

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 526 Session of
1997

INTRODUCED BY ROONEY, STABACK, JOSEPHS, WALKO, SATHER, NICKOL,
HALUSKA, MELIO, FICHTER, OLASZ, YOUNGBLOOD, COY, SHANER,
JAMES, TRELLO, DeLUCA, STURLA, BOSCOLA, PETRARCA, STEELMAN,
MICHLOVIC, RAMOS, BROWN AND A. H. WILLIAMS, FEBRUARY 12, 1997

AS REPORTED FROM COMMITTEE ON INSURANCE, HOUSE OF
REPRESENTATIVES, AS AMENDED, FEBRUARY 17, 1998

AN ACT

1 Providing for viatical settlements and for powers and duties of
2 the Insurance Department.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 ~~Section 1. Short title.~~

<—

6 ~~This act shall be known and may be cited as the Viatical~~
7 ~~Settlements Act.~~

8 ~~Section 2. Definitions.~~

9 ~~The following words and phrases when used in this act shall~~
10 ~~have the meanings given to them in this section unless the~~
11 ~~context clearly indicates otherwise:~~

12 ~~"Commissioner." The Insurance Commissioner of the~~
13 ~~Commonwealth.~~

14 ~~"Department." The Insurance Department of the Commonwealth.~~

15 ~~"Person." A natural person.~~

16 ~~"Viatical settlement broker." An individual, partnership,~~

~~corporation or other entity who or which, 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. The term does not include any attorney, accountant or financial planner retained to represent the viator whose compensation is not paid by the viatical settlement provider.~~

~~"Viatical settlement contract." A written agreement entered into between a viatical settlement provider and a person owning a life insurance policy or a certificate holder of a certificate insuring the life of a person who has a catastrophic or life-threatening illness or condition. The agreement establishes the terms under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyowner's assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate of the viatical settlement provider.~~

~~"Viatical settlement provider." An individual, partnership, 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 policyowner's assignment,~~

~~transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. The term does not include:~~

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

~~(2) the insurer of a life insurance policy which provides accelerated benefits if policy benefits are in accord with accelerated benefits provisions.~~

~~"Viator." The owner of a life insurance policy insuring the life of a person with a catastrophic or life threatening illness or condition or the certificate holder of a certificate insuring the life of a person with a catastrophic illness 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.~~

~~Section 3. License requirements.~~

~~(a) General rule. An individual, partnership, corporation or other entity may not act as a viatical settlement provider or enter into or solicit a viatical settlement contract without having obtained a license from the department.~~

~~(b) Application. Application for a viatical settlement provider license shall be made to the commissioner by the applicant on a form prescribed by the department and accompanied by an application fee as determined by the department.~~

~~(c) Renewal. Licenses may be renewed annually upon payment of a renewal fee as determined by the department. Failure to pay the fee within the terms prescribed by the department shall result in automatic revocation of the license.~~

~~(d) Full disclosure. The applicant shall provide the department with complete information as requested on the application and upon request shall fully disclose the identity of all stockholders, partners, officers and employees. The department reserves the right to refuse or revoke a license if the department believes that any stockholder, partner, officer or employee may influence the applicant's conduct and not meet the standards as prescribed by this act.~~

~~(e) Authorization. A license issued to a partnership, corporation or any other entity authorizes all members, officers and designated employees of the viatical settlement provider to act as a viatical settlement provider under the license, provided that the individual was named in the application.~~

~~(f) Investigation. Upon filing of the application and payment of the appropriate fee, the department shall investigate the applicant and issue a license if the department determines that the applicant:~~

~~(1) Has provided a detailed plan of operation, including method of determining the amounts of the viatical settlements.~~

~~(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 in the business for which the license is applied.~~

~~(4) If a corporation, is incorporated under the laws of this Commonwealth or is authorized to transact business in this Commonwealth.~~

~~(g) Nonresident applicant. The department shall not issue a license to any nonresident applicant unless a written designation of an agent for service of process is filed and maintained by the department or the applicant has filed with the department the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the department.~~

~~Section 4. License revocation.~~

~~(a) General rule. The department shall reserve the right to suspend, revoke or refuse to renew the license of any viatical settlement provider if the department finds that:~~

~~(1) The application was a misrepresentation.~~

~~(2) The holder of the license has been found guilty of fraudulent or dishonest practices or is the subject of any final administrative action by another regulatory agency 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 policyowners in which the amount of the viatical settlement was not based on a minimum contained in section 9(e) or was not based on a reasonable interest theory in relation to the then current market rates.~~

~~(4) The licensee has been convicted of or pleaded nolo contendere to any felony or any misdemeanor of which criminal fraud is an element.~~

~~(5) The licensee has violated any of the provisions of this act or any of the regulations promulgated by the~~

department.

~~(b) Hearing. Before the department shall deny an application or suspend, revoke or refuse to renew the license of a viatical settlement provider, the department shall conduct a hearing in accordance with the State administrative procedure.~~

~~Section 5. Approval of viatical settlement contracts.~~

~~(a) General rule. A viatical settlement provider may not use any viatical settlement contract in this Commonwealth unless it has been filed with and approved by the department. Any viatical settlement contract form filed with the department shall be deemed approved if it has not been approved or disapproved within 60 days of the filing. The department shall disapprove a viatical settlement contract form if in the department's opinion the contract or provisions contained therein are unreasonable, contrary to the interests of the public or otherwise misleading or unfair to the policyowner or certificate holder.~~

~~(b) Applicability. The provisions of the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, shall apply to this act.~~

~~Section 6. Reporting requirements.~~

~~Each licensee shall file with the department on or before March 1 of each year an annual statement containing information as prescribed by the department.~~

~~Section 7. Examination.~~

~~(a) General rule. The department may, when the commissioner deems it reasonably necessary to protect the interests of the public, examine the business and affairs of any licensee or applicant for a license. The department shall have the authority to order any licensee or applicant to produce any records,~~

~~documents, files or other information reasonably necessary to ascertain 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 expense incurred in conducting any examination shall be paid by the licensee or applicant.~~

~~(b) Confidentiality. The names and individual identification data for all viators shall be considered private and confidential and shall not be disclosed by the department unless otherwise required by law.~~

~~(c) Records. Records of all transactions of viatical settlement contracts shall be maintained by the licensee and shall be available to the department for inspection or duplication.~~

~~Section 8. Disclosure.~~

~~A viatical settlement provider shall disclose the following information to the viator at least five days prior to the date the viatical settlement is entered into:~~

~~(1) Possible alternatives to or options that can be used in conjunction with viatical settlement contracts for persons with catastrophic or life threatening illnesses, including, but not limited to, accelerated benefits, policy loans or reverse mortgages 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 subject to Federal tax and that assistance should be sought from a personal tax advisor.~~

