

CHAPTER 32

(HB 348)

AN ACT relating to life settlements.

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) ***"Advertisement" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communication media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed directly before the public, for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy or an interest in a life insurance policy pursuant to a life settlement contract.***
- (2) "Business of ~~life~~~~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 ~~life~~~~viatical~~ settlement contracts.
- (3)~~(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.
- (4) ***"College life insurance" is that form of life insurance sold to college students, the initial premiums for which are financed by a promissory note.***
- (5)~~(3)~~ "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy from a ~~life~~~~viatical~~ settlement provider, credit enhancer, or any entity that has a direct ownership in a policy that is the subject of a ~~life~~~~viatical~~ settlement contract but:
 - (a) Whose principal activity related to the transaction is providing funds to effect the ~~life~~~~viatical~~ settlement contract or purchase of one (1) or more ~~viatical~~ policies or to provide credit enhancement; and
 - (b) Who has an agreement in writing with one (1) or more licensed ~~life~~~~viatical~~ settlement providers to finance the acquisition of ~~life~~~~viatical~~ settlement contracts or to provide stop loss insurance.

"Financing entity" does not include a nonaccredited investor ***or purchaser.***
- (6) ***"Financing transaction" means a transaction in which a life settlement provider obtains financing from a financing entity, including without limitation any secured or unsecured financing, any securitization transaction, or any securities offering which either is registered or exempt from registration under federal and state securities law.***
- (7)~~(4)~~ "Fraudulent ~~life~~~~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 ~~life~~~~viatical~~ settlement provider, ~~life~~~~viatical~~ settlement broker, life insurance producer, financing entity, insurer, ***premium finance lender***, 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 *life* settlement contract or policy;
 - b. The underwriting of a *life* settlement contract or policy;
 - c. A claim for payment or benefit pursuant to a *life* settlement contract or policy;
 - d. Premiums paid on a policy;
 - e. Payments and changes in ownership or beneficiary made in accordance with the terms of a *life* settlement contract or policy;
 - f. The reinstatement or conversion of a policy;
 - g. In the solicitation, offer, effectuation, or sale of a *life* settlement contract or policy;
 - h. The issuance of written evidence of a *life* settlement contract or policy;
 - i. A financing transaction;
 - j. Any application for or the existence of or any payments related to a loan secured directly or indirectly by any interest in a life insurance policy; or**
 - k. Stranger-originated life insurance;**
2. Employing any device, scheme, or artifice to defraud related to policies acquired pursuant to a *life* settlement contract;
 - 3. In the solicitation, application, or issuance of a life insurance policy, employing any device, scheme, or artifice in violation of state insurable interest laws;**
- (b) Any of the following acts committed by any person or permitted by a person to be committed by the person's employees or agents in the furtherance of a fraud or to prevent detection of a fraud to:
1. Remove, conceal, alter, destroy, or sequester from the executive director the assets or records of a licensee or other person engaged in the business of *life* settlements;
 2. Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;
 3. Transact the business of *life* settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of *life* settlements;
 4. File with the executive director or the chief insurance regulatory official of another jurisdiction a document containing false information or which otherwise conceals information about a material fact from the executive director; **or**
 - 5. Misrepresent the state of residence of an owner to be a state or jurisdiction that does not have a law substantially similar to this section and KRS 304.15-700 to 304.15-720;**
- (c) Embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a *life* settlement provider, *life* settlement broker, insurer, insured, **owner**, insurance policyowner, or any other person engaged in the business of *life* settlements or insurance;
- (d) Recklessly entering into, brokering, or otherwise dealing in a *life* settlement contract, the subject of which is a policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the **owner** or the **owner's** agent intended to defraud the policy issuer. For the purposes of this paragraph, "recklessly" means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct; or
- (e) Attempting to commit, assisting, aiding, or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.

- (8)~~(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.
- (9) *"Life expectancy" means the number of months the insured under the life insurance policy to be settled can be expected to live considering medical records and appropriate experiential data.*
- (10) *"Premium finance loan" means a loan made primarily for the purposes of making premium payments on a life insurance policy, which loan is secured by an interest in such life insurance policy.*
- (11) *"Purchaser" means a person who pays compensation or anything of value as consideration for a beneficial interest in a trust which is vested with, or for the assignment, transfer, or sale of, an ownership or other interest in a life insurance policy or certificate issued pursuant to a group life insurance policy which has been the subject of a life settlement contract.*
- (12) *"Related provider trust" means a titling trust or other trust established by a licensed life settlement provider or financing entity for the sole purpose of holding the ownership or beneficial interest in policies. The trust shall have a written agreement with the licensed life settlement provider under which the licensed life 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 life settlement transactions available to the executive director as if those records and files were maintained directly by the licensed life settlement provider.*
- (13) *"Settled policy" means a life insurance policy or certificate that has been acquired by a life settlement provider pursuant to a life settlement contract.*
- (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 life settlement provider.*
- (15) *"Stranger-originated life insurance" or "STOLI" means the procurement of new life insurance by persons or entities that lack insurable interest on the insured and, at policy inception, such person or entity owns or controls, or has an arrangement or agreement to own or control, the policy or the majority of the death benefit in the policy and the insured or insured's beneficiaries receive little or none of the proceeds of the death benefits of the policy. Trusts that are created to give the appearance of insurable interest and are used to initiate policies for investors violate insurable interest laws and the prohibition against wagering on life. STOLI arrangements do not include those practices set forth in paragraph (b) of subsection (17) of this section.*
- (16)~~(6)~~ — "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) — "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) ~~"Life~~^[viatical] settlement broker" or "broker" means an individual, partnership, corporation, or other person who *is working exclusively on behalf of an owner*~~[or that for another]~~ and for a fee, commission, or other valuable consideration, offers or advertises the availability of *life*^[viatical] settlements, introduces *an owner*~~[a viator]~~ to *life*^[viatical] settlement providers, or offers or attempts to negotiate *life*^[viatical] settlements between *an owner*~~[a viator]~~ and one (1) or more *life*^[viatical] settlement providers. "Life^[viatical] settlement broker" does not include an attorney, certified public accountant, or financial planner who is retained to represent the *owner*~~[viator]~~ and whose compensation is not paid *directly or indirectly* by the *life*^[viatical] settlement provider *or any other person except the owner.*
- (17)~~(9)~~ "Life^[viatical] settlement contract" means a written agreement entered into between a *life*^[viatical] settlement provider and *an owner*~~[a viator]~~ owning a 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 *life*^[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 *owner's*~~[viator's]~~ assignment, transfer, sale,

devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate. A *life*^[viatical] settlement contract also includes a contract for a loan or other financing transaction with *an owner*^[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 *life*^[viatical] settlement contract includes an agreement with *an owner*^[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 *owner*^[viator]. "*Life*^[Viatical] settlement contract" does not mean a written agreement entered into between *an owner*^[a viator] and a person having an insurable interest in the insured's life.

