employment;

1182           (vi) the ~~[viator has become]~~ owner becomes physically or mentally disabled and a  
1183 physician determines that the disability precludes the ~~[viator]~~ owner from maintaining full-time  
1184 employment;

1185           ~~[(vii) (A) the viator was the employer of the insured when the policy or certificate was~~  
1186 ~~issued; and]~~

1187           ~~[(B) the employment relationship has terminated;]~~

1188           ~~[(viii)]~~ (vii) a final judgment or order ~~[has been]~~ is entered or issued by a court of  
1189 competent jurisdiction, on the application of a creditor of the ~~[viator]~~ owner:

1190           (A) adjudging the ~~[viator]~~ owner bankrupt or insolvent;

1191           (B) approving a petition for reorganization of the ~~[viator]~~ owner; or

1192           (C) appointing a receiver, trustee, or liquidator for all or a substantial part of the  
1193 ~~[viator's]~~ owner's assets;

1194           ~~[(ix) the viator]~~ (viii) the owner experiences a significant decrease in income that is  
1195 unexpected and impairs the ~~[viator's]~~ owner's reasonable ability to pay the policy premium; or

1196           ~~[(x) the viator disposes of the viator's ownership in a closely held corporation; or]~~

1197           ~~[(xi) the insured disposes of the insured's ownership in a closely held corporation.]~~

1198           ~~[(2) When the viatical settlement provider submits a request to the insurer to verify~~  
1199 ~~coverage, the viatical settlement provider shall submit to the insurer the following:]~~

1200           ~~[(a) copies of the independent evidence required under Subsection (1)(d); and]~~

1201           ~~[(b) documents required under Subsection 31A-36-109(2).]~~

1202           ~~[(3) If a viatical settlement provider submits to an insurer a copy of the owner's or~~  
1203 ~~insured's certification that one of the events described in Subsection (1)(d) has occurred, the~~  
1204 ~~certification conclusively establishes that the viatical settlement satisfies the requirements of~~  
1205 ~~this section, and the insurer shall timely respond to the viatical settlement provider's request to~~

1206 effect a transfer of the policy.]

1207 (ix) the owner or insured disposes of ownership interests in a closely held corporation,  
1208 pursuant to the terms of a buyout or other similar agreement in effect at the time the policy is  
1209 initially issued.

1210 (3) An insurer may not, as a condition of responding to a request for verification of  
1211 coverage or effecting the transfer of a policy pursuant to a life settlement, require any of the  
1212 following to sign a form, disclosure, consent, or waiver that is not filed with the commissioner  
1213 for use in connection with a life settlement in this state:

1214 (a) an owner;

1215 (b) an insured;

1216 (c) a life settlement provider; or

1217 (d) a life settlement producer.

1218 (4) (a) Upon receipt of a properly completed request for change of ownership or  
1219 beneficiary of a policy, an insurer shall respond in writing within 30 calendar days of the day of  
1220 receipt with written acknowledgment:

1221 (i) confirming that the change is effective; or

1222 (ii) specifying the reasons why the requested change cannot be processed.

1223 (b) An insurer may not:

1224 (i) unreasonably delay effecting a change of ownership or beneficiary; and

1225 (ii) otherwise seek to interfere with a life settlement lawfully entered into in this state.

1226 (5) A person may not issue, solicit, or market the purchase of a policy for the primary  
1227 purpose of or with a primary emphasis on settling the policy.

1228 (6) (a) Unless disclosed to an owner before the execution of a life settlement by the  
1229 owner, a life settlement producer may not knowingly with respect to the life settlement solicit  
1230 an offer from, effectuate the life settlement with, or make a sale to any of the following that is  
1231 controlling, controlled by, or under common control with the life settlement producer:

1232 (i) a life settlement provider;

1233 (ii) a life settlement purchaser;

1234 (iii) a financing entity; or

1235 (iv) a related provider trust.

1236 (b) Unless disclosed to an owner before the execution of a life settlement by the owner,



1237 with respect to the life settlement, a life settlement provider may not knowingly enter into the  
1238 life settlement with the owner, if, in connection with the life settlement, anything of value will  
1239 be paid to a life settlement producer that is controlling, controlled by, or under common control  
1240 with:

1241 (i) the life settlement provider;

1242 (ii) the life settlement purchaser;

1243 (iii) a financing entity; or

1244 (iv) a related provider trust.

1245 Section 18. Section **31A-36-112** is amended to read:

1246 **31A-36-112. Advertising regulations.**

1247 (1) (a) [~~Each viatical~~] A life settlement provider or [~~viatical~~] life settlement producer  
1248 shall establish and continuously maintain a system of control over the content, form, and  
1249 method of dissemination of [~~all~~] advertisements of the [~~viatical~~] life settlement provider's or  
1250 [~~viatical~~] life settlement producer's contracts and services.

1251 (b) [~~Each~~] An advertisement is the responsibility of the [~~viatical~~] life settlement  
1252 provider or [~~viatical~~] life settlement producer as well as the person that creates or presents the  
1253 advertisement.

1254 (c) A system of control must include at least annual notification to persons authorized  
1255 by the [~~viatical~~] life settlement provider or [~~viatical~~] life settlement producer that disseminate  
1256 advertisements of the requirements and procedures for approval before use of any  
1257 advertisements not furnished by the [~~viatical~~] life settlement provider or [~~viatical~~] life  
1258 settlement producer.