~~(3) The fact that receipt of a viatical settlement may adversely affect the recipients' eligibility for Medicaid or other Federal Government benefits or entitlements and that advice should be obtained from the appropriate agencies.~~

1 ~~(4) The policyowner's or certificate holder's right to~~
2 ~~rescind a viatical settlement contract within 30 days of its~~
3 ~~execution by all parties or 15 days of the receipt of the~~
4 ~~viatical settlement proceeds by the viator, whichever is~~
5 ~~later, as provided in section 9(d).~~

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

8 ~~(6) The new name of the owner of the policy or~~
9 ~~certificate as a result of the viatical settlement contract.~~

10 ~~(7) The fact that the beneficiaries may not receive some~~
11 ~~or all of the death benefit as a result of the viatical~~
12 ~~settlement contract.~~

13 ~~(8) That the viatical settlement contract will pay the~~
14 ~~difference between the viatication amount and the value of~~
15 ~~the policy to the estate of the viator if the viator dies~~
16 ~~within 15 days of the inception of the contract.~~

17 ~~Section 9. Guidelines.~~

18 ~~(a) General rule. A viatical settlement provider entering~~
19 ~~into a viatical settlement contract with any person owning an~~
20 ~~insurance policy or certificate insuring the life of a person~~
21 ~~with a catastrophic or life threatening illness or condition~~
22 ~~shall first obtain:~~

23 ~~(1) A written statement from a licensed attending~~
24 ~~physician that the person is of sound mind and under no~~
25 ~~constraint or undue influence.~~

26 ~~(2) A witnessed document in which the owner consents to~~
27 ~~the viatical settlement contract, acknowledges the~~
28 ~~catastrophic or life threatening illness, represents that he~~
29 ~~has a full and complete understanding of the viatical~~
30 ~~settlement contract and that he has a full and complete~~

~~understanding of the benefits of the life insurance policy and acknowledges that he has entered into the viatical settlement contract freely and voluntarily.~~

~~(3) A voluntarily signed settlement from the insured releasing his medical records to the provider.~~

~~(b) Proceeds. Only the owner, designee or assignee may receive the proceeds of the viatical settlement. Insurers are prohibited from requiring the insured to accept viatical settlement benefits and shall not be under undue influence or constraint.~~

~~(c) Medical records. All medical information solicited or obtained by any licensee shall be consistent with laws pertaining to the confidentiality of medical records.~~

~~(d) Rescission. All viatical settlement contracts entered into in this Commonwealth shall contain a right to rescind a viatical settlement contract within 30 days from the date of the execution of the contract or 15 days of the receipt of the viatical settlement proceeds, whichever is later.~~

~~(e) Amount. The amount of the viatical settlement shall be based on the following table:~~

Insured's Life Expectancy	Minimum Percentage of Available Face Value
Less than six months	80%
Six months but less than 12 months	70%
12 months but less than 18 months	65%
18 months but less than 24 months	60%
24 months or more	50%

~~The available face value is the face value of policy less outstanding policy loans. The rate used in determination of the viatical settlement should be reasonable in relation to the~~

~~then current market rates.~~

~~(f) Transfer of proceeds. Immediately upon receipt from the viator of documents to effect the transfer of the insurance policy or certificate, 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 financial institution approved by the department, pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent shall be required to transfer the proceeds due to the insured immediately upon receipt of acknowledgment of the transfer from the insurer.~~

~~(g) Deadline. Failure to tender the viatical settlement by the date disclosed to the viator renders the contract null and void.~~

~~(h) Fee limit. The viatical settlement provider shall not access fees which total more than 6% of the total death benefit of the insurance policy or certificate.~~

~~Section 10. Responsibility of department.~~

~~The commissioner shall have the authority to:~~

~~(1) Promulgate regulations implementing the provisions of this act.~~

~~(2) Establish standards for evaluating the reasonableness of the amount of payments under viatical settlement contracts in exchange for assignment, transfer, sale, devise or bequest of a benefit under a life insurance policy.~~

~~(3) Establish appropriate licensing requirements and fees for agents and brokers.~~

~~(4) Require a bond.~~

~~Section 11. Miscellaneous provisions.~~

~~(a) State aid. A person may not be required, as a condition of eligibility for State aid, to exercise a viatical settlement or be denied or suffer a reduction in aid as a result of not entering into a viatical settlement.~~

~~(b) Available resource. Aid agencies or programs may not consider viatical benefits as an available resource in determining eligibility for public assistance.~~

~~(c) Third party claims. Viatical settlements are protected from third party claims, including creditors, personal representatives and bankruptcy trustees.~~

~~(d) Gross income. Viatical settlements are not to be included as a portion of the recipient's State gross income.~~

~~Section 12. Unfair trade practices.~~

~~A violation of this act shall be considered an unfair trade practice and shall be subject to all Commonwealth statutes which address unfair trade practices.~~

~~Section 13. Effective date.~~

~~This act shall take effect in 90 days.~~

SECTION 1. SHORT TITLE.

THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE VIATICAL SETTLEMENTS ACT.

SECTION 2. DEFINITIONS.

THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

"COMMISSIONER." THE INSURANCE COMMISSIONER OF THE COMMONWEALTH.

"DEPARTMENT." THE INSURANCE DEPARTMENT OF THE COMMONWEALTH.

"FINANCING ENTITY." AN UNDERWRITER, PLACEMENT AGENT, LENDER, PURCHASER OF SECURITIES, PURCHASER OF A POLICY OR CERTIFICATE

1 FROM A VIATICAL SETTLEMENT PROVIDER, CREDIT ENHANCER OR ANY
2 PERSON THAT MAY BE A PARTY TO A VIATICAL SETTLEMENT CONTRACT AND
3 THAT HAS A DIRECT OWNERSHIP IN A POLICY OR CERTIFICATE THAT IS
4 THE SUBJECT OF A VIATICAL SETTLEMENT CONTRACT BUT WHOSE SOLE
5 ACTIVITY RELATED TO THE TRANSACTION IS PROVIDING FUNDS TO EFFECT
6 THE VIATICAL SETTLEMENT AND WHO HAS AN AGREEMENT IN WRITING WITH
7 A LICENSED VIATICAL SETTLEMENT PROVIDER TO ACT AS A PARTICIPANT
8 IN A FINANCING TRANSACTION.