(a) "*Life settlement contract*" also includes a premium finance loan made for a policy on or before the date of issuance of the policy where:

1. *The loan proceeds are not used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing;*
2. *The owner receives on the date of the premium finance loan a guarantee of the future life settlement value of the policy; or*
3. *The owner agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.*

(b) "*Life settlement contract*" does not include:

1. *A policy loan by a life insurance company pursuant to the terms of the life insurance policy or accelerated death provisions contained in the life insurance policy, whether issued with the original policy or as a rider;*
2. *A premium finance loan or any loan made by a bank or other licensed financial institution, provided that neither default on such loan nor the transfer of the policy in connection with such default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under KRS 304.15-700 to 304.15-720;*
3. *A collateral assignment of a life insurance policy by an owner;*
4. *A loan made by a lender that does not violate Subtitle 30 of this chapter, if the loan is not described in paragraph (a) of this subsection and is not otherwise within the definition of life settlement contract;*
5. *An agreement where all the parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties;*
6. *Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;*
7. *A bona fide business succession planning arrangement:*
 - a. *Between one (1) or more shareholders in a corporation or between a corporation and one (1) or more of its shareholders or one (1) or more trust established by its shareholders;*
 - b. *Between one (1) or more partners in a partnership or between a partnership and one (1) or more of its partners or one (1) or more trust established by its partners; or*
 - c. *Between one (1) or more members in a limited liability company or between a limited liability company and one (1) or more of its members or one (1) or more trust established by its members;*
8. *An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or*
9. *Any other contract, transaction, or arrangement not included in the definition of life settlement contract as determined by the executive director by administrative regulation.*

~~(18)~~~~(10)~~ "**Life**~~[viatical]~~ settlement provider" **or "provider"** means an individual, partnership, corporation, or other person who or that enters into an agreement with a person owning a policy under the terms of which the **life**~~[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 policy to the **life**~~[viatical]~~ settlement provider. **Life**~~[viatical]~~ settlement provider does not include:

- (a) Any bank, savings bank, savings and loan association, credit union, or other licensed lending institution **or creditor or secured party** that takes an assignment of a policy as collateral for a loan;
- (b) The issuer of a 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 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;
- (d) A related provider trust;
- (e) An authorized or eligible insurer that provides stop-loss coverage to a **life**~~[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 ~~viatical~~ policy from a **life**~~[viatical]~~ settlement provider;
- (i) **A purchaser;**
- (j) **A financing entity; or**
- (k) **Broker.**

~~(19)~~~~(11)~~ "**Owner**~~[viator]~~" means a resident of this Commonwealth who is the owner of a policy or a certificate holder under a group policy who enters or seeks to enter into a **life**~~[viatical]~~ settlement contract. **An owner**~~[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) **owner**~~[viator]~~ on a single policy and the **owners**~~[viators]~~ are residents of different states, the transaction shall be governed by the law of the state in which the **owner**~~[viator]~~ having the largest percentage of ownership resides or, if the **owners**~~[viators]~~ hold equal ownership, the state of residence of one (1) **owner**~~[viator]~~ agreed upon in writing by all **owners**~~[viators]~~. "**Owner**~~[viator]~~" does not include:

- (a) A **life**~~[viatical]~~ settlement provider licensed pursuant to KRS 304.9-440;
- (b) A~~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.

~~(20)~~~~(12)~~ "**Viatical policy**" means a policy that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

~~(13)~~ "**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 viatical 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 executive director as if those records and files were maintained directly by the licensed viatical settlement provider.~~

- ~~(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.~~
- (21) *"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.*

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

- (1) No person may act as a *life*~~[viatical]~~ settlement provider without first having obtained a license as a *life*~~[viatical]~~ settlement provider from the executive director.
- (2) Except as provided in paragraph (b) or (c) of this subsection, no person may broker, solicit, or negotiate *life*~~[viatical]~~ settlement contracts between *an owner*~~[a viator]~~ and one (1) or more *life*~~[viatical]~~ settlement providers or otherwise act on behalf of *an owner*~~[a viator]~~ without first having obtained a license as a *life*~~[viatical]~~ settlement broker from the executive director as follows:
- (a) All applicants for a *life*~~[viatical]~~ settlement broker license shall attend the required *life*~~[viatical]~~ broker training and pass a *life*~~[viatical]~~ broker examination designated by the executive director 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), shall be deemed to meet the licensing requirements of a *life*~~[viatical]~~ settlement broker and shall be permitted to operate as a *life*~~[viatical]~~ settlement broker without obtaining a license as a *life*~~[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 *life*~~[viatical]~~ settlement broker, the agent notifies the executive director, on a notification form prescribed by the executive director, that he is acting as a *life*~~[viatical]~~ settlement broker and pays any applicable fees to be determined by the executive director. The notification shall include an acknowledgment by the agent that he will operate as a *life*~~[viatical]~~ settlement broker in accordance with this subtitle; and
 3. Irrespective of the manner in which a *life*~~[viatical]~~ settlement broker or life insurance agent is compensated, the *life*~~[viatical]~~ settlement broker or life insurance agent is deemed to represent only the *owner*~~[viator]~~ and owes a fiduciary duty to the *owner*~~[viator]~~ to act according to the *owner's*~~[viator's]~~ instructions and in the best interests of the *owner*~~[viator]~~.
- (c) Notwithstanding this subsection, 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 *owner*~~[viator]~~, whose compensation is not paid directly or indirectly by the *life*~~[viatical]~~ settlement provider, may negotiate *life*~~[viatical]~~ settlement contracts without having to obtain a license as a *life*~~[viatical]~~ settlement broker.
- (d) A life insurance agent operating as a *life*~~[viatical]~~ settlement broker in accordance with paragraph (b) of this subsection, prior to the execution of the *life*~~[viatical]~~ settlement contract by all the parties for which such agent is operating as a *life*~~[viatical]~~ settlement broker, shall have in force and file with the executive director evidence of financial responsibility as follows:
1. A policy of insurance covering the legal liability of the agent as the result of erroneous acts or failure to act in his or her capacity as a *life*~~[viatical]~~ settlement broker, and inuring to the benefit of any aggrieved party as the result of any single occurrence in the sum of not less than twenty

