

(4) a combination of methods in clauses (1) to (3).

Subd. 2. VOTING BY MEMBERS WHO ARE NOT COOPERATIVES OR ASSOCIATIONS. A cooperative that is constituted partially of other cooperatives or associations and partially of members who are not cooperatives or associations, and that has its members who are not cooperatives or associations organized into local units of members, may, by the articles or the bylaws, authorize the delegates elected by its members who are not cooperatives or associations, and who are organized into local units of members, to have an additional vote for:

(1) a stipulated amount of business transacted between the members in the voting units and the cooperative;

(2) a certain stipulated amount of equity allocated to or held by the members of the voting units in the cooperative; or

(3) a combination of methods in clauses (1) and (2).

Sec. 4. **EFFECTIVE DATE.**

Sections 1 to 3 are effective the day following final enactment.

Presented to the governor May 9, 1995

Signed by the governor May 10, 1995, 10:34 a.m.

CHAPTER 151—H.F.No. 217

An act relating to insurance; life; regulating living benefits settlements; adopting the NAIC viatical settlements model act; prescribing powers and duties; appropriating money; amending Minnesota Statutes 1994, section 13.71, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 60A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1994, section 13.71, is amended by adding a subdivision to read:

Subd. 18. VIATICAL SETTLEMENTS DATA. Viatical settlements data provided to the commissioner of commerce is classified under section 60A.968, subdivision 2.

Sec. 2. **[60A.961] DEFINITIONS.**

Subdivision 1. APPLICATION. For the purposes of sections 60A.961 to 60A.974, the definitions in this section have the meanings given them.

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Subd. 2. PERSON. “Person” means a natural or artificial entity, including individuals, partnerships, associations, trusts, limited liability companies, or corporations.

Subd. 3. VIATICAL SETTLEMENT BROKER. “Viatical settlement broker” means an individual, partnership, limited liability company, corporation, or other entity who or which for another and for a fee, commission, or other valuable consideration, offers or advertises the availability of viatical settlements, introduces viators to viatical settlement providers, or offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers. “Viatical settlement broker” does not include an attorney, accountant, or financial planner retained to represent the viator whose compensation is not paid by the viatical settlement provider.

Subd. 4. VIATICAL SETTLEMENT CONTRACT. “Viatical settlement contract” means a written agreement entered into between a viatical settlement provider and a person owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life threatening illness or condition. The agreement must establish the terms under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policy owner’s assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

Subd. 5. VIATICAL SETTLEMENT PROVIDER. “Viatical settlement provider” means an individual, partnership, limited liability company, corporation, or other entity that enters into an agreement with a person owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life threatening illness or condition, under the terms of which the viatical settlement provider pays compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policy owner’s assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. Viatical settlement provider does not include:

(1) a bank, savings bank, savings association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;

(2) the issuer of a life insurance policy providing accelerated benefits under section 61A.072; or

(3) a natural person who enters into no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit.

Subd. 6. VIATOR. “Viator” means the owner or certificate holder of a life

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insurance policy insuring the life of a person with a catastrophic or life threatening illness or condition who enters into an agreement under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

Sec. 3. **[60A.962] LICENSE REQUIREMENTS.**

Subdivision 1. LICENSE. No individual, partnership, limited liability company, corporation, or other entity may act as a viatical settlement provider or enter into or solicit a viatical settlement contract without first having obtained a license from the commissioner of commerce.

Subd. 2. FORM. An applicant for a viatical settlement provider license shall submit an application to the commissioner of commerce on a form prescribed by the commissioner.

Subd. 3. CONTENTS. The applicant shall provide information that the commissioner requires on forms prepared by the commissioner. The commissioner may, at any time, require the applicant to fully disclose the identity of all shareholders, members, partners, officers, and employees. The commissioner may, in the exercise of discretion, refuse to issue a license in the name of a firm, partnership, limited liability company, or corporation if not satisfied that an officer, employee, shareholder, member, or partner who may materially influence the applicant's conduct meets the requirements of sections 60A.961 to 60A.974.