9 "FINANCING TRANSACTION." A TRANSACTION IN WHICH A LICENSED
10 VIATICAL SETTLEMENT PROVIDER OR A FINANCING ENTITY OBTAINS
11 FINANCING FOR VIATICAL SETTLEMENT CONTRACTS, VIATICATED POLICIES
12 OR INTEREST THEREIN, INCLUDING, WITHOUT LIMITATION, ANY SECURED
13 OR UNSECURED FINANCING, ANY SECURITIZATION TRANSACTION OR ANY
14 SECURITIES OFFERING EITHER REGISTERED OR EXEMPT FROM
15 REGISTRATION UNDER FEDERAL AND STATE SECURITIES LAW OR ANY
16 DIRECT PURCHASE OR INTERESTS IN A POLICY OR CERTIFICATE IF THE
17 FINANCING TRANSACTION COMPLIES WITH FEDERAL AND STATE SECURITIES
18 LAW.

19 "PERSON." A LEGAL ENTITY, INCLUDING, BUT NOT LIMITED TO, AN
20 INDIVIDUAL, PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION,
21 TRUST, CORPORATION OR OTHER LEGAL ENTITY.

22 "VIATICAL SETTLEMENT BROKER." A PERSON THAT ON BEHALF OF A
23 VIATOR AND FOR A FEE, COMMISSION OR OTHER VALUABLE CONSIDERATION
24 OFFERS OR ATTEMPTS TO NEGOTIATE VIATICAL SETTLEMENTS BETWEEN A
25 VIATOR AND ONE OR MORE VIATICAL SETTLEMENT PROVIDERS.
26 IRRESPECTIVE OF THE MANNER IN WHICH THE VIATICAL SETTLEMENT
27 BROKER IS COMPENSATED, A VIATICAL SETTLEMENT BROKER IS DEEMED TO
28 REPRESENT ONLY THE VIATOR AND OWES A FIDUCIARY DUTY TO THE
29 VIATOR TO ACT ACCORDING TO THE VIATOR'S INSTRUCTIONS AND IN THE
30 BEST INTEREST OF THE VIATOR. THE TERM DOES NOT INCLUDE AN

1 ATTORNEY, ACCOUNTANT OR FINANCIAL PLANNER RETAINED TO REPRESENT
2 THE VIATOR WHOSE COMPENSATION IS PAID DIRECTLY BY OR AT THE
3 DIRECTION OF THE VIATOR.

4 "VIATICAL SETTLEMENT CONTRACT." A WRITTEN AGREEMENT ENTERED
5 INTO BETWEEN A VIATICAL SETTLEMENT PROVIDER AND A VIATOR. THE
6 AGREEMENT SHALL ESTABLISH THE TERMS UNDER WHICH THE VIATICAL
7 SETTLEMENT PROVIDER WILL PAY COMPENSATION OR ANYTHING OF VALUE,
8 WHICH COMPENSATION OR VALUE IS LESS THAN THE EXPECTED DEATH
9 BENEFIT OF THE INSURANCE POLICY OR CERTIFICATE, IN RETURN FOR
10 THE VIATOR'S ASSIGNMENT, TRANSFER, SALE, DEVISE OR BEQUEST OF
11 THE DEATH BENEFIT OR OWNERSHIP OF ALL OR A PORTION OF THE
12 INSURANCE POLICY OR CERTIFICATE OF INSURANCE TO THE VIATICAL
13 SETTLEMENT PROVIDER. THE TERM ALSO INCLUDES A CONTRACT FOR A
14 LOAN OR OTHER FINANCIAL TRANSACTION SECURED PRIMARILY BY AN
15 INDIVIDUAL OR GROUP LIFE INSURANCE POLICY, OTHER THAN A LOAN BY
16 A LIFE INSURANCE COMPANY PURSUANT TO THE TERMS OF THE LIFE
17 INSURANCE CONTRACT, OR A LOAN SECURED BY THE CASH VALUE OF A
18 POLICY.

19 "VIATICAL SETTLEMENT PROVIDER." A PERSON, OTHER THAN A
20 VIATOR, THAT ENTERS INTO A VIATICAL SETTLEMENT CONTRACT. THE
21 TERM SHALL INCLUDE A PERSON THAT OBTAINS FINANCING FROM A
22 FINANCING ENTITY FOR THE PURCHASE, ACQUISITION, TRANSFER OR
23 OTHER ASSIGNMENT OF ONE OR MORE VIATICAL SETTLEMENT CONTRACTS,
24 VIATICATED POLICIES OR INTEREST THEREIN OR OTHERWISE SELLS,
25 ASSIGNS, TRANSFERS, PLEDGES, HYPOTHECATES OR OTHERWISE DISPOSES
26 OF ONE OR MORE VIATICAL SETTLEMENT CONTRACTS, VIATICATED
27 POLICIES OR INTERESTS THEREIN. THE TERM SHALL NOT INCLUDE:

28 (1) A BANK, SAVINGS BANK, SAVINGS AND LOAN ASSOCIATION,
29 CREDIT UNION OR OTHER LICENSED LENDING INSTITUTION THAT TAKES
30 AN ASSIGNMENT OF A LIFE INSURANCE POLICY AS COLLATERAL FOR A

1 LOAN;

2 (2) THE ISSUER OF A LIFE INSURANCE POLICY PROVIDING
3 ACCELERATED DEATH BENEFITS PURSUANT TO THE CONTRACT; OR

4 (3) A NATURAL PERSON WHO ENTERS INTO NO MORE THAN ONE
5 AGREEMENT IN A CALENDAR YEAR FOR THE TRANSFER OF LIFE
6 INSURANCE POLICIES FOR ANY VALUE LESS THAN THE EXPECTED DEATH
7 BENEFIT.

8 "VIATICAL SETTLEMENT REPRESENTATIVE." A PERSON WHO IS AN
9 AUTHORIZED AGENT OF A LICENSED VIATICAL SETTLEMENT PROVIDER OR
10 VIATICAL SETTLEMENT BROKER, AS APPLICABLE, WHO ACTS OR AIDS IN
11 ANY MANNER IN THE SOLICITATION OF A VIATICAL SETTLEMENT. THE
12 TERM SHALL NOT INCLUDE:

13 (1) AN ATTORNEY, ACCOUNTANT OR ANY PERSON EXERCISING A
14 POWER OF ATTORNEY GRANTED BY A VIATOR; OR

15 (2) ANY PERSON WHO IS RETAINED TO REPRESENT A VIATOR AND
16 WHOSE COMPENSATION IS PAID BY OR AT THE DIRECTION OF THE
17 VIATOR REGARDLESS OF WHETHER THE VIATICAL SETTLEMENT IS
18 CONSUMMATED.

19 A VIATICAL SETTLEMENT REPRESENTATIVE IS DEEMED TO REPRESENT ONLY
20 THE VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT BROKER.

21 "VIATICATED POLICY." A LIFE INSURANCE POLICY OR CERTIFICATE
22 THAT HAS BEEN ACQUIRED BY A VIATICAL SETTLEMENT PROVIDER
23 PURSUANT TO A VIATICAL SETTLEMENT CONTRACT.