- thousand dollars (\$20,000) and one hundred thousand dollars (\$100,000) in the aggregate for all occurrences within one (1) year; or
2. An agreement with a licensed *life* settlement provider whereby the agent is an additional insured on the policy of insurance covering the legal liability of both the *life* settlement provider and the agent as the result of erroneous acts or failure to act in his or her capacity as a *life* settlement broker on a *life* settlement contract to which the *life* settlement provider is a party, in the sum of twenty thousand dollars (\$20,000) for any single occurrence; or
 3. A deposit with the executive director of cash or a cash surety bond, executed by an insurer authorized to write business in this Commonwealth, in the sum of twenty thousand dollars (\$20,000), which shall be subject to lawful levy of execution by any party to whom the agent has been found to be legally liable as the result of erroneous acts or failure to act in his or her capacity as a *life* settlement broker.
- (3) Application for a *life* settlement provider license or a *life* settlement broker license shall be made in accordance with KRS 304.9-150.
 - (4) Licenses for *life* settlement providers and *life* settlement brokers shall be in accordance with Subtitle 9 of KRS Chapter 304. A business entity licensed as a *life* settlement broker or *life* settlement provider shall designate individuals to act under its license in accordance with KRS 304.9-133.
 - (5) Prior to issuance of a license as a *life* settlement broker or *life* settlement provider, except as provided in subsection (2)(d) of this section, the applicant shall file with the executive director, 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 twenty thousand dollars (\$20,000) per occurrence, and the sum of one hundred thousand dollars (\$100,000) 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 executive director. This subsection shall not apply to a life insurance agent operating as a *life* settlement broker in accordance with subsection (2) of this section.
 - (6) No person shall use a *life* settlement contract form or provide to *an owner* a disclosure statement form in this Commonwealth unless it has been filed with and approved by the executive director 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 executive director has by order given prior approval or disapproval. Approval of a form by the executive director shall constitute a waiver of any unexpired portion of the waiting period. The executive director may extend by not more than thirty (30) days the time period in which he or she may approve or disapprove the form. The executive director 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 executive director may at any time, after notice and for cause shown, withdraw any approval. The executive director shall disapprove a *life* settlement contract form or disclosure statement form if, in the determination of the executive director, the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise are misleading or unfair to the *owner*. Upon notice and hearing the executive director 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) A licensed *life* settlement provider shall not use any person to perform the functions of a *life* 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 *life* settlement broker. A licensed *life* settlement broker shall not use any person to perform the functions of a *life* settlement provider as defined in KRS 304.15-020 unless the person holds a current and valid license as a *life* settlement provider.

- (8) 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 office may take disciplinary action against the employer licensee.
- (9) When a ~~life~~^{life}~~viatical~~ settlement provider elects to use a related provider trust ~~in accordance with KRS 304.15-716~~, the ~~life~~^{life}~~viatical~~ settlement provider shall file notice of its intention to use that trust with the office with a copy of the trust agreement. Any change in the trust agreement shall be filed with the executive director prior to its effect.
- (10) Any additional death benefit payment on a life insurance policy that is the subject of a ~~life~~^{life}~~viatical~~ settlement contract with a double or additional indemnity for accidental death shall be payable to the following:
- The beneficiary last named by the policy owner prior to entering into the ~~life~~^{life}~~viatical~~ settlement contract; or
 - To the estate of the ~~owner~~^{viator} in the absence of a beneficiary.
- (11) *An insurer that issued a policy that is the subject of a life settlement contract shall not be responsible for any act or omission of a broker, provider, or purchaser arising out of or in connection with the life settlement transaction, unless the insurer receives compensation for the placement of the life settlement contract from the provider, purchaser, or broker in connection with the life settlement contract.*
- (12) *No insurer may, as a condition of responding to a request for verification of coverage or in connection with the transfer of a policy pursuant to a life settlement contract, require that the owner, insured, provider, or broker sign any form, disclosure, consent, waiver, or acknowledgment that has not been expressly approved by the executive director for use in connection with life settlement contracts in the Commonwealth.*

➔SECTION 3. A NEW SECTION OF KRS 304.15-700 TO 304.15-720 IS CREATED TO READ AS FOLLOWS:

- A broker or provider licensed pursuant to KRS 304.15-700 to 304.15-720 may conduct or participate in advertisements within this state. Such advertisements shall comply with all advertising and marketing laws of this chapter or rules and administrative regulations promulgated by the executive director that are applicable to life insurers or to brokers, and providers licensed pursuant to this chapter.*
- Advertisements shall be accurate, truthful, and not misleading in fact or by implication.*
- No person or trust shall:*
 - Directly or indirectly market, advertise, solicit, or otherwise promote the purchase of a life insurance policy for the sole purpose of, or with a primary emphasis on, settling the policy; or*
 - Use the words "free", "no cost", or words of similar import in the marketing, advertising, soliciting, or otherwise promoting the purchase of a life insurance policy.*

➔Section 4. KRS 304.15-710 is amended to read as follows:

- With each application for a ~~life~~^{life}~~viatical~~ settlement contract, a ~~life~~^{life}~~viatical~~ settlement provider or ~~life~~^{life}~~viatical~~ settlement broker shall provide the ~~owner~~^{viator} a copy of the office's consumer guide relating to ~~life~~^{life}~~viatical~~ settlements. *The provider shall provide in writing, in a separate document that is signed by the owner and provider the information in this subsection to the owner no later than the date the life* ~~and shall disclose the following information to the viator no later than the date that the application for a~~ settlement contract is signed by all parties. *The written disclosures shall be conspicuously displayed in any life settlement contract or in a separate document furnished to the owner by a provider including any affiliations or contractual arrangements between the provider and the broker and shall provide the following information:*
 - That there are possible alternatives to ~~life~~^{life}~~viatical~~ settlement contracts including but not limited to accelerated benefits or policy loans offered under the ~~owner's~~^{viator's} policy;
 - That some or all of the proceeds of the ~~life~~^{life}~~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;
 - That proceeds of the ~~life~~^{life}~~viatical~~ settlement contract could be subject to the claims of creditors;

- (d) That receipt of the proceeds of a *life* settlement contract may adversely affect the *owner's* eligibility for Medicaid or other government benefits or entitlements, and that advice should be obtained from the appropriate government agencies;
 - (e) That the *owner* has a right to rescind a *life* settlement contract before the earlier of thirty (30) calendar days of the date it is executed by all parties or fifteen (15) calendar days after the receipt of the proceeds of the *life* settlement contract by the *owner*. If exercised by the *owner*, 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 *life* settlement proceeds and any premiums, loans, and loan interest to the *life* settlement provider. The *life* settlement provider shall effectuate the change of ownership of the policy or certificate to the *owner* immediately upon effective rescission by the *owner*;
 - (f) That entering into a *life* 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 *life* 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 *life* settlement contract;
 - (h) That the disclosure document shall contain the following language:

