

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1257 Session of  
2000

INTRODUCED BY MOWERY, WENGER, TARTAGLIONE, WOZNIAK, ROBBINS,  
WHITE, BELL, O'PAKE AND LEMMOND, JANUARY 6, 2000

REFERRED TO BANKING AND INSURANCE, JANUARY 6, 2000

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 "Financing entity." An underwriter, placement agent, lender,  
16 purchaser of securities, purchaser of a policy or certificate  
17 from a viatical settlement provider, credit enhancer or any

1 person that may be a party to a viatical settlement contract and  
2 that has a direct ownership in a policy or certificate that is  
3 the subject of a viatical settlement contract but whose sole  
4 activity related to the transaction is providing funds to effect  
5 the viatical settlement and who has an agreement in writing with  
6 a licensed viatical settlement provider to act as a participant  
7 in a financing transaction.

8 "Financing transaction." A transaction in which a licensed  
9 viatical settlement provider or a financing entity obtains  
10 financing for viatical settlement contracts, viaticated policies  
11 or interest therein, including, without limitation, any secured  
12 or unsecured financing, any securitization transaction or any  
13 securities offering either registered or exempt from  
14 registration under Federal and State securities law or any  
15 direct purchase or interests in a policy or certificate if the  
16 financing transaction complies with Federal and State securities  
17 law.

18 "Person." A legal entity, including, but not limited to, an  
19 individual, partnership, limited liability company, association,  
20 trust, corporation or other legal entity.

21 "Viatical settlement broker." A person who on behalf of a  
22 viator and for a fee, commission or other valuable consideration  
23 offers or attempts to negotiate viatical settlements between a  
24 viator and one or more viatical settlement providers.

25 Irrespective of the manner in which the viatical settlement  
26 broker is compensated, a viatical settlement broker is deemed to  
27 represent only the viator and owes a fiduciary duty to the  
28 viator to act according to the viator's instructions and in the  
29 best interest of the viator. The term does not include an  
30 attorney, accountant or financial planner retained to represent

1 the viator whose compensation is paid directly by or at the  
2 direction of the viator.

3 "Viatical settlement contract." A written agreement entered  
4 into between a viatical settlement provider and a viator. The  
5 agreement shall establish the terms under which the viatical  
6 settlement provider will pay compensation or anything of value,  
7 which compensation or value is less than the expected death  
8 benefit of the insurance policy or certificate, in return for  
9 the viator's assignment, transfer, sale, devise or bequest of  
10 the death benefit or ownership of all or a portion of the  
11 insurance policy or certificate of insurance to the viatical  
12 settlement provider. The term also includes a contract for a  
13 loan or other financial transaction secured primarily by an  
14 individual or group life insurance policy, other than a loan by  
15 a life insurance company pursuant to the terms of the life  
16 insurance contract, or a loan secured by the cash value of a  
17 policy.

18 "Viatical settlement provider." A person, other than a  
19 viator, who enters into a viatical settlement contract. The term  
20 shall include a person who obtains financing from a financing  
21 entity for the purchase, acquisition, transfer or other  
22 assignment of one or more viatical settlement contracts,  
23 viaticated policies or interest therein or otherwise sells,  
24 assigns, transfers, pledges, hypothecates or otherwise disposes  
25 of one or more viatical settlement contracts, viaticated  
26 policies or interests therein. The term shall not include:

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

1           (2) the issuer of a life insurance policy providing  
2           accelerated death benefits pursuant to the contract; or

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

7           "Viatical settlement representative." A person who is an  
8           authorized agent of a licensed viatical settlement provider or  
9           viatical settlement broker, as applicable, who acts or aids in  
10          any manner in the solicitation of a viatical settlement. The  
11          term shall not include:

12          (1) an attorney, accountant or a person exercising a  
13          power of attorney granted by a viator; or

14          (2) a person who is retained to represent a viator and  
15          whose compensation is paid by or at the direction of the  
16          viator regardless of whether the viatical settlement is  
17          consummated.

18          A viatical settlement representative is deemed to represent only  
19          the viatical settlement provider or viatical settlement broker.

20          "Viaticated policy." A life insurance policy or certificate  
21          that has been acquired by a viatical settlement provider  
22          pursuant to a viatical settlement contract.

23          "Viator." The owner of a life insurance policy or a  
24          certificate holder under a group policy insuring the life of an  
25          individual with a catastrophic, life-threatening or chronic  
26          illness or condition who enters or seeks to enter into a  
27          viatical settlement contract.

28          Section 3. License requirements.

29          (a) General rule.--No person may operate as a viatical  
30          settlement provider, viatical settlement representative or

1 viatical settlement broker without first obtaining a license  
2 from the department.

