

## CHAPTER 472

(HB 453)

AN ACT relating to life insurance.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 304.15-020 is amended to read as follows:

- (1) "Industrial life insurance" is that form of life insurance written under policies of face amount of \$3,000 or less issued on the basis of an industrial mortality table, and under which premiums are payable monthly or more often.
- (2) "Wholesale life insurance" is that plan of life insurance, other than salary savings life insurance or pension trust insurance and annuities, under which individual policies are issued to the employees of any employer and where ~~such~~ policies are issued on the lives of not less than four (4) employees at date of issue. Premiums for ~~the~~ policies shall be paid either wholly from the employer's funds, or funds contributed by him, or partly from ~~the~~ funds and partly from funds contributed by the insured employees.
- (3) "College life insurance" is that form of life insurance sold to college students, the initial premiums for which are financed by a promissory note.
- (4) "Viatical settlement broker" means an individual, partnership, corporation, or other ~~person~~~~entity~~ who or that for another and for a fee, commission, or other valuable consideration, offers or advertises the availability of viatical settlements, introduces a viator to viatical settlement providers, or offers or attempts to negotiate viatical settlements between a viator and one (1) or more viatical settlement providers. "Viatical settlement broker" does not include an attorney, *certified public* accountant, or financial planner who is retained to represent the viator and whose compensation is not paid by the viatical settlement provider.
- (5) "Viatical settlement contract" means a written agreement entered into between a viatical settlement provider and a ~~viator~~~~person~~ owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person ~~and the~~~~who has a catastrophic or life-threatening illness or condition.~~ The agreement ~~establishes~~~~shall establish~~ the terms under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyowner's assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. *A viatical settlement contract also includes a contract for a loan or other financial transaction secured primarily by an individual or group life policy, with the following exceptions:*
  - (a) *A loan by a life insurance company in accordance with the terms of the life insurance contract; or*
  - (b) *A loan secured by the cash value of a policy.*
- (6) "Viatical settlement provider" means an individual, partnership, corporation, or other ~~person~~~~entity~~ who or that enters into an agreement with a person owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person ~~who has a catastrophic or life-threatening illness or condition~~, under the terms of which the viatical settlement provider pays compensation or anything of value, which compensation or value is

less than the expected death benefit of the insurance policy or certificate, in return for the policyowner's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. Viatical settlement provider does not include:

- (a) Any bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;
  - (b) The issuer of a life insurance policy that provides accelerated benefits that accelerate in anticipation of death or upon the occurrence of specified life-threatening or catastrophic conditions as defined by the policy or rider;~~[-or]~~
  - (c) Any natural person who *is not licensed in accordance with Section 2 this Act and who* enters into no more than one (1) agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit; *or (d) A related provider trust.*
- (7) "Viator" means the owner of a life insurance policy that insures the life of a person~~[who has a catastrophic or life-threatening illness or condition, or the certificate holder]~~ who enters into *a viatical settlement contract*~~[an agreement under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider].~~
- (8) *"Independent third-party trustee" means a custodial bank that:*
- (a) *Carries out custodial functions for the viatical settlement provider through its trust department;*
  - (b) *Is audited annually by an independent certified public accountant whose audit report, together with the related financial statements, and whose report on internal controls are made available to the viatical settlement provider and the commissioner upon request;*
  - (c) *Maintains policies and procedures requiring that the custodied deposits are recognized as deposits to be set aside and reserved as the specific property of the viatical settlement provider, and are not subject to any creditor relationship with the custodial bank;*
  - (d) *Maintains blanket bond coverage relating to its custodial functions with limits equal to or exceeding those suggested by the American Bankers Association;*
  - (e) *Maintains capital and surplus funds equal to or exceeding twenty-five million dollars (\$25,000,000) unless it is licensed and regulated by the Commonwealth of Kentucky, in which case its capital and surplus funds shall equal or exceed ten million dollars (\$10,000,000);*
  - (f) *Has demonstrated sufficient experience in handling custodial accounts, and shall not include any person associated, affiliated, or under common control with a viatical settlement provider or viatical settlement broker; and*

- (g) *Is licensed in good standing with the Department of Financial Institutions, or comparable federal authority.*
- (9) *"Related provider trust" means a trust established by a licensed viatical settlement provider for the purpose of entering into or owning viatical settlement contracts. This term shall not include an independent third-party trustee.*
- (10) *"Viatical settlement purchaser" means a person other than a licensee under Subtitle 15 of KRS Chapter 304, who gives consideration for a life insurance policy or an interest in a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit.*

