

CHAPTER 62—S.F.No. 1539

An act relating to insurance; regulating viatical settlements; enacting and modifying the Viatical Settlements Model Act of the National Association of Insurance Commissions; providing criminal penalties; amending Minnesota Statutes 2008, sections 13.716, subdivision 7; 60A.964, subdivision 1; proposing coding for new law in Minnesota Statutes, chapter 60A; repealing Minnesota Statutes 2008, sections 60A.961; 60A.962; 60A.963; 60A.965; 60A.966; 60A.967; 60A.968; 60A.969; 60A.970; 60A.971; 60A.972; 60A.973; 60A.974.

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

Section 1. Minnesota Statutes 2008, section 13.716, subdivision 7, is amended to read:

Subd. 7. **Viatical settlements data.** Viatical settlements data provided to the commissioner of commerce are classified under section ~~60A.968, subdivision 2~~ 60A.9575.

Sec. 2. **[60A.957] DEFINITIONS.**

Subdivision 1. **Terms.** For purposes of sections 60A.957 to 60A.9585, the terms defined in this section have the meanings given them.

Subd. 2. **Advertising.** "Advertising" 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 communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed directly before the public in this state, for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequeath, or transfer the death benefit or ownership of a life insurance policy pursuant to a viatical settlement contract.

Subd. 3. **Business of viatical settlements.** "Business of viatical settlements" means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating, or in any other manner acquiring an interest in a life insurance policy by means of a viatical settlement contract.

Subd. 4. **Chronically ill.** "Chronically ill" means:

(1) being unable to perform at least two activities of daily living (for example, eating, toileting, transferring, bathing, dressing, or continence);

(2) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

(3) having a level of disability similar to that described in clause (1) as determined by the United States Secretary of Health and Human Services.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 6. **Financing entity.** "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but:

(1) whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies; and

(2) who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts.

Financing entity does not include a nonaccredited investor or a viatical settlement purchaser.

Subd. 7. **Fraudulent viatical settlement act.** "Fraudulent viatical settlement act" includes:

(a) acts or omissions committed by any person who, knowingly and with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in acts including:

(1) presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, viatical settlement investment agent, financing entity, insurer, insurance producer, or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

(i) an application for the issuance of a viatical settlement contract or insurance policy;

(ii) the underwriting of a viatical settlement contract or insurance policy;

(iii) a claim for payment or benefit pursuant to a viatical settlement contract or insurance policy;

(iv) premiums paid on an insurance policy or as a result of a viatical settlement purchase agreement;

(v) payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract, viatical settlement purchase agreement, or insurance policy;

(vi) the reinstatement or conversion of an insurance policy;

(vii) the solicitation, offer, effectuation, or sale of a viatical settlement contract, insurance policy, or viatical settlement purchase agreement;

(viii) the issuance of written evidence of viatical settlement contract, viatical settlement purchase agreement, or insurance; or

(ix) a financing transaction; and

(2) employing any plan, financial structure, device, scheme, or artifice to defraud related to viaticated policies;

(b) acts or omissions in the furtherance of a fraud or to prevent the detection of a fraud committed by any person, its employees, or its agents, to:

(1) remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;

(2) misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;

(3) transact the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements; or

(4) file with the commissioner or the equivalent chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceal information about a material fact from the commissioner;

(c) commit embezzlement, theft, misappropriation, or conversion of money, funds, premiums, credits, or other property of a viatical settlement provider, insurer, viator, insurance policyowner, or any other person engaged in the business of viatical settlements or insurance; or

(d) attempt to commit, assist, aid, or abet in the commission of, or conspiracy to commit, the acts or omissions specified in this subdivision.

Subd. 8. **Life insurance producer.** "Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority for life insurance pursuant to chapter 60K.

Subd. 9. **Person.** "Person" means a natural person or a legal entity, including, without limitation, an individual, partnership, limited liability company, association, trust, or corporation.

Subd. 10. **Policy.** "Policy" means an individual or group policy, group certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

Subd. 11. **Related provider trust.** "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.

Subd. 12. **Special purpose entity.** "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:

(1) for a financing entity or licensed viatical settlement provider; or

(2) in connection with a transaction in which:

(i) the securities in the special purpose entity are acquired by the viator or by "qualified institutional buyers" as defined in Rule 144 promulgated under the Securities Act of 1933, as amended; or

(ii) the securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.

Subd. 13. **Terminally ill.** "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in 24 months or less.

Subd. 14. **Viatical settlement broker.** "Viatical settlement broker" means a person, including a life insurance producer as provided in section 60A.9572, who, working exclusively on behalf of a viator and for a fee, commission, or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or one or more viatical settlement brokers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator. Viatical settlement broker does not include an attorney, certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.

Subd. 15. **Viatical settlement contract.** (a) "Viatical settlement contract" means a written agreement between a viator and a viatical settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the viator's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. Viatical settlement contract also includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such a policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of a person residing in this state.