3 (b) Application.--Application for a viatical settlement  
4 provider, viatical settlement representative or viatical  
5 settlement broker license shall be made to the commissioner by  
6 the applicant on a form prescribed by the department and shall  
7 be accompanied by an application fee as determined by the  
8 department.

9 (c) Renewal.--A license issued under this section may be  
10 renewed biennially upon payment of a renewal fee as determined  
11 by the department. Failure to pay the fee or submit the renewal  
12 form within the terms prescribed by the department shall be  
13 deemed voluntary termination of the license.

14 (d) Full disclosure.--The applicant shall provide  
15 information on forms required by the commissioner. The  
16 commissioner may, at any time, require the applicant to fully  
17 disclose the identity of all stockholders, partners, officers,  
18 members and employees, and the commissioner may, in the  
19 commissioner's discretion, refuse to issue a license in the name  
20 of a legal entity if not satisfied that any officer, employee,  
21 stockholder, partner or member thereof who may materially  
22 influence the applicant's conduct meets the standards set forth  
23 in this act.

24 (e) Authorization.--A license issued to a legal entity  
25 authorizes all members, officers and designated employees of the  
26 legal entity to act as viatical settlement providers, viatical  
27 settlement brokers or viatical settlement representatives as  
28 applicable under the license and those persons shall be named in  
29 the application and any supplements to the application.

30 (f) Investigation.--Upon the filing of an application and

1 the payment of the license fee, the commissioner shall make an  
2 investigation of each applicant and issue a license if the  
3 commissioner finds that the applicant:

4 (1) Has provided a detailed plan of operation.

5 (2) Is competent and trustworthy and intends to act in  
6 good faith in the capacity involved by the license applied  
7 for.

8 (3) Has a good business reputation and has had  
9 experience, training or education so as to be qualified in  
10 the business for which the license is applied for.

11 (4) If a legal entity, provides a certificate of good  
12 standing from the state of its domicile.

13 (g) Hearing.--An applicant who disputes the department's  
14 determination concerning licensure may seek a formal  
15 administrative hearing before the commissioner under 2 Pa.C.S.  
16 Ch. 5 Subch. A (relating to practice and procedure of  
17 Commonwealth agencies) and subject to review and appeal in  
18 accordance with 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial  
19 review of Commonwealth agency action).

20 (h) Nonresident applicant.--The department may not issue a  
21 license to a nonresident applicant unless a written designation  
22 of an agent for service of process is filed with and maintained  
23 by the department.

24 Section 4. License suspension, revocation and denial.

25 The department may suspend, revoke or refuse to renew the  
26 license of a viatical settlement provider, viatical settlement  
27 representative or viatical settlement broker if the department  
28 finds that:

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

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

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

8           (4) the licensee has been found guilty of or has pleaded  
9 guilty or nolo contendere to any felony or to a misdemeanor  
10 involving fraud or moral turpitude, regardless of whether a  
11 judgment of conviction has been entered by the court;

12           (5) the viatical settlement provider has entered into  
13 any viatical settlement contract that has not been approved  
14 under this act;

15           (6) the viatical settlement provider has failed to honor  
16 contractual obligations set out in a viatical settlement  
17 contract;

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

20           (8) the viatical settlement provider has assigned,  
21 transferred or pledged a viaticated policy to a person other  
22 than a viatical settlement provider licensed in this  
23 Commonwealth or a financing entity; or

24           (9) The licensee has violated any provision of this act  
25 or any regulations promulgated by the department.

26 Section 5. Approval of viatical settlement contracts.

27           (a) General rule.--Any viatical settlement contract proposed  
28 to be used by viatical settlement providers in this Commonwealth  
29 shall be filed for review with the department. Unless  
30 disapproved within 45 days of receipt by the department, the

1 filing shall be effective for use.

2 (b) Disapproval after use.--Any viatical settlement contract  
3 approved or effective for use in accordance with subsection (a)  
4 may be subsequently disapproved by the department. The  
5 department shall notify the viatical settlement provider in  
6 writing and provide the opportunity for a hearing as provided in  
7 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of  
8 Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial  
9 review of Commonwealth agency action).

10 (c) Discontinuance of contract.--If following a hearing the  
11 commissioner finds that a viatical settlement contract should be  
12 disapproved, the commissioner shall order the use of the  
13 contract to be discontinued after a date specified in the order.  
14 Section 6. Reporting requirements and confidentiality.

15 (a) General rule.--Each viatical settlement provider shall  
16 file with the department on or before March 1 of each year an  
17 annual statement containing such information as the commissioner  
18 by rule may prescribe.