24 "VIATOR." THE OWNER OF A LIFE INSURANCE POLICY OR A
25 CERTIFICATE HOLDER UNDER A GROUP POLICY INSURING THE LIFE OF AN
26 INDIVIDUAL WITH A CATASTROPHIC, LIFE-THREATENING OR CHRONIC
27 ILLNESS OR CONDITION WHO ENTERS OR SEEKS TO ENTER INTO A
28 VIATICAL SETTLEMENT CONTRACT.

29 SECTION 3. LICENSE REQUIREMENTS.

30 (A) GENERAL RULE.--A PERSON SHALL NOT OPERATE AS A VIATICAL

1 SETTLEMENT PROVIDER, VIATICAL SETTLEMENT REPRESENTATIVE OR
2 VIATICAL SETTLEMENT BROKER WITHOUT FIRST HAVING OBTAINED A
3 LICENSE FROM THE DEPARTMENT.

4 (B) APPLICATION.--APPLICATION FOR A VIATICAL SETTLEMENT
5 PROVIDER, VIATICAL SETTLEMENT REPRESENTATIVE OR VIATICAL
6 SETTLEMENT BROKER LICENSE SHALL BE MADE TO THE COMMISSIONER BY
7 THE APPLICANT ON A FORM PRESCRIBED BY THE DEPARTMENT AND
8 ACCOMPANIED BY AN APPLICATION FEE AS DETERMINED BY THE
9 DEPARTMENT.

10 (C) RENEWAL.--LICENSES MAY BE RENEWED BIENNIALY UPON
11 PAYMENT OF A RENEWAL FEE AS DETERMINED BY THE DEPARTMENT.
12 FAILURE TO PAY THE FEE OR SUBMIT THE RENEWAL FORM WITHIN THE
13 TERMS PRESCRIBED BY THE DEPARTMENT SHALL BE DEEMED VOLUNTARY
14 TERMINATION OF THE LICENSE.

15 (D) FULL DISCLOSURE.--THE APPLICANT SHALL PROVIDE
16 INFORMATION ON FORMS REQUIRED BY THE COMMISSIONER. THE
17 COMMISSIONER SHALL HAVE AUTHORITY, AT ANY TIME, TO REQUIRE THE
18 APPLICANT TO FULLY DISCLOSE THE IDENTITY OF ALL STOCKHOLDERS,
19 PARTNERS, OFFICERS, MEMBERS AND EMPLOYEES, AND THE COMMISSIONER
20 MAY, IN THE COMMISSIONER'S DISCRETION, REFUSE TO ISSUE A LICENSE
21 IN THE NAME OF A LEGAL ENTITY IF NOT SATISFIED THAT ANY OFFICER,
22 EMPLOYEE, STOCKHOLDER, PARTNER OR MEMBER THEREOF WHO MAY
23 MATERIALLY INFLUENCE THE APPLICANT'S CONDUCT MEETS THE STANDARDS
24 OF THIS ACT.

25 (E) AUTHORIZATION.--A LICENSE ISSUED TO A LEGAL ENTITY
26 AUTHORIZES ALL MEMBERS, OFFICERS AND DESIGNATED EMPLOYEES TO ACT
27 AS VIATICAL SETTLEMENT PROVIDERS, VIATICAL SETTLEMENT BROKERS OR
28 VIATICAL SETTLEMENT REPRESENTATIVES AS APPLICABLE UNDER THE
29 LICENSE AND THOSE PERSONS SHALL BE NAMED IN THE APPLICATION AND
30 ANY SUPPLEMENTS TO THE APPLICATION.

1 (F) INVESTIGATION.--UPON THE FILING OF AN APPLICATION AND
2 THE PAYMENT OF THE LICENSE FEE, THE COMMISSIONER SHALL MAKE AN
3 INVESTIGATION OF EACH APPLICANT AND ISSUE A LICENSE IF THE
4 COMMISSIONER FINDS THAT THE APPLICANT:

5 (1) HAS PROVIDED A DETAILED PLAN OF OPERATION.

6 (2) IS COMPETENT AND TRUSTWORTHY AND INTENDS TO ACT IN
7 GOOD FAITH IN THE CAPACITY INVOLVED BY THE LICENSE APPLIED
8 FOR.

9 (3) HAS A GOOD BUSINESS REPUTATION AND HAS HAD
10 EXPERIENCE, TRAINING OR EDUCATION SO AS TO BE QUALIFIED IN
11 THE BUSINESS FOR WHICH THE LICENSE IS APPLIED FOR.

12 (4) IF A LEGAL ENTITY, PROVIDES A CERTIFICATE OF GOOD
13 STANDING FROM THE STATE OF ITS DOMICILE.

14 (G) HEARING.--AN APPLICANT WHO DISPUTES THE DEPARTMENT'S
15 DETERMINATION CONCERNING Licensure MAY SEEK A FORMAL
16 ADMINISTRATIVE HEARING BEFORE THE COMMISSIONER UNDER 2 PA.C.S.
17 CH. 5 SUBCH. A (RELATING TO PRACTICE AND PROCEDURE OF
18 COMMONWEALTH AGENCIES) AND SUBJECT TO REVIEW AND APPEAL IN
19 ACCORDANCE WITH 2 PA.C.S. CH. 7 SUBCH. A (RELATING TO JUDICIAL
20 REVIEW OF COMMONWEALTH AGENCY ACTION).

21 (H) NONRESIDENT APPLICANT.--THE DEPARTMENT SHALL NOT ISSUE A
22 LICENSE TO A NONRESIDENT APPLICANT UNLESS A WRITTEN DESIGNATION
23 OF AN AGENT FOR SERVICE OF PROCESS IS FILED WITH AND MAINTAINED
24 BY THE DEPARTMENT.