Section 2. KRS 304.15-700 is amended to read as follows:

- (1) No person may act as a viatical settlement provider *or broker*, or enter into or solicit a viatical settlement contract without first having obtained a license from the commissioner. *All applicants for a viatical settlement broker license shall attend the required viatical broker training and pass a viatical broker examination designated by the department through administrative regulation.*
- (2) The examination of contracts shall take place simultaneously with the company's approval process. *Any form to be used in the solicitation of the transaction and the transaction shall be filed for prior approval with the department and shall contain a form number. Viatical settlement providers and brokers shall provide the department notice of any change in the licensee's name, residence address, principal business address, or mailing address at least thirty (30) days prior to the effective date of the change.* ~~Provided that the viatical settlement provider or viatical settlement broker complies with KRS 304.15-020 and KRS 304.15-700 to 304.15-725, the provider or broker transacting business in this state prior to July 15, 1998, may continue to transact the business until the commissioner approves or disapproves the provider's or broker's application for license. The application shall be filed on forms provided by the commissioner no later than November 1, 1998.~~
- (3)~~(2)~~ The commissioner shall promulgate administrative regulations in accordance with KRS Chapter 13A that are necessary to provide for the *following*:
- (a) Licensing of viatical settlement providers;
  - (b) *Licensing of viatical settlement brokers;*
  - (c) *Termination*~~[and the termination]~~ or revocation of the license *of a viatical settlement provider and a viatical settlement broker; and*
  - (d) *Prescribing that the amount of the viatical examination fee shall be equal to the life examination fee.*
- (4) *Prior to issuance of a license as a viatical settlement broker or viatical settlement provider, the applicant shall file with the commissioner, and thereafter for as long as the license remains in effect shall keep in force, evidence of financial responsibility in the sum of not less than five hundred thousand dollars (\$500,000) per occurrence, and the sum of one million five hundred thousand dollars (\$1,500,000) in the aggregate, for all occurrences within one (1) year. This evidence shall be in the form of an errors and omissions insurance policy issued by an authorized insurer, a bond issued by an authorized corporate surety, a deposit, or any combination of these evidences of financial responsibility. The policy, bond,*

*deposit, or combination thereof shall not be terminated without thirty (30) days' prior written notice to the licensee and the commissioner.*

- (5)~~(3)~~ No person shall use any viatical settlement contract in this Commonwealth unless it has been filed with and approved by the commissioner. *At the expiration of sixty (60) days from the date the filing is complete, the form filed shall be deemed approved unless the commissioner has by order given prior approval or disapproval. Approval of a form by the commissioner shall constitute a waiver of any unexpired portion of the waiting period. The commissioner may extend by not more than thirty (30) days the time period in which he or she may approve or disapprove any form. The commissioner shall give notice to the licensee of the extension before expiration of the initial sixty (60) day period. At the expiration of the extended period, and in the absence of the prior approval or disapproval, the form shall be deemed approved. The commissioner may at any time, after notice and for cause shown, withdraw any approval.* ~~Any viatical settlement contract form filed with the commissioner shall be deemed approved if it has not been disapproved within sixty (60) days of filing.~~ The commissioner shall disapprove a viatical settlement contract form if, in the determination of the commissioner, the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise are misleading or unfair to the policyowner. *Upon notice and hearing the commissioner shall withdraw approval of any contract later determined to be unreasonable, misleading, unfair, or contrary to the interest of the public.*
- (6) *A licensed viatical settlement provider shall not use any person to perform the functions of a viatical settlement broker as defined in Section 1 of this Act unless the person holds a current and valid license as a viatical settlement broker. Individuals employed by viatical settlement providers shall not engage in viatical settlement broker activities unless they hold a current and valid license. A licensed viatical settlement broker shall not use any person to perform the functions of a viatical settlement provider as defined in Section 1 of this Act unless the person holds a current and valid license as a viatical settlement provider. Individuals employed by viatical settlement brokers shall not engage in viatical settlement broker activities unless they hold a current valid license.*
- (7) *If any employee of a licensee violates any provision of Sections 1 to 12 of this Act, the department may take disciplinary action against the employer licensee.*
- (8) *When a viatical settlement provider elects to use a related provider trust in accordance with Section 10 of this Act, the viatical settlement provider shall file notice of its intention to use that trust with the department with a copy of the trust agreement. Any change in the trust agreement shall be filed with the commissioner prior to its effect.*
- (9) *Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker represents the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator.*
- (10) *Any additional death benefit payment on a life insurance policy that is the subject of a viatical settlement contract with a double or additional indemnity for accidental death shall be payable to the following:*
- (a) *The beneficiary last named by the policy owner prior to entering into the viatical settlement contract; or*
  - (b) *To the estate of the viator in the absence of a beneficiary.*

