

CHAPTER 58**(SB 163)**

AN ACT relating to viatical settlements.

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

SECTION 1. A NEW SECTION OF SUBTITLE 15 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Nothing in this subtitle preempts or otherwise limits the provisions of the Securities Act of Kentucky, KRS Chapter 292, or any administrative regulations, orders, policy statements, notices, bulletins, or other interpretations issued by or through the commissioner of the Kentucky Department of Financial Institutions or his designee acting pursuant to the Securities Act of Kentucky. Compliance with the provisions of this subtitle does not constitute compliance with any applicable provision of the Securities Act of Kentucky and any amendments thereto or any administrative regulations, orders, policy statements, notices, bulletins, or other interpretations issued by or through the commissioner of the Kentucky Department of Financial Institutions or his designee acting pursuant to the Securities Act of Kentucky.

Section 2. KRS 292.310 is amended to read as follows:

When used in this chapter, unless the context otherwise requires:

- (1) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities, except as otherwise provided in this chapter.
 - (a) "Agent" does not include an individual who represents:
 1. An issuer in:
 - a. Effecting a transaction in a security exempted by subsection (1), (2), (3), (10), or (11) of KRS 292.400, or subsection (5), (9), or (12) thereof if no commission or other remuneration is received for the sale of such securities or effecting a transaction in a security exempted by KRS 292.400(15) even if commission or other remuneration is received for the sale of such security provided that the individual offers or sells no other security except securities exempted by KRS 292.400(15);
 - b. Effecting transactions exempted by KRS 292.410 unless otherwise required;
 - c. Effecting transactions in a covered security under Section 18(b)(3) or 18(b)(4)(d) of the Securities Act of 1933 if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in Kentucky;
 - d. Effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or
 - e. Effecting other transactions if the individual primarily performs, or is intended primarily to perform upon completion of an offering of the issuer's own securities, substantial duties for or on behalf of the issuer

otherwise than in connection with transactions in the issuer's own securities and the individual's compensation is not based, in whole or in part, upon the amount of purchases or sales of the issuer's own securities effected for the issuer; or

2. A broker-dealer in effecting transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934.
 - (b) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions is an "agent" only if he otherwise comes within the definition in this subsection;
- (2) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:
 - (a) An agent, issuer, bank, savings institution, or trust company;
 - (b) A person that effects transactions in this state exclusively in securities exempted by KRS 292.400(15); or
 - (c) A person who has no place of business in this state:
 1. If he effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or
 2. If during any period of twelve (12) consecutive months he does not direct more than fifteen (15) offers to sell or to buy into this state in any manner to persons other than those specified in this paragraph;
- (3) "Certified" means, when used in regard to financial statements, examined and reported upon in accordance with generally accepted auditing standards with an opinion expressed by a certified public accountant;
- (4) "Commissioner" means the commissioner of the Department of Financial Institutions or any individual employee of the Department of Financial Institutions expressly designated by order of the commissioner to act in the commissioner's place;
- (5) "Covered advisor" means any person who is registered under Section 203 of the Investment Advisers Act of 1940, 15 U.S.C. sec. 80b-3;
- (6) "Covered security" means any security that is a covered security under Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated thereunder;
- (7) "Department" means the Department of Financial Institutions of the Commonwealth of Kentucky;
- (8) "Fraud," "deceit," and "defraud" are not limited to common-law deceit;
- (9) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends;
- (10) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who,

for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

- (a) A bank, savings institution, or trust company;
- (b) A lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his profession;
- (c) A broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them;
- (d) A publisher of any bona fide newspaper, news magazine, or business or financial publication of general, regular, and paid circulation;
- (e) A person whose advice, analyses, or reports relate only to securities exempted by KRS 292.400(1);
- (f) A person who has no place of business in this state if:
 - 1. His only clients in this state are other investment advisers, covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or
 - 2. During any period of twelve (12) consecutive months he does not have more than five (5) clients other than those specified in subparagraph 1;
- (g) An investment adviser representative or a person excluded from the definition of investment adviser representative;
- (h) A person who is excluded from the definition of investment adviser under Section 202(a)(11) of the Investment Advisors Act of 1940;
- (i) A covered adviser; or
- (j) Such other persons not within the intent of this subsection as the commissioner may by rule or order designate;

(11) "Investment adviser representative" means:

- (a) With respect to any investment adviser registered or required to be registered under this chapter, any partner, officer, director of, or a person occupying a similar status or performing similar functions, or other individual employed by or associated with an investment adviser, except clerical or ministerial personnel, who:
 - 1. Makes any recommendations or otherwise renders advice regarding securities;
 - 2. Manages accounts or portfolios of clients;
 - 3. Determines which recommendation or advice regarding securities should be given;
 - 4. Solicits, offers, or negotiates for the sale of or sells investment advisory services; or
 - 5. Supervises employees who perform any of the functions described in this paragraph; and