19 (b) Confidentiality.--Except as otherwise allowed or  
20 required by law, a viatical settlement provider, viatical  
21 settlement representative, viatical settlement broker, insurance  
22 company, insurance agent, insurance broker, information bureau,  
23 rating agency or company or any other person with actual  
24 knowledge of a viator's identity may not disclose that identity  
25 as a viator to any other person unless the disclosure:

26 (1) is necessary to effect a viatical settlement between  
27 the viator and a viatical settlement provider and the viator  
28 has provided prior written consent to the disclosure;

29 (2) is provided in response to an investigation by the  
30 commissioner or any other governmental officer or agency; or



1 (3) is a term of or condition to the transfer of a  
2 viaticated policy by one viatical settlement provider to  
3 another viatical settlement provider or financing entity.

4 (4) Is made by an insurance company in the course of its  
5 business, including, without being limited to, activities  
6 such as reinsurance transactions, sales or mergers of the  
7 insurance company or one or more of its books of business,  
8 handling and investigation of claims and conduct of all legal  
9 proceedings connected with them, underwriting, litigation and  
10 market conduct investigations.

11 Section 7. Examination.

12 (a) General rule.--The department may, when the department  
13 deems it reasonably necessary to protect the interests of the  
14 public, examine the business and affairs of any licensee or  
15 applicant for a license. The department may order any licensee  
16 or applicant to produce any records, books, files or other  
17 information reasonably necessary to ascertain whether or not the  
18 licensee or applicant is acting or has acted in violation of the  
19 law or otherwise contrary to the interests of the public. The  
20 expenses incurred in conducting any examination shall be paid by  
21 the licensee or applicant.

22 (b) Confidentiality.--The names and individual  
23 identification data for all viators shall be considered private  
24 and confidential information and may not be disclosed by the  
25 department unless required by law.

26 (c) Records.--Records of all transactions of viatical  
27 settlement contracts shall be maintained by the viatical  
28 settlement provider and shall be available to the department for  
29 inspection and duplication during reasonable business hours. A  
30 viatical settlement provider shall maintain records of each

1 viatical settlement until five years after the death of the  
2 insured.

3 Section 8. Disclosure.

4 (a) General rule.--A viatical settlement provider, viatical  
5 settlement representative or viatical settlement broker shall  
6 disclose the following information to the viator no later than  
7 the time of application:

8 (1) Possible alternatives to viatical settlement  
9 contracts for individuals with catastrophic, life-threatening  
10 or chronic illnesses, including any accelerated death  
11 benefits offered under the viator's life insurance policy.

12 (2) Some or all of the proceeds of the viatical  
13 settlement may be free from Federal income tax and from State  
14 franchise and income taxes, and that assistance should be  
15 sought from a professional tax advisor.

16 (3) Proceeds of the viatical settlement may be subject  
17 to the claims of creditors.

18 (4) Receipt of the proceeds of a viatical settlement may  
19 adversely affect the viator's eligibility for Medicaid or  
20 other government benefits or entitlements, and that advice  
21 should be obtained from the appropriate government agencies.

22 (5) The viator's right to rescind a viatical settlement  
23 contract 15 days after the receipt of the viatical settlement  
24 proceeds by the viator, as provided in section 9(c).

25 (6) Funds will be sent to the viator within two business  
26 days after the viatical settlement provider has received the  
27 insurer or group administrator's acknowledgment that  
28 ownership of the policy or interest in the certificate has  
29 been transferred and the beneficiary has been designated  
30 pursuant to the viatical settlement contract.

(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 and that assistance should be sought from a financial advisor.

(b) Disclosure by viatical settlement provider.--A viatical settlement provider shall disclose the following information to the viator prior to the date the viatical settlement contract is signed by all parties:

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

(2) 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 and be advised to consult with his or her insurance producer or the company issuing the policy for advice on the proposed viatication.

(3) The dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate.

(4) 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 viatical settlement provider's interest in those benefits.

#### Section 9. Guidelines.

(a) General rule.--A viatical settlement provider entering into a viatical settlement contract shall first obtain:

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

5           (2) A witnessed document:

6                 (i) in which the viator consents to the viatical  
7           settlement contract;

8                 (ii) acknowledges that the insured has a  
9           catastrophic, life-threatening or chronic illness or  
10          condition;

11                (iii) represents that the viator has a full and  
12          complete understanding of the viatical settlement  
13          contract, that he has a full and complete understanding  
14          of the benefits of the life insurance policy; and

15                (iv) acknowledges that the viator has entered into  
16          the viatical settlement contract freely and voluntarily.

17          (3) A document in which the insured consents to the  
18          release of his medical records to a viatical settlement  
19          provider or viatical settlement broker.

20          (b) Medical records.--All medical information solicited or  
21          obtained by a licensee shall be subject to the applicable  
22          provision of State law relating to confidentiality of medical  
23          information.

24          (c) Rescission.--Each viatical settlement contract entered  
25          into in this Commonwealth shall provide the viator with an  
26          unconditional right to rescind the contract for at least 15  
27          calendar days from the receipt of the viatical settlement  
28          proceeds. If the insured dies during the rescission period, the  
29          viatical settlement contract shall be deemed to have been  
30          rescinded subject to repayment to the viatical settlement

1 provider of all viatical settlement proceeds.