1259 (2) An advertisement must be truthful and not misleading in fact or by implication, as  
1260 determined by the commissioner from the overall impression it may reasonably be expected to  
1261 create upon a person of average education or intelligence in the segment of the public to which  
1262 it is directed.

1263 (3) [~~False~~] A false or misleading [~~statements are~~] statement is not remedied by:

1264 (a) making a [~~viatical~~] life settlement available for inspection before it is  
1265 consummated; or

1266 (b) offering to refund payment if the [~~viator~~] owner is not satisfied within the period  
1267 prescribed in Subsection 31A-36-109(7).

1268 Section 19. Section **31A-36-113** is amended to read:

1269 **31A-36-113. Fraud.**

1270 (1) As used in this section, "recklessly" means engaging in conduct:

1271 (a) [~~where~~] when a person knows or should have known of a substantial likelihood of  
1272 the existence of the relevant facts or risks; and

1273 (b) involving a significant deviation from acceptable standards of conduct.

1274 (2) A person may not, knowingly or with intent to defraud, to deprive another of  
1275 property or for pecuniary gain, do or permit its employees or agents to engage in any of the  
1276 following acts:

1277 (a) (i) present, cause to be presented or prepare with knowledge or belief that it will be  
1278 presented, false information to or by a [~~viatical~~] life settlement provider or [~~viatical~~] life  
1279 settlement producer, a financing entity, an insurer, a provider of insurance or any other person,  
1280 or to conceal information, as part of, in support of or concerning a fact material to:

1281 [(i)] (A) an application for the issuance of a policy or [~~viatical~~] life settlement;

1282 [(ii)] (B) the underwriting of a policy or [~~viatical~~] life settlement;

1283 [(iii)] (C) a claim for payment or other benefit under a policy or [~~viatical~~] life  
1284 settlement;

1285 [(iv)] (D) a premium paid on a policy;

1286 [(v)] (E) a payment or change of beneficiary or ownership pursuant to a policy or  
1287 [~~viatical~~] life settlement;

1288 [(vi)] (F) the reinstatement or conversion of a policy;

1289 [(vii)] (G) the solicitation, offer, effectuation, or sale of a policy or [~~viatical~~] life  
1290 settlement;

1291 [(viii)] (H) the issuance of written evidence of a policy or [~~viatical~~] life settlement; or

1292 [(ix)] (I) a financing transaction;

1293 (ii) employ a device, scheme, or artifice to defraud in the business of life settlements;

1294 (iii) enter into any plan or practice that involves stranger-originated life insurance; or

1295 (iv) employ a device, scheme, or artifice resulting in a violation of Section 31A-21-104  
1296 in the solicitation, application, or issuance of a policy that is the subject of a life settlement;

1297 (b) in furtherance of a fraud or to prevent detection of a fraud:

1298 (i) remove, conceal, alter, destroy, or sequester from the commissioner assets or

1299 records of a person engaged in the business of [~~viatical~~] life settlements;

1300 (ii) misrepresent or conceal the financial condition of a licensee, a financing entity, an  
1301 insurer, or other person;

1302 (iii) transact the business of [~~viatical~~] life settlements in violation of this chapter; or

1303 (iv) file with the commissioner or analogous officer of another jurisdiction a document  
1304 containing false information or otherwise conceal information about a material fact from the  
1305 commissioner or analogous officer;

1306 (c) embezzle, steal, misappropriate, or convert money, premiums, credits, or other  
1307 property of a [~~viatical~~] life settlement provider, [~~a viator~~] an owner, an insurer, an insured, an  
1308 owner of a policy, or other person engaged in the business of [~~viatical~~] life settlements or  
1309 insurance;

1310 (d) recklessly enter into, negotiate, or otherwise deal in a [~~viatical~~] life settlement, the  
1311 subject of which is a policy obtained [~~where the viator or the viator's agent intended~~] when one  
1312 or more persons intend to defraud the policy's issuer, the life settlement provider, or the owner  
1313 by:

1314 (i) presenting false information concerning [~~any~~] a fact material to the policy; or

1315 (ii) concealing, to mislead another, information concerning [~~any~~] a fact material to the  
1316 policy; [~~or~~]

1317 (e) facilitate a change of the state or jurisdiction of ownership of a policy or the state of  
1318 residency of an owner to a state or jurisdiction that does not have a law similar to this chapter  
1319 for the express purpose of evading or avoiding this chapter; or

1320 [~~(e)~~] (f) attempt to commit, assist, aid, abet, or conspire to commit an act or omission  
1321 described in this Subsection (2).

1322 (3) A person may not knowingly or intentionally interfere with the enforcement of this  
1323 chapter or an investigation of a possible violation of this chapter.

1324 (4) A person engaged in the business of [~~viatical~~] life settlements may not knowingly  
1325 or intentionally permit [~~any~~] a person convicted of a felony involving dishonesty or breach of  
1326 trust to participate in the business of [~~viatical~~] life settlements.

1327 (5) (a) An application or contract for a [~~viatical~~] life settlement, however transmitted,  
1328 shall contain the following or a substantially similar statement: "A person that knowingly  
1329 presents false information in an application for insurance or a [~~viatical~~] life settlement is guilty

1330 of a crime and may be subject to fines and confinement in prison."

1331 (b) The lack of the statement described in Subsection (5)(a) is not a defense in a  
1332 prosecution for violation of this section.

1333 Section 20. Section **31A-36-114** is amended to read:

1334 **31A-36-114. Reporting of fraud and immunity.**

1335 (1) A person engaged in the business of [~~viatical~~] life settlements that knows or  
1336 reasonably [~~believes~~] suspects that a violation of Section 31A-36-113 is being, has been, or  
1337 will be committed shall provide to the commissioner the information required by, and in a  
1338 manner prescribed by, the commissioner.