- (b) With respect to any covered adviser, any person defined as an investment adviser representative who has a place of business located in Kentucky, as those terms are defined in Rule 203A-3 promulgated in accordance with the Investment Advisors Act of 1940.
- (12) "Issuer" means any person who issues or proposes to issue any security, except that with respect to certificates of deposit, voting trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors (or persons performing similar functions) or of the fixed, restricted management, or unit type, the term "issuer" means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued, and except that with respect to fractional undivided interests in oil, gas, or other mineral rights, the term "issuer" means the owner of any such right or of an interest in such right (whether whole or fractional) who creates fractional interests therein for the purpose of distribution;
- (13) "Nonissuer" means not directly or indirectly for the benefit of the issuer;
- (14) "Person" means an individual, a limited liability company, a corporation, a partnership, a registered limited liability partnership, a limited partnership, an association, a joint-stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;
- (15) "Rule" or "regulation" means either or both administrative rules or administrative regulations promulgated by any governmental or other regulatory or self-regulatory entity, as the context requires;
- (16) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value. "Offer" or "offer to sell" includes every attempt to offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock is considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer, of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security;
- (17) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal statutes of those names as amended before or after January 1, 1961;
- (18) "Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, *viatical settlement investment* voting-trust certificate, certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest in or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any

insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period;

- (19) "State" means any state, territory, or possession of the United States, as well as the District of Columbia and Puerto Rico;~~and~~
- (20) ***"Viatical settlement investment" means the contractual right to receive any portion of the death benefit or ownership of a life insurance policy or certificate, for consideration that is less than the expected death benefit of the life insurance policy or certificate. "Viatical settlement investment" does not include:***
- (a) ***Any transaction between a viator and a viatical settlement provider as defined by Sections 6 and 7 of this Act, and KRS 304.15-700 to 304.15-720;***
 - (b) ***Any transfer of ownership or beneficial interest in a life insurance policy from a viatical settlement provider to another viatical settlement provider as defined by Section 6 of this Act and KRS 304.15-700 to 304.15-720 or to any legal entity formed solely for the purpose of holding ownership or beneficial interest in a life insurance policy or policies;***
 - (c) ***The bona fide assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan; or***
 - (d) ***The exercise of accelerated benefits pursuant to the terms of a life insurance policy issued in accordance with Subtitle 15 of KRS Chapter 304; and***
- (21) Nothing in this section shall be construed to affect the classification of property for ad valorem tax purposes.

Section 3. KRS 304.9-150 is amended to read as follows:

- (1) Application for a license issued under this subtitle, surplus lines broker license, viatical settlement broker license, or viatical settlement provider license shall be made by the applicant. Applications under this subsection shall be certified as true under penalty of perjury by the applicant.
- (2) The form of application shall require full answers to any questions as may be reasonably necessary to determine the applicant's identity, residence, personal history, business record, financial responsibility, experience in insurance, purpose for which the license is to be used, and other facts as required by the commissioner to determine whether the applicant meets the applicable qualifications for the license applied for.
- (3) The application shall state the kinds of insurance and any applicable lines of authority proposed to be transacted.
- (4) The application shall also show whether the applicant was ever convicted of or is currently charged with committing a crime; whether the applicant was ever involved in an administrative proceeding regarding any professional or occupational license; whether the applicant has a history of not being financially responsible; whether the applicant has any delinquent tax obligation that is not the subject of a repayment agreement; whether the applicant is currently charged with or has ever been found liable of fraud, misappropriation, conversion of funds, misrepresentation, or breach of fiduciary duty; whether the applicant has child support obligations in arrearage or is subject to a child support-related subpoena or

warrant; and whether the applicant has ever had a business relationship with an insurer terminated for any alleged misconduct, and the facts thereof.

- (5) The commissioner may require additional information or submissions from applicants and may obtain any documents or information reasonably necessary to verify the information contained in an application.
- (6) All applications shall be accompanied by the applicable license fee and examination fee, in the respective amounts stated in KRS 304.4-010.
- (7) No applicant for any license shall willfully misrepresent or withhold any fact or information called for in the application form or in connection therewith.
- (8) ***If the licensee is a business entity, the licensee shall notify the commissioner of all changes among its members, directors, officers and other individuals designated in or registered as to the license, within thirty (30) days of such change.***

Section 4. KRS 304.9-170 is amended to read as follows:

No preclicensing education or examination shall be required of:

- (1) (a) An individual licensee who allows his or her license to lapse if the license renewal fee is paid within twelve (12) months from the due date of the license renewal fee. However, a penalty in the amount of double the unpaid renewal fee shall be imposed. The department shall issue a license with the same lines of authority as the lapsed license.
 - (b) Any applicant for license covering any line of authority to which the applicant was licensed under a similar license in Kentucky, other than a temporary license, within the twelve (12) months next preceding date of application. The applicant is not eligible for this exemption if the previous license was revoked or suspended by the commissioner for reasons other than failure to maintain financial responsibility or to meet continuing education requirements as required by KRS 304.9-105 and 304.9-295.
 - (c) ***A licensed insurance agent operating as a viatical settlement broker pursuant to Section 7, subsection (2)(b) of this Act.***
- (2) An individual who applies for an insurance producer license in Kentucky who was previously licensed for the same lines of authority in another state shall not be required to complete any preclicensing education or examination. This exemption is only available if the applicant is currently licensed in the other state or if the application is received within ninety (90) days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's database records, maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries, indicate that the insurance producer is or was licensed in good standing for the line of authority requested.
 - (3) An individual licensed as an insurance producer in another state within the last twelve (12) months who moves to Kentucky shall make application within ninety (90) days of establishing legal residence to become a resident licensee in accordance with KRS 304.9-105. No preclicensing education or examination shall be required of that applicant to obtain a license for any line of authority previously held in the prior home state except where the commissioner determines otherwise by administrative regulation.