25 SECTION 4. LICENSE SUSPENSION, REVOCATION AND DENIAL.

26 THE DEPARTMENT MAY SUSPEND, REVOKE OR REFUSE TO RENEW THE
27 LICENSE OF A VIATICAL SETTLEMENT PROVIDER, VIATICAL SETTLEMENT
28 REPRESENTATIVE OR VIATICAL SETTLEMENT BROKER IF THE DEPARTMENT
29 FINDS THAT:

30 (1) THERE WAS ANY MATERIAL MISREPRESENTATION IN THE

1 APPLICATION FOR THE LICENSE;

2 (2) THE LICENSEE OR ANY OFFICER, PARTNER, MEMBER OR KEY
3 MANAGEMENT PERSONNEL HAS BEEN CONVICTED OF FRAUDULENT OR
4 DISHONEST PRACTICES, IS SUBJECT TO A FINAL ADMINISTRATIVE
5 ACTION OR IS OTHERWISE SHOWN TO BE UNTRUSTWORTHY OR
6 INCOMPETENT;

7 (3) THE VIATICAL SETTLEMENT PROVIDER DEMONSTRATES A
8 PATTERN OF UNREASONABLE PAYMENTS TO VIATORS;

9 (4) THE LICENSEE HAS BEEN FOUND GUILTY OF OR HAS PLEADED
10 GUILTY OR NOLO CONTENDERE TO ANY FELONY OR TO A MISDEMEANOR
11 INVOLVING FRAUD OR MORAL TURPITUDE, REGARDLESS OF WHETHER A
12 JUDGMENT OF CONVICTION HAS BEEN ENTERED BY THE COURT;

13 (5) THE VIATICAL SETTLEMENT PROVIDER HAS ENTERED INTO
14 ANY VIATICAL SETTLEMENT CONTRACT THAT HAS NOT BEEN APPROVED
15 PURSUANT TO THIS ACT;

16 (6) THE VIATICAL SETTLEMENT PROVIDER HAS FAILED TO HONOR
17 CONTRACTUAL OBLIGATIONS SET OUT IN A VIATICAL SETTLEMENT
18 CONTRACT;

19 (7) THE LICENSEE NO LONGER MEETS THE REQUIREMENTS FOR
20 INITIAL LICENSURE;

21 (8) THE VIATICAL SETTLEMENT PROVIDER HAS ASSIGNED,
22 TRANSFERRED OR PLEDGED A VIATICATED POLICY TO A PERSON OTHER
23 THAN A VIATICAL SETTLEMENT PROVIDER LICENSED IN THIS
24 COMMONWEALTH OR A FINANCING ENTITY; OR

25 (9) THE LICENSEE HAS VIOLATED ANY PROVISION OF THIS ACT
26 OR ANY REGULATIONS PROMULGATED BY THE DEPARTMENT.

27 SECTION 5. APPROVAL OF VIATICAL SETTLEMENT CONTRACTS.

28 (A) GENERAL RULE.--ANY VIATICAL SETTLEMENT CONTRACT PROPOSED
29 TO BE USED BY VIATICAL SETTLEMENT PROVIDERS IN THIS COMMONWEALTH
30 SHALL BE FILED FOR REVIEW WITH THE DEPARTMENT. UNLESS

1 DISAPPROVED WITHIN 45 DAYS OF RECEIPT BY THE DEPARTMENT, THE
2 FILING SHALL BE EFFECTIVE FOR USE.

3 (B) DISAPPROVAL AFTER USE.--ANY VIATICAL SETTLEMENT CONTRACT
4 APPROVED OR EFFECTIVE FOR USE IN ACCORDANCE WITH SUBSECTION (A)
5 MAY BE SUBSEQUENTLY DISAPPROVED BY THE DEPARTMENT. THE
6 DEPARTMENT SHALL NOTIFY THE VIATICAL SETTLEMENT PROVIDER IN
7 WRITING AND PROVIDE THE OPPORTUNITY FOR A HEARING AS PROVIDED IN
8 2 PA.C.S. CH. 5 SUBCH. A (RELATING TO PRACTICE AND PROCEDURE OF
9 COMMONWEALTH AGENCIES) AND CH. 7 SUBCH. A (RELATING TO JUDICIAL
10 REVIEW OF COMMONWEALTH AGENCY ACTION).

11 (C) DISCONTINUANCE OF CONTRACT.--IF FOLLOWING A HEARING THE
12 COMMISSIONER FINDS THAT A VIATICAL SETTLEMENT CONTRACT SHOULD BE
13 DISAPPROVED, THE COMMISSIONER SHALL ORDER THE USE OF THE
14 CONTRACT TO BE DISCONTINUED AFTER A DATE SPECIFIED IN THE ORDER.
15 SECTION 6. REPORTING REQUIREMENTS AND CONFIDENTIALITY.

16 (A) GENERAL RULE.--EACH VIATICAL SETTLEMENT PROVIDER SHALL
17 FILE WITH THE DEPARTMENT ON OR BEFORE MARCH 1 OF EACH YEAR AN
18 ANNUAL STATEMENT CONTAINING SUCH INFORMATION AS THE COMMISSIONER
19 BY RULE MAY PRESCRIBE.

20 (B) CONFIDENTIALITY.--EXCEPT AS OTHERWISE ALLOWED OR
21 REQUIRED BY LAW, A VIATICAL SETTLEMENT PROVIDER, VIATICAL
22 SETTLEMENT REPRESENTATIVE, VIATICAL SETTLEMENT BROKER, INSURANCE
23 COMPANY, INSURANCE AGENT, INSURANCE BROKER, INFORMATION BUREAU,
24 RATING AGENCY OR COMPANY OR ANY OTHER PERSON WITH ACTUAL
25 KNOWLEDGE OF A VIATOR'S IDENTITY SHALL NOT DISCLOSE THAT
26 IDENTITY AS A VIATOR TO ANY OTHER PERSON UNLESS THE DISCLOSURE:

27 (1) IS NECESSARY TO EFFECT A VIATICAL SETTLEMENT BETWEEN
28 THE VIATOR AND A VIATICAL SETTLEMENT PROVIDER AND THE VIATOR
29 HAS PROVIDED PRIOR WRITTEN CONSENT TO THE DISCLOSURE;

30 (2) IS PROVIDED IN RESPONSE TO AN INVESTIGATION BY THE

1 COMMISSIONER OR ANY OTHER GOVERNMENTAL OFFICER OR AGENCY; OR

2 (3) IS A TERM OF OR CONDITION TO THE TRANSFER OF A
3 VIATICATED POLICY BY ONE VIATICAL SETTLEMENT PROVIDER TO
4 ANOTHER VIATICAL SETTLEMENT PROVIDER OR FINANCING ENTITY.

5 (4) IS MADE BY AN INSURANCE COMPANY IN THE COURSE OF ITS
6 BUSINESS, INCLUDING, WITHOUT BEING LIMITED TO, ACTIVITIES
7 SUCH AS REINSURANCE TRANSACTIONS, SALES OR MERGERS OF THE
8 INSURANCE COMPANY OR ONE OR MORE OF ITS BOOKS OF BUSINESS,
9 HANDLING AND INVESTIGATION OF CLAIMS AND CONDUCT OF ALL LEGAL
10 PROCEEDINGS CONNECTED WITH THEM, UNDERWRITING, LITIGATION AND
11 MARKET CONDUCT INVESTIGATIONS.