1339 (2) [~~Any other~~] A person not engaged in the business of life settlements that knows or  
1340 reasonably believes that a violation of Section 31A-36-113 is being, has been, or will be  
1341 committed may furnish to the commissioner the information required by, and in a manner  
1342 prescribed by, the commissioner.

1343 (3) Except as provided in Subsection (4), a person furnishing information of the kind  
1344 described in this section is immune from liability and civil action if the information is  
1345 furnished to or received from:

1346 (a) the commissioner or the commissioner's employees, agents, or representatives;

1347 (b) federal, state, or local law enforcement or regulatory officials or their employees,  
1348 agents, or representatives;

1349 (c) another person involved in the prevention or detection of violations of Section  
1350 31A-36-113 or that person's employees, agents, or representatives;

1351 (d) the following organizations or their employees, agents, or representatives:

1352 (i) the National Association of Insurance Commissioners;

1353 (ii) the [~~National Association of Securities Dealers~~] Financial Industry Regulatory  
1354 Authority;

1355 (iii) the North American Securities Administrators Association; or

1356 (iv) another regulatory body overseeing life insurance, [~~viatical~~] life settlements,  
1357 securities, or investment fraud; or

1358 (e) the insurer that issued the policy concerned in the information.

1359 (4) The immunity provided in Subsection (3) does not extend to a statement made with  
1360 actual malice. In an action brought against a person for filing a report or furnishing other

1361 information concerning a violation of this section, the plaintiff must plead specifically that the  
1362 defendant acted with actual malice.

1363 (5) A person furnishing information as identified in Subsection (3) [~~shall be~~] is entitled  
1364 to an award of [~~attorney's~~] attorney fees and costs if:

1365 (a) the person is the prevailing party in a civil cause of action for libel, slander, or [~~any~~  
1366 ~~other~~] another relevant tort arising out of activities in carrying out the provisions of this  
1367 chapter; and

1368 (b) the action did not have a reasonable basis in law or fact at the time it was initiated.

1369 (6) This section does not supplant or modify any other privilege or immunity at  
1370 common law or under another statute.

1371 Section 21. Section **31A-36-115** is amended to read:

1372 **31A-36-115. Confidentiality.**

1373 (1) The following shall be classified as protected records under Title 63G, Chapter 2,  
1374 Government Records Access and Management Act:

1375 (a) a document or information furnished pursuant to Section 31A-36-114; and

1376 (b) a document or information obtained by the commissioner in an investigation of a  
1377 violation of Section 31A-36-113.

1378 (2) Subsection (1) does not prohibit the commissioner from disclosing documents or  
1379 evidence so furnished or obtained:

1380 (a) in an administrative or judicial proceeding to enforce laws administered by the  
1381 commissioner;

1382 (b) to federal, state, or local law enforcement or regulatory agencies;

1383 (c) to an organization established to detect and prevent fraudulent [~~viatical~~] life  
1384 settlement acts;

1385 (d) to the National Association of Insurance Commissioners; or

1386 (e) to a person engaged in the business of [~~viatical~~] life settlements that is aggrieved by  
1387 the violation.

1388 (3) Disclosure of a document or evidence under Subsection (2) does not abrogate or  
1389 modify the privilege granted in Subsection (1).

1390 Section 22. Section **31A-36-116** is amended to read:

1391 **31A-36-116. Other law enforcement or regulatory authority.**

1392 This chapter does not:

1393 (1) preempt the authority or relieve the duty of other law enforcement or regulatory  
1394 agencies to investigate, examine, and prosecute suspected violations of law;

1395 (2) prevent or prohibit a person from disclosing voluntarily information concerning  
1396 [~~vatical~~] life settlement fraud to a law enforcement or regulatory agency other than the  
1397 insurance department; or

1398 (3) limit the powers granted elsewhere by law to the commissioner or an insurance  
1399 fraud unit to investigate and examine possible violations of law and to take appropriate action.

1400 Section 23. Section **31A-36-117** is amended to read:

1401 **31A-36-117. Antifraud initiatives.**

1402 (1) The following shall establish and maintain antifraud initiatives which are  
1403 reasonably calculated to prevent, detect, and assist in the prosecution of violations of Section  
1404 31A-36-113:

1405 (a) a [~~vatical~~] life settlement provider; and

1406 (b) an agency that is a [~~vatical~~] life settlement producer.

1407 (2) The commissioner may order, or a licensee may request and the commissioner may  
1408 approve, modifications of the measures otherwise required under this section, more or less  
1409 restrictive than those measures, as necessary to protect against fraud.

1410 (3) Antifraud initiatives shall include:

1411 (a) fraud investigators, that may be either:

1412 (i) employees of a [~~vatical~~] life settlement provider or [~~vatical~~] life settlement  
1413 producer; or

1414 (ii) independent contractors;

1415 (b) an antifraud plan submitted to the commissioner, which shall include:

1416 (i) a description of the procedures for:

1417 (A) detecting and investigating possible violations of Section 31A-36-113; and

1418 (B) resolving material inconsistencies between medical records and applications for  
1419 insurance;

1420 (ii) a description of the procedures for reporting possible violations to the  
1421 commissioner;

1422 (iii) a description of the plan for educating and training underwriters and other

1423 personnel against fraud; and

1424 (iv) a description or chart of the organizational arrangement of the personnel  
1425 responsible for detecting and investigating possible violations of Section 31A-36-113 and for  
1426 resolving material inconsistencies between medical records and applications for insurance.

