

LEGISLATIVE BILL 52

Approved by the Governor April 4, 2001

Introduced by Landis, 46

AN ACT relating to insurance; to amend sections 8-1101, 44-425, 44-2138, 44-4405, 44-4811, 44-5805, 44-5906, 44-6119.01, 44-6140, 44-6303, 44-6606, and 59-1803, Reissue Revised Statutes of Nebraska, and sections 8-1111, 44-1525, and 44-6021, Revised Statutes Supplement, 2000; to adopt the Privacy of Insurance Consumer Information Act; to provide and change provisions relating to sharing of information by the Department of Insurance and confidential information; to adopt the Viatical Settlements Act; to regulate viatical settlement contracts; to exempt viatical settlement contracts from securities regulation; to change provisions relating to charitable gift annuities; to harmonize provisions; to provide a duty for the Revisor of Statutes; to provide operative dates; to provide severability; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. Sections 1 to 25 of this act shall be known and may be cited as the Privacy of Insurance Consumer Information Act.

Sec. 2. (1) The Privacy of Insurance Consumer Information Act governs the treatment of nonpublic personal health information and nonpublic personal financial information about individuals by all licensees of the Department of Insurance. The act:

(a) Requires a licensee to provide notice to individuals about its privacy policies and practices;

(b) Describes the conditions under which a licensee may disclose nonpublic personal health information and nonpublic personal financial information about individuals to affiliates and nonaffiliated third parties; and

(c) Provides methods for individuals to prevent a licensee from disclosing that information.

(2) The act applies to:

(a) Nonpublic personal financial information about individuals who obtain or are claimants or beneficiaries of products or services primarily for personal, family, or household purposes from licensees. The act does not apply to information about companies or about individuals who obtain products or services for business, commercial, or agricultural purposes; and

(b) All nonpublic personal health information.

(3) A licensee domiciled in this state that is in compliance with the act in a state that has not enacted laws or regulations that meet the requirements of Title V of the Gramm-Leach-Bliley Act, as the federal law existed on the operative date of this section, may nonetheless be deemed to be in compliance with Title V of the Gramm-Leach-Bliley Act, as such federal law existed on the operative date of this section, in such other state.

Sec. 3. For purposes of the Privacy of Insurance Consumer Information Act:

(1) Affiliate means any company that controls, is controlled by, or is under common control with another company;

(2) Clear and conspicuous means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice;

(3) Collect means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information;

(4) Company means any corporation, limited liability company, business trust, general or limited partnership, association, sole proprietorship, or similar organization;

(5)(a) Consumer means an individual who seeks to obtain, obtains, or has obtained an insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, and about whom the licensee has nonpublic personal information, or that individual's legal representative;

(b) Consumer includes:

(i) An individual who provides nonpublic personal information to a licensee in connection with obtaining or seeking to obtain financial,

investment, or economic advisory services relating to an insurance product or service whether or not the licensee establishes an ongoing advisory relationship;

(ii) An applicant for insurance prior to the inception of insurance coverage; and

(iii) An individual who is a beneficiary of a life insurance policy underwritten by the licensee, who is a claimant under an insurance policy issued by the licensee, who is an insured or an annuitant under an insurance policy or an annuity issued by the licensee, or who is a mortgagor of a mortgage covered under a mortgage insurance policy, if the licensee discloses nonpublic personal financial information about such individual to a nonaffiliated third party other than as permitted under sections 13 to 15 of this act;

(c) Consumer does not include an individual:

(i) Who is a consumer of another financial institution solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution;

(ii) Solely because such individual is a participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer, or fiduciary, covered under a group or blanket insurance policy or group annuity contract issued by the licensee, or a beneficiary in a workers' compensation plan if:

(A) The licensee provides the initial, annual, and revised notices under sections 4, 5, and 8 of this act to the plan sponsor, group or blanket insurance policyholder, group annuity contract holder, or workers' compensation plan participant; and

(B) The licensee does not disclose to a nonaffiliated third party nonpublic personal financial information about such an individual other than as permitted under sections 13 to 15 of this act;

(iii) Solely because he or she is a beneficiary of a trust for which the licensee is a trustee; or

(iv) Solely because he or she has designated the licensee as a trustee for a trust;

(6) Consumer reporting agency has the same meaning as in 15 U.S.C. 1681a(f), as such section existed on the operative date of this section;

(7) Control means:

(a) Ownership, control, or power to vote twenty-five percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(b) Control in any manner over the election of a majority of the directors, trustees, or general partners, or individuals exercising similar functions, of the company; or

(c) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the director determines;

(8) Customer means a consumer who has a customer relationship with a licensee;

(9)(a) Customer relationship means a continuing relationship between a consumer and a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family, or household purposes.

(b) Customer relationship includes a continuing relationship between a consumer and a licensee if:

(i) The consumer is a current policyholder of an insurance product issued by or through the licensee; or

(ii) The consumer obtains financial, investment, or economic advisory services relating to an insurance product or service from the licensee for a fee;

(10) Director means the Director of Insurance;

(11)(a) Financial institution means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in 12 U.S.C. 1843(k), as the act existed on the operative date of this section.

(b) Financial institution does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act, 7 U.S.C. 1 et seq., as the act existed on the operative date of this section;

(ii) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971, 12 U.S.C. 2001 et seq., as the act existed on the operative date of this section; or

(iii) Institutions chartered by Congress specifically to engage in

securitizations, secondary market sales, including sales of servicing rights, or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party;

(12)(a) Financial product or service means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under 12 U.S.C. 1843(k), as such section existed on the operative date of this section.

(b) Financial service includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service;

(13) Health care means:

(a) Preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, services, procedures, tests, or counseling that:

(i) Relates to the physical, mental, or behavioral condition of an individual; or

(ii) Affects the structure or function of the human body or any part of the human body, including the banking of blood, sperm, organs, or any other tissue; or

(b) Prescribing, dispensing, or furnishing to an individual drugs, biologicals, medical devices, or health care equipment and supplies;

(14) Health care provider means a physician or other health care practitioner licensed, accredited, or certified to perform specified health services consistent with state law or a health care facility;

(15) Health information means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or the consumer that relates to:

(a) The past, present, or future physical, mental, or behavioral health or condition of an individual;

(b) The provision of health care to an individual; or

(c) Payment for the provision of health care to an individual;

(16)(a) Insurance product or service means any product or service that is offered by a licensee pursuant to the insurance laws of this state.

(b) Insurance service includes a licensee's evaluation, brokerage, or distribution of information that the licensee collects in connection with a request or an application from a consumer for an insurance product or service;

(17)(a) Licensee means all licensed insurers, including fraternal benefit societies, producers, and other persons licensed or required to be licensed, authorized or required to be authorized, or registered or required to be registered pursuant to the insurance laws of this state.

(b) A licensee is not subject to the notice and opt out requirements for nonpublic personal financial information set forth in the Privacy of Insurance Consumer Information Act if the licensee is an employee, agent, or other representative of another licensee acting as principal and:

(i) The principal otherwise complies with, and provides the notices required by, the act; and

(ii) The licensee does not disclose any nonpublic personal information to any person other than the principal or its affiliates in a manner permitted by the act.

(c)(i) Subject to subdivision (17)(c)(ii) of this section, licensee also includes an unauthorized insurer that accepts business placed through a licensed excess lines broker in this state, but only in regard to the excess lines placements placed pursuant to the Surplus Lines Insurance Act.

(ii) An excess lines broker or excess lines insurer shall be deemed to be in compliance with the notice and opt out requirements for nonpublic personal financial information set forth in the Privacy of Insurance Consumer Information Act if:

(A) The broker or insurer does not disclose nonpublic personal information of a consumer or a customer to nonaffiliated third parties for any purpose, including joint servicing or marketing under section 13 of this act, except as permitted by section 14 or 15 of this act; and

(B) The broker or insurer delivers a notice to the consumer at the time a customer relationship is established on which the following is printed in sixteen-point type:

PRIVACY NOTICE

NEITHER THE UNITED STATES BROKERS THAT HANDLED THIS INSURANCE NOR THE INSURERS THAT HAVE UNDERWRITTEN THIS INSURANCE WILL DISCLOSE NONPUBLIC PERSONAL INFORMATION CONCERNING THE BUYER TO NONAFFILIATES OF THE BROKERS OR INSURERS EXCEPT AS PERMITTED BY LAW;

(18)(a) Nonaffiliated third party means any person except:

(i) A licensee's affiliate; or

(ii) A person employed jointly by a licensee and any company that is not the licensee's affiliate, but nonaffiliated third party includes the other company that jointly employs the person.

(b) Nonaffiliated third party includes any company that is an affiliate solely by virtue of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in 12 U.S.C. 1843(k)(4)(H), as such section existed on the operative date of this section, or insurance company investment activities of the type described in 12 U.S.C. 1843(k)(4)(H) and (I), as such section existed on the operative date of this section;

(19) Nonpublic personal information means nonpublic personal financial information and nonpublic personal health information;

(20)(a) Nonpublic personal financial information means:

(i) Personally identifiable financial information; and

(ii) Any list, description, or other grouping of consumers, and publicly available information pertaining to them, that is derived using any personally identifiable financial information that is not publicly available.

(b) Nonpublic personal financial information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

(c) Nonpublic personal financial information does not include:

(i) Health information;

(ii) Publicly available information, except as included on a list described in subdivision (20)(a)(ii) of this section;

(iii) Any list, description, or other grouping of consumers, and publicly available information pertaining to them, that is derived without using any personally identifiable financial information that is not publicly available; or

(iv) Any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a financial institution;

(21) Nonpublic personal health information means health information:

(a) That identifies an individual who is the subject of the information; or

(b) With respect to which there is a reasonable basis to believe that the information could be used to identify an individual;

(22) Personally identifiable financial information means any information:

(a) A consumer provides to a licensee to obtain an insurance product or service from the licensee;

(b) About a consumer resulting from a transaction involving an insurance product or service between a licensee and a consumer; or

(c) The licensee otherwise obtains about a consumer in connection with providing an insurance product or service to that consumer; and

(23)(a) Publicly available information means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, state, or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by federal, state, or local law.