12 SECTION 7. EXAMINATION.

13 (A) GENERAL RULE.--THE DEPARTMENT MAY, WHEN THE DEPARTMENT
14 DEEMS IT REASONABLY NECESSARY TO PROTECT THE INTERESTS OF THE
15 PUBLIC, EXAMINE THE BUSINESS AND AFFAIRS OF ANY LICENSEE OR
16 APPLICANT FOR A LICENSE. THE DEPARTMENT SHALL HAVE THE AUTHORITY
17 TO ORDER ANY LICENSEE OR APPLICANT TO PRODUCE ANY RECORDS,
18 BOOKS, FILES OR OTHER INFORMATION REASONABLY NECESSARY TO
19 ASCERTAIN WHETHER OR NOT THE LICENSEE OR APPLICANT IS ACTING OR
20 HAS ACTED IN VIOLATION OF THE LAW OR OTHERWISE CONTRARY TO THE
21 INTERESTS OF THE PUBLIC. THE EXPENSES INCURRED IN CONDUCTING ANY
22 EXAMINATION SHALL BE PAID BY THE LICENSEE OR APPLICANT.

23 (B) CONFIDENTIALITY.--THE NAMES AND INDIVIDUAL
24 IDENTIFICATION DATA FOR ALL VIATORS SHALL BE CONSIDERED PRIVATE
25 AND CONFIDENTIAL INFORMATION AND SHALL NOT BE DISCLOSED BY THE
26 DEPARTMENT UNLESS REQUIRED BY LAW.

27 (C) RECORDS.--RECORDS OF ALL TRANSACTIONS OF VIATICAL
28 SETTLEMENT CONTRACTS SHALL BE MAINTAINED BY THE VIATICAL
29 SETTLEMENT PROVIDER AND SHALL BE AVAILABLE TO THE DEPARTMENT FOR
30 INSPECTION AND DUPLICATION DURING REASONABLE BUSINESS HOURS. A

1 VIATICAL SETTLEMENT PROVIDER SHALL MAINTAIN RECORDS OF EACH
2 VIATICAL SETTLEMENT UNTIL FIVE YEARS AFTER THE DEATH OF THE
3 INSURED.

4 SECTION 8. DISCLOSURE.

5 (A) GENERAL RULE.--A VIATICAL SETTLEMENT PROVIDER, VIATICAL
6 SETTLEMENT REPRESENTATIVE OR VIATICAL SETTLEMENT BROKER SHALL
7 DISCLOSE THE FOLLOWING INFORMATION TO THE VIATOR NO LATER THAN
8 THE TIME OF APPLICATION:

9 (1) POSSIBLE ALTERNATIVES TO VIATICAL SETTLEMENT
10 CONTRACTS FOR INDIVIDUALS WITH CATASTROPHIC, LIFE-THREATENING
11 OR CHRONIC ILLNESSES, INCLUDING ANY ACCELERATED DEATH
12 BENEFITS OFFERED UNDER THE VIATOR'S LIFE INSURANCE POLICY.

13 (2) SOME OR ALL OF THE PROCEEDS OF THE VIATICAL
14 SETTLEMENT MAY BE FREE FROM FEDERAL INCOME TAX AND FROM STATE
15 FRANCHISE AND INCOME TAXES, AND THAT ASSISTANCE SHOULD BE
16 SOUGHT FROM A PROFESSIONAL TAX ADVISOR.

17 (3) PROCEEDS OF THE VIATICAL SETTLEMENT COULD BE SUBJECT
18 TO THE CLAIMS OF CREDITORS.

19 (4) RECEIPT OF THE PROCEEDS OF A VIATICAL SETTLEMENT MAY
20 ADVERSELY AFFECT THE VIATOR'S ELIGIBILITY FOR MEDICAID OR
21 OTHER GOVERNMENT BENEFITS OR ENTITLEMENTS, AND THAT ADVICE
22 SHOULD BE OBTAINED FROM THE APPROPRIATE GOVERNMENT AGENCIES.

23 (5) THE VIATOR'S RIGHT TO RESCIND A VIATICAL SETTLEMENT
24 CONTRACT 15 DAYS AFTER THE RECEIPT OF THE VIATICAL SETTLEMENT
25 PROCEEDS BY THE VIATOR, AS PROVIDED IN SECTION 9(C).

26 (6) FUNDS WILL BE SENT TO THE VIATOR WITHIN TWO BUSINESS
27 DAYS AFTER THE VIATICAL SETTLEMENT PROVIDER HAS RECEIVED THE
28 INSURER OR GROUP ADMINISTRATOR'S ACKNOWLEDGMENT THAT
29 OWNERSHIP OF THE POLICY OR INTEREST IN THE CERTIFICATE HAS
30 BEEN TRANSFERRED AND THE BENEFICIARY HAS BEEN DESIGNATED

1 PURSUANT TO THE VIATICAL SETTLEMENT CONTRACT.

2 (7) ENTERING INTO A VIATICAL SETTLEMENT CONTRACT MAY
3 CAUSE OTHER RIGHTS OR BENEFITS, INCLUDING CONVERSION RIGHTS
4 AND WAIVER OF PREMIUM BENEFITS THAT MAY EXIST UNDER THE
5 POLICY OR CERTIFICATE, TO BE FORFEITED BY THE VIATOR AND THAT
6 ASSISTANCE SHOULD BE SOUGHT FROM A FINANCIAL ADVISOR.

7 (B) DISCLOSURE BY VIATICAL SETTLEMENT PROVIDER.--A VIATICAL
8 SETTLEMENT PROVIDER SHALL DISCLOSE THE FOLLOWING INFORMATION TO
9 THE VIATOR PRIOR TO THE DATE THE VIATICAL SETTLEMENT CONTRACT IS
10 SIGNED BY ALL PARTIES:

11 (1) THE AFFILIATION, IF ANY, BETWEEN THE VIATICAL
12 SETTLEMENT PROVIDER AND THE ISSUER OF AN INSURANCE POLICY TO
13 BE VIATICATED.

14 (2) IF AN INSURANCE POLICY TO BE VIATICATED HAS BEEN
15 ISSUED AS A JOINT POLICY OR INVOLVES FAMILY RIDERS OR ANY
16 COVERAGE OF A LIFE OTHER THAN THE INSURED UNDER THE POLICY TO
17 BE VIATICATED, THE VIATOR SHALL BE INFORMED OF THE POSSIBLE
18 LOSS OF COVERAGE ON THE OTHER LIVES AND BE ADVISED TO CONSULT
19 WITH HIS OR HER INSURANCE PRODUCER OR THE COMPANY ISSUING THE
20 POLICY FOR ADVICE ON THE PROPOSED VIATICATION.