Section 3. KRS 304.15-705 is amended to read as follows:

- (1) The commissioner may, when the commissioner deems it reasonably necessary to protect the interests of the public, examine the business and affairs of any licensee or applicant for a license. The commissioner shall have the authority to order information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interest of the public. The reasonable expenses incurred in conducting any examination shall be paid by the licensee or applicant.
- (2) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the commissioner, unless required by law.
- (3) Records of all transactions of viatical settlement contracts shall be maintained by the licensee ***for five (5) years after the death of the viator***, and shall be available to the commissioner for inspection during reasonable business hours. ***All other business records shall be kept for a period of five (5) years following creation of records, or the completion of the purpose for which records were created, whichever shall occur last.***
- (4) ***Upon issuance of a viatical settlement provider or broker license, the licensee shall be deemed to have appointed the Kentucky Secretary of State as the licensee's attorney to receive service of process issued against the licensee in this state. The appointment shall be irrevocable, shall bind any successor in interest or to the assets or liabilities of the licensee, and shall remain in effect as long as there is in force in this state or elsewhere a contract that would give rise to a cause of action in this state, made by the licensee, or liabilities or duties arising therefrom. KRS 304.3-230(5) to (8) shall apply to the service of process.***

Section 4. KRS 304.15-715 is amended to read as follows:

- (1) A viatical settlement provider entering into a viatical settlement contract with any person ~~who has a catastrophic or life-threatening illness or condition~~ shall first obtain:
  - (a) A written statement from a licensed attending physician that the person is of sound mind and under no constraint or undue influence; and
  - (b) A witnessed document in which the person consents to the viatical settlement contract, acknowledges ***any***~~the~~ catastrophic or life-threatening illness, represents that he or she has a full and complete understanding of the viatical settlement contract and a full and complete understanding of the benefits of the life insurance policy, releases his or her medical records, and acknowledges that he or she has entered into the viatical settlement contract freely and voluntarily.
- (2) All medical information solicited or obtained by any licensee shall be subject to the applicable provision of state law relating to confidentiality of medical information.
- (3) All viatical settlement contracts entered into in this state shall contain an unconditional refund provision that provides for a refund within at least thirty (30) days from the date of the contract or fifteen (15) days from the receipt of the viatical settlement proceeds, whichever is less.
- (4) ~~Immediately upon receipt from the insurer of the effect of the transfer of ownership of the insurance policy, the viatical settlement provider shall pay the proceeds of the settlement to an account in a custodian bank that meets the qualifications outlined in 806 KAR 7:090 Section 3.~~ ***The independent third-party trustee***~~eustodian~~ shall~~be required to~~ transfer the

proceeds that are due to the viator within two (2) business days upon receipt of acknowledgment of the transfer *of ownership* from the insurer.

- (5) Failure to tender the viatical settlement by the date disclosed to the viator renders the contract null and void.
- (6) All licensed viatical settlement providers transacting business in Kentucky ~~shall~~<sup>must</sup> have the *insured's*~~[viator's]~~ medical condition reviewed by a qualified third-party physician or physician firm. Qualification shall be met with the approval of Standard and Poors, Moody's, or any other reviewing entity approved by the commissioner.
- (7) *When the viatical settlement contract is executed, the viatical settlement provider shall provide the viator with a separate form from which the viator may choose one of the following options:*
  - (a) *That the viator be provided written notice of the identity of the new owner upon any future transfer of ownership in the life insurance policy being viated; or*
  - (b) *To forgo written notice of the identity of any future purchaser of, or investor in, the life insurance policy being viated.*
- (8) *Within ten (10) days of the expiration of the rescission period, the viatical settlement provider shall send written notification to the insurer that the policy has become the subject of a viatical transaction.*