(b) Viatical settlement contract includes a premium finance loan made for a life insurance policy by a lender to a viator on, before, or after the date of issuance of the policy where:

(1) the viator or the insured receives on the date of the premium finance loan a guarantee of a future viatical settlement value of the policy; or

(2) the viator or the insured 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.

(c) Viatical settlement contract does not include:

(1) a policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms;

(2) loan proceeds that are used solely to pay:

(i) premiums for the policy; and

(ii) the costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third-party collateral provider fees and expenses, including fees payable to letter of credit issuers;

(3) a loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of a policy by the lender, provided that neither the default itself nor the transfer of the policy in connection with the default is pursuant to an agreement or understanding with any other person for the purposes of evading regulation under sections 60A.957 to 60A.9585;

(4) a loan made by a lender that does not violate chapter 59A, provided that the premium finance loan is not described in clause (3);

(5) an agreement where all the parties (i) are closely related to the insured by blood or law or (ii) 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 the 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:

(i) between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders;

(ii) between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or

(iii) between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts 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 exempted from the definition of viatical settlement contract by the commissioner based on a determination that the contract, transaction, or arrangement is not of the type intended to be regulated by sections 60A.957 to 60A.9585.

Subd. 16. **Viatical settlement investment agent.** (a) "Viatical settlement investment agent" means a person who is an appointed or contracted agent of a licensed viatical settlement provider who solicits or arranges the funding for the purchase of a viatical settlement by a viatical settlement purchaser and who is acting on behalf of a viatical settlement provider.

(b) A viatical settlement investment agent shall not have any contact directly or indirectly with the viator or insured or have knowledge of the identity of the viator or insured.

(c) A viatical settlement investment agent is deemed to represent the viatical settlement provider of whom the viatical settlement investment agent is an appointed or contracted agent.

Subd. 17. **Viatical settlement provider.** (a) "Viatical settlement provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract with a viator resident in this state.

(b) Viatical settlement provider does not include:

(1) a bank, savings bank, savings and loan association, credit union, or other licensed lending institution;

(2) a premium finance company making premium finance loans and exempted by the commissioner from the licensing requirement under the premium finance laws that takes an assignment of a life insurance policy solely as collateral for a loan;

(3) the issuer of the life insurance policy;

(4) an authorized or eligible insurer that provides stop-loss coverage or financial guaranty insurance to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;

(5) a natural person who enters into or effectuates 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;

(6) a financing entity;

(7) a special purpose entity;

(8) a related provider trust;

(9) a viatical settlement purchaser; or

(10) any other person that the commissioner determines is not the type of person intended to be covered by the definition of viatical settlement provider.

Subd. 18. **Viatical settlement purchase agreement.** "Viatical settlement purchase agreement" means a contract or agreement, entered into by a viatical settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or an interest in a life insurance policy, that is entered into for the purpose of deriving an economic benefit.

Subd. 19. **Viatical settlement purchaser.** (a) "Viatical settlement purchaser" means a person who provides a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit.

(b) Viatical settlement purchaser does not include:

(1) a licensee under sections 60A.957 to 60A.9585;

(2) an accredited investor or qualified institutional buyer as defined, respectively, in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended;

(3) a financing entity;

(4) a special purpose entity; or

(5) a related provider trust.

Subd. 20. **Viaticated policy.** "Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

Subd. 21. **Viator.** (a) "Viator" means the owner of a life insurance policy or a certificate holder under a group policy that resides in this state and enters or seeks to enter into a viatical settlement contract. For purposes of sections 60A.957 to 60A.9585, 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 viator on a single policy and the viators are residents of different states, the transaction is governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all the viators.

(b) Viator does not include:

(1) a licensee under sections 60A.957 to 60A.9585, including a life insurance producer acting as a viatical settlement broker pursuant to sections 60A.957 to 60A.9585;

(2) a qualified institutional buyer as defined in Rule 144A promulgated under the Federal Securities Act of 1933, as amended;

(3) a financing entity;

(4) a special purpose entity; or

(5) a related provider trust.

Sec. 3. **[60A.9572] LICENSE AND BOND REQUIREMENTS.**

Subdivision 1. **Provider or broker license required.** A person shall not operate as a viatical settlement provider or viatical settlement broker in this state without first obtaining a license from the commissioner of the state of residence of the viator.

Subd. 2. **Agent license required.** A person shall not operate as a viatical settlement investment agent in this state without first obtaining a license from the commissioner of the state of residence of the viatical settlement purchaser. If there is more than one purchaser of a single policy and the purchasers are residents of different states, the viatical settlement purchase agreement shall be governed by the law of the state in which the purchaser having the largest percentage ownership resides or, if the purchasers hold equal ownership, the state of residence of one purchaser agreed upon in writing by all purchasers.

Subd. 3. **Life insurance producer.** (a) An insurance producer who is currently licensed with the life line of authority and has been licensed in good standing for at least one year is deemed to meet the licensing requirements of this section and is permitted to operate as a viatical settlement broker.