(b) For purposes of this definition, a licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

Sec. 4. (1) A licensee shall provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

(a) An individual who becomes the licensee's customer, not later than when the licensee establishes a customer relationship, except as provided in subsection (5) of this section; and

(b) A consumer, before the licensee discloses any nonpublic personal financial information about the consumer to any nonaffiliated third party, if the licensee makes a disclosure other than as authorized by sections 14 and 15

of this act.

(2) A licensee is not required to provide an initial notice to a consumer under subdivision (1)(b) of this section if:

(a) The licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party, other than as authorized by sections 14 and 15 of this act, and the licensee does not have a customer relationship with the consumer; or

(b) A notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

(3)(a) A licensee establishes a customer relationship at the time the licensee and the consumer enter into a continuing relationship.

(b) A licensee establishes a customer relationship when the consumer:

(i) Becomes a policyholder of a licensee that is an insurer when the insurer delivers an insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer obtains insurance through that licensee; or

(ii) Agrees to obtain financial, economic, or investment advisory services relating to insurance products or services for a fee from the licensee.

(4) When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, the licensee satisfies the initial notice requirements of subsection (1) of this section as follows:

(a) The licensee may provide a revised policy notice, under section 8 of this act, that covers the customer's new insurance product or service; or

(b) If the initial, revised, or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, the licensee does not need to provide a new privacy notice under subsection (1) of this section.

(5)(a) A licensee may provide the initial notice required by subdivision (1)(a) of this section within a reasonable time after the licensee establishes a customer relationship if establishing the customer relationship is not at the customer's election. Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

(b) A licensee may provide the initial notice required by subdivision (1)(a) of this section within a reasonable time after the licensee establishes a customer relationship if providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time. Providing notice not later than when a licensee establishes a customer relationship substantially delays the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the insurance product or service. Providing notice not later than when a licensee establishes a customer relationship does not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a web site.

(6) When a licensee is required to deliver an initial privacy notice by this section, the licensee shall deliver it according to section 9 of this act. If the licensee uses a short form initial notice for noncustomers according to subsection (4) of section 6 of this act, the licensee may deliver its privacy notice according to subdivision (4)(c) of section 6 of this act.

Sec. 5. (1) A licensee shall provide a clear and conspicuous notice to customers that accurately reflects its privacy policies and practices not less than annually during the continuation of the customer relationship. For purposes of this subsection, annually means at least once in any period of twelve consecutive months during which that relationship exists. A licensee may define the twelve-consecutive-month period, but the licensee shall apply it to the customer on a consistent basis.

(2)(a) A licensee is not required to provide an annual notice to a former customer.

(b) For purposes of this subsection, a former customer is an individual with whom a licensee no longer has a continuing relationship. A former customer includes:

(i) An individual who is no longer a current policyholder of an insurance product or no longer obtains insurance services with or through the licensee;

(ii) An individual whose policy is lapsed, expired, or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of twelve consecutive months, other than to provide annual privacy notices, material required by law or regulation, or promotional materials;

(iii) An individual whose last-known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful; and

(iv) In the case of providing real estate settlement services, the customer has completed execution of all documents related to the real estate closing, payment for those services has been received, or the licensee has completed all of its responsibilities with respect to the settlement, including filing documents on the public record, whichever is later.

(3) When a licensee is required by this section to deliver an annual privacy notice, the licensee shall deliver it according to section 9 of this act.

Sec. 6. (1) The initial, annual, and revised privacy notices that a licensee provides under sections 4, 5, and 8 of this act shall include each of the following items of information, in addition to any other information the licensee wishes to provide, that applies to the licensee and to the consumers to whom the licensee sends its privacy notice:

(a) The categories of nonpublic personal financial information that the licensee collects;

(b) The categories of nonpublic personal financial information that the licensee discloses;

(c) The categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information, other than those parties to whom the licensee discloses information under sections 14 and 15 of this act;

(d) The categories of nonpublic personal financial information about the licensee's former customers that the licensee discloses and the categories of affiliates and nonaffiliated third parties to whom the licensee discloses nonpublic personal financial information about the licensee's former customers, other than those parties to whom the licensee discloses information under sections 14 and 15 of this act;

(e) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under section 13 of this act, and no other exception in sections 14 and 15 of this act applies to that disclosure, a separate description of the categories of information the licensee discloses and the categories of third parties with whom the licensee has contracted;

(f) An explanation of the consumer's right under subsection (1) of section 10 of this act to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(g) Any disclosures that the licensee makes under 15 U.S.C. 1681a(d)(2)(A)(iii), as such section existed on the operative date of this section;

(h) The licensee's policies and practices with respect to protecting the confidentiality and security of nonpublic personal financial information; and

(i) Any disclosure that the licensee makes under subsection (2) of this section.

(2) If a licensee discloses nonpublic personal financial information as authorized under sections 14 and 15 of this act, the licensee is not required to list those exceptions in the initial or annual privacy notices required by sections 4 and 5 of this act. When describing the categories of parties to whom disclosure is made, the licensee is required to state only that it makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(3) If a licensee does not disclose, and does not wish to reserve the right to disclose, nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under sections 14 and 15 of this act, the licensee may simply state that fact, in addition to the information it shall provide under subdivisions (1)(a), (1)(h), and (1)(i) of this section and subsection (2) of this section.

(4)(a) A licensee may satisfy the initial notice requirements in subdivision (1)(b) of section 4 of this act and subsection (3) of section 7 of this act for a consumer who is not a customer by providing a short form initial notice at the same time as the licensee delivers an opt out notice as

required in section 7 of this act.

(b) A short form initial notice shall:

(i) Be clear and conspicuous;

(ii) State that the licensee's privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice. Such reasonable means include provision of a toll-free telephone number that the consumer may call to request the notice or, for a consumer who conducts business in person at the licensee's office, maintenance of copies of the notice on hand that the licensee provides to the consumer immediately upon request.

(c) The licensee shall deliver its short form initial notice according to section 9 of this act. The licensee is not required to deliver its privacy notice with its short form initial notice. The licensee instead may simply provide the consumer a reasonable means to obtain its privacy notice. If a consumer who receives the licensee's short form notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to section 9 of this act.

(5) The licensee's notice may include:

(a) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future, but does not currently disclose; and

(b) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

Sec. 7. (1) If a licensee is required to provide an opt out notice under subsection (1) of section 10 of this act, it shall provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out under that section. The notice shall state:

(a) That the licensee discloses or reserves the right to disclose nonpublic personal financial information about its consumer to a nonaffiliated third party;

(b) That the consumer has the right to opt out of that disclosure; and

(c)(i) A reasonable means by which the consumer may exercise the opt out right.

(ii) A licensee provides a reasonable means to exercise an opt out right pursuant to subdivision (1)(c) of this section if the licensee:

(A) Designates check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Includes a reply form together with the opt out notice;

(C) Provides an electronic means to opt out, such as a form that can be sent via electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information; or

(D) Provides a toll-free telephone number that consumers may call to opt out.

(2) A licensee may provide the opt out notice together with or on the same written or electronic form as the initial notice the licensee provides in accordance with section 4 of this act.

(3) If a licensee provides the opt out notice later than required for the initial notice in accordance with section 4 of this act, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(4)(a) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer.

(b) Any of the joint consumers may exercise the right to opt out. The licensee may either:

(i) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(c) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(d) A licensee may not require all joint consumers to opt out before it implements any opt out direction.

(5) A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives it.

(6) A consumer may exercise the right to opt out at any time.

(7)(a) A consumer's direction to opt out under this section is

effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(b) When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

(8) When a licensee is required to deliver an opt out notice by this section, the licensee shall deliver it according to section 9 of this act.

Sec. 8. (1) Except as otherwise authorized in the Privacy of Insurance Consumer Information Act, a licensee shall not, directly or through an affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party other than as described in the initial notice that the licensee provided to that consumer under section 4 of this act unless:

(a) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(b) The licensee has provided to the consumer a new opt out notice;

(c) The licensee has given the consumer a reasonable opportunity, before the licensee discloses the information to the nonaffiliated third party, to opt out of the disclosure; and

(d) The consumer does not opt out.

(2) When a licensee is required to deliver a revised privacy notice by this section, the licensee shall deliver it according to section 9 of this act.

Sec. 9. (1) A licensee shall provide any notices that the Privacy of Insurance Consumer Information Act requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(2)(a) A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

(i) Hand delivers a printed copy of the notice to the consumer;

(ii) Mails a printed copy of the notice to the last-known address of the consumer separately or in a policy, billing, or other written communication;

(iii) For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service; and

(iv) For an isolated transaction with a consumer, such as the licensee providing an insurance quote or selling the consumer travel insurance, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(b) A licensee may not reasonably expect that a consumer will receive actual notice of its privacy policies and practices if it:

(i) Only posts a sign in its office or generally publishes advertisements of its privacy policies and practices; or

(ii) Sends the notice via electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(3) A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(a) The customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or

(b) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(4) A licensee may not provide any notice required by the act solely by orally explaining the notice, either in person or over the telephone.

(5)(a) For customers only, a licensee shall provide the initial notice required by subdivision (1)(a) of section 4 of this act, the annual notice required by subsection (1) of section 5 of this act, and the revised notice required by section 8 of this act so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically.

(b) A licensee shall be deemed to comply with the provisions of this subsection if the licensee:

(i) Hand delivers a printed copy of the notice to the customer;

(ii) Mails a printed copy of the notice to the last-known address of the customer; or

(iii) Makes its current privacy notice available on a web site, or a link to another web site, for the customer who obtains an insurance product or service electronically and agrees to receive the notice at the web site.