SECTION 5. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *When the department finds that a violation presents an immediate danger to the public health, safety, or welfare that requires an immediate final order, it shall issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent.*
- (2) *The department may impose and collect an administrative fine not to exceed ten thousand dollars (\$10,000) for each violation of a cease and desist order issued in accordance with this section.*

SECTION 6. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*It is unlawful for any person:*

- (1) *To knowingly enter into a viatical settlement contract when the subject life insurance policy was obtained by means of a false, deceptive, or misleading application for the life insurance policy;*
- (2) *In the solicitation or purchase of a viatical settlement:*
  - (a) *To employ a device, scheme, or artifice to defraud;*
  - (b) *To obtain money or property by means of an untrue statement of a material fact, or by any omission to state a material fact;*
  - (c) *To engage in any transaction, practice, or course of business that operates or would operate as a fraud or deceit upon a person; and*

- (d) *To misrepresent that the viatical provider, viatical broker, or other licensee has been guaranteed, sponsored, recommended, or approved by the state, or by any local, state, or federal agency or officer thereof.*

*This subsection shall not prohibit a statement that the person is licensed, if that statement is true and the effect of the statement is not misrepresented;*

- (3) *To act as a viatical settlement broker if the person is acting as a viatical settlement provider in the same viatical settlement contract;*
- (4) *To act as the viatical settlement broker or provider regarding a life insurance policy if the broker or provider is the life insurance agent that produced or receives commissions from the policy being viated; and*
- (5) *If the person is licensed as a viatical settlement provider or viatical settlement broker, to pay any compensation or provide anything of value to an insured's physician, attorney, accountant, or any other person who provides medical, legal, or financial advice to the insured as a finder's or referral fee.*

SECTION 7. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *A viatical settlement transaction shall be completed through the independent third-party trustee. Within three (3) business days of receipt of a signed viatical settlement contract from the viator, the viatical settlement provider shall pay the proceeds due to the viator, and any commission due the viatical settlement broker, to an escrow or trust account managed by the independent third-party trustee pending acknowledgment of the insurer of the transfer of ownership of the policy. The independent third-party trustee shall provide the viator written proof of deposit within three (3) days of deposit of the proceeds. An advance or partial payment of the proceeds from the viatical settlement provider to the viator under the settlement contract shall not be used to effect transfer of the subject policy. Partial payment shall be made at the sole discretion and risk of the viatical settlement provider.*
- (2) *Upon receipt of all viatical settlement contract proceeds, the independent third-party trustee shall hold the proceeds for disbursement in accordance with Sections 1 to 12 of this Act and the viatical settlement contract. In no event shall the viatical settlement provider or independent third-party trustee pay any commission or fee to the viatical settlement broker prior to the end of the rescission period.*
- (3) *The viatical settlement contract is rescinded if the insured dies during the rescission period. If the independent third-party trustee receives information that the insured died during the rescission period and the trustee still holds the funds, it shall verify the death and then refund the proceeds to the viatical settlement provider. If the proceeds have been disbursed by the independent third-party trustee and the insured died during the rescission period, the viatical settlement provider shall pay the viator the difference between the death benefit and the amount of the proceeds disbursed to the viator. No commission or fee shall be due the viatical settlement broker if the insured dies during the rescission period.*
- (4) *A viatical settlement provider shall not negotiate or enter into a viatical settlement contract with a viator if the policy contains an accelerated benefits provision allowing benefits to be paid for a period in advance of the expected death that is equal to or exceeds the time period available under the viatical settlement contract, and at an amount that is equal to or exceeds the amount available under the viatical settlement contract unless the issuer of the policy,*

*in writing, denies, declines, or refuses to provide the accelerated benefits. If the insurer does not respond to a request to effectuate an accelerated benefits provision sent by certified mail within thirty (30) days after receiving the request, the insurer shall be deemed to have denied, declined, or refused to provide the accelerated benefits.*

SECTION 8. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *In addition to the penalties and other enforcement provisions of Sections 1 to 14 of this Act, if any person violates any provision of Sections 1 to 12 of this Act, or any administrative regulations promulgated under Sections 1 to 12 of this Act, the department may seek an injunction in Franklin Circuit Court or in the Circuit Court of the county where the person resides or has a principal place of business and may apply for temporary and permanent orders that the department determines necessary to restrain the person from committing the violation.*
- (2) *Any person damaged by the acts of a person in violation of any provision of Sections 1 to 12 of this Act may bring a civil action against the person in the Circuit Court of the county in which the alleged violator resides, or has a principal place of business, or in the county where the alleged violation occurred.*