1427 (4) A plan submitted to the commissioner shall be classified as a protected record  
1428 under Title 63G, Chapter 2, Government Records Access and Management Act.

1429 Section 24. Section **31A-36-118** is amended to read:

1430 **31A-36-118. Criminal penalties and restitution.**

1431 (1) ~~[Persons]~~ A person subject to this chapter ~~[are]~~ is subject to:

1432 (a) ~~[the enforcement penalties and procedures of]~~ Section 31A-2-308 for an  
1433 administrative ~~[violations]~~ violation of this title;

1434 (b) prosecution under Section 76-6-412 for a criminal ~~[activities]~~ activity involving  
1435 ~~[viatical settlements]~~ a life settlement; or

1436 (c) prosecution under Section 31A-31-103 for insurance fraud involving ~~[viatical~~  
1437 ~~settlements]~~ a life settlement.

1438 (2) A person found to be in violation of this chapter may:

1439 (a) be ordered to pay restitution to persons aggrieved by the violation;

1440 (b) be ordered to pay a forfeiture; ~~[or]~~

1441 (c) be imprisoned if found guilty of ~~[any]~~ a criminal law by a court of competent  
1442 jurisdiction~~[-]; and~~

1443 (d) be subject to a combination of the penalties described in this Subsection (2).

1444 (3) Except for a fraudulent act committed by an owner, this section does not apply to  
1445 the owner.

1446 Section 25. Section **31A-36-119** is amended to read:

1447 **31A-36-119. Authority to make rules.**

1448 In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the  
1449 commissioner may adopt rules to:

1450 (1) establish the requirements for the annual ~~[statement]~~ report required under Section  
1451 31A-36-106;

1452 (2) establish standards for evaluating the reasonableness of payments under ~~[viatical]~~  
1453 life settlements;

- 1454 (3) establish appropriate licensing requirements, fees, and standards for continued  
1455 licensure for:
- 1456 (a) a ~~[viatical]~~ life settlement provider; and  
1457 (b) a ~~[viatical]~~ life settlement producer;
- 1458 (4) ~~[require]~~ (a) determine the amount and conditions of a bond or [otherwise ensure]  
1459 other assurance of financial [accountability of: (a) a viatical] responsibility required under  
1460 Section 31A-23a-117 for a life settlement provider; and
- 1461 (b) ~~[a viatical]~~ require, determine the amount, or determine the conditions of an  
1462 assurance of financial responsibility for a life settlement producer, including a bond or an  
1463 errors and omissions insurance policy;
- 1464 (5) govern the relationship of insurers with a ~~[viatical]~~ life settlement provider or  
1465 ~~[viatical]~~ life settlement producer during the ~~[viatication]~~ settlement of a policy;
- 1466 (6) determine the specific disclosures required under Section 31A-36-108;
- 1467 (7) determine whether advertising for ~~[viatical]~~ life settlements violates Section  
1468 31A-36-112;
- 1469 (8) determine the information to be provided to the commissioner under Section  
1470 31A-36-114 and the manner of providing the information;
- 1471 (9) determine additional acts or practices that are prohibited under Section  
1472 31A-36-111;
- 1473 (10) establish payment requirements for the payments in Section 31A-36-110; and  
1474 (11) establish the filing procedure for the forms listed in Subsection 31A-36-105(1).  
1475 Section 26. Section **61-1-13** is amended to read:
- 1476 **61-1-13. Definitions.**
- 1477 (1) As used in this chapter:
- 1478 (a) "Affiliate" means a person that, directly or indirectly, through one or more  
1479 intermediaries, controls or is controlled by, or is under common control with a person  
1480 specified.
- 1481 (b) (i) "Agent" means any individual other than a broker-dealer who represents a  
1482 broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.
- 1483 (ii) "Agent" does not include an individual who represents:
- 1484 (A) an issuer, who receives no commission or other remuneration, directly or



1485 indirectly, for effecting or attempting to effect purchases or sales of securities in this state, and  
1486 who effects transactions:

1487 (I) in securities exempted by Subsection 61-1-14(1)(a), (b), (c), (i), or (j);

1488 (II) exempted by Subsection 61-1-14(2);

1489 (III) in a covered security as described in Sections 18(b)(3) and 18(b)(4)(D) of the  
1490 Securities Act of 1933; or

1491 (IV) with existing employees, partners, officers, or directors of the issuer; or

1492 (B) a broker-dealer in effecting transactions in this state limited to those transactions  
1493 described in Section 15(h)(2) of the Securities Exchange Act of 1934.

1494 (iii) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a  
1495 similar status or performing similar functions, is an agent only if the partner, officer, director,  
1496 or person otherwise comes within the definition of "agent."

1497 (iv) "Agent" does not include a person described in Subsection (3).

1498 (c) (i) "Broker-dealer" means any person engaged in the business of effecting  
1499 transactions in securities for the account of others or for the person's own account.