Subd. 4. NAMED PERSONS. A license issued to a partnership, limited liability company, corporation, or other entity authorizes all members, officers, partners, and designated employees to act as viatical settlement providers under the license, and all those persons must be named in the application and any supplements to the application.

Subd. 5. INVESTIGATION. Upon the filing of an application and the payment of the license fee, the commissioner shall investigate each applicant and may issue a license if the commissioner finds that the applicant:

- (1) has provided a detailed plan of operation;
- (2) is competent and trustworthy and intends to act in good faith in the capacity involved in the license applied for;
- (3) has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for; and
- (4) if a corporation, is a corporation incorporated under the laws of this state or a foreign corporation authorized to transact business in this state.

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Sec. 4. **[60A.963] SERVICE OF PROCESS; NONRESIDENT LICENSING.**

Subdivision 1. LICENSE. A nonresident of this state may be licensed as a viatical settlement provider upon compliance with all provisions of sections 60A.961 to 60A.974.

Subd. 2. SERVICE OF PROCESS. Section 45.028 applies to service of process upon a viatical settlement provider.

Sec. 5. **[60A.964] FEES.**

Subdivision 1. AMOUNT. The licensing fee for a viatical settlement provider license is \$750 for initial licensure and \$250 for each annual renewal. The commissioner may adjust the fees as provided under section 16A.1285 to recover the costs of administration and enforcement. The fees must be limited to the cost of license administration and enforcement and must be deposited in the state treasury, credited to a special account, and appropriated to the commissioner.

Subd. 2. AUTOMATIC REVOCATION. A license is automatically revoked for failure to pay the licensing fee within the terms prescribed by the commissioner.

Sec. 6. **[60A.965] LICENSE REVOCATION.**

Subdivision 1. REVOCATION. The commissioner may suspend, revoke, or refuse to renew the license of a viatical settlement provider if the commissioner finds that:

(1) there was any misrepresentation in the application for the license;

(2) the holder of the license has been found guilty of fraudulent or dishonest practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent to act as a viatical settlement provider;

(3) the licensee demonstrates a pattern of unreasonable payments to policy owners;

(4) the licensee has been convicted of a felony or a misdemeanor of which criminal fraud is an element; or

(5) the licensee has violated any of the provisions of sections 60A.961 to 60A.974.

Subd. 2. ADMINISTRATIVE ACTION. Section 45.027 applies to any action taken by the commissioner in connection with the administration of sections 60A.961 to 60A.974.

Sec. 7. **[60A.966] APPROVAL OF VIATICAL SETTLEMENTS CONTRACTS.**

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A viatical settlement provider may not use a viatical settlement contract form in this state unless it has been filed with and approved by the commissioner. A viatical settlement contract form filed with the commissioner is considered to have been approved if it has not been disapproved within 60 days of the filing. The commissioner shall disapprove a viatical settlement contract form if, in the commissioner's opinion, the contract or contract provisions are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the policy owner.

Sec. 8. [60A.967] REPORTING REQUIREMENTS.

Each licensee shall file with the commissioner on or before March 1 of each year an annual statement containing the following information for the previous calendar year:

(1) for each policy viaticated, the date that the viatical settlement was entered into; the life expectancy of the viator at the time of the contract; the face amount of the policy; the amount paid by the viatical settlement provider to viaticate the policy; and if the viator has died, the date of death and the total insurance premiums paid by the viatical settlement provider to maintain the policy in force;

(2) a breakdown of applications received, accepted, and rejected, by disease category;

(3) a breakdown of policies viaticated by issuer and policy type;

(4) the number of secondary market versus primary market transactions;

(5) the portfolio size; and

(6) the amount of outside borrowings.

Sec. 9. [60A.968] EXAMINATION.

Subdivision 1. AUTHORIZATION. The commissioner may, when the commissioner considers it reasonably necessary to protect the interests of the public, examine the business and affairs of a licensee or applicant for a license. The commissioner may order a licensee or applicant to produce records, books, files, or other information reasonably necessary to determine whether or not the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The licensee or applicant shall pay the expenses incurred in conducting an examination.

Subd. 2. PRIVATE DATA. Names and individual identification data for all viators is private and confidential information and must not be disclosed by the commissioner, unless required by law.