(6) A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee also may provide a notice on behalf of another financial institution.

(7) If two or more consumers jointly obtain an insurance product or service from a licensee, the licensee may satisfy the initial, annual, and revised notice requirements of subsection (1) of section 4 of this act, subsection (1) of section 5 of this act, and subsection (1) of section 8 of this act, respectively, by providing one notice to those consumers jointly.

Sec. 10. (1)(a) Except as otherwise authorized in the Privacy of Insurance Consumer Information Act, a licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer to a nonaffiliated third party unless:

(i) The licensee has provided to the consumer an initial notice as required under section 4 of this act;

(ii) The licensee has provided to the consumer an opt out notice as required in section 7 of this act;

(iii) The licensee has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third party to opt out of the disclosure; and

(iv) The consumer does not opt out.

(b) A licensee shall be deemed to provide a consumer with a reasonable opportunity to opt out pursuant to subdivision (1)(a)(iii) of this section if:

(i) The licensee mails the notices required in subdivision (1)(a) of this section to the consumer and allows the consumer to opt out by mailing a form, calling a toll-free telephone number, or any other reasonable means within thirty days from the date the licensee mailed the notices;

(ii) A customer opens an online account with a licensee and agrees to receive the notices required in subdivision (1)(a) of this section electronically, and the licensee allows the customer to opt out by any reasonable means within thirty days after the date that the customer acknowledges receipt of the notices in conjunction with opening the account; or

(iii) For an isolated transaction such as providing the consumer with an insurance quote, a licensee provides the consumer with a reasonable opportunity to opt out if the licensee provides the notices required in subdivision (1)(a) of this section at the time of the transaction and requests that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(c) For purposes of this section, opt out means a direction by the consumer that the licensee not disclose nonpublic personal financial information about that consumer to a nonaffiliated third party other than as permitted by sections 13 to 15 of this act.

(2) A licensee shall comply with this section, regardless of whether the licensee and the consumer have established a customer relationship. Unless a licensee complies with this section, the licensee may not, directly or through any affiliate, disclose any nonpublic personal financial information about a consumer that the licensee has collected, regardless of whether the licensee collected it before or after receiving the direction to opt out from the consumer.

(3) A licensee may allow a consumer to select certain nonpublic personal financial information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

Sec. 11. (1) If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in section 14 or 15 of this act, the licensee's disclosure and use of that information is limited as follows:

(a) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;

(b) The licensee may disclose the information to its affiliates, but the licensee's affiliates may, in turn, disclose and use the information only to the extent that the licensee may disclose and use the information; and

(c) The licensee may disclose and use the information pursuant to an exception in section 14 or 15 of this act in the ordinary course of business to carry out the activity covered by the exception under which the licensee

received the information.

(2) If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in section 14 or 15 of this act, the licensee may disclose the information only:

(a) To the affiliates of the financial institution from which the licensee received the information;

(b) To its affiliates, but its affiliates may, in turn, disclose the information only to the extent that the licensee may disclose the information; and

(c) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

(3) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in section 14 or 15 of this act, the third party may disclose and use that information only as follows:

(a) The third party may disclose the information to the licensee's affiliates;

(b) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(c) The third party may disclose and use the information pursuant to an exception in section 14 or 15 of this act in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(4) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception in section 14 or 15 of this act, the third party may disclose the information only:

(a) To the licensee's affiliates;

(b) To the third party's affiliates, but the third party's affiliates, in turn, may disclose the information only to the extent the third party can disclose the information; and

(c) To any other person, if the disclosure would be lawful if the licensee made it directly to that person.

Sec. 12. (1) A licensee shall not, directly or through an affiliate, disclose, other than to a consumer reporting agency, a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

(2) Subsection (1) of this section does not apply if a licensee discloses a policy number or similar form of access number or access code:

(a) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

(b) To a licensee who is a producer solely in order to perform marketing for the licensee's own products or services; or

(c) To a participant in an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

(3)(a) For purposes of this section, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

(b) A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, if the licensee does not provide the recipient with a means to decode the number or code.

Sec. 13. (1)(a) The opt out requirements in sections 7 and 10 of this act do not apply when a licensee provides nonpublic personal financial information to a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf, if the licensee:

(i) Provides the initial notice in accordance with section 4 of this act; and

(ii) Enters into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which the licensee disclosed the information, including use under an exception in section 14 or 15 of this act in the ordinary course of business to carry out those purposes.

(b) If a licensee discloses nonpublic personal financial information under this section to a financial institution with which the licensee performs joint marketing, the licensee's contractual agreement with that institution meets the requirements of subdivision (1)(a)(ii) of this section if it prohibits the institution from disclosing or using the nonpublic personal

financial information except as necessary to carry out the joint marketing or under an exception in section 14 or 15 of this act in the ordinary course of business to carry out that joint marketing.

(2) The services a nonaffiliated third party performs for a licensee under subsection (1) of this section may include marketing of the licensee's own products or services or marketing of financial products or services offered pursuant to joint agreements between the licensee and one or more financial institutions.

(3) For purposes of this section, joint agreement means a written contract pursuant to which a licensee and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

Sec. 14. (1) The requirements for initial notice in subdivision (1)(b) of section 4 of this act, the opt out in sections 7 and 10 of this act, and service providers and joint marketing in section 13 of this act do not apply if the licensee discloses nonpublic personal financial information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

(a) Servicing or processing an insurance product or service that a consumer requests or authorizes;

(b) Maintaining or servicing the consumer's account with a licensee, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity;

(c) A proposed or actual securitization, secondary market sale, including sales of servicing rights, or similar transaction related to a transaction of the consumer; or

(d) Reinsurance or stop-loss or excess-loss insurance.

(2) For purposes of this section, necessary to effect, administer, or enforce a transaction means that the disclosure is:

(a) Required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(b) Required, or is an usual, appropriate, or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the insurance product or service;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the insurance product or service to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by a licensee or any other party;

(v) To underwrite insurance at the consumer's request or for any of the following purposes as they relate to a consumer's insurance: Account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits, including utilization review activities, participating in research projects, or as otherwise required or specifically permitted by federal or state law; or

(vi) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling, or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or account number, or by other payment means;

(B) The transfer of receivables, accounts, or interests therein; or

(C) The audit of debit, credit, or other payment information.

Sec. 15. The requirements for initial notice to consumers in subdivision (1)(b) of section 4 of this act, the opt out in sections 7 and 10 of this act, and service providers and joint marketing in section 13 of this act do not apply when a licensee discloses nonpublic personal financial information:

(1) With the consent or at the direction of the consumer if the consumer has not revoked the consent or direction;

(2)(a) To protect the confidentiality or security of a licensee's records pertaining to the consumer, service, product, or transaction;

(b) To protect against or prevent actual or potential fraud or unauthorized transactions;

(c) For required institutional risk control or for resolving consumer disputes or inquiries;

(d) To persons holding a legal or beneficial interest relating to the consumer; or

(e) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating a licensee, persons that are assessing the licensee's compliance with industry standards, and the licensee's attorneys, accountants, and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with 12 U.S.C. 3401 et seq., as such federal law existed on the operative date of this section, to law enforcement agencies, including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II, and 12 U.S.C. Chapter 21, as such federal laws existed on the operative date of this section, a state insurance authority, a state banking and state securities authority, and the Federal Trade Commission, to self-regulatory organizations, or for an investigation on a matter related to public safety;

(5)(a) To a consumer reporting agency in accordance with 15 U.S.C. 1681 et seq., as such section existed on the operative date of this section;
or

(b) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal financial information concerns solely consumers of the business or unit;

(7)(a) To comply with federal, state, or local laws, rules, and other applicable legal requirements;

(b) To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by federal, state, or local authorities;

(c) To respond to judicial process or government regulatory authorities having jurisdiction over a licensee for examination, compliance, or other purposes as authorized by law; or

(8) For purposes related to the replacement of a group benefit plan, a group health plan, a group welfare plan, or a workers' compensation plan.

Sec. 16. (1) On and after January 1, 2003, a licensee shall not disclose nonpublic personal health information about a consumer or customer unless an authorization is obtained from the consumer or customer whose nonpublic personal health information is sought to be disclosed.

(2) Nothing in this section shall prohibit, restrict, or require an authorization for the disclosure of nonpublic personal health information by a licensee for the performance of the following insurance functions by or on behalf of the licensee: (a) Claims administration; (b) claims adjustment and management; (c) detection, investigation, or reporting of actual or potential fraud, misrepresentation, or criminal activity; (d) underwriting; (e) policy placement or issuance; (f) loss control; (g) ratemaking and guaranty fund functions; (h) reinsurance and excess loss insurance; (i) risk management; (j) case management; (k) disease management; (l) quality assurance; (m) quality improvement; (n) performance evaluation; (o) provider credentialing verification; (p) utilization review; (q) peer review activities; (r) actuarial, scientific, medical, or public policy research; (s) grievance procedures; (t) internal administration of compliance, managerial, and information systems; (u) policyholder service functions; (v) auditing; (w) reporting; (x) data base security; (y) administration of consumer disputes and inquiries; (z) external accreditation standards; (aa) the replacement of a group benefit plan or workers' compensation policy or program; (bb) activities in connection with a sale, merger, transfer, or exchange of all or part of a business or operating unit; (cc) any activity that permits disclosure without authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the United States Department of Health and Human Services; (dd) disclosure that is required, or is one of the lawful or appropriate methods, to enforce the licensee's rights or the rights of other persons engaged in carrying out a transaction or providing a product or service that a consumer requests or authorizes; (ee) any activity otherwise permitted by law, required pursuant to governmental reporting authority, or to comply with legal process; and (ff) additional insurance functions as may be approved by adoption and promulgation of rules and regulations of the director to the extent they are necessary for appropriate performance of insurance functions and are fair and reasonable to the interest of consumers.