(b) Not later than 30 days from the first day of operating as a viatical settlement broker, the life insurance producer shall notify the commissioner that the life insurance producer is acting as a viatical settlement broker on a form prescribed by the commissioner, and shall pay any applicable fee to be determined by the commissioner. Notification includes an acknowledgment by the life insurance producer that the life insurance producer will operate as a viatical settlement broker in accordance with sections 60A.957 to 60A.9585.

(c) The insurer that issued the policy being viaticated is not responsible for any act or omission of a viatical settlement broker or viatical settlement provider arising out of or in connection with the viatical settlement transaction, unless the insurer receives compensation for the placement of a viatical settlement contract from the viatical

settlement provider or viatical settlement broker in connection with the viatical settlement contract.

(d) A person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator, whose compensation is not paid directly or indirectly by the viatical settlement provider, may negotiate viatical settlement contracts on behalf of the viator without having to obtain a license as a viatical settlement broker.

Subd. 4. **Application.** An application for a viatical settlement provider, viatical settlement broker, or viatical settlement investment agent license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and these applications shall be accompanied by the fees specified in section 60A.964.

Subd. 5. **Renewals.** A license may be renewed from year to year on the anniversary date upon payment of the annual renewal fees specified in section 60A.964. Failure to pay the fees by the renewal date results in expiration of the license.

Subd. 6. **Disclosures.** The applicant shall provide information on forms required by the commissioner. The commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders who hold more than ten percent of the shares of the company, partners, officers, members, and employees, and the commissioner may, in the exercise of the commissioner's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner, or member may materially influence the applicant's conduct meets the standards of sections 60A.957 to 60A.9585.

Subd. 7. **Legal entity license.** A license issued to a legal entity authorizes all partners, officers, members, and designated employees to act as viatical settlement providers, viatical settlement brokers, or viatical settlement investment agents, as applicable, under the license, and all those persons shall be named in the application and any supplements to the application.

Subd. 8. **Investigation.** Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

- (1) if a viatical settlement provider, has provided a detailed plan of operation;
- (2) is competent and trustworthy and intends to act in good faith in the capacity involved by 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;
- (4) if a viatical settlement provider or a viatical settlement broker, has demonstrated evidence of financial responsibility in a format prescribed by the commissioner through either a surety bond executed and issued by an insurer authorized to issue surety bonds in this state or a deposit of cash, certificates of deposit, or securities or any combination thereof in an amount to be determined by the commissioner. The commissioner shall accept, as evidence of financial responsibility, proof that financial instruments in accordance with the requirements in this clause have been filed with one or more states where the applicant is licensed as a viatical settlement provider or a viatical settlement broker. The commissioner may ask for evidence of financial responsibility at any time the commissioner deems necessary. Any surety bond issued pursuant to this clause shall be in

favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices by the viatical settlement provider or a viatical settlement broker;

(5) if a legal entity, provides a certificate of good standing from the state of its domicile; and

(6) if a viatical settlement provider or viatical settlement broker, has provided an antifraud plan that meets the requirements of section 60A.9583.

Subd. 9. **Consent to service of process.** The commissioner shall not issue a license to a nonresident applicant, unless a written designation of an agent for service of process is filed and maintained with the commissioner or the applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

Subd. 10. **Duty to supplement information.** A viatical settlement provider, viatical settlement broker, or viatical settlement investment agent shall provide to the commissioner new or revised information about officers, ten percent or more stockholders, partners, directors, members, or designated employees within 30 days of the change.

Subd. 11. **Training required.** An individual licensed as a viatical settlement broker shall complete on an annual basis six hours of training related to viatical settlements and viatical settlement transactions, as required by the commissioner; provided, however, that a life insurance producer who is operating as a viatical settlement broker pursuant to subdivision 3 shall not be subject to the requirements of this subdivision. Any person failing to meet the requirements of this subdivision is subject to the penalties imposed by the commissioner.

Sec. 4. **[60A.9573] LICENSE REVOCATION AND DENIAL.**

Subdivision 1. **Grounds.** The commissioner may suspend, revoke, or refuse to issue or renew the license of a viatical settlement provider, viatical settlement broker, or viatical settlement investment agent if the commissioner finds that:

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

(2) the licensee or any officer, partner, member, or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent;

(3) the viatical settlement provider demonstrates a pattern of unreasonable payments to viators;

(4) the licensee or any officer, partner, member, or key management personnel has been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;

(5) the viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to sections 60A.957 to 60A.9585;

(6) the viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract or a viatical settlement purchase agreement;

(7) the licensee no longer meets the requirements for initial licensure;

(8) the viatical settlement provider has assigned, transferred, or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, a viatical settlement purchaser, an accredited investor or qualified institutional buyer as defined respectively in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended, a financing entity, a special purpose entity, or a related provider trust; or

(9) the licensee or any officer, partner, member, or key management personnel has violated any provision of sections 60A.957 to 60A.9585.

Subd. 2. **Bad faith by broker or producer.** The commissioner may suspend, revoke, or refuse to renew the license of a viatical settlement broker or a life insurance producer operating as a viatical settlement broker pursuant to sections 60A.957 to 60A.9585 if the commissioner finds that the viatical settlement broker or life insurance producer has violated the provisions of sections 60A.957 to 60A.9585 or has otherwise engaged in bad faith conduct with one or more viators.