"All medical, financial, or personal information solicited or obtained by a *life* settlement provider or *life* 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 *life* settlement between the *owner* and the *life* 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 *life* settlement provider or its authorized representative for the purpose of determining the insured's health status *or to verify the insured's address*. 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 *life* settlement provider shall provide the *owner* with at least the following disclosures no later than the date the *life* settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the *life* settlement contract or in a separate document signed by the *owner* and the *life* settlement provider and provide the following information:
- (a) State the affiliation, if any, between the *life* 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 *life* settlement provider;
 - (c) If a policy to be acquired pursuant to a *life* 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 *owner* 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 *life* settlement contract;
 - (d) State the dollar amount of the current death benefit payable to the *life* settlement provider under the policy. The *life* 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 *life* 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 ~~owner~~^{transmitter} may inspect or receive copies of the relevant escrow or trust agreements or documents;
 - (f) *The date by which the funds will be available to the owner and the transmitter of the funds;*
 - (g) *That a consumer guide shall be delivered to owners with each application as required in this subsection;*
 - (h) *That applications and life settlement contracts shall contain the statement as required in subsection (2) of Section 8 of this Act;*
 - (i) *That a broker represents exclusively the owner, and not the insurer or the provider or any other person, and owes a fiduciary duty to the owner, including a duty to act according to the owner's instructions and in the best interests of the owner; and*
 - (j) *The fact that a change in ownership could in the future limit the insured's ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one (1) life.*
- (3) If the ~~life~~^{life} settlement provider transfers ownership or changes the beneficiary of the policy, the ~~life~~^{life} settlement provider shall communicate the change in ownership or beneficiary to the insured within twenty (20) days after the change.
- (4) *A broker shall provide the owner and the provider with at least the following disclosures no later than the date the life settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement contract or in a separate document signed by the owner and provide the following information:*
- (a) *The name, business address, and telephone number of the broker;*
 - (b) *A full, complete, and accurate description of all the offers, counter-offers, acceptances, and rejections relating to the proposed life settlement contract;*
 - (c) *The name of each broker who receives compensation and the amount of compensation received by the broker, which compensation includes anything of value paid or given to the broker in connection with the life settlement contract;*
 - (d) *A complete reconciliation of the gross offer or bid by the provider to the net amount of proceeds or value to be received by the owner. For the purposes of this paragraph, "gross offer or bid" means the total amount or value offered by the provider for the purchase of one (1) or more life insurance policies, inclusive of the commissions and fees; and*
 - (e) *The failure to provide the disclosures or rights described in this section shall be deemed an unfair trade practice.*

➔SECTION 5. A NEW SECTION OF KRS 304.15-700 TO 304.15-720 IS CREATED TO READ AS FOLLOWS:

- (1) *In addition to other questions an insurer may lawfully pose to a life insurance applicant, insurers may inquire in the application for insurance whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing.*
- (a) *If, as described in subsection (17) of Section 1 of this Act, the loan provides funds which can be used for a purpose other than paying for the premiums, costs, and expenses associated with obtaining and maintaining the life insurance policy and loan, the application shall be rejected as a violation of the prohibited practices in Section 8 of this Act.*
 - (b) *If the financing does not violate Section 8 of this Act in this manner, the insurer:*
 - 1. *May make disclosures to the applicant and the insured, either on the application or an amendment to the application to be completed no later than the delivery of the policy, which shall include but not be limited to the following statement or a substantially similar statement:*

"If you have entered into a loan arrangement where the policy is used as collateral, and the policy does change ownership at some point in the future in satisfaction of the loan, the following may be true:

- a. *A change of ownership could lead to a stranger owning an interest in the insured's life;*
 - b. *A change of ownership could in the future limit your ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one (1) life;*
 - c. *Should there be a change of ownership and you wish to obtain more insurance coverage on the insured's life in the future, the insured's higher issue age, a change in health status, or other factors may reduce the ability to obtain coverage and may result in significantly higher premiums; and*
 - d. *You should consult a professional advisor, since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan."; and*
2. *May require certifications from the applicant or the insured or both which shall include but not be limited to the following statement or a substantially similar statement:*

"I certify that:

- a. *I have not entered into any agreement or arrangement providing for the future sale of this life insurance policy;*
- b. *My loan arrangement for this policy provides funds sufficient to pay for some or all of the premiums, costs, and expenses associated with obtaining and maintaining my life insurance policy, but I have not entered into any agreement by which I am to receive consideration in exchange for procuring this policy; and*
- c. *The borrower has an insurable interest in the insured."*

➔Section 6. KRS 304.15-715 is amended to read as follows:

- (1) A ~~life~~^{viatical} settlement provider entering into a ~~life~~^{viatical} settlement contract with any person shall first obtain:
 - (a) If the ~~owner~~^{viator} is insured, a written statement from a licensed attending physician that the ~~owner~~^{viator} is of sound mind and under no constraint or undue influence to enter into a ~~life~~^{viatical} settlement contract; and
 - (b) A document in which the insured consents to the release of his or her medical records to a ~~life~~^{viatical} settlement provider, life insurance agent, or ~~life~~^{viatical} settlement broker and, if the policy was issued less than two (2) years from the date of application for a ~~life~~^{viatical} settlement contract, to the insurance company that issued the policy.
- (2) The insurer shall respond to a request for verification of coverage submitted by a ~~life~~^{viatical} settlement provider or ~~life~~^{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 executive director. 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 ~~life~~^{viatical} settlement provider or viatical settlement broker.
- (3) Prior to or at the time of execution of the ~~life~~^{viatical} settlement contract, the ~~life~~^{viatical} settlement provider shall obtain a witnessed document in which the ~~owner~~^{viator} consents to the ~~life~~^{viatical} settlement contract, represents that he or she has a full and complete understanding of the ~~life~~^{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 ~~life~~^{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) All *life* settlement contracts entered into in this state shall contain an unconditional right to rescind a *life* 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 *life* settlement contract by the *owner*. If exercised by the *owner*, 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 *life* settlement provider. If the insured dies during the rescission period, the *life* settlement contract shall be deemed to have been rescinded subject to repayment of all proceeds and any premiums, loans, and loan interest to the *life* settlement provider. The *life* settlement provider shall effectuate the change of ownership of the policy or certificate to the *owner* immediately upon effective rescission by the *owner*.
- (6) The independent third-party trustee shall transfer the proceeds that are due to the *owner* within two (2) business days upon receipt of acknowledgment of the transfer of ownership from the insurer.
- (7) Failure to tender consideration to the *owner* for the *life* settlement contract by the date disclosed renders the *life* settlement contract voidable by the *owner* for lack of consideration until the time consideration is tendered to and accepted by the *owner*.
- (8) Contacts with the insured for the purpose of determining the health status of the insured after the execution of the *life* settlement contract shall only be made by the *life* 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 *life* settlement provider shall explain the procedure for these contacts at the time the *life* 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. *Life* settlement providers shall be responsible for the actions of their authorized representatives.
- (9) *The insurer shall not unreasonably delay effecting change of ownership or beneficiary with any life settlement contract lawfully entered into in the Commonwealth or with a resident of the Commonwealth.*
- (10) *If a life settlement broker performs any activities required of the provider under this section, the provider is deemed to have fulfilled those requirements of this section that have been properly performed by the broker.*
- (11) *If a life settlement broker performs any of the disclosure activities required of the provider under Section 4 of this Act, the provider is deemed to have fulfilled those requirements of Section 4 of this Act that have been properly performed by the broker.*
- (12) *Within twenty (20) days after an owner executes the life settlement contract, the provider shall give written notice to the insurer that issued that insurance policy that the policy has become subject to a life settlement contract. The notice shall be accompanied by the documents required by paragraph (b) of subsection (1) of Section 5 of this Act.*
- (13) *Any fee paid by a provider, party, individual, or an owner to a broker in exchange for services provided to the owner pertaining to a life settlement contract shall be computed as a percentage of the offer obtained, not the face value of the policy. Nothing in this section shall be construed as prohibiting a broker from reducing such broker's fee below this percentage if the broker so chooses.*
- (14) *The broker shall disclose to the owner anything of value paid or given to a broker which relates to a life settlement contract.*