- (4) An applicant for an insurance producer's license who is currently licensed in Kentucky as a consultant as to the same line of authority, or has been so licensed within twelve (12) months next preceding the date of application for the license, unless the previous license was revoked or suspended or continuation thereof refused by the commissioner for reasons other than failure to maintain financial responsibility as required by KRS 304.9-330.
- (5) Any applicant for license covering the same line of authority as to which that applicant shall have held a valid license issued in accordance with this subtitle or other applicable Kentucky law which was surrendered, in accordance with KRS 304.2-080 or other applicable law, in order to accept employment with the Department of Insurance, provided, however, that the applicant shall apply for relicensing within twelve (12) months of the date of termination of his or her employment with the Department of Insurance.

Section 5. KRS 304.9-440 is amended to read as follows:

- (1) The commissioner may place on probation, suspend, or may impose conditions upon the continuance of a license for not more than twelve (12) months, revoke, or refuse to issue or renew any license issued under this subtitle or any surplus lines broker, viatical settlement broker, or viatical settlement provider license, or may levy a civil penalty in accordance with *Section 15 of this Act* ~~[KRS 304.99-020]~~, or any combination of actions for any one (1) or more of the following causes:
 - (a) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
 - (b) Violating any insurance laws, or violating any administrative regulations, subpoena, or order of the commissioner or of another state's insurance commissioner;
 - (c) Obtaining or attempting to obtain a license through misrepresentation or fraud;
 - (d) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing insurance or *the business of* viatical *settlements* ~~[settlement business]~~;
 - (e) Intentionally misrepresenting the terms of an actual or proposed insurance contract, viatical settlement contract, or application for insurance;
 - (f) Having been convicted of *or having pled guilty or nolo contendere to* any felony;
 - (g) Having admitted or been found to have committed any unfair insurance trade practice, ~~[~~ *or* insurance fraud, *or fraudulent viatical settlement act*; ~~]~~
 - (h) Using fraudulent, coercive, or dishonest practices; or demonstrating incompetence, untrustworthiness, or financial irresponsibility; or being a source of injury or loss to the public in the conduct of business in this state or elsewhere;
 - (i) Having an insurance license, viatical settlement license, or its equivalent, denied, suspended, or revoked in any other state, province, district, or territory;
 - (j) Surrendering or otherwise terminating any license issued by this state or by any other jurisdiction, under threat of disciplinary action, denial, or refusal of the issuance of or renewal of any other license issued by this state or by any other jurisdiction; or revocation or suspension of any other license held by the licensee issued by this state or by any other jurisdiction;

- (k) Forging another's name to an application for insurance, to any other document related to an insurance transaction, or to any document related to *the business of* ~~the~~ viatical ~~settlements~~ ~~settlement transaction~~;
 - (l) Cheating, including improperly using notes or any other reference material to complete an examination for license;
 - (m) Knowingly accepting insurance or viatical settlement business from an individual or business entity who is not licensed, but who is required to be licensed under this subtitle;
 - (n) Failing to comply with an administrative or court order imposing a child support obligation;
 - (o) Failing to pay state income tax or to comply with any administrative or court order directing payment of state income tax;
 - (p) Having been convicted of a misdemeanor for which restitution is ordered in excess of three hundred dollars (\$300), or of any misdemeanor involving dishonesty, breach of trust, or moral turpitude; ~~or~~
 - (q) *Failing to no longer meet the requirements for initial licensure;*
 - (r) *If a viatical settlement provider, demonstrating a pattern of unreasonable payments to viators or failing to honor contractual obligations set out in a viatical settlement contract;*
 - (s) *Entering into any viatical settlement contract or using any form that has not been approved pursuant to subtitle 15 of this chapter;*
 - (t) *If a licensee, having assigned, transferred, or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, an accredited investor or qualified institutional buyer as defined, respectively, in Regulation D, Rule 501 or Rule 144a of the Federal Securities Act of 1933, as amended, a financing entity, a special purpose entity, or a related provider trust; or*
 - (u) Any other cause for which issuance of the license could have been refused, had it then existed and been known to the commissioner.
- (2) The license of a business entity may be suspended, revoked, or refused for any cause relating to an individual designated in or registered under the license if the commissioner finds that an individual licensee's violation was known or should have been known by one (1) or more of the partners, officers, or managers acting on behalf of the business entity and the violation was not reported to the Department of Insurance nor corrective action taken. The applicant or licensee may make written demand upon the commissioner in accordance with KRS 304.2-310 for a hearing before the commissioner to determine the reasonableness of the commissioner's action.
- (3) The commissioner shall retain the authority to enforce the provisions and penalties of this chapter against any individual or business entity who is under investigation for or charged with a violation of this chapter, even if the individual's or business entity's license has been surrendered or has lapsed by operation of law;
- (4) *The commissioner may suspend, revoke or refuse to renew the license of a licensed insurance agent operating as a viatical settlement broker, pursuant to Section 7 of this*

Act, if the commissioner finds that such insurance agent has violated the provisions of KRS 304.15-700 to 304.15-725.