Subd. 3. RECORDS. The licensee shall maintain records of all transactions of viatical settlement contracts and shall make them available to the commissioner for inspection during reasonable business hours.

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Sec. 10. [60A.969] DISCLOSURE.

A viatical settlement provider shall disclose the following information to the viator no later than the date the viatical settlement contract is signed by all parties:

(1) possible alternatives to viatical settlement contracts for persons with catastrophic or life threatening illnesses, including accelerated benefits offered by the issuer of the life insurance policy;

(2) the fact that some or all of the proceeds of the viatical settlement may be taxable and that assistance should be sought from a personal tax advisor;

(3) the fact that the viatical settlement may be subject to the claims of creditors;

(4) the fact that receipt of a viatical settlement may adversely effect the recipients' eligibility for Medicaid or other government benefits or entitlements, and that advice should be obtained from the appropriate agencies;

(5) the policy owner's right to rescind a viatical settlement contract within 30 days of the date it is executed by all parties or 15 days of the receipt of the viatical settlement proceeds by the viator, whichever is less, as provided in section 60A.970, subdivision 3; and

(6) the date by which the funds will be available to the viator and the source of the funds.

Sec. 11. [60A.970] GENERAL REQUIREMENTS.

Subdivision 1. REQUIRED DOCUMENTS. A viatical settlement provider entering into a viatical settlement contract with a person with a catastrophic or life threatening illness or condition shall first obtain:

(1) a written statement from a licensed attending physician that the person is of sound mind and under no constraint or undue influence; and

(2) a witnessed document in which the person consents to the viatical settlement contract, acknowledges the catastrophic or life threatening illness, represents that the person has a full and complete understanding of the viatical settlement contract, acknowledges that the person has a full and complete understanding of the benefits of the life insurance policy, releases the person's medical records, and acknowledges that the person has entered into the viatical settlement contract freely and voluntarily.

Subd. 2. CONFIDENTIALITY OF MEDICAL INFORMATION. All medical information solicited or obtained by a licensee is subject to the applicable provisions of state law relating to confidentiality of medical information.

Subd. 3. UNCONDITIONAL REFUND PROVISION. All viatical settlement contracts entered into in this state must contain an unconditional refund

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provision of at least 30 days from the date that the viator signs an agreement to transfer an insurance policy, or 15 days of the receipt of the viatical settlement proceeds, whichever is less.

Subd. 4. PAYMENT OF PROCEEDS. Immediately upon receipt from the viator of documents to effect the transfer of the insurance policy, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a bank approved by the commissioner, pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent must transfer the proceeds due to the viator immediately upon receipt of acknowledgment of the transfer from the insurer. Payment of the proceeds must be made by means of wire transfer to the viator or by certified check or cashier's check.

Subd. 5. LUMP SUM PAYMENT. Payment of the proceeds under a viatical settlement must be made in a lump sum. Retention of a portion of the proceeds by the viatical settlement provider or escrow agent is not permissible. Payment must not be made by installments unless the viatical settlement company has purchased an annuity or similar financial instrument issued by a licensed insurance company or bank.

Subd. 6. ADDITIONAL PAYMENT. With respect to policies containing a provision for double or other additional indemnity for accidental death, the additional payment must remain payable to the beneficiary last named by the viator before entering into the viatical settlement agreement, or to a beneficiary designated by the viator, other than the viatical settlement provider, or in the absence of a designation, to the estate of the viator.

Subd. 7. PROHIBITED PAYMENTS. A viatical settlement provider or broker must not pay or offer to pay a finder's fee, commission, or other compensation to a viator's physician, attorney, accountant, or other person providing medical, legal, or financial planning services to the viator, or to any other person acting as an agent of the viator with respect to the viatical settlement.

Subd. 8. DISCRIMINATION PROHIBITED. A viatical settlement provider or broker must not discriminate in the making of viatical settlements on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status, or sexual orientation, or discriminate between viators with dependents and without.