➔Section 7. 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 *life* settlement contract **at any time prior to, or at the time of application for, issuance of a policy, or** within a two (2) year period commencing with the date of issuance of the policy unless the *owner* certifies to the *life* 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 ~~owner~~_[viator] submits independent evidence to the ~~life~~_[viatical] settlement provider that one (1) or more of the following conditions has been met within the two (2) year period:
1. The ~~owner~~_[viator] or insured is terminally or chronically ill;~~or~~
 2. The ~~owner~~_[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;
 3. *The owner's spouse dies;*
 4. *The owner divorces his or her spouse;*
 5. *The owner retires from full-time employment;*
 6. *The owner becomes physically or mentally disabled and a physician determines that the disability prevents the owner from maintaining full-time employment; or*
 7. *A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of the creditor of the owner, adjudicating the owner bankrupt or insolvent, or approving a petition seeking reorganization of the owner or appointing a receiver, trustee, or liquidator to all or a substantial part of the owner's assets.*
- (2) Copies of the independent evidence described in subsection (1) of this section and the documents required by KRS 304.15-710 shall be submitted to the insurer when the ~~life~~_[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 ~~life~~_[viatical] settlement provider that the copies are true and correct copies of the documents received by the ~~life~~_[viatical] settlement provider.
- (3) If the ~~life~~_[viatical] settlement provider submits to the insurer a copy of independent evidence provided for in subsection (2) of this section when the ~~life~~_[viatical] settlement provider submits a request to the insurer to effect the transfer of the policy to the ~~life~~_[viatical] settlement provider, the copy shall be deemed to conclusively establish that the ~~life~~_[viatical] settlement contract satisfies the requirements of this section and the insurer shall respond timely to the request.

➔Section 8. KRS 304.15-717 is amended to read as follows:

- (1) It is unlawful for any person:
- (a) To knowingly or intentionally enter into a ~~life~~_[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 ~~life~~_[viatical] settlements as defined in KRS 304.15-020(5)~~(4)~~;
 - (d) To commit a fraudulent ~~life~~_[viatical] settlement act;
 - (e) To misrepresent that the ~~life~~_[viatical] settlement provider, ~~life~~_[viatical] settlement broker, 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;
 - (f) To act as a ~~life~~_[viatical] settlement broker if the person is acting as a ~~life~~_[viatical] settlement provider in the same ~~life~~_[viatical] settlement contract;~~and~~
 - (g) For any person 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;

- (h) *To engage in any transaction, practice, or course of business if such person knows or reasonably should have known that the intent was to avoid the notice requirements of Section 1 of this Act and KRS 304.15-700 to 304.15-720;*
- (i) *To engage in any fraudulent act or practice in connection with any transaction relating to any settlement involving an owner who is a resident of this state;*
- (j) *To issue, solicit, market, or otherwise promote the purchase of a life insurance policy for the sole purpose of or with a primary emphasis on settling the policy;*
- (k) *To enter into a life settlement contact on a policy that was the subject of a premium finance agreement as described in Section 1(17)(a)2. of this Act;*
- (l) *With respect to any life settlement contract or life insurance policy and a broker, to knowingly solicit an offer from, effectuate a life settlement contract with or make a sale to any provider, financing entity, or related provider trust, or any insurer that is controlling, controlled by, or under common control with such broker unless disclosed to the owner;*
- (m) *With respect to any life settlement contract or life insurance policy and a provider, to knowingly enter into a life settlement contract with an owner if, in connection with such life settlement contract, anything of value will be paid to a broker or provider that is controlling, controlled by, or under common control with such provider, the financing entity, or related provider trust that is involved in such life settlement, or any insurer unless disclosed to the owner;*
- (n) *With respect to a provider, to enter into a life settlement contract unless the life settlement promotional, advertising, and marketing materials, as may be prescribed by administrative regulation, have been filed with the executive director. Marketing materials shall not expressly reference that the insurance is "free" for any period of time. The inclusion of any reference in the marketing materials that would cause an owner to reasonably believe that the insurance is free for any period of time shall be considered a violation of KRS 304.15-700 to 304.15-720;*
- (o) *With respect to any insurance company, insurance producer, broker, or provider, or any other person, to make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy; or*
- (p) *If an insurer, to:*
 - 1. *Engage in or permit any discrimination between individuals of the same class, same policy amount, and equal expectation of life in the rates charged for any life insurance policy or annuity contract based upon an individual's having entered into a life settlement contract or being insured under a settled policy;*
 - 2. *Make any false or misleading statement as to the business of life settlements or financing premiums due for a policy or to any owner or insured for the purpose of inducing or tending to induce the owner or insured not to enter into a life settlement contract; or*
 - 3. *Engage in any transaction, act, practice, or course of business, or dealing which restricts, limits, or impairs in any way the lawful transfer of ownership, change of beneficiary, or assignment of a policy.*

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 ~~life-viatical~~ settlement contract and an application for a ~~life-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 ~~life-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 ~~life-viatical~~ settlement act.