Section 9. KRS 304.15-710 is amended to read as follows:

A viatical settlement provider shall *provide the viator a copy of the department's consumer guide relating to viaticals and* disclose the following information to the viator no later than the date that the viatical settlement contract is signed by all parties:

- (1) That possible alternatives to viatical settlement contracts may exist for persons with catastrophic or life-threatening illnesses, including, but not limited to, accelerated benefits offered by the issuer of the life insurance policy;
- (2) That some or all of the proceeds of the viatical settlement may be taxable, and that assistance should be sought from a personal tax advisor;
- (3) That the viatical settlement could be subject to the claims of creditors;
- (4) That receipt of a viatical settlement may adversely affect the recipient's eligibility for Medicaid or other government benefits or entitlements, and that advice should be obtained from the appropriate agencies;
- (5) That the policyowner has a right to rescind a viatical settlement contract within thirty (30) days of the date it is executed by all parties or within fifteen (15) days of the receipt of the viatical settlement proceeds by the viator, whichever is less, *that the contract is rescinded if the insured dies within the rescission period;*~~and~~
- (6) That *viaticating a joint policy or policy with family riders or coverage of any life other than the viator may cause a loss of coverage on the other lives and that the viator should consult with an insurance advisor;*
- (7) *That the viatical settlement provider shall deposit the proceeds due the viator and any commissions due the viatical settlement broker with an independent third-party trustee within three (3) days of receipt of the contract signed by the viator, and that the independent third-party trustee shall mail proof of deposit within three (3) days of deposit, and that the*



funds will be available to the viator within two (2) business days of notification from the insurer of the effect of the transfer of ownership;

- (8) *The name, address, and telephone number of the independent third-party trustee and the fact that the viator may inspect and receive copies of the relevant trust, or escrow agreements, or other documents; and*
- (9) *The amount and method of calculation of any fee, commission, or compensation to be paid the viatical settlement broker.*

SECTION 10. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*A related provider trust shall be subject to all provisions of Sections 1 to 14 of this Act that apply to the viatical settlement provider, and that establish the related provider trust, except subsection (1) of Section 2 of this Act shall not apply to the related provider trust. The viatical settlement provider is liable and responsible for the performance of all obligations of the related trust and compliance of the trust with all provisions of Sections 1 to 14 of this Act.*

Section 11. KRS 304.42-190 is amended to read as follows:

No person, including an insurer, agent, ~~or~~ affiliate of an insurer, *viatical settlement provider, or viatical settlement broker* shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster, or over any radio station or television station, or in any other way, any advertisement, announcement or statement which uses the existence of the Insurance Guaranty Association of this state for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Kentucky Life and Health Insurance Guaranty Association Act. This section shall not apply to the Kentucky Life and Health Insurance Guaranty Association or any other entity which does not sell or solicit insurance.

SECTION 12. A NEW SECTION OF SUBTITLE 99 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

- (1) *When a license issued under Section 2 of this Act is suspended or revoked, the licensee, if the commissioner directs, shall proceed, immediately following the effective date of the suspension or revocation to conclude the affairs it is transacting under its license. The licensee shall not solicit, negotiate, advertise, or effectuate new contracts. The department shall retain jurisdiction over the licensee and trust until all viatical contracts have been fulfilled or canceled or have expired.*
- (2) *During the suspension or revocation period in which the licensee is concluding existing contracts, the licensee shall continue to comply with Sections 1 to 14 of this Act as if the license were in force.*

SECTION 13. A NEW SECTION OF SUBTITLE 99 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*Any person who violates any provisions of Sections 1 to 12 of this Act shall be subject to civil fines by the commissioner in an amount not less than one thousand dollars (\$1,000) and not more than twenty-five thousand dollars (\$25,000). Each violation shall constitute a separate offense.*

SECTION 14. A NEW SECTION OF SUBTITLE 99 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

*The department shall refer violations to the Division of Insurance Fraud Investigation for further investigation, and, if appropriate, the Division of Insurance Fraud Investigation shall proceed as set forth in KRS 304.47-050(5).*

**Approved April 21, 2000**