1500 (ii) "Broker-dealer" does not include:

1501 (A) an agent;

1502 (B) an issuer;

1503 (C) a bank, savings institution, or trust company;

1504 (D) a person who has no place of business in this state if:

1505 (I) the person effects transactions in this state exclusively with or through:

1506 (Aa) the issuers of the securities involved in the transactions;

1507 (Bb) other broker-dealers; or

1508 (Cc) banks, savings institutions, trust companies, insurance companies, investment  
1509 companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts,  
1510 or other financial institutions or institutional buyers, whether acting for themselves or as  
1511 trustees; or

1512 (II) during any period of 12 consecutive months the person does not direct more than  
1513 15 offers to sell or buy into this state in any manner to persons other than those specified in  
1514 Subsection (1)(c)(ii)(D)(I), whether or not the offeror or any of the offerees is then present in  
1515 this state;

1516 (E) a general partner who organizes and effects transactions in securities of three or  
1517 fewer limited partnerships, of which the person is the general partner, in any period of 12  
1518 consecutive months;

1519 (F) a person whose participation in transactions in securities is confined to those  
1520 transactions made by or through a broker-dealer licensed in this state;

1521 (G) a person who is a real estate broker licensed in this state and who effects  
1522 transactions in a bond or other evidence of indebtedness secured by a real or chattel mortgage  
1523 or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage,  
1524 deed or trust, or agreement, together with all the bonds or other evidences of indebtedness  
1525 secured thereby, is offered and sold as a unit;

1526 (H) a person effecting transactions in commodity contracts or commodity options;

1527 (I) a person described in Subsection (3); or

1528 (J) other persons as the division, by rule or order, may designate, consistent with the  
1529 public interest and protection of investors, as not within the intent of this Subsection (1)(c).

1530 (d) "Buy" or "purchase" means every contract for purchase of, contract to buy, or  
1531 acquisition of a security or interest in a security for value.

1532 (e) "Commodity" means, except as otherwise specified by the division by rule:

1533 (i) any agricultural, grain, or livestock product or byproduct, except real property or  
1534 any timber, agricultural, or livestock product grown or raised on real property and offered or  
1535 sold by the owner or lessee of the real property;

1536 (ii) any metal or mineral, including a precious metal, except a numismatic coin whose  
1537 fair market value is at least 15% greater than the value of the metal it contains;

1538 (iii) any gem or gemstone, whether characterized as precious, semi-precious, or  
1539 otherwise;

1540 (iv) any fuel, whether liquid, gaseous, or otherwise;

1541 (v) any foreign currency; and

1542 (vi) all other goods, articles, products, or items of any kind, except any work of art  
1543 offered or sold by art dealers, at public auction or offered or sold through a private sale by the  
1544 owner of the work.

1545 (f) (i) "Commodity contract" means any account, agreement, or contract for the  
1546 purchase or sale, primarily for speculation or investment purposes and not for use or

1547 consumption by the offeree or purchaser, of one or more commodities, whether for immediate  
1548 or subsequent delivery or whether delivery is intended by the parties, and whether characterized  
1549 as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures  
1550 contract, installment or margin contract, leverage contract, or otherwise.

1551 (ii) Any commodity contract offered or sold shall, in the absence of evidence to the  
1552 contrary, be presumed to be offered or sold for speculation or investment purposes.

1553 (iii) (A) A commodity contract shall not include any contract or agreement which  
1554 requires, and under which the purchaser receives, within 28 calendar days from the payment in  
1555 good funds any portion of the purchase price, physical delivery of the total amount of each  
1556 commodity to be purchased under the contract or agreement.

1557 (B) The purchaser is not considered to have received physical delivery of the total  
1558 amount of each commodity to be purchased under the contract or agreement when the  
1559 commodity or commodities are held as collateral for a loan or are subject to a lien of any  
1560 person when the loan or lien arises in connection with the purchase of each commodity or  
1561 commodities.

1562 (g) (i) "Commodity option" means any account, agreement, or contract giving a party  
1563 to the option the right but not the obligation to purchase or sell one or more commodities or  
1564 one or more commodity contracts, or both whether characterized as an option, privilege,  
1565 indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

1566 (ii) "Commodity option" does not include an option traded on a national securities  
1567 exchange registered:

1568 (A) with the United States Securities and Exchange Commission; or

1569 (B) on a board of trade designated as a contract market by the Commodity Futures  
1570 Trading Commission.

1571 (h) "Director" means the director of the Division of Securities charged with the  
1572 administration and enforcement of this chapter.

1573 (i) "Division" means the Division of Securities established by Section 61-1-18.

1574 (j) "Executive director" means the executive director of the Department of Commerce.

1575 (k) "Federal covered adviser" means a person who:

1576 (i) is registered under Section 203 of the Investment Advisers Act of 1940; or

1577 (ii) is excluded from the definition of "investment adviser" under Section 202(a)(11) of

1578 the Investment Advisers Act of 1940.

1579 (l) "Federal covered security" means any security that is a covered security under  
1580 Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated under Section  
1581 18(b) of the Securities Act of 1933.

1582 (m) "Fraud," "deceit," and "defraud" are not limited to their common-law meanings.

1583 (n) "Guaranteed" means guaranteed as to payment of principal or interest as to debt  
1584 securities, or dividends as to equity securities.

1585 (o) (i) "Investment adviser" means any person who:

1586 (A) for compensation, engages in the business of advising others, either directly or  
1587 through publications or writings, as to the value of securities or as to the advisability of  
1588 investing in, purchasing, or selling securities; or

1589 (B) for compensation and as a part of a regular business, issues or promulgates  
1590 analyses or reports concerning securities.

1591 (ii) "Investment adviser" includes financial planners and other persons who:

1592 (A) as an integral component of other financially related services, provide the  
1593 investment advisory services described in Subsection (1)(o)(i) to others for compensation and  
1594 as part of a business; or

1595 (B) hold themselves out as providing the investment advisory services described in  
1596 Subsection (1)(o)(i) to others for compensation.