- (3) (a) A person engaged in the business of ~~life~~~~viatical~~ settlements who has knowledge or a reasonable belief that a fraudulent ~~life~~~~viatical~~ settlement act is being, will be, or has been committed shall provide the information required to the executive director, in a manner prescribed by the executive director.
- (b) Any person who has knowledge or a reasonable belief that a fraudulent ~~life~~~~viatical~~ settlement act is being, will be, or has been committed may provide the information required to the executive director, in a manner prescribed by the executive director 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 ~~life~~~~viatical~~ settlement acts, or suspected or completed fraudulent insurance acts, if the information is provided to or received from:
1. The executive director or the executive director'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 ~~life~~~~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 ~~life~~~~viatical~~ settlement contracts;~~or~~
 5. The insurer that issued the policy covering the life of the insured; **or**
- 6. *The licensee and any agents, employees, or representatives.***
- (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 ~~life~~~~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 ~~life~~~~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 ~~life~~~~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 executive director in an investigation of suspected or actual fraudulent ~~life~~~~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 executive director of documents and evidence obtained in an investigation of suspected or actual fraudulent ~~life~~~~viatical~~ settlement acts:
1. In administrative or judicial proceedings to enforce laws administered by the executive director;
 2. To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent ~~life~~~~viatical~~ settlement acts, or to the National Association of Insurance Commissioners (NAIC); or
 3. At the discretion of the executive director, to a person in the business of ~~life~~~~viatical~~ settlements that is aggrieved by a fraudulent ~~life~~~~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 ~~life~~~~viatical~~ settlement acts to a law enforcement or regulatory agency other than the Office of Insurance; ~~or~~
 - (c) Limit the powers granted elsewhere by the laws of this state to the executive director or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers; *or*
 - (d) ***Preempt, supersede, or limit any provision of any state securities law or any rule, order, administrative regulation, or notice issued thereunder.***
- (7) A ~~life~~~~viatical~~ settlement provider shall adopt antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent ~~life~~~~viatical~~ settlement acts. The executive director 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 ~~life~~~~viatical~~ settlement providers or employees or independent contractors of those ~~life~~~~viatical~~ settlement providers; and
 - (b) An antifraud plan submitted to the executive director that shall include but is not limited to the following:
 1. The procedures for detecting and investigating possible fraudulent ~~life~~~~viatical~~ settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;
 2. The procedures for reporting possible fraudulent ~~life~~~~viatical~~ settlement acts to the executive director;
 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.

Antifraud plans submitted to the executive director 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.

➔SECTION 9. A NEW SECTION OF KRS 304.15-700 TO 304.15-725 IS CREATED TO READ AS FOLLOWS:

Each provider shall file with the executive director on or before March 1 of each year an annual statement containing such information as the executive director may prescribe by administrative regulation. In addition to any other requirements, the annual statement of each provider shall also include the names of the insurance companies whose policies have been settled.

➔SECTION 10. A NEW SECTION OF SUBTITLE 14 OF KRS CHAPTER 304 IS CREATED TO READ AS FOLLOWS:

Except as provided in KRS 304.14-050, it shall be a violation of insurable interest for any person or entity without insurable interest to provide or arrange for the funding ultimately used to pay premiums, or the majority of premiums, on a life insurance policy and, at policy inception, have an arrangement for such person or entity to have an ownership interest in the majority of the death benefit of that life insurance policy.

➔Section 11. KRS 304.2-160 is amended to read as follows:

Each written and signed complaint received by the Office of Insurance shall be recorded by the office, including the subsequent disposition thereof, and maintained for a period of not less than five (5) years. The records of such complaints shall be indexed whenever applicable both by the name of the insurer and by the name of the licensee, including agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee, specialty credit producer or managing employee, ~~life/vitacal~~ settlement broker or provider, or consultant involved. The executive director shall consider such complaints before issuing or renewing any certificate of authority or license.

➔Section 12. KRS 304.4-040 is amended to read as follows:

The executive director may revoke the certificate of authority of any insurer which fails to pay when due any taxes, fees, licenses, and other charges owing to this state. The executive director may likewise revoke the license of any agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee, specialty credit producer or managing employee, ~~life/vitacal~~ settlement broker or provider, or consultant, as to whom any tax or fee required under this code has not been paid when due.

➔Section 13. KRS 304.9-133 is amended to read as follows:

- (1) A business entity issued a license in accordance with this subtitle, or issued a ~~life/vitacal~~ settlement broker or ~~life/vitacal~~ settlement provider license, shall designate only individuals to act under the business entity license.
- (2) Each designated individual shall:
 - (a) Hold the same kind of license as the business entity;
 - (b) If the business entity license has lines of authority, have one (1) or more of the same lines of authority; and
 - (c) If the individual is designated under an agent license, have at least one (1) appointment with an insurer.
- (3) The licensed business entity shall file with the executive director:
 - (a) Notice of the designation of an individual within thirty (30) days of the designation; and
 - (b) Notice of termination of designation of an individual within thirty (30) days of the termination of designation.
- (4)
 - (a) On or before January 31 of each odd-numbered year, each licensed business entity shall file with the executive director an annual report of all designated individuals whose designations were not terminated on or prior to December 31 of the preceding calendar year.
 - (b) The report shall include each individual licensee's name, identification number, and lines of authority the individual is designated to exercise on behalf of the business entity.
- (5) The notice and report shall be on a form or in a format prescribed by the executive director.
- (6) A licensed business entity shall exercise the license only through a designated individual licensee.
 - (a) The business entity shall have for each of its active lines of authority at least one (1) licensed individual with the same line of authority designated with the executive director. If the business entity fails to have at least one (1) licensed individual designated with the executive director for a line of authority, that line of authority shall become inactive; and
 - (b) The business entity shall have at least one (1) licensed individual designated with the executive director at all times. If the business entity fails to have at least one (1) individual designated with the executive director, the business entity license shall terminate and shall be promptly surrendered to the executive director without demand.
- (7) An insurer that has appointed the business entity licensee shall be responsible for the acts of each designated individual performed under the business entity's license as if the insurer had appointed the individual licensee.

➔Section 14. KRS 304.9-150 is amended to read as follows:

- (1) Application for a license issued under this subtitle, surplus lines broker license, ~~life/vitacal~~ settlement broker license, or ~~life/vitacal~~ settlement provider license shall be made by the applicant. Applications under this

subsection shall be certified by the applicant as true, correct, and complete to the best of the applicant's knowledge and belief under penalty of perjury and under penalty of refusal, suspension, or revocation of the license.

- (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 executive director 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 of a resident individual shall show whether the applicant is a citizen of the United States. If the applicant is not a citizen of the United States, the applicant shall attach to the application a copy of his or her legal work authorization document.
- (5) 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.
- (6) The executive director 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.
- (7) All applications shall be accompanied by:
 - (a) The applicable license fee and examination fee, in the respective amounts stated in KRS 304.4-010;
 - (b) Documentation supporting affirmative answers to the questions posed in the background section;
 - (c) If a business entity, certificates issued by the Kentucky Secretary of State demonstrating the business entity is qualified to conduct business in Kentucky; and
 - (d) If using an assumed name, copy of any certificate required under KRS 365.015.
- (8) An individual designating Kentucky as his or her home state shall submit to the executive director the applicant's criminal background report from the Kentucky Administrative Office of the Courts.
- (9) No applicant for any license shall willfully misrepresent or withhold any fact or information called for in the application form or in connection therewith.
- (10) If the licensee is a business entity, the licensee shall notify the executive director 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 15. 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 office 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 executive director 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 ~~life~~~~vital~~ settlement broker pursuant to KRS 304.15-700(2)(b).
- (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 prelicensing 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 prelicensing 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 executive director 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 executive director 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 Office 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 Office of Insurance.