Sec. 17. (1) A valid authorization to disclose nonpublic personal

health information pursuant to sections 16 to 20 of this act shall be in written or electronic form and shall contain all of the following:

(a) The identity of the consumer or customer who is the subject of the nonpublic personal health information;

(b) A general description of the types of nonpublic personal health information to be disclosed;

(c) General descriptions of the parties to whom the licensee discloses nonpublic personal health information, the purpose of the disclosure, and how the information will be used;

(d) The signature of the consumer or customer who is the subject of the nonpublic personal health information or the individual who is legally empowered to grant authority and the date signed; and

(e) Notice of the length of time for which the authorization is valid and that the consumer or customer may revoke the authorization at any time and the procedure for making a revocation.

(2) An authorization for the purposes of sections 16 to 20 of this act shall specify a length of time for which the authorization shall remain valid, which in no event shall be for more than twenty-four months.

(3) A consumer or customer who is the subject of nonpublic personal health information may revoke an authorization provided pursuant to sections 16 to 20 of this act at any time, subject to the rights of an individual who acted in reliance on the authorization prior to notice of the revocation.

(4) A licensee shall retain the authorization or a copy thereof in the record of the individual who is the subject of nonpublic personal health information.

Sec. 18. A request for authorization and an authorization form may be delivered to a consumer or a customer as part of an opt out notice pursuant to section 9 of this act if the request and the authorization form are clear and conspicuous. An authorization form is not required to be delivered to the consumer or customer or included in any other notices unless the licensee intends to disclose protected health information pursuant to subsection (1) of section 16 of this act.

Sec. 19. Irrespective of whether a licensee is subject to the federal Health Insurance Portability and Accountability Act privacy rule as promulgated by the United States Department of Health and Human Services, if a licensee complies with all requirements of the federal rule except for its effective date provision, the licensee shall not be subject to the provisions of sections 16 to 20 of this act.

Sec. 20. Nothing in sections 16 to 20 of this act shall preempt or supersede existing state law related to medical records or health or insurance information privacy.

Sec. 21. Nothing in the Privacy of Insurance Consumer Information Act shall be construed to modify, limit, or supersede the operation of 15 U.S.C. 1681 et seq., as such section existed on the operative date of this section, and no inference shall be drawn on the basis of the provisions of the act regarding whether information is transaction or experience information under 15 U.S.C. 1681a, as such section existed on the operative date of this section.

Sec. 22. (1) A licensee shall not unfairly discriminate against any consumer or customer because that consumer or customer has opted out from the disclosure of his or her nonpublic personal financial information pursuant to the Privacy of Insurance Consumer Information Act.

(2) A licensee shall not unfairly discriminate against a consumer or customer because that consumer or customer has not granted authorization for the disclosure of his or her nonpublic personal health information pursuant to the act.

Sec. 23. In addition to any other remedies available under the laws of this state, each violation of the Privacy of Insurance Consumer Information Act and any rules and regulations adopted and promulgated under the act shall be an unfair trade practice in the business of insurance subject to the Unfair Insurance Trade Practices Act.

Sec. 24. (1) The director may adopt and promulgate rules and regulations to carry out the Privacy of Insurance Consumer Information Act.

(2)(a) Prior to January 1, 2003, the director may adopt and promulgate rules and regulations that:

(i) Set standards for the maintenance of the privacy of health and nonpublic personal health information held by licensees;

(ii) Conform to the standards contained in the act for the maintenance of health information and nonpublic personal health information held by licensees.

(b) Rules and regulations adopted under this subsection expire on January 1, 2003.

(c) This subsection terminates on January 1, 2003.

Sec. 25. (1) By July 1, 2001, a licensee shall provide an initial notice, as required by section 4 of this act, to consumers who are the licensee's customers on July 1, 2001, with regard to nonpublic personal financial information.

(2) Until July 1, 2002, a contract that a licensee has entered into with a nonaffiliated third party to perform services for the licensee or functions on the licensee's behalf satisfies the provisions of subdivision (1)(a)(ii) of section 13 of this act, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the licensee entered into the agreement on or before July 1, 2000.

Sec. 26. (1) Unless otherwise expressly prohibited by Chapter 44, the director may:

(a) Share documents, materials, or other information, including otherwise confidential and privileged documents, materials, or information, with other state, federal, foreign, and international regulatory and law enforcement agencies and with the National Association of Insurance Commissioners and its affiliates and subsidiaries if the recipient agrees to maintain the confidential or privileged status of the document, material, or other information;

(b) Receive documents, materials, or other information, including otherwise confidential and privileged documents, materials, or information, from other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries. The director shall maintain as confidential or privileged any document, material, or other information received pursuant to an information-sharing agreement entered into pursuant to this section with notice or the understanding that the document, material, or other information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(c) Enter into agreements governing sharing and use of information consistent with this subsection.

(2)(a) All confidential and privileged information obtained by or disclosed to the director by other state, federal, foreign, or international regulatory and law enforcement agencies or by the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to this section with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or other information shall:

- (i) Be confidential and privileged;
- (ii) Not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09;
- (iii) Not be subject to subpoena; and
- (iv) Not be subject to discovery or admissible in evidence in any private civil action.

(b) Notwithstanding the provisions of subdivision (2)(a) of this section, the director may use the documents, materials, or other information in any regulatory or legal action brought by the director.

(3) The director, and any other person while acting under the authority of the director who has received information from other state, federal, foreign, or international regulatory and law enforcement agencies or from the National Association of Insurance Commissioners or its affiliates and subsidiaries pursuant to this section, may not, and shall not be required to, testify in any private civil action concerning such information.

(4) Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the documents, materials, or other information received from state, federal, foreign, or international regulatory and law enforcement agencies or from the National Association of Insurance Commissioners or its affiliates and subsidiaries pursuant to this section as a result of disclosure to the director or as a result of information sharing authorized by this section.

Sec. 27. Sections 27 to 42 of this act shall be known and may be cited as the Viatical Settlements Act.

Sec. 28. For purposes of the Viatical Settlements Act:

(1) 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 before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to sell a life

insurance policy pursuant to a viatical settlement contract;

(2) Business of viatical settlements means an activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, or hypothecating of viatical settlement contracts or purchase agreements;

(3) Chronically ill means (a) being unable to perform at least two activities of daily living, such as eating, toileting, transferring, bathing, dressing, or continence; (b) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or (c) having a level of disability similar to that described in subdivision (3)(a) of this section as determined by the Director of Health and Human Services;

(4) Department means the Department of Insurance;

(5) Director means the Director of Insurance;

(6) Financing entity means an underwriter, a placement agent, a lender, a purchaser of securities, a purchaser of a policy or certificate from a viatical settlement provider, a credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract (a) whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies and (b) 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 viatical settlement purchaser;

(7) Fraudulent viatical settlement act means an act or omission committed by any person who, knowingly and with intent to defraud and for the purpose of depriving another of property or for pecuniary gain, commits, or permits his or her employees or agents to commit, any of the following acts:

(a) Presenting, causing to be presented, or preparing with the knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance broker, insurance agent, 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;

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

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

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

(viii) The issuance of written evidence of a viatical settlement contract or insurance;

(ix) A financing transaction; or

(x) Employing any device, scheme, or artifice to defraud related to viaticated policies;

(b) In the furtherance of a fraud or to prevent the detection of a fraud:

(i) Removing, concealing, altering, destroying, or sequestering from the director the assets or records of a licensee or other person engaged in the business of viatical settlements;

(ii) Misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or other person;

(iii) Transacting 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

(iv) Filing with the director or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the director;

(c) Presenting, causing to be presented, or preparing with the knowledge or reason to believe that it will be presented, to or by a viatical settlement provider, viatical settlement broker, insurer, insurance agent, financing entity, viatical settlement purchaser, or any other person, in connection with a viatical settlement transaction or insurance transaction, an insurance policy, knowing the policy was fraudulently obtained by the insured,

owner, or any agent thereof;

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

(e) Attempting to commit, assisting, aiding, or abetting in the commission of, or conspiring to commit the acts or omissions specified in this subdivision;

(8) Person means a natural person or a legal entity, including an individual, a partnership, a limited liability company, an association, a trust, or a corporation;

(9) Policy means an individual or group policy, group certificate, contract, or arrangement of life insurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state;

(10) 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 director as if those records and files were maintained directly by the licensed viatical settlement provider;

(11) Special purpose entity means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets for a financing entity or licensed viatical settlement provider;

(12) Terminally ill means having an illness or sickness that can reasonably be expected to result in death in twenty-four months or less;

(13) Viatical settlement broker means a person that 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. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. Viatical settlement broker includes a licensed life insurance producer that meets the requirements of section 29 of this act. Viatical settlement broker does not include an attorney, a 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;

(14) Viatical settlement contract means a written agreement establishing the terms under which compensation or anything of value will be paid, 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 or any portion of the insurance policy or certificate of insurance. A viatical settlement contract also includes a contract for a loan or other financing transaction secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator;

(15) Viatical settlement provider means a person, other than a viator, that enters into or effectuates a viatical settlement contract. Viatical settlement provider does not include:

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

(b) The issuer of a life insurance policy providing accelerated benefits under and pursuant to the contract;

(c) An authorized or eligible insurer that provides stop-loss coverage to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;

(d) 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;

(e) A financing entity;

- (f) A special purpose entity;
- (g) A related provider trust;
- (h) A viatical settlement purchaser; or

(i) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501, or Rule 144A of the federal Securities Act of 1933, as the act existed on the operative date of this section, who purchases a viaticated policy from a viatical settlement provider;

(16) Viatical settlement purchaser means a person who gives 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. Viatical settlement purchaser does not include:

- (a) A licensee under the Viatical Settlements Act;

(b) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501, or Rule 144A of the federal Securities Act of 1933, as the act existed on the operative date of this section;

- (c) A financing entity;
- (d) A special purpose entity; or
- (e) A related provider trust;

(17) Viaticated policy means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract; and

(18) Viator means the owner of a life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract. For purposes of the Viatical Settlements Act, a viator is not 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 as specifically addressed. Viator does not include:

- (a) A licensee under the act;

(b) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501, or Rule 144A of the federal Securities Act of 1933, as the act existed on the operative date of this section;

- (c) A financing entity;
- (d) A special purpose entity; or
- (e) A related provider trust.