1597 (iii) "Investment adviser" does not include:

1598 (A) an investment adviser representative;

1599 (B) a bank, savings institution, or trust company;

1600 (C) a lawyer, accountant, engineer, or teacher whose performance of these services is  
1601 solely incidental to the practice of the profession;

1602 (D) a broker-dealer or its agent whose performance of these services is solely  
1603 incidental to the conduct of its business as a broker-dealer and who receives no special  
1604 compensation for the services;

1605 (E) a publisher of any bona fide newspaper, news column, news letter, news magazine,  
1606 or business or financial publication or service, of general, regular, and paid circulation, whether  
1607 communicated in hard copy form, or by electronic means, or otherwise, that does not consist of  
1608 the rendering of advice on the basis of the specific investment situation of each client;

- 1609 (F) any person who is a federal covered adviser;  
1610 (G) a person described in Subsection (3); or  
1611 (H) such other persons not within the intent of this Subsection (1)(o) as the division  
1612 may by rule or order designate.
- 1613 (p) (i) "Investment adviser representative" means any partner, officer, director of, or a  
1614 person occupying a similar status or performing similar functions, or other individual, except  
1615 clerical or ministerial personnel, who:
- 1616 (A) (I) is employed by or associated with an investment adviser who is licensed or  
1617 required to be licensed under this chapter; or  
1618 (II) has a place of business located in this state and is employed by or associated with a  
1619 federal covered adviser; and
- 1620 (B) does any of the following:
- 1621 (I) makes any recommendations or otherwise renders advice regarding securities;  
1622 (II) manages accounts or portfolios of clients;  
1623 (III) determines which recommendation or advice regarding securities should be given;  
1624 (IV) solicits, offers, or negotiates for the sale of or sells investment advisory services;
- 1625 or
- 1626 (V) supervises employees who perform any of the acts described in this Subsection  
1627 (1)(p)(i)(B).
- 1628 (ii) "Investment advisor representative" does not include a person described in  
1629 Subsection (3).
- 1630 (q) (i) "Issuer" means any person who issues or proposes to issue any security or has  
1631 outstanding a security that it has issued.
- 1632 (ii) With respect to a preorganization certificate or subscription, "issuer" means the  
1633 promoter or the promoters of the person to be organized.
- 1634 (iii) "Issuer" means the person or persons performing the acts and assuming duties of a  
1635 depositor or manager under the provisions of the trust or other agreement or instrument under  
1636 which the security is issued with respect to:
- 1637 (A) interests in trusts, including collateral trust certificates, voting trust certificates, and  
1638 certificates of deposit for securities; or  
1639 (B) shares in an investment company without a board of directors.

1640 (iv) With respect to an equipment trust certificate, a conditional sales contract, or  
1641 similar securities serving the same purpose, "issuer" means the person by whom the equipment  
1642 or property is to be used.

1643 (v) With respect to interests in partnerships, general or limited, "issuer" means the  
1644 partnership itself and not the general partner or partners.

1645 (vi) With respect to certificates of interest or participation in oil, gas, or mining titles or  
1646 leases or in payment out of production under the titles or leases, "issuer" means the owner of  
1647 the title or lease or right of production, whether whole or fractional, who creates fractional  
1648 interests therein for the purpose of sale.

1649 [~~(aa)~~] (r) (i) [~~"Viatical"~~] "Life settlement interest" means the entire interest or any  
1650 fractional interest in any of the following that is the subject of a [~~viatical~~] life settlement:

1651 (A) a [~~life insurance~~] policy; or

1652 (B) the death benefit under a [~~life insurance~~] policy.

1653 (ii) [~~"Viatical"~~] "Life settlement interest" does not include the initial purchase from the  
1654 [~~viator~~] owner by a [~~viatical~~] life settlement provider.

1655 [~~(r)~~] (s) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

1656 [~~(s)~~] (t) "Person" means:

1657 (i) an individual;

1658 (ii) a corporation;

1659 (iii) a partnership;

1660 (iv) a limited liability company;

1661 (v) an association;

1662 (vi) a joint-stock company;

1663 (vii) a joint venture;

1664 (viii) a trust where the interests of the beneficiaries are evidenced by a security;

1665 (ix) an unincorporated organization;

1666 (x) a government; or

1667 (xi) a political subdivision of a government.

1668 [~~(t)~~] (u) "Precious metal" means the following, whether in coin, bullion, or other form:

1669 (i) silver;

1670 (ii) gold;

1671 (iii) platinum;  
1672 (iv) palladium;  
1673 (v) copper; and  
1674 (vi) such other substances as the division may specify by rule.  
1675 ~~(v)~~ (v) "Promoter" means any person who, acting alone or in concert with one or  
1676 more persons, takes initiative in founding or organizing the business or enterprise of a person.  
1677 ~~(w)~~ (w) (i) "Sale" or "sell" includes every contract for sale of, contract to sell, or  
1678 disposition of, a security or interest in a security for value.  
1679 (ii) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or  
1680 solicitation of an offer to buy, a security or interest in a security for value.  
1681 (iii) The following are examples of the definitions in Subsection (1)~~(v)~~(w)(i) or (ii):  
1682 (A) any security given or delivered with or as a bonus on account of any purchase of a  
1683 security or any other thing, is part of the subject of the purchase, and has been offered and sold  
1684 for value;  
1685 (B) a purported gift of assessable stock is an offer or sale as is each assessment levied  
1686 on the stock;  
1687 (C) an offer or sale of a security that is convertible into, or entitles its holder to acquire  
1688 or subscribe to another security of the same or another issuer is an offer or sale of that security,  
1689 and also an offer of the other security, whether the right to convert or acquire is exercisable  
1690 immediately or in the future;  
1691 (D) any conversion or exchange of one security for another shall constitute an offer or  
1692 sale of the security received in a conversion or exchange, and the offer to buy or the purchase  
1693 of the security converted or exchanged;  
1694 (E) securities distributed as a dividend wherein the person receiving the dividend  
1695 surrenders the right, or the alternative right, to receive a cash or property dividend is an offer or  
1696 sale;  
1697 (F) a dividend of a security of another issuer is an offer or sale; or  
1698 (G) the issuance of a security under a merger, consolidation, reorganization,  
1699 recapitalization, reclassification, or acquisition of assets shall constitute the offer or sale of the  
1700 security issued as well as the offer to buy or the purchase of any security surrendered in  
1701 connection therewith, unless the sole purpose of the transaction is to change the issuer's