Subd. 3. **License enforcement actions.** Section 45.027 applies to any action taken by the commissioner to deny a license application or suspend, revoke, or refuse to renew the license of a viatical settlement provider, viatical settlement broker, or viatical settlement investment agent, or suspend, revoke, or refuse to renew a license of a life insurance producer operating as a viatical settlement broker pursuant to sections 60A.957 to 60A.9585.

Sec. 5. **[60A.9574] APPROVAL OF VIATICAL SETTLEMENT CONTRACTS AND DISCLOSURE STATEMENTS.**

A person shall not use a viatical settlement contract form or provide to a viator a disclosure statement form in this state unless first filed with and approved by the commissioner. The commissioner shall disapprove a viatical settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or provisions fail to meet the requirements of sections 60A.9577, 60A.9579, 60A.9582, and 60A.9583, subdivision 2, or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. At the commissioner's discretion, the commissioner may require the submission of advertising material.

Sec. 6. **[60A.9575] REPORTING REQUIREMENTS AND PRIVACY.**

Subdivision 1. **Annual statement.** A viatical settlement provider shall file with the commissioner on or before March 1 of each year an annual statement containing the following information:

(1) for each policy viaticated, the date that the viatical settlement contract 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 by disease category of applications received, accepted, and rejected;

(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.

The information shall be limited to only those transactions where the viator is a resident of this state. Individual transaction data regarding the business of viatical settlements or data that could compromise the privacy of personal, financial, and health information of the viator or insured shall be filed with the commissioner on a confidential basis.

Subd. 2. **Identity disclosure restrictions.** Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, or viatical settlement investment agent, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not disclose that identity as an insured, or the insured's financial or medical information to any other person unless the disclosure:

(1) is necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

(2) is necessary to effect a viatical settlement purchase agreement between the viatical settlement purchaser and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

(3) is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to section 45.027;

(4) is a term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider;

(5) is necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies by a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

(6) is necessary to allow a viatical settlement provider or viatical settlement broker or an authorized representative to make contacts for the purpose of determining health status; or

(7) is required to purchase stop-loss coverage or financial guaranty insurance.

Sec. 7. **[60A.9577] DISCLOSURE TO VIATOR.**

Subdivision 1. **Application disclosures by provider and broker.** With an application for a viatical settlement, a viatical settlement provider or viatical settlement broker shall provide the viator with at least the following disclosures no later than the time the application for the viatical settlement contract is signed by all parties. The disclosures shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker, and shall provide the following information:

(1) that a viatical settlement broker represents exclusively the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator, including a duty to act according to the viator's instructions and in the best interests of the viator;

(2) some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor;

(3) proceeds of the viatical settlement could be subject to the claims of creditors;

(4) receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies;

(5) the viator has the right to rescind a viatical settlement contract before the earlier of 30 calendar days after the date upon which the viatical settlement contract is executed by all parties or 15 calendar days after the viatical settlement proceeds have been paid to the viator, as provided in section 60A.9579, subdivision 3. Rescission, if exercised by the viator, is effective only if both notice of the rescission is given, and the viator repays all proceeds and any premiums, loans, and loan interest paid on account of the viatical settlement within the rescission period. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment by the viator or the viator's estate of all viatical settlement proceeds and any premiums, loans, and loan interest to the viatical settlement within 60 days of the insured's death;

(6) funds will be sent to the viator within three business days after the viatical settlement provider has received the insurer or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated;

(7) entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator. Assistance should be sought from a financial adviser;

(8) the disclosure document shall contain the following language: "All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."; and

(9) following execution of a viatical contract, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number, or as otherwise provided in sections 60A.957 to 60A.9585. This contact shall be limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less. Contacts shall be made only by a viatical settlement provider licensed in the state in which the viator resided at the time of the viatical settlement, or by the authorized representative of a duly licensed viatical settlement provider.

Disclosure to a viator under this subdivision includes distribution of a brochure describing the process of viatical settlements. The National Association of Insurance Commissioners' form for the brochure shall be used unless another form is developed or approved by the commissioner.

Subd. 2. **Contract disclosures by provider.** A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date the viatical

settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide the following information:

(1) the affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated;

(2) the document includes the name, business address, and telephone number of the viatical settlement provider;

(3) any affiliations or contractual arrangements between the viatical settlement provider and the viatical settlement broker;

(4) if an insurance policy to be viaticated 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 viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with the viator's insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement;

(5) state the dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. If known, the viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the extent to which the viator's interest in those benefits will be transferred as a result of the viatical settlement contract; and

(6) state whether the funds will be escrowed with an independent third party during the transfer process, and if so, provide the name, business address, and telephone number of the independent third-party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

Subd. 3. **Contract disclosures by broker.** A viatical settlement broker shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide the following information:

(1) the name, business address, and telephone number of the viatical settlement broker;

(2) a full, complete, and accurate description of all offers, counteroffers, acceptances, and rejections relating to the proposed viatical settlement contract;

(3) a written disclosure of any affiliations or contractual arrangements between the viatical settlement broker and any person making an offer in connection with the proposed viatical settlement contracts;

(4) the name of each broker who receives compensation and the amount of compensation received by that broker, which compensation includes anything of value paid or given to the broker in connection with the life settlement contract; and

(5) where any portion of the viatical settlement broker's compensation, as defined in subdivision 3, clause (4), is taken from a proposed viatical settlement offer, the broker shall also disclose the total amount of the viatical settlement offer and the percentage of the viatical settlement offer comprised by the viatical settlement broker's compensation.