➔Section 16. KRS 304.9-200 is amended to read as follows:

- (1) The license issued under this subtitle or to a surplus lines broker, ~~life~~~~vital~~ settlement broker, or ~~life~~~~vital~~ settlement provider shall contain the licensee's name, city and state of principal place of business address, personal identification number, and the date of issuance, the lines of authority, and any other information the executive director deems necessary.
- (2) The licensee shall inform the executive director in writing in a format acceptable to the executive director of a change of address or change of legal name within thirty (30) days of the change.
- (3) After completion of application for a license, completion of any prelicensing education required under this chapter, payment of applicable fees, and the taking and passing of any examination required under this chapter, the executive director shall promptly consider the application. If the executive director finds that the applicant has fully met the requirements for licensure, the executive director shall promptly issue the license to the applicant; otherwise, the executive director shall refuse to issue the license and promptly notify the applicant of the refusal, stating the grounds thereof.
- (4) If a license is refused, the executive director shall promptly refund any appointment fee tendered with the license application. All other fees for application for license or examination shall be deemed earned when paid and shall not be refundable.
- (5) In order to assist in the performance of the executive director's duties, the executive director may contract with nongovernmental entities, including the National Association of Insurance Commissioners or its affiliate or subsidiary, to perform ministerial functions, including the collection of fees or data related to licensing.

➔Section 17. KRS 304.9-260 is amended to read as follows:

- (1) Each license issued under this subtitle, surplus lines broker license, ~~life~~~~vital~~ settlement broker license, and ~~life~~~~vital~~ settlement provider license shall continue in force until expired, suspended, revoked, or otherwise terminated. License renewal fees shall be received on or before the applicable due date for the license as stated

in KRS 304.4-010. Beginning January 1, 2003, request for renewal shall be on a form or in a format prescribed by the executive director and made as follows:

- (a) At least thirty (30) days before the renewal request and fees are due from the licensee, the office shall make available to each respective licensee a list of his or her licenses to be renewed during that calendar year. With the licensee's written consent, an insurer or the licensee's employer may request that the office send the renewal list to the insurer or to the employer. The office may distribute the renewal list to the requesting insurer or employer instead of to the licensee;
 - (b) Beginning January 31, 2006, in conjunction with license renewal, an individual holding a resident license for agent, rental vehicle managing employee, and ~~life~~~~vital~~ settlement broker shall show proof of compliance with continuing education pursuant to KRS 304.9-295. An individual licensee whose birth date is in an even-numbered year shall submit the renewal request, continuing education course completion documentation pursuant to KRS 304.9-295, and fees to the executive director by the last day of the licensee's birth month in the next even-numbered year after the date the license is issued, and each subsequent even-numbered year thereafter;
 - (c) Beginning January 31, 2006, in conjunction with license renewal, an individual holding a resident license for agent, rental vehicle managing employee, and ~~life~~~~vital~~ settlement broker shall show proof of compliance with continuing education pursuant to KRS 304.9-295. An individual licensee whose birth date is in an odd-numbered year shall submit the renewal request, continuing education course completion documentation pursuant to KRS 304.9-295, and fees to the executive director by the last day of the licensee's birth month in the next odd-numbered year after the date the license is issued, and each subsequent odd-numbered year thereafter;
 - (d) A business entity that is issued a license in an even-numbered year shall submit the renewal request and fees to the executive director by March 31 of the next even-numbered year, and each subsequent even-numbered year thereafter; and
 - (e) A business entity that is issued a license in an odd-numbered year shall submit the renewal request and fees to the executive director by March 31 of the next odd-numbered year, and each subsequent odd-numbered year thereafter.
- (2) (a) Any license referred to in subsection (1) of this section for which the request for renewal, any required continuing education course completion documentation, if applicable, and fee are not received by the executive director shall be deemed to have expired at midnight on the last day of the birth month for individuals and on March 31 for business entities;
 - (b) Any renewal request and fees received by the executive director within thirty (30) days after the expiration date may be accepted with no penalty or interruption in license;
 - (c) Any renewal request and fees received by the executive director after thirty (30) days from the date of expiration, but within sixty (60) days after the date of expiration, may be accepted with no interruption in license if accompanied by a penalty as provided in Subtitle 99 of this chapter; and
 - (d) Completion of the required continuing education course, if applicable, shall be on or before the expiration date, which is deemed as the last day of the birth month of the licensee during the applicable odd or even year on a biennial basis. Proof of compliance shall be received by the executive director within sixty (60) days after the expiration date.
- (3) A licensee who is unable to comply with license renewal procedures due to military service, long-term medical disability, or some other extenuating circumstance may make a written request for a waiver of those procedures. The licensee may also make a written request for a waiver of any examination requirement, fine, or other sanction imposed for failure to comply with these renewal procedures.
 - (4) As a condition to or in connection with the continuation of any insurance producer license, the executive director may require the licensee to file with him or her information relative to use made of the license during the next preceding calendar year and especially as to whether the license has been used principally for the writing of controlled business, as defined in KRS 304.9-100.
 - (5) As a condition to or in connection with the continuation of any license, the executive director shall require continuous demonstration of continuing education course completion to sustain the license, and any license shall terminate and be surrendered to the executive director if and when the demonstration becomes impaired.

- (6) This section does not apply to temporary licenses issued under KRS 304.9-300, and licensees not licensed for one (1) full year prior to the end of the applicable biennial renewal year.

➔Section 18. KRS 304.9-425 is amended to read as follows:

- (1) No insurer, financial institution, agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee, specialty credit producer or managing employee, viatical settlement broker or provider, or consultant shall pay, directly or indirectly, any commission, brokerage, or other valuable consideration to any individual or business entity for services as an agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee, specialty credit producer or managing employee, ~~life~~~~viatical~~ settlement broker or provider, or consultant within this state, unless the individual or business entity held at the time the services were performed a valid license for that line of insurance as required by the laws of this state for the services.
- (2) No individual or business entity, other than an individual or business entity duly licensed by this state as an agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee, specialty credit producer or managing employee, ~~life~~~~viatical~~ settlement broker or provider, or consultant at the time the services were performed, shall accept any commission, brokerage, or other valuable consideration for those services.
- (3) This section shall not prevent payment or receipt of renewal or other deferred commissions to or by any individual or business entity entitled under this section.
- (4) Services as an agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee, specialty credit producer or managing employee, or consultant within this state shall not include a referral by an unlicensed person of a consumer to a licensed agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee, specialty credit producer or managing employee, or consultant that does not include a discussion of specific insurance policy terms and conditions.
- (5) An insurer, financial institution, agent, surplus lines broker, adjuster, administrator, reinsurance intermediary broker or manager, rental vehicle agent or managing employee, specialty credit producer or managing employee, or consultant may pay any compensation, fee, or other consideration to an individual not licensed to sell insurance for the referral of a consumer to a licensed individual, only if the consideration is paid regardless of whether the insurance coverage is sold to the consumer.