- 1702 domicile.
- 1703 (iv) The terms defined in Subsections (1)~~(v)~~(w)(i) and (ii) do not include:
- 1704 (A) a good faith gift;
- 1705 (B) a transfer by death;
- 1706 (C) a transfer by termination of a trust or of a beneficial interest in a trust;
- 1707 (D) a security dividend not within Subsection (1)~~(v)~~(w)(iii)(E) or (F);
- 1708 (E) a securities split or reverse split; or
- 1709 (F) any act incident to a judicially approved reorganization in which a security is issued
- 1710 in exchange for one or more outstanding securities, claims, or property interests, or partly in
- 1711 such exchange and partly for cash.
- 1712 ~~(w)~~ (x) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility
- 1713 Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal
- 1714 statutes of those names as amended before or after the effective date of this chapter.
- 1715 ~~(x)~~ (y) (i) "Security" means any:
- 1716 (A) note;
- 1717 (B) stock;
- 1718 (C) treasury stock;
- 1719 (D) bond;
- 1720 (E) debenture;
- 1721 (F) evidence of indebtedness;
- 1722 (G) certificate of interest or participation in any profit-sharing agreement;
- 1723 (H) collateral-trust certificate;
- 1724 (I) preorganization certificate or subscription;
- 1725 (J) transferable share;
- 1726 (K) investment contract;
- 1727 (L) burial certificate or burial contract;
- 1728 (M) voting-trust certificate;
- 1729 (N) certificate of deposit for a security;
- 1730 (O) certificate of interest or participation in an oil, gas, or mining title or lease or in
- 1731 payments out of production under such a title or lease;
- 1732 (P) commodity contract or commodity option;



- 1733 (Q) interest in a limited liability company;
- 1734 (R) ~~viatical~~ life settlement interest; or
- 1735 (S) in general, any interest or instrument commonly known as a "security," or any
- 1736 certificate of interest or participation in, temporary or interim certificate for, receipt for,
- 1737 guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.
- 1738 (ii) "Security" does not include any:
- 1739 (A) insurance or endowment policy or annuity contract under which an insurance
- 1740 company promises to pay money in a lump sum or periodically for life or some other specified
- 1741 period;
- 1742 (B) interest in a limited liability company in which the limited liability company is
- 1743 formed as part of an estate plan where all of the members are related by blood or marriage,
- 1744 there are five or fewer members, or the person claiming this exception can prove that all of the
- 1745 members are actively engaged in the management of the limited liability company; or
- 1746 (C) (I) a whole long-term estate in real property;
- 1747 (II) an undivided fractionalized long-term estate in real property that consists of ten or
- 1748 fewer owners; or
- 1749 (III) an undivided fractionalized long-term estate in real property that consists of more
- 1750 than ten owners if, when the real property estate is subject to a management agreement:
- 1751 (Aa) the management agreement permits a simple majority of owners of the real
- 1752 property estate to not renew or to terminate the management agreement at the earlier of the end
- 1753 of the management agreement's current term, or 180 days after the day on which the owners
- 1754 give notice of termination to the manager;
- 1755 (Bb) the management agreement prohibits, directly or indirectly, the lending of the
- 1756 proceeds earned from the real property estate or the use or pledge of its assets to any person or
- 1757 entity affiliated with or under common control of the manager; and
- 1758 (Cc) the management agreement complies with any other requirement imposed by rule
- 1759 by the Real Estate Commission under Section 61-2-26.
- 1760 (iii) For purposes of Subsection (1)~~(x)~~(y)(ii)(B), evidence that members vote or have
- 1761 the right to vote, or the right to information concerning the business and affairs of the limited
- 1762 liability company, or the right to participate in management, shall not establish, without more,
- 1763 that all members are actively engaged in the management of the limited liability company.

1764            [~~(y)~~] (z) "State" means any state, territory, or possession of the United States, the  
1765 District of Columbia, and Puerto Rico.

1766            [~~(z)~~] (aa) (i) "Undivided fractionalized long-term estate" means an ownership interest  
1767 in real property by two or more persons that is a:

1768            (A) tenancy in common; or

1769            (B) any other legal form of undivided estate in real property including:

1770            (I) a fee estate;

1771            (II) a life estate; or

1772            (III) other long-term estate.

1773            (ii) "Undivided fractionalized long-term estate" does not include a joint tenancy.

1774            (bb) "Whole long-term estate" means a person or persons through joint tenancy owns  
1775 real property through:

1776            (i) a fee estate;

1777            (ii) a life estate; or

1778            (iii) other long-term estate.