Subd. 4. **Ownership and beneficiary changes.** If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within 20 days after the change.

Subd. 5. **Contract disclosures by provider or agent.** A viatical settlement provider or its viatical settlement investment agent shall provide the viatical settlement purchaser with at least the following disclosures prior to the date the viatical settlement purchase agreement is signed by all parties. The disclosures shall be conspicuously displayed in any viatical purchase contract or in a separate document signed by the viatical settlement purchaser and viatical settlement provider or viatical settlement investment agent, and shall make the following disclosures to the viatical settlement purchaser:

(1) the purchaser will receive no returns, for example, dividends and interest, until the insured dies and a death claim payment is made;

(2) the actual annual rate of return on a viatical settlement contract is dependent upon an accurate projection of the insured's life expectancy, and the actual date of the insured's death. An annual guaranteed rate of return is not determinable;

(3) the viaticated life insurance contract should not be considered a liquid purchase since it is impossible to predict the exact timing of its maturity and the funds are probably not available until the death of the insured. There is no established secondary market for resale of these products by the purchaser;

(4) the purchaser may lose all benefits or may receive substantially reduced benefits if the insurer goes out of business during the term of the viatical investment;

(5) the purchaser is responsible for payment of the insurance premium or other costs related to the policy, if required by the terms of the viatical purchase agreement. These payments may reduce the purchaser's return. If a party other than the purchaser is responsible for the payment, the name and address of that party shall also be disclosed;

(6) the purchaser is responsible for payment of the insurance premiums or other costs related to the policy if the insured returns to health. Disclose the amount of the premiums, if applicable;

(7) the name, business address, and telephone number of the independent third party providing escrow services and the relationship to the broker;

(8) the amount of any trust fees or other expenses to be charged to the viatical settlement purchaser shall be disclosed;

(9) whether the purchaser is entitled to a refund of all or part of the purchaser's investment under the settlement contract if the policy is later determined to be null and void;

(10) that group policies may contain limitations or caps in the conversion rights, additional premiums may have to be paid if the policy is converted, name the party responsible for the payment of the additional premiums and, if a group policy is terminated and replaced by another group policy, state that there may be no right to convert the original coverage;

(11) the risks associated with policy contestability including, but not limited to, the risk that the purchaser will have no claim or only a partial claim to death benefits should the insurer rescind the policy within the contestability period;

(12) whether the purchaser will be the owner of the policy in addition to being the beneficiary, and if the purchaser is the beneficiary only and not also the owner, the special risks associated with that status, including, but not limited to, the risk that the beneficiary may be changed or the premium may not be paid; and

(13) the experience and qualifications of the person who determines the life expectancy of the insured, for example, in-house staff, independent physicians, and specialty firms that weigh medical and actuarial data; the information this projection is based on; and the relationship of the projection maker to the viatical settlement provider, if any.

Disclosure to a viatical settlement purchaser under this subdivision includes the distribution of a brochure describing the process of investment in viatical settlements. The National Association of Insurance Commissioners' form for the brochure shall be used unless one is developed by the commissioner.

Subd. 6. **Transfer or sale disclosures by provider or agent.** A viatical settlement provider or its viatical settlement investment agent shall provide the viatical settlement purchaser with at least the following disclosures no later than at the time of the assignment, transfer, or sale of all or a portion of an insurance policy. The disclosures shall be contained in a document signed by the viatical settlement purchaser and viatical settlement provider or viatical settlement investment agent, and shall make the following disclosures to the viatical settlement purchaser:

(1) disclose all the life expectancy certifications obtained by the provider in the process of determining the price paid to the viator;

(2) state whether premium payments or other costs related to the policy have been escrowed. If escrowed, state the date upon which the escrowed funds will be depleted and whether the purchaser will be responsible for payment of premiums thereafter and, if so, the amount of the premiums;

(3) state whether premium payments or other costs related to the policy have been waived. If waived, disclose whether the investor will be responsible for payment of the premiums if the insurer that wrote the policy terminates the waiver after purchase and the amount of those premiums;

(4) disclose the type of policy offered or sold, for example, whole life, term life, universal life, or a group policy certificate; any additional benefits contained in the policy; and the current status of the policy;

(5) if the policy is term insurance, disclose the special risks associated with term insurance including, but not limited to, the purchaser's responsibility for additional premiums if the viator continues the term policy at the end of the current term;

(6) state whether the policy is contestable;

(7) state whether the insurer that wrote the policy has any additional rights that could negatively affect or extinguish the purchaser's rights under the viatical settlement contract, what these rights are, and under what conditions these rights are activated; and

(8) state the name and address of the person responsible for monitoring the insured's condition. Describe how often the monitoring of the insured's condition is done, how the date of death is determined, and how and when this information will be transmitted to the purchaser.