2 (d) Transfer of proceeds.--Immediately upon the viatical  
3 settlement provider's receipt of documents to effect the  
4 transfer of the insurance policy, the viatical settlement  
5 provider shall pay the proceeds of the viatical settlement to an  
6 escrow or trust account in a federally chartered or State-  
7 chartered financial institution whose deposits are insured by  
8 the Federal Deposit Insurance Corporation (FDIC). The account  
9 shall be managed by a trustee or escrow agent independent of the  
10 parties to the contract. The trustee or escrow agent shall  
11 transfer the proceeds to the viator immediately upon the  
12 viatical settlement provider's receipt of acknowledgment of the  
13 transfer of the insurance policy.

14 (e) Deadline.--Failure to tender consideration to the viator  
15 for the viatical settlement contract within the time disclosed  
16 pursuant to section 8(a)(6) renders the viatical settlement  
17 contract voidable by the viator for lack of consideration until  
18 the time consideration is tendered to and accepted by the  
19 viator.

20 (f) Commissions.--No viatical settlement broker or viatical  
21 settlement representative shall receive from a viatical  
22 settlement provider a fee, commission or other valuable  
23 consideration for services rendered to or in connection with  
24 viators resident in this Commonwealth unless the viatical  
25 settlement provider is licensed in this Commonwealth.

26 (g) Health status.--

27 (1) Contacts with an insured for the purpose of  
28 determining the health status of the insured by the viatical  
29 settlement provider, viatical settlement broker or viatical  
30 settlement representative after the viatical settlement has

1 occurred may only be made by the viatical settlement provider  
2 or broker licensed in this Commonwealth and shall be limited  
3 to once every three months for insureds with a life  
4 expectancy of more than one year, and to no more than one per  
5 month for insureds with a life expectancy of one year or  
6 less.

7 (2) The provider or broker shall explain the procedure  
8 for these contacts at the time the viatical settlement  
9 contract is entered into.

10 (3) The limitations set forth in this subsection shall  
11 not apply to any contact with an insured under a viaticated  
12 policy for reasons other than determining the insured's  
13 health status.

14 (h) Prohibition.--No person who invests in a viaticated  
15 policy, including, but not limited to, a participant in a  
16 financing transaction, may influence the treatment of the  
17 insured's illness.

18 Section 10. Responsibility of department.

19 The commissioner shall:

20 (1) Promulgate regulations implementing this act.

21 (2) Establish standards for evaluating reasonableness of  
22 payments under viatical settlement contracts, including, but  
23 not limited to, regulation of the amount paid in exchange for  
24 assignment, transfer, sale, devise or bequest of a benefit  
25 under a life insurance policy.

26 (3) Establish appropriate licensing requirements, fees  
27 and standards for continued licensure for viatical settlement  
28 providers, representatives and brokers.

29 (4) Require a bond or other mechanism for financial  
30 accountability for viatical settlement providers.

(5) Adopt rules governing the relationship and responsibilities of both insurers and viatical settlement providers, brokers and representatives during the viatication of a life insurance policy or certificate.

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) Income.--A viatical settlement shall not be included in any of the class of taxable income enumerated in Article III of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, to determine the tax liability of the viator as defined in this act.

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, including the act of July 22, 1974 (P.L.589, No.205), known as the Unfair Insurance Practices Act.

Section 13. Enforcement.

(a) General rule.--Upon a determination by hearing that this act or any regulations promulgated by the department pursuant to this act have been violated, the commissioner may pursue one or more of the following courses of action:

(1) Issue an order requiring the person to cease and desist from engaging in such violation.

1           (2) Suspend, revoke or refuse to renew the license of  
2       the offending person or persons.

3           (3) Impose a civil penalty in the amount of \$5,000 for  
4       each violation.

5       (b) Additional remedies.--The enforcement remedies imposed  
6       under this section are in addition to any other remedies or  
7       penalties imposed by any other applicable statute.

8       (c) Hearing.--Before taking any action under this section,  
9       the commissioner shall give notice to the person accused of  
10      violating this act or regulations promulgated by the department  
11      under this act, stating specifically the nature of each alleged  
12      violation and fixing a time and place, at least ten days  
13      thereafter, for a formal administrative hearing in accordance  
14      with 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and  
15      procedure of Commonwealth agencies) and subject to review and  
16      appeal in accordance with 2 Pa.C.S. Ch. 7 Subch. A (relating to  
17      judicial review of Commonwealth agency action). After such  
18      hearing or upon failure of the accused to appear at such  
19      hearing, the commissioner shall impose any of the above  
20      penalties which the commissioner deems appropriate.

21      Section 14. Effective date.

22      This act shall take effect in 180 days.