Subd. 9. HEALTH STATUS CONTACTS. Contacts for the purpose of determining the health status of the viator by the viatical settlement provider or broker after the viatical settlement has occurred must not exceed one every three months for viators with a life expectancy of more than one year, and must not exceed one per month for viators with a life expectancy of one year or less. The provider or broker must explain the procedure for these contacts at the time the viatical settlement contract is entered into.

Subd. 10. PROHIBITED INVESTOR SOLICITATION. Viatical settlement providers and brokers shall not solicit investors who may influence the

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treatment of the illness of the viators whose coverage is the subject of the investment.

Subd. 11. CONTRACT NULL AND VOID. Failure to tender the viatical settlement by the date disclosed to the viator renders the contract null and void.

Sec. 12. [60A.971] STANDARDS FOR EVALUATIONS OF REASONABLE PAYMENTS.

In order to assure that viators receive a reasonable return for viaticating an insurance policy, the following are the minimum permitted discounts:

<u>Insured's Life Expectancy</u>	<u>Minimum Percentage of Face Value Less Outstanding Loans Received by Viator</u>
<u>Less than 6 months</u>	<u>80%</u>
<u>At least 6 but less than 12 months</u>	<u>70%</u>
<u>At least 12 but less than 18 months</u>	<u>65%</u>
<u>At least 18 but less than 24 months</u>	<u>60%</u>
<u>Twenty-four months or more</u>	<u>50%</u>

The percentage may be reduced by five percent for viaticating a policy written by an insurer rated lower than the highest four categories by A.M. Best, or a comparable rating by another rating agency.

Sec. 13. [60A.972] VIACICAL SETTLEMENT BROKERS.

Subdivision 1. LICENSE. A viatical settlement broker may not solicit a viatical settlement contract without first obtaining a license from the commissioner of commerce.

Subd. 2. FORM. An applicant for a viatical settlement broker license shall submit an application to the commissioner on a form prescribed by the commissioner.

Subd. 3. FEES. The licensing fee for a viatical settlement broker is \$750 for initial licensure and \$250 for each annual renewal. Failure to pay the renewal fee within the time required by the commissioner results in an automatic revocation of the license. The commissioner may adjust the fees as provided under section 16A.1285 to recover the costs of administration and enforcement. The fees must be limited to the cost of license administration and enforcement and must be deposited in the state treasury, credited to a special account, and appropriated to the commissioner.

Subd. 4. LICENSE LIMITATION. The license is a limited license which allows solicitation only of viatical settlements.

Subd. 5. LICENSE REVOCATION. The commissioner may suspend, revoke, or refuse to renew the license of a viatical settlement broker if the commissioner finds that:

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(1) there was any misrepresentation in the application for a license;

(2) the broker has been found guilty of fraudulent or dishonest practices, has been found guilty of a felony or a misdemeanor of which criminal fraud is an element, or is otherwise shown to be untrustworthy or incompetent;

(3) the licensee has placed or attempted to place a viatical settlement with a viatical settlement provider not licensed in this state; or

(4) the licensee has violated any of the provisions of sections 60A.961 to 60A.974.

Subd. 6. AGENT. In the absence of a written agreement making the broker the viator's agent, viatical settlement brokers are presumed to be agents of viatical settlement providers.

Subd. 7. COMPENSATION PROHIBITED. A viatical settlement broker must not, without the written agreement of the viator obtained before performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

Sec. 14. [60A.973] ADVERTISING STANDARDS.

Subdivision 1. GENERALLY. Advertising by viatical settlement providers or brokers must be truthful and not misleading by fact or implication.

Subd. 2. AVERAGE TIME. If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

Subd. 3. AVERAGE PURCHASE PRICE. If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase prices as a percent of face value obtained by viators contracting with the advertiser during the previous six months.

Sec. 15. [60A.974] UNFAIR TRADE PRACTICES.

A violation of sections 60A.961 to 60A.974 is an unfair trade practice under chapter 72A.

Sec. 16. EFFECTIVE DATE.

Sections 1 to 15 are effective January 1, 1996, and apply to viatical settlement agreements entered into on or after that date.

Presented to the governor May 9, 1995

Signed by the governor May 10, 1995, 10:32 a.m.

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