- (5) *If the commissioner denies a license application or suspends, revokes, or refuses to renew the license of a viatical settlement provider or viatical settlement broker, or suspends, revokes, or refuses to renew the license of a licensed life insurance agent operating as a viatical settlement broker pursuant to Section 7 of this Act, the commissioner shall comply with the provisions of this section and KRS Chapter 13B.*

Section 6. KRS 304.15-020 is amended to read as follows:

- (1) *"Business of viatical settlements" means an activity involved in but not limited to the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating, or in any other manner, of viatical settlement contracts.*
- (2) *"Chronically ill" means:*
- (a) *Being unable to perform at least two (2) activities of daily living, including but not limited to eating, toileting, transferring, bathing, dressing, or continence;*
 - (b) *Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or*
 - (c) *Having a level of disability similar to that described in paragraph (a) of this subsection as determined by the Secretary of Health and Human Services.*
- (3) *"Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy that is the subject of a viatical settlement contract but:*
- (a) *Whose principal activity related to the transaction is providing funds to effect the viatical settlement contract or purchase of one (1) or more viaticated policies or to provide credit enhancement; and*
 - (b) *Who has an agreement in writing with one (1) or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts or to provide stop loss insurance.*

"Financing entity" does not include a nonaccredited investor.

- (4) *"Fraudulent viatical settlement act" includes:*
- (a) *Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits or permits his employees or its agents to engage in acts including:*
 - 1. *Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, life insurance producer, financing entity, insurer, or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one (1) or more of the following:*
 - a. *An application for the issuance of a viatical settlement contract or policy;*

(e) *Attempting to commit, assisting, aiding, or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.*

(5) "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.

~~(6)(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 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.

~~(7)(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.

~~(8)(4)~~ "Viatical settlement broker" means an individual, partnership, corporation, or other person 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.

~~(9)(5)~~ "Viatical settlement contract" means a written agreement entered into between a viatical settlement provider and a viator owning a ~~life insurance~~ policy or who owns or is covered under a group policy insuring the life of a person and the agreement establishes 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 *viator's* ~~policyowner's~~ assignment, transfer, sale, devise or bequest of the death benefit or ownership of **any portion of** the insurance policy or certificate ~~to the viatical settlement provider~~. A viatical settlement contract also includes a contract for a loan or other **financing transaction with a viator secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy.** A viatical settlement contract includes an agreement with a viator to transfer ownership or change the beneficiary designation of a policy at a later date regardless of the date that compensation is paid to the viator. "Viatical settlement contract" does not mean a written agreement entered into between a viator and a person having an insurable interest in the insured's life ~~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.~~

~~(10)(6)~~ "Viatical settlement provider" means an individual, partnership, corporation, or other person 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,~~ 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;
- (c) Any natural person who is not licensed in accordance with *Section 7 of this Act* ~~KRS 304.15-700~~ 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;
- (e) *An authorized or eligible insurer that provides stop-loss coverage to a viatical settlement provider, financing entity, special purpose entity, or related provider trust;*
- (f) *A special purpose entity;*
- (g) *A related provider trust; or*
- (h) *An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended, and who acquires a viaticated policy from a viatical settlement provider.*

~~(11)~~~~(7)~~ "Viator" means *a resident of this Commonwealth who is the owner of a ~~life insurance~~ policy or a certificate holder under a group policy* ~~that insures the life of a person~~ who enters *or seeks to enter* into a viatical settlement contract. *A viator shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one (1) viator on a single policy and the viators are residents of different states, the transaction shall be governed by the law of the state in which the viator having the largest percentage of ownership resides or, if the viators hold equal ownership, the state of residence of one (1) viator agreed upon in writing by all viators. "Viator" does not include:*

- (a) *A viatical settlement provider licensed pursuant to Section 5 of this Act;*
- (b) *An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933 as amended;*
- (c) *A financing entity;*
- (d) *A special purpose entity; or*
- (e) *A related provider trust.*

(12) *"Viaticated policy" means a policy that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.*

~~(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.]~~

~~(13)~~~~(9)~~ "Related provider trust" means a *titling trust or other trust* established by a licensed viatical settlement provider *or financing entity* for the *sole* purpose of *holding the ownership or beneficial interest in viaticated policies. The trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed viatical settlement provider*~~entering into or owning viatical settlement contracts. This term shall not include an independent third party trustee.~~

(14) "*Special purpose entity*" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets for a financing entity or licensed viatical settlement provider.

(15) "*Terminally ill*" means having an illness or sickness that can reasonably be expected to result in death in twenty-four (24) months or less.