Subd. 7. Agreement voidable. The viatical settlement purchase agreement is voidable by the purchaser at any time within three days after the disclosures mandated by subdivisions 4 and 5 are received by the purchaser.

Sec. 8. ~~[60A.9579]~~ GENERAL RULES.

Subdivision 1. Provider requirements. (a) A viatical settlement provider entering into a viatical settlement contract shall first obtain:

(1) if the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and

(2) a document in which the insured consents to the release of the insured's medical records to a licensed viatical settlement provider, viatical settlement broker, and the insurance company that issued the life insurance policy covering the life of the insured.

(b) Within 20 days after a viator executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement, option, promise, or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy. The notice shall be accompanied by the documents required by paragraph (c).

(c) The viatical provider shall deliver a copy of the medical release required under paragraph (a), clause (2), a copy of the viator's application for the viatical settlement contract, the notice required under paragraph (b), and a request for verification of coverage to the insurer that issued the life insurance policy that is the subject of the viatical transaction. The National Association of Insurance Commissioners' form for verification of coverage shall be used unless another form is developed or approved by the commissioner.

(d) The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider or viatical settlement broker within 30 calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible fraud. The insurer shall accept a request for verification of coverage made on an National Association of Insurance Commissioners form or any other form approved by the commissioner. The insurer shall accept an original or facsimile or electronic copy of a request and any accompanying authorization signed by the viator. Failure by the insurer to meet its obligations under this subdivision is a violation of sections 60A.9581, subdivision 3, and 60A.9585.

(e) Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, that the viator has a full and complete understanding of the benefits of the life insurance policy, acknowledges that the viator is entering into the viatical settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

(f) If a viatical settlement broker performs any of these activities required of the viatical settlement provider, the provider is deemed to have fulfilled the requirements of this section.

Subd. 2. **Confidentiality of personal information.** All personal information solicited or obtained by any licensee shall be subject to sections 72A.49 to 72A.505.

Subd. 3. **General right of rescission.** A viatical settlement contract entered into in this state shall provide the viator with an absolute right to rescind the contract before the earlier of 30 calendar days after the date upon which the viatical settlement contract is executed by all parties or 15 calendar days after the viatical settlement proceeds have been sent to the viator as provided in subdivision 6. Rescission by the viator may be conditioned upon the viator both giving notice and repaying to the viatical settlement provider within the rescission period all proceeds of the settlement and any premiums, loans, and loan interest paid by or on behalf of the viatical settlement provider in connection with or as a consequence of the viatical settlement. If the insured dies during the rescission period, the viatical settlement contract is deemed to have been rescinded, subject to repayment to the viatical settlement provider or purchaser of all viatical settlement proceeds, and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or purchaser, which shall be paid within 60 calendar days of the death of the insured. In the event of any rescission, if the viatical settlement provider has paid commissions or other compensation to a viatical settlement broker in connection with the rescinded transaction, the viatical settlement broker shall refund all commissions and compensation to the viatical settlement provider within five business days following receipt of written demand from the viatical settlement provider, which demand shall be accompanied by either the viator's notice of rescission if rescinded at the election of the viator, or notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period.

Subd. 4. **Right to rescind after mandated disclosures.** The purchaser shall have the right to rescind a viatical settlement contract within three days after the disclosures mandated by section 60A.9577, subdivisions 5 and 6, are received by the purchaser.

Subd. 5. **Payment of settlement proceeds.** The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary directly to the independent escrow agent. Within three business days after the date the escrow agent receives the document, or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the provider, the provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a state- or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the viatical settlement provider or related provider trust or other designated representative of the viatical settlement provider. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator.

Subd. 6. **Tendering consideration.** Failure to tender consideration to the viator for the viatical settlement contract within the time set forth in the disclosure pursuant to section 60A.9577, subdivision 1, clause (6), renders the viatical settlement contract

voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator. Funds shall be deemed sent by a viatical settlement provider to a viator as of the date that the escrow agent either releases funds for wire transfer to the viator or places a check for delivery to the viator by United States mail or other nationally recognized delivery service.

Subd. 7. **Health status contacts.** Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or broker licensed in this state or its authorized representatives and shall be limited to once every three months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations in this subdivision shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.

Sec. 9. **[60A.9581] PROHIBITED PRACTICES AND CONFLICTS OF INTEREST.**

Subdivision 1. **Solicitations and sales to controlled person.** With respect to any viatical settlement contract or insurance policy, no viatical settlement broker knowingly shall solicit an offer from, effectuate a viatical settlement with, or make a sale to any viatical settlement provider, viatical settlement purchaser, viatical settlement investment agent, financing entity, or related provider trust that is controlling, controlled by, or under common control with the viatical settlement broker unless this relationship is disclosed to the viator.