Sec. 29. (1)(a) A person shall not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the director or the chief insurance regulatory official of the state of residence of the viator. If there is more than one viator on a single policy and the viators are residents of different states, the viatical settlement shall be 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 viators.

(b)(i) A licensed insurance producer who has received qualification for a license in life insurance shall be exempt from the requirements of subdivision (1)(a) of this section if:

(A) The insurance producer is involved in no more than five viatical settlements per year;

(B) The insurance producer registers as a licensed insurance producer involved in no more than five viatical settlements per year;

(C) The insurance producer makes such registration no later than three days following the referral of a potential settlement to a viatical settlement provider; and

(D) The insurance producer meets the requirements set forth in subsections (4) through (7) of this section.

(ii) A registration application made pursuant to this subdivision shall be accompanied by a registration fee as set forth in subsection (2) of this section.

(iii) The director may suspend, revoke, or refuse to issue or renew a registration of an insurance producer pursuant to this subdivision for any of the grounds set forth in section 30 of this act.

(2) Application for a viatical settlement provider or viatical settlement broker license shall be made to the director by the applicant on a form prescribed by the director. The viatical settlement broker application shall be accompanied by a fee established by the director of not to exceed forty dollars. The viatical settlement provider application shall be

accompanied by a fee established by the director of not to exceed one hundred dollars.

(3) All viatical settlement broker licenses shall expire on the last day of the month of the licensed person's birthday in the first year after issuance in which his or her age is divisible by two and may be renewed upon payment of a fee established by the director not to exceed forty dollars. All viatical settlement provider licenses shall expire on the last day of April in each year and may be renewed upon payment of a renewal fee established by the director not to exceed one hundred dollars. Failure to pay the fee by the renewal date results in expiration of the license.

(4) The applicant shall provide information on forms required by the director. The director shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members, and employees, and the director may, in the exercise of the director's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any stockholder, partner, officer, member, or employee thereof who may materially influence the applicant's conduct meets the standards of the Viatical Settlements Act.

(5) A license issued to a legal entity authorizes all partners, officers, members, and designated employees to act as viatical settlement providers and viatical settlement brokers, as applicable, under the license, and all those persons shall be named in the application and any supplements to the application.

(6) Upon the filing of an application and the payment of the license fee, the director shall make an investigation of each applicant and issue a license if the director finds that the applicant:

(a) If a viatical settlement provider, provides a detailed plan of operation;

(b) Is competent and trustworthy and intends to act in good faith in the capacity for which application for a license is made;

(c) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which application for a license is made;

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

(e) If a viatical settlement provider or viatical settlement broker, provides an antifraud plan that meets the requirements of subsection (7) of section 38 of this act.

(7) A licensee shall provide to the director new or revised information about officers, ten-percent or more stockholders, partners, directors, members, or designated employees within thirty days after the change.

Sec. 30. (1) The director may suspend, revoke, or refuse to issue or renew a license if the director finds that:

(a) There was any material misrepresentation in the application for the license;

(b) The applicant or licensee or any officer, partner, member, or key management personnel is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent;

(c) The viatical settlement provider demonstrates a pattern of unreasonable payments to viators;

(d) The applicant or 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 a Class I, II, or III misdemeanor, regardless of whether a judgment of conviction has been entered by the court;

(e) The viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to the Viatical Settlements Act;

(f) The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;

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

(h) 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 Regulation D, Rule 501, or Rule 144A of the federal Securities Act of 1933, as the act existed on the operative date of this section, a financing entity, a special purpose entity, or a related provider trust;

(i) The applicant or licensee or any officer, partner, member, or key management personnel has violated any provision of the Viatical Settlements Act; or

(j) The licensee has failed to respond to the department within fifteen working days after receipt of an inquiry from the department.

(2) If the director denies a license application or suspends, revokes, or refuses to renew a license, the director shall conduct a hearing in accordance with the Administrative Procedure Act.

Sec. 31. A person shall not use a viatical settlement contract or provide to a viator a disclosure statement form in this state unless filed with and approved by the director. The director shall disapprove a viatical settlement contract or disclosure statement form if, in the director's opinion, the contract or provisions contained therein are unreasonable, contrary to the interest of the public, or otherwise misleading or unfair to the viator. At the director's discretion, the director may require the submission of advertising material.

Sec. 32. (1) Each licensee shall file with the director on or before March 1 of each year an annual statement containing such information as the director may prescribe by rule and regulation.

(2) Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, 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:

(a) 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;

(b) Is provided in response to an investigation or examination by the director or any other governmental officer or agency or pursuant to the requirements of subsection (3) of section 38 of this act;

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

(d) 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;

(e) Is necessary to allow the viatical settlement provider or viatical settlement broker or his or her authorized representative to make contacts for the purpose of determining health status; or

(f) Is required to purchase stop-loss coverage.

Sec. 33. (1)(a) The director may conduct an examination of a licensee under the Viatical Settlements Act as often as the director, in his or her sole discretion, deems appropriate.

(b) For purposes of completing an examination of a licensee under the act, the director may examine or investigate any person or the business of any person, in so far as the examination or investigation is, in the sole discretion of the director, necessary or material to the examination of the licensee.

(c) In lieu of an examination under the act of any foreign or alien licensee licensed in this state, the director may, in his or her sole discretion, accept an examination report on the licensee as prepared by the director for the licensee's state of domicile or port-of-entry state.

(2)(a) A person required to be licensed under the act shall for five years retain copies of all:

(i) Proposed, offered, or executed contracts, purchase agreements, underwriting documents, policy forms, and applications from the date of the proposal, offer, or execution of the contract, purchase agreement, underwriting document, policy form, or application, whichever is later;

(ii) Checks, drafts, or other evidence and documentation related to the payment, transfer, deposit, or release of funds from the date of the transaction; and

(iii) Other records and documents related to the requirements of the act.

(b) This section does not relieve a person of the obligation to produce documents under subdivision (a) of this subsection to the director after the retention period has expired if the person has retained the documents.

(c) Records required to be retained by this section must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

(3)(a) Upon determining that an examination should be conducted, the director shall appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. In conducting the

examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The director may also employ such other guidelines or procedures as he or she deems appropriate.

(b) Every licensee or person from whom information is sought and its officers, directors, employees, and agents shall provide to the examiner timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs of the licensee being examined. The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the director shall be grounds for the suspension, refusal, or nonrenewal of any license or authority held by the licensee to engage in the viatical settlement business or other business subject to the director's jurisdiction. Any proceedings for the suspension, revocation, or refusal of any license or authority shall be conducted pursuant to the Administrative Procedure Act.

(c) The director may issue subpoenas, administer oaths, and examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the director may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. A person who is subpoenaed shall attend as a witness at the place specified in the subpoena anywhere within the state. He or she shall be entitled to the same fees and mileage, if claimed, as a witness in the district court, with mileage to be computed at the rate provided in section 81-1176, which fees, mileage, and actual expense, if any, necessarily incurred in securing the attendance of witnesses, and their testimony, shall be itemized, charged against, and paid by the licensee being examined.

(d) When making an examination under the Viatical Settlements Act, the director may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the cost of which will be borne by the licensee that is the subject of the examination.

(e) Nothing contained in the act shall be construed to limit the director's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions of law made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

(f) Nothing contained in the act shall be construed to limit the director's authority to use, and, if appropriate, to make public, any final or preliminary examination report, any examiner or licensee workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the director may, in his or her sole discretion, deem appropriate.

(4)(a) Examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the licensee or its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(b) No later than forty-five days following completion of the examination, the examiner in charge shall file with the director a verified written report of examination under oath. Upon receipt of the verified report, the director shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(c) Within thirty days after the end of the period allowed for the receipt of written submissions or rebuttals, the director shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers, and shall:

(i) Adopt the examination report as submitted or with modifications or corrections. If the examination report reveals that the licensee is operating in violation of any law, rule, regulation, or prior order of the director, the director may order the licensee to take any action the director considers necessary and appropriate to cure such violation; or

(ii) Reject the examination report with directions to the examiner to reopen the examination for purposes of obtaining additional data,

documentation, or information and to resubmit a report pursuant to subdivision (4)(b) of this section.

(d) Any licensee aggrieved by any action of the director pursuant to subdivision (4)(c) of this section may, within ten days after such action, make written request to the director for a hearing. Upon receipt of the licensee's request for a hearing, the director shall provide notice of the hearing no less than ten nor more than thirty days after the date of the licensee's request. The notice shall identify the subject of the hearing and the specific issues.

(e) Any hearing on an examination report shall be held in accordance with the Administrative Procedure Act.

(f) The examination report, with any modifications and corrections thereof, shall be accepted by the director and filed for public inspection immediately after the expiration of the times specified in subdivision (4)(d) of this section in the event that the licensee has not requested a hearing. Within thirty days after the filing of the examination report for public inspection, the licensee shall file affidavits executed by each of its directors stating under oath that they have received a copy of the examination report and related orders.

(5)(a) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the director unless required by law.

(b) Except as otherwise provided in the Viatical Settlements Act, all examination reports, working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the director or any other person in the course of an examination made under the act, or in the course of analysis or investigation by the director of the financial condition or market conduct of a licensee, shall be confidential by law and privileged, shall not be subject to disclosure pursuant to sections 84-712 to 84-712.09, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The director is authorized to use the documents, materials, communications, or other information in the furtherance of any regulatory or legal action brought as part of the director's official duties.