1779            (cc) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive of  
1780 legal holidays listed in Section 63G-1-301.

1781            (2) A term not defined in this section shall have the meaning as established by division  
1782 rule. The meaning of a term neither defined in this section nor by rule of the division shall be  
1783 the meaning commonly accepted in the business community.

1784            (3) (a) This Subsection (3) applies to:

1785            (i) the offer or sale of a real property estate exempted from the definition of security  
1786 under Subsection (1)[~~(x)~~](y)(ii)(C); or

1787            (ii) the offer or sale of an undivided fractionalized long-term estate that is the offer of a  
1788 security.

1789            (b) A person who, directly or indirectly receives compensation in connection with the  
1790 offer or sale as provided in this Subsection (3) of a real property estate is not an agent,  
1791 broker-dealer, investment adviser, or investor adviser representative under this chapter if that  
1792 person is licensed under Chapter 2, Division of Real Estate, as:

1793            (i) a principal real estate broker;

1794            (ii) an associate real estate broker; or

1795 (iii) a real estate sales agent.

1796 (4) The list of real property estates excluded from the definition of securities under  
1797 Subsection (1)~~(x)~~(y)(ii)(C) is not an exclusive list of real property estates or interests that are  
1798 not a security.

1799 Section 27. Section **64-13-39.5** is amended to read:

1800 **64-13-39.5. Definitions -- Health care for chronically or terminally ill offenders --**  
1801 **Notice to health care facility.**

1802 (1) As used in this section:

1803 (a) "Department or agency" means the Utah Department of Corrections or a department  
1804 of corrections or government entity responsible for placing an offender in a facility located in  
1805 Utah.

1806 (b) "Chronically ill" has the same meaning as in Section 31A-36-102.

1807 (c) "Facility" means an assisted living facility as defined in Subsection 26-21-2(5) and a  
1808 nursing care facility as defined in Subsection 26-21-2(17), except that transitional care units  
1809 and other long term care beds owned or operated on the premises of acute care hospitals or  
1810 critical care hospitals are not facilities for the purpose of this section.

1811 (d) "Offender" means an inmate whom the department or agency has given an early  
1812 release, pardon, or parole due to a chronic or terminal illness.

1813 (e) "Terminally ill" has the same meaning as in ~~[Subsection]~~ Section  
1814 31A-36-102~~(H)~~.

1815 (2) If an offender from Utah or any other state is admitted as a resident of a facility due  
1816 to the chronic or terminal illness, the department or agency placing the offender shall:

1817 (a) provide written notice to the administrator of the facility no later than 15 days prior  
1818 to the offender's admission as a resident of a facility, stating:

1819 (i) the offense for which the offender was convicted and a description of the actual  
1820 offense;

1821 (ii) the offender's status with the department or agency;

1822 (iii) that the information provided by the department or agency regarding the offender  
1823 shall be provided to employees of the facility no later than ten days prior to the offender's  
1824 admission to the facility; and

1825 (iv) the contact information for:

1826 (A) the offender's parole officer and also a point of contact within the department or  
1827 agency, if the offender is on parole; and

1828 (B) a point of contact within the department or agency, if the offender is not under  
1829 parole supervision but was given an early release or pardon due to a chronic or terminal illness;

1830 (b) make available to the public on the Utah Department of Corrections' website and  
1831 upon request:

1832 (i) the name and address of the facility where the offender resides; and

1833 (ii) the date the offender was placed at the facility; and

1834 (c) provide a training program for employees who work in a facility where offenders  
1835 reside, and if the offender is placed at the facility by:

1836 (i) the Utah Department of Corrections, the department shall provide the training  
1837 program for the employees; and

1838 (ii) by a department or agency from another state, that state's department or agency  
1839 shall arrange with the Utah Department of Corrections to provide the training required by this  
1840 Subsection (2), if training has not already been provided by the Utah Department of  
1841 Corrections, and shall provide to the Utah Department of Corrections any necessary  
1842 compensation for this service.

1843 (3) The administrator of the facility shall:

1844 (a) provide residents of the facility or their guardians notice that a convicted felon is  
1845 being admitted to the facility no later than ten days prior to the offender's admission to the  
1846 facility;

1847 (b) advise potential residents or their guardians of persons under Subsection (2) who  
1848 are current residents of the facility; and

1849 (c) provide training, offered by the Utah Department of Corrections, in the safe  
1850 management of offenders for all employees.

1851 (4) The Utah Department of Corrections shall make rules under Title 63G, Chapter 3,  
1852 Utah Administrative Rulemaking Act, establishing:

1853 (a) a consistent format and procedure for providing notification to facilities and  
1854 information to the public in compliance with Subsection (2); and

1855 (b) a training program, in compliance with Subsection (3) for employees, who work at  
1856 facilities where offenders reside to ensure the safety of facility residents and employees.

1857 Section 28. **Revisor instructions.**

1858 It is the intent of the Legislature, that the Office of Legislative Research and General  
1859 Counsel, in preparing the Utah Code database for publication, replace references in the Utah  
1860 Code added during the 2009 General Session related to viatical settlements as follows:

1861 (1) replace "viator" with "owner";

1862 (2) replace "viaticate" with "settle" or "viaticated" with "settled"; and

1863 (3) replace "viatical settlement" with "life settlement."

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**Legislative Review Note**  
as of 2-9-09 3:16 PM

**Office of Legislative Research and General Counsel**

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**H.B. 170 - Insurance and Life Settlement Amendments**

**Fiscal Note**

2009 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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