Subd. 2. **Payment to controlled broker.** With respect to any viatical settlement contract or insurance policy, no viatical settlement provider knowingly may enter into a viatical settlement contract with a viator, if, in connection with a viatical settlement contract, anything of value will be paid to a viatical settlement broker that is controlling, controlled by, or under common control with the viatical settlement provider or the viatical settlement purchaser, viatical settlement investment agent, financing entity, or related provider trust that is involved in a viatical settlement contract unless this relationship is disclosed to the viator.

Subd. 3. **Fraudulent viatical settlement act.** A violation of subdivisions 1 and 2 is deemed a fraudulent viatical settlement act.

Subd. 4. **Advertising.** (a) No viatical settlement provider shall enter into a viatical settlement contract unless the viatical settlement promotional, advertising, and marketing materials, as may be prescribed by rule, have been filed with the commissioner. In no event shall any marketing materials expressly reference that the insurance is "free" for any period of time. The inclusion of any reference in the marketing materials that would cause a viator to reasonably believe that the insurance is free for any period of time shall be considered a violation of sections 60A.957 to 60A.9585.

(b) No life insurance producer, insurance company, viatical settlement broker, viatical settlement provider, or viatical settlement investment agent shall 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.

Sec. 10. **[60A.9582] ADVERTISING FOR VIATICAL SETTLEMENTS AND VIATICAL SETTLEMENTS PURCHASE AGREEMENTS.**

Subdivision 1. **Application.** This section applies to any advertising of viatical settlement contracts, viatical purchase agreements, or related products or services intended for dissemination in this state, including Internet advertising viewed by persons located in this state. Where disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

Subd. 2. **System of control.** Every viatical settlement licensee shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products, and services. All advertisements, regardless of by whom written, created, designed, or presented, shall be the responsibility of the viatical settlement licensees, as well as the individual who created or presented the advertisement. A system of control shall include regular routine notification, at least once a year, to agents and others authorized by the viatical settlement licensee who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the viatical settlement licensee.

Subd. 3. **Form and content.** Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract or viatical settlement purchase agreement, product, or service shall be sufficiently complete and clear so as to avoid deception and it shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

Subd. 4. **False and misleading advertisements.** Certain viatical settlement advertisements are deemed false and misleading on their face and are prohibited. False and misleading viatical settlement advertisements include, but are not limited to, the following representations:

(1) "guaranteed," "fully secured," "100 percent secured," "fully insured," "secure," "safe," "backed by rated insurance companies," "backed by federal law," "backed by state law," "state guaranty funds," or similar representations;

(2) "no risk," "minimal risk," "low risk," "no speculation," "no fluctuation," or similar representations;

(3) "qualified or approved for individual retirement accounts (IRAs), Roth IRAs, 401(k) plans, simplified employee pensions (SEP), 403(b), Keogh plans, TSA, other retirement account rollovers," "tax deferred," or similar representations;

(4) utilization of the word "guaranteed" to describe the fixed return, annual return, principal, earnings, profits, investment, or similar representations;

(5) "no sales charges or fees" or similar representations;

(6) "high yield," "superior return," "excellent return," "high return," "quick profit," or similar representations; and

(7) purported favorable representations or testimonials about the benefits of viatical settlement contracts or viatical settlement purchase agreements as an investment, taken out of context from newspapers, trade papers, journals, radio and television programs, and all other forms of print and electronic media.

Subd. 5. **Disclosures regulated.** (a) The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(b) An advertisement shall not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving viators, purchasers, or prospective purchasers as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the viatical settlement contract or viatical settlement purchase agreement offered is made available for inspection prior to consummation of the sale, or an offer is made to refund the payment if the viator is not satisfied or that the viatical settlement contract or viatical settlement purchase agreement includes a "free look" period that satisfies or exceeds legal requirements, does not remedy misleading statements.

(c) An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.

(d) An advertisement shall not represent that premium payments will not be required to be paid on the life insurance policy that is the subject of a viatical settlement contract or viatical settlement purchase agreement in order to maintain that policy, unless that is the fact.

(e) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.

(f) The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

(g) Testimonials, appraisals, or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the viatical settlement contract or viatical settlement purchase agreement product or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators or purchasers as to the nature or scope of the testimonials, appraisal, analysis, or endorsement. In using testimonials, appraisals, or analysis, a licensee under sections 60A.957 to 60A.9585 makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

(h) If the individual making a testimonial, appraisal, analysis, or endorsement has a financial interest in the party making use of the testimonial, appraisal, analysis, or endorsement, either directly or through a related entity as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union-scale wages, that fact shall be prominently disclosed in the advertisement.

(i) An advertisement shall not state or imply that a viatical settlement contract or viatical settlement purchase agreement, benefit, or service has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the

fact and unless any relationship between an organization and the viatical settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the viatical settlement licensee, or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(j) When an endorsement refers to benefits received under a viatical settlement contract or viatical settlement purchase agreement, all pertinent information shall be retained for a period of five years after its use.