~~(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 7. KRS 304.15-700 is amended to read as follows:

- (1) No person may act as a viatical settlement provider *without first having obtained a license as a viatical settlement provider from the commissioner*~~[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) *Except as provided in paragraph (b) or (c) of this subsection, no person may broker, solicit, or negotiate viatical settlement contracts between a viator and one (1) or more viatical settlement providers or otherwise act on behalf of a viator without first having obtained a license as a viatical settlement broker from the commissioner as follows:*
 - (a) *All applicants for a viatical settlement broker license shall attend the required viatical broker training and pass a viatical broker examination designated by the commissioner through administrative regulation;*
 - (b) *A person licensed as a resident or nonresident insurance agent with a life line of authority, as set forth in KRS 304.9-030(2)(a), may act on behalf of a viator or otherwise negotiate, as defined in KRS 304.9-020 viatical settlement contracts between a viator and one or more viatical settlement providers without first obtaining a license as a viatical settlement broker and shall be permitted to operate as a viatical settlement broker as set forth in this subtitle if:*
 1. *That person has been licensed as a resident insurance agent with a life line of authority in his home state for at least one (1) year;*
 2. *Not later than thirty (30) days from the first day of operating as a viatical settlement broker, the agent notifies the commissioner, on a form or in a manner that may be prescribed by the commissioner, that he is acting as a viatical settlement broker and pays any applicable fees to be determined by the commissioner. The notification shall include an acknowledgment by the agent that he will operate as a viatical settlement broker in accordance with this subtitle; and*
 3. *Irrespective of the manner in which a viatical settlement broker or life insurance agent is compensated, the viatical settlement broker or life insurance agent is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator.*
 - (c) *Notwithstanding subsection (2) of this section, a person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator, whose compensation is not paid directly or indirectly by the viatical settlement provider, may negotiate viatical settlement contracts without having to obtain a license as a viatical settlement broker.*
- (3) *Application for a viatical settlement provider license or a viatical settlement broker license shall be made in accordance with KRS 304.9-150.*
- (4) *Licenses for viatical settlement providers and viatical settlement brokers shall be in accordance with subtitle 9 of KRS Chapter 304. A business entity licensed as a viatical settlement broker or viatical settlement provider shall designate individuals to act under its license in accordance with KRS 304.9-133.*

- (5) ~~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.~~
- (3) ~~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 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.
- (6) ~~(5)~~ No person shall use ~~a~~~~any~~ viatical settlement contract *form or provide to a viator a disclosure statement form* in this Commonwealth unless it has been filed with and approved by the commissioner *in the following manner:*
- (a) 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 ~~the~~~~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. The commissioner shall disapprove a viatical settlement contract form *or disclosure statement 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 ~~viator~~~~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; *and*

(b) *Forms may be submitted simultaneously with an application or at any time during the process of approving an application for a license pursuant to this subtitle or at any other time.*

~~(7)(6)~~ A licensed viatical settlement provider shall not use any person to perform the functions of a viatical settlement broker as defined in KRS 304.15-020 unless the person holds a current and valid license *or is a licensed insurance agent authorized pursuant to this subtitle to operate* 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 6 of this Act* ~~[KRS 304.15-020]~~ 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.~~

~~(8)(7)~~ If any employee of a licensee violates any provision of KRS 304.15-020, 304.15-700 to 304.15-720, 304.42-190, and 304.99-126, the department may take disciplinary action against the employer licensee.

~~(9)(8)~~ When a viatical settlement provider elects to use a related provider trust in accordance with *Section 11 of this Act* ~~[KRS 304.15-716]~~, 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 8. 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 subject to the following:*

- (a) *The following 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;
1. *Proposed, offered, or executed settlement contracts, underwriting documents, policy forms, and applications from the date of the proposal, offer, or execution of the settlement contract, whichever is later; and*
 2. *All checks, drafts, or other evidence and documentation related to the payment, transfer, deposit, or release of funds from the date of the transaction.*
- (b) 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.
- (c) *This section shall not relieve a licensed settlement provider of the obligation to produce these documents to the commissioner after the retention period has expired if the settlement provider has retained the documents.*
- (d) *Records required to be retained by this section shall be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of the record.*

~~[(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 9. KRS 304.15-710 is amended to read as follows:

- (1) *With each application for a viatical settlement contract, a viatical settlement provider or viatical settlement broker*~~[A viatical settlement provider]~~ shall provide the viator a copy of the department's consumer guide relating to *viatical settlements*~~[viaticals]~~ and *shall* disclose the following information to the viator no later than the date that the *application for a*~~[viatical]~~ settlement contract is signed by all parties:
- (a)~~[(1)]~~ That *there are* possible alternatives to viatical settlement contracts~~[may exist for persons with catastrophic or life-threatening illnesses,]~~ including~~[,]~~ but not limited to~~[,]~~ accelerated benefits *or policy loans* offered *under the viator's*~~[by the issuer of the life insurance]~~ policy;
 - (b)~~[(2)]~~ That some or all of the proceeds of the viatical settlement may be taxable *under federal income tax laws and state franchise and income tax laws*, and that assistance should be sought from a personal tax advisor;
 - (c)~~[(3)]~~ That *proceeds of* the viatical settlement *contract* could be subject to the claims of creditors;
 - (d)~~[(4)]~~ That receipt of *the proceeds of* a viatical settlement *contract* may adversely affect the *viator's*~~[recipient's]~~ eligibility for Medicaid or other government benefits or

entitlements, and that advice should be obtained from the appropriate *government* agencies;