(c) Documents, materials, communications, or other information, including all working papers and copies thereof, in the possession or control of the National Association of Insurance Commissioners and its affiliates and subsidiaries shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if they are:

(i) Created, produced, or obtained by or disclosed to the National Association of Insurance Commissioners and its affiliates and subsidiaries in the course of assisting an examination made under the act or the law of another state or jurisdiction that is substantially similar to the act or assisting the director or the chief insurance regulatory official of another state in the analysis or investigation of the financial condition or market conduct of a licensee; or

(ii) Disclosed to the National Association of Insurance Commissioners and its affiliates and subsidiaries under subdivision (e) of this subsection by the director or the chief insurance regulatory official of another state.

(d) Neither the director nor any person that received the documents, materials, communications, or other information while acting under the authority of the director, including the National Association of Insurance Commissioners and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials, communications, or other information subject to this subsection.

(e) In order to assist in the performance of his or her duties, the director:

(i) May share documents, materials, communications, or other information, including the confidential and privileged documents, materials, communications, or other information subject to this subsection, with other state, federal, foreign, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, foreign, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, communications, or other information;

(ii) May receive documents, materials, communications, or other information, including otherwise confidential and privileged documents, materials, communications, or other information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from

regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any documents, materials, communications, or other information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, communications, or other information; and

(iii) May enter into agreements governing sharing and use of information consistent with this subsection.

(f) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, communications, or other information shall occur as a result of disclosure to the director under this section or as a result of sharing as authorized in subdivision (d) of this subsection.

(g) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this state.

(h) Nothing contained in the act shall prevent or be construed as prohibiting the director from disclosing the content of an examination report, preliminary report or results, or any matter relating thereto to the director or chief insurance regulatory official of any other state or country, to any law enforcement official of this state or any other state, to any agency of the federal government at any time, or to the National Association of Insurance Commissioners so long as the agency or office receiving the examination report or matters relating thereto agrees in writing to hold the examination report or matters confidential and in a manner consistent with the act.

(6)(a) An examiner may not be appointed by the director if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under the Viatical Settlements Act. This subsection shall not be construed to automatically preclude an examiner from being:

(i) A viator;

(ii) An insured in a viaticated insurance policy; or

(iii) A beneficiary in an insurance policy that is proposed to be viaticated.

(b) Notwithstanding the requirements of this subsection, the director may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under the act.

(7) The reasonable expenses of the examination of a licensee conducted under the Viatical Settlements Act shall be fixed and determined by the director who shall collect the same from the licensee examined. The licensee shall reimburse the amount thereof upon presentation of a statement by the director. Reimbursement shall be limited to a reasonable allocation for the salary of each examiner plus actual expenses. All money collected by the director for examination of licensees shall be remitted in accordance with section 44-116.

(8)(a) No cause of action shall arise nor shall any liability be imposed against the director, the director's authorized representatives, or any examiner appointed by the director for any statements made or conduct performed in good faith while carrying out the provisions of the Viatical Settlements Act.

(b) No cause of action shall arise nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the director or the director's authorized representative or an examiner pursuant to an examination made under the act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This subdivision does not abrogate or modify in any way common-law or statutory privilege or immunity heretofore enjoyed by any person identified in this subsection.

(c) A person identified in this subsection is entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of the Viatical Settlements Act and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is substantially justified if it had a reasonable basis in law or fact at the time that it was initiated.

(9) The director may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.

Sec. 34. (1) With each application for a viatical settlement, a viatical settlement provider or viatical settlement broker shall provide the viator with at least the disclosures required by this section 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:

(a) Possible alternatives to viatical settlement contracts, including any accelerated death benefits or policy loans offered under the viator's life insurance policy;

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

(c) Proceeds from the viatical settlement could be subject to the claims of creditors;

(d) Receipt of the proceeds from a viatical settlement may adversely effect the viator's eligibility for medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies;

(e) The viator has the right to rescind the viatical settlement contract for fifteen calendar days after receipt of the viatical settlement proceeds by the viator as provided in subsection (3) of section 35 of this act. If the insured dies during the rescission period, the settlement contract shall be deemed to have been rescinded. If a viatical settlement contract is rescinded, all viatical settlement proceeds and any premiums paid by the viatical settlement provider or purchaser shall be repaid to the viatical settlement provider or purchaser within sixty days of such rescission;

(f) 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 assistance should be sought from a financial advisor;

(g) A brochure describing the process of viatical settlements. The National Association of Insurance Commissioners' form for the brochure shall be used unless one is developed by the director; and

(h) The insured may be contacted by either the viatical settlement provider or broker or its authorized representative for the purpose of determining the insured's health status. This contact is limited to once every six months if the insured has a life expectancy of more than one year, and no more than once every three months if the insured has a life expectancy of one year or less. For purposes of this subdivision, authorized representative does not include a viatical settlement purchaser.

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 you, the insured, including your 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.

(2) 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 the viatical settlement provider or viatical settlement broker and provide the following information:

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

(b) The name, address, and telephone number of the viatical settlement provider;

(c) The amount and method of calculating the viatical settlement broker's compensation. Compensation includes anything of value paid or given to a viatical settlement broker for the placement of a policy;

(d) 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, there is the possibility of a loss of coverage on the other lives under the policy, and consultation with an insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement is advised;

(e) The dollar amount of the current death benefit payable to the

viatical settlement provider under the policy or certificate and, if known, 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; and

(f) The name, business address, and telephone number of the independent third-party escrow agent. The viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(3) If the provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate the change in ownership or beneficiary to the insured within twenty days after the change.

Sec. 35. (1)(a) A viatical settlement provider entering into a viatical settlement contract shall first obtain:

(i) 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

(ii) A document in which the insured consents, as required in subsection (2) of section 32 of this act, to the release of his or her medical records to a viatical settlement provider, a viatical settlement broker, and the insurance company that issued the life insurance policy covering the life of the insured.

(b) Within twenty days after a viator executes documents necessary to transfer any rights under an insurance policy, or within twenty days after entering any agreement, option, promise, or 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 must be accompanied by the documents required by subdivision (c) of this subsection.

(c) The viatical settlement provider shall deliver a copy of the medical release required under subdivision (a)(ii) of this subsection, a copy of the viator's application for the viatical settlement contract, the notice required under subdivision (b) of this subsection, 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 shall be used unless standards for verification are developed by the director.

(d) The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider within thirty calendar days after 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.

(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 and 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, that the viator acknowledges he or she is entering into the viatical settlement contract freely and voluntarily, and, for persons with a terminal or chronic illness or condition, that the viator acknowledges the insured has a terminal or chronic illness and 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 the activities listed in this subsection on behalf of the viatical settlement provider, the provider is deemed to have fulfilled the requirements of this section.

(2) All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information.

(3) All viatical settlement contracts entered into in this state shall provide the viator with an unconditional right to rescind the contract for fifteen calendar days from the receipt of the viatical settlement proceeds. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded. If a viatical settlement contract is rescinded, all viatical settlement proceeds and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or purchaser shall be repaid to the viatical settlement provider or purchaser within sixty days of such rescission.

(4) 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 documents or after 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-chartered or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation. 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. 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.

(5) Failure to tender consideration to the viator for the viatical settlement contract 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.

(6) 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 six months for insureds with a life expectancy of more than one year and to no more than once every three months 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 set forth in this subsection 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. 36. It is a violation of the Viatical Settlements Act for any person to enter into a viatical settlement contract within a two-year period commencing on the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:

(1) The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy if the total of the time covered under the conversion policy, plus the time covered under the group or individual policy, is at least twenty-four months. The time covered under the group policy shall be calculated without regard to any change in insurance carriers if the coverage has been continuous and under the same group sponsorship;

(2) The viator is a charitable organization exempt from taxation under 26 U.S.C. 501(c)(3), as such section existed on the operative date of this section;

(3) The viator is not a natural person, such as the owner is a corporation, limited liability company, or partnership; and

(4) The viator submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:

(a) The viator or insured is terminally or chronically ill;

(b) The viator's spouse died;

(c) The viator divorced his or her spouse;

(d) The viator retired from full-time employment;

(e) The viator became physically or mentally disabled and a physician determined that the disability prevented the viator from maintaining full-time employment;

(f) The viator was the insured's employer at the time the policy or certificate was issued and the employment relationship terminated;

(g) A final order, judgment, or decree was entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee, or liquidator for all or a substantial part of the viator's assets;

(h) The viator experienced a significant decrease in income that was unexpected and that impaired the viator's reasonable ability to pay the policy premium; or

(i) The viator or insured disposed of his or her ownership interests in a closely held corporation.

Copies of the independent evidence described in subdivision (4) of this section and documents required by subsection (1) of section 35 of this

act shall be submitted to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

If the viatical settlement provider submits to the insurer a copy of the owner's or insured's certification described in subdivision (4) of this section when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this section and the insurer shall timely respond to the request.

Sec. 37. (1) The purpose of this section is to provide prospective viators with clear and unambiguous statements in the advertisement of viatical settlements and to assure the clear, truthful, and adequate disclosure of the benefits, risks, limitations, and exclusions of any viatical settlement contract. This purpose is intended to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of viatical settlements or related products or services to assure that product descriptions are presented in a manner that prevents unfair, deceptive, or misleading advertising and is conducive to accurate presentation and description of viatical settlements or related products or services through the advertising media and material used by licensees.

(2) This section applies to any advertising of viatical settlement contracts or related products or services intended for dissemination in this state, including Internet advertising viewed by persons located in this state. If disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation whenever possible.

(3) Every 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 licensee, 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 licensee who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisement not furnished by the licensee.

(4) Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract shall be sufficiently complete and clear so as to avoid deception. 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 director 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.

(5)(a) The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an 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 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 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 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 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.