➔Section 19. KRS 304.9-440 is amended to read as follows:

- (1) The executive director may place on probation, suspend, or may impose conditions upon the continuance of a license for not more than twenty-four (24) months, revoke, or refuse to issue or renew any license issued under this subtitle or any surplus lines broker, ~~life~~~~viatical~~ settlement broker, or viatical settlement provider license, or may levy a civil penalty in accordance with 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 executive director or of another state's insurance executive director;
 - (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 ~~life~~~~viatical~~ settlements;
 - (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, insurance fraud, or fraudulent ~~life~~~~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, ~~life~~~~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 viatical settlements;
 - (l) Cheating, including improperly using notes or any other reference material to complete an examination for license;
 - (m) Knowingly accepting insurance or ~~life~~~~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;
 - (q) Failing to no longer meet the requirements for initial licensure;
 - (r) If a ~~life~~~~viatical~~ settlement provider, demonstrating a pattern of unreasonable payments to viators or failing to honor contractual obligations set out in a ~~life~~~~viatical~~ settlement contract;
 - (s) Entering into any ~~life~~~~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 ~~viatical~~ policy **subject to a life settlement contract** to a person other than a ~~life~~~~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 executive director.
- (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 executive director 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 Office of Insurance nor corrective action taken.
 - (3) The applicant or licensee may make written request for a hearing in accordance with KRS 304.2-310.
 - (4) The executive director 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.
 - (5) The executive director may suspend, revoke, or refuse to renew the license of a licensed insurance agent operating as a ~~life~~~~viatical~~ settlement broker, pursuant to KRS 304.15-700, if the executive director finds that such insurance agent has violated the provisions of KRS 304.15-700 to 304.15-725.
 - (6) If the executive director denies a license application or suspends, revokes, or refuses to renew the license of a ~~life~~~~viatical~~ settlement provider or ~~life~~~~viatical~~ settlement broker, or suspends, revokes, or refuses to renew

the license of a licensed life insurance agent operating as a ~~life~~~~viatical~~ settlement broker pursuant to KRS 304.15-700, the executive director shall comply with the provisions of this section and KRS Chapter 13B.

➔Section 20. KRS 304.9-467 is amended to read as follows:

- (1) An individual or business entity holding a license issued under this subtitle or holding a license as a surplus lines broker, ~~life~~~~viatical~~ settlement broker, or ~~life~~~~viatical~~ settlement provider shall notify the executive director in writing immediately if the licensee's license to conduct insurance, securities, real estate, auctioneer, investment, financial, or financial planning business of any kind in this state or elsewhere is surrendered or terminated under threat of disciplinary action, refused, suspended, revoked, or renewal of continuance is denied.
- (2) A licensee shall report to the executive director any administrative action taken against the licensee in another jurisdiction or by another governmental agency in Kentucky within thirty (30) days of the final disposition of the matter. This report shall include:
 - (a) A written statement identifying the type of license and explaining the circumstances of each incident;
 - (b) A copy of the notice of hearing or other document that states the charges and allegations; and
 - (c) A copy of the official document which demonstrates the resolution of the charges or any final judgment.
- (3) Within thirty (30) days of service upon the licensee of any criminal complaint, information, or indictment in any jurisdiction, the licensee shall submit to the executive director the following:
 - (a) A written statement explaining the circumstances of each incident;
 - (b) A copy of the charging document; and
 - (c) A copy of the official document which demonstrates the resolution of the charges or any final judgment.
- (4) If the charges alleged in the criminal complaint, information, or indictment have not been finally resolved within the thirty (30) day period following service of the criminal complaint, information, or indictment, the licensee shall, within thirty (30) days following the resolution of the charges, submit to the executive director a copy of the official document which demonstrates the resolution of the charges or any final judgment.

➔Section 21. KRS 304.15-705 is amended to read as follows:

- (1) The executive director may, when the executive director 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 executive director 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) Records of all transactions of ~~life~~~~viatical~~ settlement contracts shall be subject to the following:
 - (a) The following records of all transactions of ~~life~~~~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 executive director 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 executive director 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.

➔Section 22. KRS 304.15-718 is amended to read as follows:

The *life*~~[viatical]~~ settlement provider shall instruct the *owner*~~[viator]~~ to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary directly to the independent escrow agent. Within three (3) business days after the date the escrow agent receives the document, or from the date the *life*~~[viatical]~~ settlement provider receives the documents, if the *owner*~~[viator]~~ erroneously sends the documents directly to the provider, the *life*~~[viatical]~~ settlement provider shall pay the proceeds due to the *owner*~~[viator]~~ 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 *life*~~[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 *owner*~~[viator]~~.

➔Section 23. KRS 304.15-720 is amended to read as follows:

The executive director shall have the authority to:

- (1) Promulgate administrative regulations in accordance with KRS Chapter 13A implementing KRS 304.15-020 and 304.15-700 to 304.15-720;
- (2) Establish standards for evaluating reasonableness of payments under *life*~~[viatical]~~ settlement contracts where the insured under the policy which is the subject of a *life*~~[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 *life*~~[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;
- (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 *life*~~[viatical]~~ settlement provider, life insurance producer, and others in the business of *life*~~[viatical]~~ settlements during the period of consideration or effectuation of a *life*~~[viatical]~~ settlement contract.

➔Section 24. KRS 304.42-190 is amended to read as follows:

No person, including an insurer, agent, affiliate of an insurer, *life*~~[viatical]~~ settlement provider, or *life*~~[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 25. KRS 304.99-020 is amended to read as follows:

- (1) For any violation of this code where the executive director 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, *life*~~[viatical]~~ settlement broker, *life*~~[viatical]~~ settlement 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.

➔Section 26. KRS 304.99-100 is amended to read as follows:

- (1) The appointment of an agent, including rental vehicle agent, rental vehicle managing employee, specialty credit producer, and specialty credit managing employee, may be renewed by an insurer under KRS 304.9-270(9) if the request and late payment for renewal is accompanied by a penalty equal to the amount of the biennial renewal fee specified in Subtitle 4 of this chapter.
- (2) A license issued under Subtitle 9 of this chapter, surplus lines broker license, ~~life~~~~viatical~~ settlement broker license, and ~~life~~~~viatical~~ settlement provider license may be reissued under KRS 304.9-260(2) if the request and late payment for reissue are accompanied by a penalty equal to the amount of the biennial renewal fee specified in Subtitle 4 of this chapter.

➔Section 27. KRS 304.99-126 is amended to read as follows:

- (1) When a license issued under KRS 304.15-700 is suspended or revoked, the licensee, if the executive director 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 office shall retain jurisdiction over the licensee and trust until all ~~life~~~~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 KRS 304.15-020, 304.15-700 to 304.15-720, and 304.42-190 and this section as if the license were in force.
- (3) Any person who violates any provisions of KRS 304.15-020, 304.15-700 to 304.15-720, and 304.42-190 and this section shall be subject to civil fines by the executive director 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.
- (4) The office 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).

Signed by Governor April 9, 2008.