- (e) ~~(5)~~ That the *viator* ~~[policyowner]~~ has a right to rescind a viatical settlement contract *before the earlier of* ~~[within]~~ thirty (30) *calendar* days of the date it is executed by all parties or ~~[within]~~ fifteen (15) *calendar* days *after* ~~[of]~~ the receipt of the *proceeds of the* viatical settlement *contract* ~~[proceeds]~~ by the viator. *If exercised by the viator, rescission is effective only if both notice of the rescission is given, and within the rescission period all proceeds, and any premiums, loans, and loan interest are repaid to the settlement provider. If the insured dies during the rescission period, the settlement contract shall be deemed to have been rescinded, subject to repayment of all viatical settlement proceeds and any premiums, loans, and loan interest to the viatical settlement provider. The viatical settlement provider shall effectuate the change of ownership of the policy or certificate to the viator immediately upon effective rescission by the viator;*
- (f) *That entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy, to be forfeited by the viator and that assistance should be sought from a financial adviser;*
- (g) *That funds will be sent to the viator within three (3) business days after the viatical settlement provider has received the insurer's or group administrator's acknowledgment that ownership of the policy has been transferred and the beneficiary has been designated pursuant to the viatical settlement contract;*
- (h) *That the disclosure document shall contain the following language:*
"All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two (2) years."; and
- (i) *That the insured may be contacted by the viatical settlement provider or its authorized representative for the purpose of determining the insured's health status. This contact shall be limited to once every three (3) months if the insured has a life expectancy of more than one (1) year, and no more than once per month if the insured has a life expectancy of one (1) year or less.*
- (2) *A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and the viatical settlement provider and provide the following information:*
- (a) *State the affiliation, if any, between the viatical settlement provider and the issuer of the policy to be acquired pursuant to a settlement contract;*
- (b) *State the name, address and telephone number of the viatical settlement provider;*

- (c) *If a policy to be acquired pursuant to a viatical settlement contract has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be acquired pursuant to a settlement contract, the viator shall be informed of the possible loss of coverage on the other lives and shall be advised to consult with his insurance producer or the company issuing the policy for advice on the proposed viatical settlement contract;*
 - (d) *State the dollar amount of the current death benefit payable to the viatical settlement provider under the policy. The viatical settlement provider shall, if known, also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy, and the viatical settlement provider's interest in those benefits; and*
 - (e) *State the name, business address and telephone number of the independent third party escrow agent, and the fact that the viator may inspect or receive copies of the relevant escrow or trust agreements or documents.*
- (3) *If the viatical settlement provider transfers ownership or changes the beneficiary of the policy, the viatical settlement provider shall communicate the change in ownership or beneficiary to the insured within twenty (20) days after the change*~~[, whichever is less, that the contract is rescinded if the insured dies within the rescission period;~~
- ~~(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. KRS 304.15-715 is amended to read as follows:

- (1) A viatical settlement provider entering into a viatical settlement contract with any person shall first obtain:
 - (a) *If the viator is insured*, a written statement from a licensed attending physician that the *viator*~~[person]~~ is of sound mind and under no constraint or undue influence *to enter into a viatical settlement contract*; and
 - (b) *A document in which the insured consents to the release of his or her medical records to a viatical settlement provider, life insurance agent, or viatical settlement broker and, if the policy was issued less than two (2) years from the date of application for a viatical settlement contract, to the insurance company that issued the policy*~~[A witnessed document in which the person consents to the viatical settlement contract, acknowledges any 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) *The insurer shall respond to a request for verification of coverage submitted by a viatical settlement provider or viatical settlement broker not later than thirty (30) calendar days after the date the request is received. The request for verification of coverage shall be made on a form approved by the commissioner. The insurer shall complete and issue the verification of coverage or indicate in which respects it is unable to respond. In its response, the insurer shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at that time regarding the validity of the insurance contract or possible fraud, and shall provide sufficient detail of all reasons for the investigation to the viatical settlement provider or viatical settlement broker.*
- (3) *Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, 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 policy, and acknowledges that he or she has entered into the viatical settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, that the terminal or chronic illness or condition was diagnosed after the policy was issued.*
- (4) 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.
- (5)~~(3)~~ All viatical settlement contracts entered into in this state shall contain an unconditional *right to rescind a viatical settlement contract before the earlier of thirty (30) calendar days after the date it is executed or fifteen (15) calendar days after the date of receipt of the proceeds of the viatical settlement contract by the viator. If exercised by the viator, rescission is effective only if both notice of the rescission is given, all proceeds, and any premiums, loans, and within the rescission period and loan interest are repaid to the viatical settlement provider. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded subject to repayment of all proceeds and any premiums, loans, and loan interest to the viatical settlement provider. The viatical settlement provider shall effectuate the change of ownership of the policy or certificate to the viator immediately upon effective rescission by the viator*~~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].~~
- (6)~~(4)~~ The independent third-party trustee shall 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.
- (7)~~(5)~~ Failure to tender *consideration to the viator for the viatical settlement contract* by the date disclosed ~~to the viator~~ renders the *viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator*~~[null and void].~~