Subd. 6. **Statistics.** An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

Subd. 7. **Disparaging advertisements.** An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement brokers, viatical settlement investment agents, insurance producers, policies, services, or methods of marketing.

Subd. 8. **Licensee's name.** The name of the viatical settlement licensee shall be clearly identified in all advertisements about the licensee or its viatical settlement contract or viatical settlement purchase agreements, products, or services, and if any specific viatical settlement contract or viatical settlement purchase agreement is advertised, the viatical settlement contract or viatical settlement purchase agreement shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.

Subd. 9. **Licensee disclosure.** An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the viatical settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee, or to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a viatical settlement contract or viatical settlement purchase agreement.

Subd. 10. **Government sponsorship; misleading advertisements.** An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators or purchasers into believing that the solicitation is in some manner connected with a government program or agency.

Subd. 11. **State licensure.** An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that a competing viatical settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's Web site or contact the Department of Commerce to find out if the state requires licensing and, if so, whether the viatical settlement provider, viatical settlement broker, or viatical settlement investment agent is licensed.

Subd. 12. **Government entity endorsement.** An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the

payment of its claims, or the merits, desirability, or advisability of its viatical settlement contracts or viatical settlement purchase agreement forms are recommended or endorsed by any government entity.

Subd. 13. **Name.** The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

Subd. 14. **Government approval.** An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the United States government endorses, approves, or favors:

- (1) any viatical settlement licensee or its business practices or methods of operation;
- (2) the merits, desirability, or advisability of any viatical settlement contract or viatical settlement purchase agreement;
- (3) any viatical settlement contract or viatical settlement purchase agreement; or
- (4) any life insurance policy or life insurance company.

Subd. 15. **Time frame disclosure.** 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. 16. **Average purchase price.** If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six months.

Sec. 11. [60A.9583] FRAUD PREVENTION AND CONTROL.

Subdivision 1. **Fraudulent viatical settlement acts, interference, and participation of convicted felons prohibited.** (a) A person who commits a fraudulent viatical settlement act commits insurance fraud and may be sentenced under section 609.611, subdivision 3.

(b) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of sections 60A.957 to 60A.9585 or investigations of suspected or actual violations of sections 60A.957 to 60A.9585.

(c) A person in the business of viatical settlements shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.

Subd. 2. **Fraud warning required.** (a) Viatical settlements contracts and purchase agreement forms and applications for viatical settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement: "Any person who knowingly presents false information in an application for insurance or viatical settlement contract or a viatical settlement purchase agreement is guilty of a crime and may be subject to fines and confinement in prison."

(b) The lack of a statement as required in paragraph (a) does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

Subd. 3. **Mandatory reporting of fraudulent viatical settlement acts.** Any person engaged in the business of viatical settlements having knowledge or a reasonable suspicion that a fraudulent viatical settlement act is being, will be, or has been committed shall provide to the commissioner such information as required by, and in a manner prescribed by, the commissioner.

Subd. 4. **Viatical settlement antifraud initiatives.** (a) Viatical settlement providers and viatical settlement brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent viatical settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives 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 may reasonably be expected to accomplish the purpose of this section.

(b) Antifraud initiatives shall include:

(1) fraud investigators, who may be viatical settlement provider or viatical settlement broker employees or independent contractors; and

(2) an antifraud plan, which shall be submitted to the commissioner. The antifraud plan shall include, but not be limited to:

(i) a description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(ii) a description of the procedures for reporting possible fraudulent viatical settlement acts to the commissioner;

(iii) a description of the plan for antifraud education and training of underwriters and other personnel; and

(iv) a description or 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.

(c) Antifraud plans submitted to the commissioner 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.

Sec. 12. [60A.9585] UNFAIR TRADE PRACTICES.

A violation of sections 60A.957 to 60A.9585, including the commission of a fraudulent viatical settlement act, shall be considered an unfair trade practice under section 72A.20.

Sec. 13. Minnesota Statutes 2008, section 60A.964, subdivision 1, is amended to read:

Subdivision 1. **Amount.** The licensing fee for a viatical settlement provider, viatical settlement broker, or viatical settlement investment agent license is \$750 for initial licensure and \$250 for each annual renewal. 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.

Sec. 14. **REPEALER.**

Minnesota Statutes 2008, sections 60A.961; 60A.962; 60A.963; 60A.965; 60A.966; 60A.967; 60A.968; 60A.969; 60A.970; 60A.971; 60A.972; 60A.973; and 60A.974, are repealed.

Sec. 15. **EFFECTIVE DATE; APPLICATION.**

This act is effective August 1, 2009. A viatical settlement provider, viatical settlement broker, or viatical settlement investment agent transacting business in this state may continue to do so pending approval or disapproval of the provider's, broker's, or investment agent's application for a license as long as the application is filed with the commissioner by December 31, 2009.

Presented to the governor May 8, 2009

Signed by the governor May 12, 2009, 4:52 p.m.