(e) The words free, no cost, without cost, no additional cost, or 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.

(f)(i) Any testimonial, appraisal, analysis, or endorsement used in an advertisement must be genuine, represent the current opinion of the author, be applicable to the viatical settlement contract, product, or service advertised, and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonial, appraisal, analysis, or endorsement. In using a testimonial, an appraisal, an analysis, or an endorsement, the licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

(ii) If the individual making a testimonial, an appraisal, an analysis, or an endorsement has a financial interest in the viatical settlement provider or 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.

(iii) An advertisement shall not state or imply that a viatical settlement contract benefit or service has been approved or endorsed by a group of individuals or any society, association, or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement provider is disclosed. If the entity making the approval or endorsement is owned, controlled, or managed by the viatical settlement provider, or receives any payment or other consideration from the viatical settlement provider for making an approval or endorsement, that fact shall be disclosed in the advertisement.

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

(v) 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.

(vi) An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement brokers, viatical settlement investment agents, insurance producers, policies, services, or methods of marketing.

(vii) The name of the viatical settlement licensee shall be clearly identified in all advertisements about the licensee or its viatical settlement contract, products, or services, and if any specific viatical settlement contract is advertised, the viatical settlement contract 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.

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

(ix) 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 into believing that the solicitation is in some manner connected with a government program or agency.

(x) An advertisement may state that a viatical settlement provider is licensed in the state where the advertisement appears if it does not exaggerate that fact or suggest or imply that competing viatical settlement providers may not be licensed. The advertisement may ask the audience to consult the licensee's web site or contact the department to find out if the state requires licensing and, if so, whether the viatical settlement provider is licensed.

(xi) 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 are recommended or endorsed by any government entity.

(xii) The name of the licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, the name of any affiliate or controlling entity of the licensee,

a service mark, a slogan, a symbol, or any 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.

(xiii) An advertisement shall not disclose or indirectly create the impression that any division or agency of the state or of the United States Government endorses, approves, or favors:

(A) Any licensee or its business practices or methods of operation;

(B) The merits, desirability, or advisability of any viatical settlement contract or viatical settlement program;

(C) Any viatical settlement contract or viatical settlement program;

or

(D) Any life insurance policy or life insurance company.

(xiv) If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average timeframe from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

(xv) 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. 38. (1)(a) A person shall not commit a fraudulent viatical settlement act.

(b) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of the Viatical Settlements Act or investigations of suspected or actual violations of the act.

(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.

(2)(a) Viatical settlement contracts 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 is guilty of a crime and may be subject to fines and confinement in prison.

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

(3)(a) Any person engaged in the business of viatical settlements having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed shall provide to the director the information required by, and in a manner prescribed by, the director.

(b) Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed may provide to the director the information required by, and in a manner prescribed by, the director.

(4)(a) No civil liability shall be imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated, or completed fraudulent viatical settlement acts, if the information is provided to or received from:

(i) The director or the director's employees, agents, or representatives;

(ii) The Director of Banking and Finance or his or employees, agents, or representatives;

(iii) Federal, state, or local law enforcement officials or their employees, agents, or representatives;

(iv) The National Association of Insurance Commissioners, the National Association of Securities Dealers, or the North American Securities Administrators Association, employees, agents, or representatives of any such association, or any other regulatory body overseeing life insurance, viatical settlements, securities, or investment fraud; or

(v) The life insurer that issued the life insurance policy covering the life of the insured.

(b) This subsection does not apply to statements made with actual malice, fraudulent intent, or bad faith. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act, the party bringing the action shall plead specifically any allegation that this subsection does not apply because the person filing the report or furnishing the information did so with actual malice, fraudulent intent, or bad faith.

(c) A person identified in this subsection shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of the Viatical Settlements Act and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding is substantially justified if it had a reasonable basis in law or fact at the time it was initiated.

(d) This section does not abrogate or modify common-law or statutory privileges or immunities enjoyed by a person described in this subsection.

(5)(a) The documents and evidence provided pursuant to subsection (4) of this section or obtained by the director in an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

(b) This subsection does not prohibit release by the director of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:

(i) In administrative or judicial proceedings to enforce laws administered by the director;

(ii) To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts, or to the National Association of Insurance Commissioners; or

(iii) At the discretion of the director, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act.

(c) Release of documents and evidence under this subsection does not abrogate or modify the privilege granted in this subsection.

(6) The Viatical Settlements Act shall not:

(a) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;

(b) Prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the department; or

(c) Limit the powers granted elsewhere by the laws of this state to the director or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

(7) 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 director, the director may order, or a licensee may request and the director 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. Antifraud initiatives shall include:

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

(b) An antifraud plan submitted to the director. 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 director;

(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.

Antifraud plans submitted to the director shall be privileged and confidential, shall not be a public record, and shall not be subject to discovery or subpoena in a civil or criminal action.

Sec. 39. (1) In addition to the penalties and other enforcement provisions of the Viatical Settlements Act, if any person violates the act or any rule or regulation implementing the act, the director may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the director determines are necessary to restrain the person from committing the violation.

(2) Any person damaged by the acts of a person in violation of the act may bring a civil action against the person committing the violation in a court of competent jurisdiction.

(3) The director may issue, in accordance with the Administrative Procedure Act, a cease and desist order upon a person that violates any provision of the Viatical Settlements Act, any rule, regulation, or order adopted or issued by the director, or any written agreement entered into between such person and the director.

(4) When the director finds that an activity in violation of the act presents an immediate danger to the public that requires an immediate final order, the director may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for ninety days. If the director begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction pursuant to the Administrative Procedure Act.

(5) In addition to the penalties and other enforcement provisions of the Viatical Settlements Act, any person who violates the act is subject to civil penalties of up to one thousand dollars per violation. Imposition of civil penalties shall be pursuant to an order of the director issued under the Administrative Procedure Act. The director's order may require a person found to be in violation of the Viatical Settlements Act to make restitution to persons aggrieved by violations of the act.

(6) A person who is found by a court of competent jurisdiction, pursuant to an action initiated by the director, to have committed a fraudulent viatical settlement act, is subject to a civil penalty not to exceed five thousand dollars for the first violation, ten thousand dollars for the second violation, and fifteen thousand dollars for each subsequent violation.

(7) A person convicted of a violation of the act by a court of competent jurisdiction shall be guilty of a Class III misdemeanor. A person convicted of a violation of the act shall be ordered to pay restitution to persons aggrieved by the violation. Restitution shall be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment. A prosecution under this subsection shall be in lieu of an action under subsection (6) of this section.

Sec. 40. The director shall have the authority to:

(1) Adopt and promulgate rules and regulations to carry out the Viatical Settlements Act;

(2) Establish standards for evaluating reasonableness of payments under viatical settlement contracts for persons with a terminal or chronic illness or condition. This authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy;

(3) Establish appropriate licensing requirements, fees, and standards for continued licensure for viatical settlement providers and brokers;

(4) Require a bond or other mechanism for financial accountability for viatical settlement providers and brokers; and

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

Sec. 41. A violation of the Viatical Settlements Act shall be considered an unfair trade practice under the Unfair Insurance Trade Practices Act subject to the penalties contained in the act.

Sec. 42. A viatical settlement provider and viatical settlement broker transacting business in this state on or before the operative date of this section, may continue to do so pending approval or disapproval of the provider's or broker's application for a license as long as the application is filed with the director by July 1, 2002.

Sec. 43. Section 8-1101, Reissue Revised Statutes of Nebraska, is amended to read:

8-1101. For purposes of the Securities Act of Nebraska, unless the context otherwise requires:

(1) Agent means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect sales of securities, but agent does not include an individual who represents (a) an issuer in (i) effecting a transaction in a security exempted by subdivision (6) or (7) of section 8-1110, (ii) effecting certain transactions

exempted by section 8-1111, (iii) effecting transactions in a federal covered security as described in section 18(b)(3) of the Securities Act of 1933, or (iv) effecting transactions with existing employees, limited liability company members, partners, or directors of the issuer or any of its subsidiaries if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state or (b) a broker-dealer in effecting transactions described in section 15(h)(2) of the Securities Exchange Act of 1934. A partner, limited liability company member, officer, or director of a broker-dealer is an agent only if he or she otherwise comes within this definition;

(2) Broker-dealer means any person engaged in the business of effecting transactions in securities for the account of others or for his or her own account. Broker-dealer does not include (a) an issuer-dealer, agent, bank, savings institution, or trust company, (b) an issuer effecting a transaction in its own security exempted by subdivision (5) of section 8-1110 or which qualifies as a federal covered security pursuant to section 18(b)(1) of the Securities Act of 1933, (c) a person who has no place of business in this state if he or she effects transactions in this state exclusively with or through the issuers of the securities involved in the transactions, other broker-dealers, or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (d) a person who has no place of business in this state if during any period of twelve consecutive months he or she does not direct more than five offers to sell or to buy into this state in any manner to persons other than those specified in subdivision (2)(c) of this section;

(3) Director means the Director of Banking and Finance of the State of Nebraska except as further provided in section 8-1120;

(4) Federal covered adviser means a person who is (a) registered under section 203 of the Investment Advisers Act of 1940 or (b) is excluded from the definition of investment adviser under section 202 of the Investment Advisers Act of 1940;

(5) Federal covered security means any security described as a covered security under section 18(b) of the Securities Act of 1933 or rules and regulations promulgated thereunder;

(6) Guaranteed means guaranteed as to payment of principal, interest, or dividends;