(8) *Contacts with the insured for the purpose of determining the health status of the insured after the execution of the viatical settlement contract shall only be made by the viatical settlement provider or its authorized representative and shall be limited to once every three (3) months for an insured with a life expectancy of more than one (1) year, and to no more than once per month for an insured with a life expectancy of one (1) year or less. The viatical settlement provider shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement providers shall be responsible for the actions of their authorized representatives.*

~~[(6) All licensed viatical settlement providers transacting business in Kentucky shall have the insured'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 (1) 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 11. KRS 304.15-716 is amended to read as follows:

(1) *It is a violation of this subtitle for a person to enter into a viatical settlement contract within a two (2) year period commencing with the date of issuance of the policy unless the viator certifies to the viatical settlement provider that one (1) or more of the following conditions has been met within the two (2) year period:*

(a) *The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, if the total of the time covered under the conversion policy plus the time covered under the prior policy is at least twenty-four (24) months. The time covered under a group policy shall be calculated without regard to a change in insurance carriers, if the coverage has been continuous and under the same group sponsorship; or*

(b) *The viator submits independent evidence to the viatical settlement provider that one (1) or more of the following conditions has been met within the two (2) year period:*

1. *The viator or insured is terminally or chronically ill; or*

2. *The viator or insured disposes of his ownership interests in a closely held corporation, pursuant to the terms of a buyout or other similar agreement in effect at the time the insurance policy was initially issued.*

(2) *Copies of the independent evidence described in subsection (1) of this section and the documents required by Section 9 of this Act shall be submitted to the insurer when the*

viatical settlement provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

- (3) *If the viatical settlement provider submits to the insurer a copy of independent evidence provided for in subsection (2) of this section when the viatical settlement provider submits a request to the insurer to effect the transfer of the policy to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this section and the insurer shall respond timely to the request.* ~~[A related provider trust shall be subject to all provisions of KRS 304.15-020, 304.15-700 to 304.15-720, 304.42-190, and 304.99-126 that apply to the viatical settlement provider, and that establish the related provider trust, except KRS 304.15-700(1) 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 KRS 304.15-020, 304.15-700 to 304.15-720, 304.42-190, and 304.99-126].~~

Section 12. KRS 304.15-717 is amended to read as follows:

- (1) It is unlawful for any person:

- (a) ~~[(1)]~~ To knowingly *or intentionally* 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;
- (b) *To knowingly or intentionally interfere with the enforcement of the provisions of this subtitle or investigations of suspected or actual violations of this subtitle;*
- (c) *To knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements as defined in subsection (4) of Section 6 of this Act;*
- (d) *To commit a fraudulent viatical settlement act;*

- ~~[(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]~~
- (e) ~~[(d)]~~ To misrepresent that the viatical *settlement* provider, viatical *settlement* broker, ~~[~~ ~~or]~~ other licensee, *or any other person* 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];~~

- (f) ~~[(3)]~~ To act as a viatical settlement broker if the person is acting as a viatical settlement provider in the same viatical settlement contract; *and*

~~[(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]~~

~~(g)[(5)] For any person~~~~[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.

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.

(2) *A viatical settlement contract and an application for a viatical settlement contract, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:*

"Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and upon conviction may be subject to fines or confinement in prison, or both."

The lack of a statement required by this section does not constitute a defense in any prosecution for a fraudulent viatical settlement act;

(3) (a) *A person engaged in the business of viatical settlements who has knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed shall provide the information required to the commissioner, in a manner prescribed by the commissioner.*

(b) *Any person who has knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed may provide the information required to the commissioner, in a manner prescribed by the commissioner in administrative regulations.*

(4) (a) *Civil liability may not be imposed on and a cause of action may not arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent viatical settlement acts, or suspected or completed fraudulent insurance acts, if the information is provided to or received from:*

1. *The commissioner or the commissioner's employees, agents, or representatives;*

2. *Federal, state, or local law enforcement or regulatory officials, or their employees, agents, or representatives;*

3. *A person involved in the prevention and detection of fraudulent viatical settlement acts or that person's agents, employees, or representatives;*

4. *The National Association of Insurance Commissioners (NAIC), the National Association of Securities Dealers (NASD), the North American Securities Administrators Association (NASAA), or their employees, agents, or representatives, or any other regulatory body overseeing life insurance or viatical settlement contracts; or*

5. *The insurer that issued the policy covering the life of the insured.*

(b) *This subsection shall not apply to a statement made with actual malice. In an action brought against a person for filing a report or furnishing other information*

concerning a fraudulent viatical settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that this subsection shall not apply because the person filing the report or furnishing the information did so with actual malice.