21 (3) THE DOLLAR AMOUNT OF THE CURRENT DEATH BENEFIT
22 PAYABLE TO THE VIATICAL SETTLEMENT PROVIDER UNDER THE POLICY
23 OR CERTIFICATE. THE VIATICAL SETTLEMENT PROVIDER SHALL ALSO
24 DISCLOSE THE AVAILABILITY OF ANY ADDITIONAL GUARANTEED
25 INSURANCE BENEFITS, THE DOLLAR AMOUNT OF ANY ACCIDENTAL DEATH
26 AND DISMEMBERMENT BENEFITS UNDER THE POLICY OR CERTIFICATE
27 AND THE VIATICAL SETTLEMENT PROVIDER'S INTEREST IN THOSE
28 BENEFITS.

29 SECTION 9. GUIDELINES.

30 (A) GENERAL RULE.--A VIATICAL SETTLEMENT PROVIDER ENTERING

1 INTO A VIATICAL SETTLEMENT CONTRACT SHALL FIRST OBTAIN:

2 (1) IF THE VIATOR IS THE INSURED, A WRITTEN STATEMENT
3 FROM A LICENSED ATTENDING PHYSICIAN THAT THE VIATOR IS OF
4 SOUND MIND AND UNDER NO CONSTRAINT OR UNDUE INFLUENCE TO
5 ENTER INTO A VIATICAL SETTLEMENT CONTRACT.

6 (2) A WITNESSED DOCUMENT IN WHICH THE VIATOR CONSENTS TO
7 THE VIATICAL SETTLEMENT CONTRACT, ACKNOWLEDGES THAT THE
8 INSURED HAS A CATASTROPHIC, LIFE-THREATENING OR CHRONIC
9 ILLNESS OR CONDITION, REPRESENTS THAT THE VIATOR HAS A FULL
10 AND COMPLETE UNDERSTANDING OF THE VIATICAL SETTLEMENT
11 CONTRACT, THAT HE HAS A FULL AND COMPLETE UNDERSTANDING OF
12 THE BENEFITS OF THE LIFE INSURANCE POLICY AND ACKNOWLEDGES
13 THAT HE HAS ENTERED INTO THE VIATICAL SETTLEMENT CONTRACT
14 FREELY AND VOLUNTARILY.

15 (3) A DOCUMENT IN WHICH THE INSURED CONSENTS TO THE
16 RELEASE OF HIS OR HER MEDICAL RECORDS TO A VIATICAL
17 SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT BROKER.

18 (B) MEDICAL RECORDS.--ALL MEDICAL INFORMATION SOLICITED OR
19 OBTAINED BY ANY LICENSEE SHALL BE SUBJECT TO THE APPLICABLE
20 PROVISION OF STATE LAW RELATING TO CONFIDENTIALITY OF MEDICAL
21 INFORMATION.

22 (C) RESCISSION.--ALL VIATICAL SETTLEMENT CONTRACTS ENTERED
23 INTO IN THIS COMMONWEALTH SHALL PROVIDE THE VIATOR WITH AN
24 UNCONDITIONAL RIGHT TO RESCIND THE CONTRACT FOR AT LEAST 15
25 CALENDAR DAYS FROM THE RECEIPT OF THE VIATICAL SETTLEMENT
26 PROCEEDS. IF THE INSURED DIES DURING THE RESCISSION PERIOD, THE
27 VIATICAL SETTLEMENT CONTRACT SHALL BE DEEMED TO HAVE BEEN
28 RESCINDED SUBJECT TO REPAYMENT TO THE VIATICAL SETTLEMENT
29 PROVIDER OF ALL VIATICAL SETTLEMENT PROCEEDS.

30 (D) TRANSFER OF PROCEEDS.--IMMEDIATELY UPON THE VIATICAL

1 SETTLEMENT PROVIDER'S RECEIPT OF DOCUMENTS TO EFFECT THE
2 TRANSFER OF THE INSURANCE POLICY, THE VIATICAL SETTLEMENT
3 PROVIDER SHALL PAY THE PROCEEDS OF THE VIATICAL SETTLEMENT TO AN
4 ESCROW OR TRUST ACCOUNT IN A FEDERALLY CHARTERED OR STATE-
5 CHARTERED FINANCIAL INSTITUTION WHOSE DEPOSITS ARE INSURED BY
6 THE FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC). THE ACCOUNT
7 SHALL BE MANAGED BY A TRUSTEE OR ESCROW AGENT INDEPENDENT OF THE
8 PARTIES TO THE CONTRACT. THE TRUSTEE OR ESCROW AGENT SHALL
9 TRANSFER THE PROCEEDS TO THE VIATOR IMMEDIATELY UPON THE
10 VIATICAL SETTLEMENT PROVIDER'S RECEIPT OF ACKNOWLEDGMENT OF THE
11 TRANSFER OF THE INSURANCE POLICY.

12 (E) DEADLINE.--FAILURE TO TENDER CONSIDERATION TO THE VIATOR
13 FOR THE VIATICAL SETTLEMENT CONTRACT WITHIN THE TIME DISCLOSED
14 PURSUANT TO SECTION 8(A)(6) RENDERS THE VIATICAL SETTLEMENT
15 CONTRACT VOIDABLE BY THE VIATOR FOR LACK OF CONSIDERATION UNTIL
16 THE TIME CONSIDERATION IS TENDERED TO AND ACCEPTED BY THE
17 VIATOR.

18 (F) COMMISSIONS.--NO VIATICAL SETTLEMENT BROKER OR VIATICAL
19 SETTLEMENT REPRESENTATIVE SHALL RECEIVE FROM A VIATICAL
20 SETTLEMENT PROVIDER A FEE, COMMISSION OR OTHER VALUABLE
21 CONSIDERATION FOR SERVICES RENDERED TO OR IN CONNECTION WITH
22 VIATORS RESIDENT IN THIS COMMONWEALTH UNLESS SUCH VIATICAL
23 SETTLEMENT PROVIDER IS LICENSED IN THIS COMMONWEALTH.

24 (G) HEALTH STATUS.--CONTACTS WITH THE INSURED FOR THE
25 PURPOSE OF DETERMINING THE HEALTH STATUS OF THE INSURED BY THE
26 VIATICAL SETTLEMENT PROVIDER, VIATICAL SETTLEMENT BROKER OR
27 VIATICAL SETTLEMENT REPRESENTATIVE AFTER THE VIATICAL SETTLEMENT
28 HAS OCCURRED SHALL ONLY BE MADE BY THE VIATICAL SETTLEMENT
29 PROVIDER OR BROKER LICENSED IN THIS COMMONWEALTH AND SHALL BE
30 LIMITED TO ONCE EVERY THREE MONTHS FOR INSUREDS WITH A LIFE

1 EXPECTANCY OF MORE THAN ONE YEAR, AND TO NO MORE THAN ONE PER
2 MONTH FOR INSURED'S WITH A LIFE EXPECTANCY OF ONE YEAR OR LESS.
3 THE PROVIDER OR BROKER SHALL EXPLAIN THE PROCEDURE FOR THESE
4 CONTACTS AT THE TIME THE VIATICAL SETTLEMENT CONTRACT IS ENTERED
5 INTO. THE LIMITATIONS SET FORTH IN THIS SUBSECTION SHALL NOT
6 APPLY TO ANY CONTACTS WITH AN INSURED UNDER A VIATICATED POLICY
7 FOR REASONS OTHER THAN DETERMINING THE INSURED'S HEALTH STATUS.