- (c) *A person who furnishes information concerning fraudulent viatical settlement acts and who is a party in a civil cause of action for libel, slander, or another relevant tort arising out of activities in carrying out the provisions of this chapter shall be entitled to an award of attorney's fees and court costs if he is the prevailing party in the suit and the party bringing the action was not substantially justified in filing the cause of action. For purposes of this paragraph, a proceeding is "substantially justified" if a person had a reasonable basis in law or fact at the time the cause of action was initiated.*
 - (d) *This subsection shall not abrogate or modify common law or statutory privileges or immunities enjoyed by a person.*
 - (e) *This subsection shall not apply to a person who furnishes information concerning his own suspected, anticipated, or completed fraudulent viatical settlement acts or suspected, anticipated, or completed fraudulent insurance acts.*
- (5) *The documents and evidence provided pursuant to subsection (4) of this section or obtained by the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action, except that:*
- (a) *This subsection shall not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:*
 - 1. *In administrative or judicial proceedings to enforce laws administered by the commissioner;*
 - 2. *To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts, or to the National Association of Insurance Commissioners (NAIC); or*
 - 3. *At the discretion of the commissioner, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act.*
 - (b) *The release of documents and evidence provided by paragraph (a) of this subsection shall not abrogate or modify the privilege granted by this subsection.*
- (6) *This section shall not:*
- (a) *Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;*
 - (b) *Prevent or prohibit a person from voluntarily disclosing information concerning fraudulent viatical settlement acts to a law enforcement or regulatory agency other than the Department of Insurance; or*

- (c) *Limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.*
- (7) *A viatical settlement provider shall adopt antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent viatical settlement acts. The commissioner may order or, if a licensee requests, may grant modifications of the required initiatives listed in this subsection as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications reasonably may be expected to accomplish the purpose of this section. Antifraud initiatives shall include the following:*
- (a) *Fraud investigators, who may be viatical settlement providers or employees or independent contractors of those viatical settlement providers; and*
- (b) *An antifraud plan submitted to the commissioner that shall include but is not limited to the following:*
1. *The procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;*
 2. *The procedures for reporting possible fraudulent viatical settlement acts to the commissioner;*
 3. *The plan for antifraud education and training of underwriters and other personnel; and*
 4. *A chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.*

Section 13. KRS 304.15-718 is amended to read as follows:

The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary directly to the independent escrow agent{

~~(1) A viatical settlement transaction shall be completed through the independent third party trustee}. Within three (3) business days *after the date the escrow agent receives the document, or from the date the viatical settlement provider receives the documents, if the viator erroneously send the documents directly to the provider*[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 *maintained in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the viatical settlement provider or related provider trust. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator.*[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 KRS 304.15-020, 304.15-700 to 304.15-720, 304.42-190, and 304.99-126 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 14. KRS 304.15-720 is amended to read as follows:

The commissioner shall have the authority to:

- (1) Promulgate administrative regulations in accordance with KRS Chapter 13A implementing *Section 6 of this Act* ~~[KRS 304.15-020]~~ and KRS 304.15-700 to 304.15-720;
- (2) Establish standards for evaluating reasonableness of payments under viatical settlement contracts *where the insured under the policy which is the subject of a viatical settlement contract is terminally or chronically ill. This authority includes but is not limited to regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a policy. A viatical settlement provider, where the insured is not terminally or chronically ill, shall pay an amount greater than the cash surrender value or accelerated death benefit then available;* ~~[which will include type of illness, life expectancy, insurance company rating, premium payment amount, policy type, market factors and other reasonable factors as deemed appropriate by the commissioner; and]~~
- (3) Establish appropriate licensing requirements and fees for agents and brokers; *and*
- (4) *Promulgate administrative regulations governing the relationship and responsibilities of an insurer and a viatical settlement provider, life insurance producer, and others in the*

business of viatical settlements during the period of consideration or effectuation of a viatical settlement contract.

Section 15. KRS 304.99-020 is amended to read as follows:

- (1) For any violation of this code where the commissioner has the power to revoke or suspend a license or certificate of authority he may in lieu thereof or in addition to such revocation or suspension impose a civil penalty against the violator in the case of an insurer, a fraternal benefit society, nonprofit hospital, medical-surgical, dental, and health service corporation, or health maintenance organization of not more than ten thousand dollars (\$10,000) per violation; in the case of an agent, surplus lines broker, rental vehicle agent or managing employee, specialty credit producer or managing employee, or reinsurance intermediary broker or manager of not more than one thousand dollars (\$1,000) per violation; in the case of an adjuster, administrator, viatical settlement broker, viatical settlement ~~producer~~ *provider*, or consultant of not more than two thousand dollars (\$2,000) per violation.
- (2) Such civil penalty may be recovered in an action brought thereon in the name of the Commonwealth of Kentucky in any court of appropriate jurisdiction.
- (3) In any court action with respect to a civil penalty, the court may review the penalty as to both liability and reasonableness of amount.

Approved March 11, 2005.