8 (H) PROHIBITION.--NO PERSON WHO INVESTS IN A VIATICATED
9 POLICY, INCLUDING, BUT NOT LIMITED TO, A PARTICIPANT IN A
10 FINANCING TRANSACTION, MAY INFLUENCE THE TREATMENT OF THE
11 INSURED'S ILLNESS.

12 SECTION 10. RESPONSIBILITY OF DEPARTMENT.

13 THE COMMISSIONER SHALL HAVE THE AUTHORITY TO:

14 (1) PROMULGATE REGULATIONS IMPLEMENTING THIS ACT.

15 (2) ESTABLISH STANDARDS FOR EVALUATING REASONABLENESS OF
16 PAYMENTS UNDER VIATICAL SETTLEMENT CONTRACTS. THIS AUTHORITY
17 INCLUDES, BUT IS NOT LIMITED TO, REGULATION OF THE AMOUNT
18 PAID IN EXCHANGE FOR ASSIGNMENT, TRANSFER, SALE, DEVISE OR
19 BEQUEST OF A BENEFIT UNDER A LIFE INSURANCE POLICY.

20 (3) ESTABLISH APPROPRIATE LICENSING REQUIREMENTS, FEES
21 AND STANDARDS FOR CONTINUED LICENSURE FOR VIATICAL SETTLEMENT
22 PROVIDERS, REPRESENTATIVES AND BROKERS.

23 (4) REQUIRE A BOND OR OTHER MECHANISM FOR FINANCIAL
24 ACCOUNTABILITY FOR VIATICAL SETTLEMENT PROVIDERS.

25 (5) ADOPT RULES GOVERNING THE RELATIONSHIP AND
26 RESPONSIBILITIES OF BOTH INSURERS AND VIATICAL SETTLEMENT
27 PROVIDERS, BROKERS AND REPRESENTATIVES DURING THE VIATICATION
28 OF A LIFE INSURANCE POLICY OR CERTIFICATE.

29 SECTION 11. MISCELLANEOUS PROVISIONS.

30 (A) STATE AID.--A PERSON MAY NOT BE REQUIRED AS A CONDITION

1 OF ELIGIBILITY FOR STATE AID TO EXERCISE A VIATICAL SETTLEMENT
2 OR BE DENIED OR SUFFER A REDUCTION IN AID AS A RESULT OF NOT
3 ENTERING INTO A VIATICAL SETTLEMENT.

4 (B) AVAILABLE RESOURCE.--AID AGENCIES OR PROGRAMS MAY NOT
5 CONSIDER VIATICAL BENEFITS AS AN AVAILABLE RESOURCE IN
6 DETERMINING ELIGIBILITY FOR PUBLIC ASSISTANCE.

7 (C) INCOME.--VIATICAL SETTLEMENTS SHALL NOT BE INCLUDED IN
8 ANY OF THE CLASS OF TAXABLE INCOME ENUMERATED IN ARTICLE III OF
9 THE ACT OF MARCH 4, 1971 (P.L.6, NO.2), KNOWN AS THE TAX REFORM
10 CODE OF 1971, TO DETERMINE THE TAX LIABILITY OF THE VIATOR AS
11 DEFINED IN THIS ACT.

12 SECTION 12. UNFAIR TRADE PRACTICES.

13 A VIOLATION OF THIS ACT SHALL BE CONSIDERED AN UNFAIR TRADE
14 PRACTICE AND SHALL BE SUBJECT TO ALL COMMONWEALTH STATUTES WHICH
15 ADDRESS UNFAIR TRADE PRACTICES, INCLUDING THE ACT OF JULY 22,
16 1974 (P.L.589, NO.205), KNOWN AS THE UNFAIR INSURANCE PRACTICES
17 ACT.

18 SECTION 13. ENFORCEMENT.

19 (A) GENERAL RULE.--UPON A DETERMINATION BY HEARING THAT THIS
20 ACT OR ANY REGULATIONS PROMULGATED BY THE DEPARTMENT PURSUANT TO
21 THIS ACT HAVE BEEN VIOLATED, THE COMMISSIONER MAY PURSUE ONE OR
22 MORE OF THE FOLLOWING COURSES OF ACTION:

23 (1) ISSUE AN ORDER REQUIRING THE PERSON TO CEASE AND
24 DESIST FROM ENGAGING IN SUCH VIOLATION.

25 (2) SUSPEND, REVOKE OR REFUSE TO RENEW THE LICENSE OF
26 THE OFFENDING PERSON OR PERSONS.

27 (3) IMPOSE A CIVIL PENALTY IN THE AMOUNT OF \$5,000 FOR
28 EACH VIOLATION.

29 (B) ADDITIONAL REMEDIES.--THE ENFORCEMENT REMEDIES IMPOSED
30 UNDER THIS SECTION ARE IN ADDITION TO ANY OTHER REMEDIES OR

PENALTIES IMPOSED BY ANY OTHER APPLICABLE STATUTE.

(C) HEARING.--BEFORE TAKING ANY ACTION UNDER THIS SECTION,
THE COMMISSIONER SHALL GIVE NOTICE TO THE PERSON ACCUSED OF
VIOLATING THIS ACT OR REGULATIONS PROMULGATED BY THE DEPARTMENT
UNDER THIS ACT, STATING SPECIFICALLY THE NATURE OF EACH ALLEGED
VIOLATION AND FIXING A TIME AND PLACE, AT LEAST TEN DAYS
THEREAFTER, FOR A FORMAL ADMINISTRATIVE HEARING IN ACCORDANCE
WITH 2 PA.C.S. CH. 5 SUBCH. A (RELATING TO PRACTICE AND
PROCEDURE OF COMMONWEALTH AGENCIES) AND SUBJECT TO REVIEW AND
APPEAL IN ACCORDANCE WITH 2 PA.C.S. CH. 7 SUBCH. A (RELATING TO
JUDICIAL REVIEW OF COMMONWEALTH AGENCY ACTION). AFTER SUCH
HEARING OR UPON FAILURE OF THE ACCUSED TO APPEAR AT SUCH
HEARING, THE COMMISSIONER SHALL IMPOSE ANY OF THE ABOVE
PENALTIES WHICH THE COMMISSIONER DEEMS APPROPRIATE.

SECTION 14. EFFECTIVE DATE.

THIS ACT SHALL TAKE EFFECT IN 180 DAYS.