(7) Investment adviser means any person who for compensation engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities or who for compensation and as a part of a regular business issues or promulgates analyses or reports concerning securities. Investment adviser also includes financial planners and other persons who, as an integral component of other financially related services, provide the foregoing investment advisory services to others for compensation and as part of a business or who hold themselves out as providing the foregoing investment advisory services to others for compensation. Investment adviser does not include (a) an investment adviser representative, (b) a bank, savings institution, or trust company, (c) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of his or her profession, (d) a broker-dealer or its agent whose performance of these services is solely incidental to its business as a broker-dealer and who receives no special compensation for them, (e) an issuer-dealer, (f) a publisher of any bona fide newspaper, news column, news letter, news magazine, or business or financial publication or service, whether communicated in hard copy form, by electronic means, or otherwise which does not consist of the rendering of advice on the basis of the specific investment situation of each client, (g) a person who has no place of business in this state if (i) his or her only clients in this state are other investment advisers, federal covered advisers, broker-dealers, banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, or (ii) during the preceding twelve-month period, he or she has had five or fewer clients who are residents of this state other than those persons specified in subdivision (g)(i) of this subdivision, (h) any person that is a federal covered adviser, or (i) such other persons not within the intent of this subdivision as the director may by rule, regulation, or order designate;

(8) Investment adviser representative means any partner, limited liability company member, officer, or director or any person occupying a

similar status or performing similar functions of a partner, limited liability company member, officer, or director or other individual, except clerical or ministerial personnel, who is employed by or associated with an investment adviser that is registered or required to be registered under the Securities Act of Nebraska or who has a place of business located in this state and is employed by or associated with a federal covered adviser, and who (a) makes any recommendations or otherwise renders advice regarding securities, (b) manages accounts or portfolios of clients, (c) determines which recommendation or advice regarding securities should be given, (d) solicits, offers, or negotiates for the sale of or sells investment advisory services, or (e) supervises employees who perform any of the foregoing;

(9) Issuer means any person who issues or proposes to issue any security, except that (a) with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors, or persons performing similar functions, or of the fixed, restricted management, or unit type, the term issuer means the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued and (b) with respect to a fractional or pooled interest in a viatical settlement contract, issuer means the person who creates, for the purpose of sale, the fractional or pooled interest. In the case of a viatical settlement contract that is not fractionalized or pooled, issuer means the person effecting a transaction with a purchaser of such contract;

(10) Issuer-dealer means (a) any issuer located in the State of Nebraska or (b) any issuer which registered its securities by qualification who proposes to sell to the public of the State of Nebraska the securities that it issues without the benefit of another registered broker-dealer. Such securities shall have been approved for sale in the State of Nebraska pursuant to section 8-1104;

(11) Nonissuer means not directly or indirectly for the benefit of the issuer;

(12) Person means an individual, a corporation, a partnership, a limited liability company, an association, a joint-stock company, a trust in which the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, or a political subdivision of a government;

(13) Sale or sell includes every contract of sale of, contract to sell, or disposition of a security or interest in a security for value. Offer or offer to sell includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value. Any security given or delivered with or as a bonus on account of any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value. A purported gift of assessable stock shall be considered to involve an offer and sale. Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, shall be considered to include an offer of the other security;

(14) Securities Act of 1933, Securities Exchange Act of 1934, Public Utility Holding Company Act of 1935, Investment Advisers Act of 1940, Investment Company Act of 1940, and Commodity Exchange Act means the federal statutes of those names as amended on or before July 31, 1997;

(15) Security means any note, stock, treasury stock, bond, debenture, units of beneficial interest in a real estate trust, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, viatical settlement contract or any fractional or pooled interest in such contract, membership interest in any limited liability company organized under Nebraska law or any other jurisdiction unless otherwise excluded from this definition, voting-trust certificate, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, in general any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing. Security does not include any insurance or endowment policy or annuity contract issued by an insurance company. Security also does not include a membership interest in a limited liability company when all of the following

exist: (a) The member enters into a written commitment to be engaged actively and directly in the management of the limited liability company; and (b) all members of the limited liability company are actively engaged in the management of the limited liability company; ~~and~~

(16) State means any state, territory, or possession of the United States as well as the District of Columbia and Puerto Rico; ~~and~~

(17) Viatical settlement contract means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of all or any portion of the death benefit or ownership of a life insurance policy or contract for consideration which is less than the expected death benefit of the life insurance policy or contract. Viatical settlement contract does not include (a) the assignment, transfer, sale, devise, or bequest of a death benefit of a life insurance policy or contract made by the viator to an insurance company or to a viatical settlement provider or broker licensed pursuant to the Viatical Settlements Act, (b) the assignment of a life insurance policy or contract to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan, or (c) the exercise of accelerated benefits pursuant to the terms of a life insurance policy or contract and consistent with applicable law.

Sec. 44. Section 8-1111, Revised Statutes Supplement, 2000, is amended to read:

8-1111. Except as provided in this section, sections 8-1103 to 8-1109 shall not apply to any of the following transactions:

(1) Any isolated transaction, whether effected through a broker-dealer or not;

(2)(a) Any nonissuer transaction by a registered agent of a registered broker-dealer, and any resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days if, at the time of the transaction:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons;

(ii) The security is sold at a price reasonably related to the current market price of the security;

(iii) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security;

(iv) A nationally recognized securities manual designated by rule and regulation or order of the director or a document filed with the Securities and Exchange Commission which is publicly available through the Electronic Data Gathering and Retrieval System (EDGAR) contains:

(A) A description of the business and operations of the issuer;

(B) The names of the issuer's officers and the names of the issuer's directors, if any, or, in the case of a non-United-States issuer, the corporate equivalents of such persons in the issuer's country of domicile;

(C) An audited balance sheet of the issuer as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; and

(D) An audited income statement for each of the issuer's immediately preceding two fiscal years, or for the period of existence of the issuer if in existence for less than two years, or, in the case of a reorganization or merger when the parties to the reorganization or merger had such audited income statement, a pro forma income statement; and

(v) The issuer of the security has a class of equity securities listed on a national securities exchange registered under the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System (NASDAQ), unless:

(A) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(B) The issuer of the security has been engaged in continuous business, including predecessors, for at least three years; or

(C) The issuer of the security has total assets of at least two million dollars based on an audited balance sheet as of a date within eighteen months or, in the case of a reorganization or merger when parties to the reorganization or merger had such audited balance sheet, a pro forma balance sheet; or

(b) Any nonissuer transaction in a security by a registered agent of a registered broker-dealer if:

(i) The issuer of the security is actually engaged in business and not in the organization stage or in bankruptcy or receivership and is not a blank check, blind pool, or shell company whose primary plan of business is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person or persons; and

(ii) The security is senior in rank to the common stock of the issuer both as to payment of dividends or interest and upon dissolution or liquidation of the issuer and such security has been outstanding at least three years and the issuer or any predecessor has not defaulted within the current fiscal year or the three immediately preceding fiscal years in the payment of any dividend, interest, principal, or sinking fund installment on the security when due and payable;

(3) Any nonissuer transaction effected by or through a registered agent of a registered broker-dealer pursuant to an unsolicited order or offer to buy, but the director may by rule or regulation require that the customer acknowledge upon a specified form that the sale was unsolicited and that a signed copy of each such form be preserved by the broker-dealer for a specified period;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust or by an agreement for the sale of real estate or chattels if the entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of indebtedness secured thereby, are offered and sold as a unit. Such exemption shall not apply to any transaction in a bond or other evidence of indebtedness secured by a real estate mortgage or deed of trust or by an agreement for the sale of real estate if the real estate securing the evidences of indebtedness are parcels of real estate the sale of which requires the subdivision in which the parcels are located to be registered under the Interstate Land Sales Full Disclosure Act, 82 Stat. 590 et seq., 15 U.S.C. 1701 et seq., as the act existed on the operative date of this section;

(6) Any transaction by an executor, personal representative, administrator, sheriff, marshal, receiver, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading the Securities Act of Nebraska;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, to an individual accredited investor, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity. For purposes of this subdivision, the term "individual accredited investor" means (a) any director, executive officer, or general partner of the issuer of the securities being offered or sold, or any director, executive officer, or general partner of a general partner of that issuer, (b) any manager of a limited liability company that is the issuer of the securities being offered or sold, (c) any natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his or her purchase, exceeds one million dollars, or (d) any natural person who had an individual income in excess of two hundred thousand dollars in each of the two most recent years or joint income with that person's spouse in excess of three hundred thousand dollars in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(9) Any transaction pursuant to an offering in which sales are made to not more than fifteen persons, other than those designated in subdivisions (8), (11), and (17) of this section, in this state during any period of twelve consecutive months if (a) the seller reasonably believes that all the buyers are purchasing for investment, (b) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, and (d) no general or public advertisements or solicitations are made;

(10) Any offer or sale of a preorganization certificate or subscription if (a) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, (b) the number of subscribers does not exceed ten, and (c) no payment is made by any subscriber;

(11) Any transaction pursuant to an offer to existing security

holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than ninety days of their issuance, if (a) no commission or other remuneration, other than a standby commission, is paid or given directly or indirectly for soliciting any security holder in this state or (b) the issuer first files a notice specifying the terms of the offer and the director does not by order disallow the exemption within the next five full business days;

(12) Any offer, but not a sale, of a security for which registration statements have been filed under both the Securities Act of Nebraska and the Securities Act of 1933 if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either the Securities Act of Nebraska or the Securities Act of 1933;

(13) The issuance of any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not, if nothing of value is given by the stockholders for the distribution other than the surrender of a right to a cash dividend when the stockholder can elect to take a dividend in cash or stock;

(14) Any transaction incident to a right of conversion or a statutory or judicially approved reclassification, recapitalization, reorganization, quasi-reorganization, stock split, reverse stock split, merger, consolidation, or sale of assets;

(15) Any transaction involving the issuance for cash of any evidence of ownership interest or indebtedness by an agricultural cooperative formed as a corporation under section 21-1301 or 21-1401 if the issuer has first filed a notice of intention to issue with the director and the director has not by order, mailed to the issuer by certified or registered mail within ten business days after receipt thereof, disallowed the exemption;

(16) Any transaction in this state not involving a public offering when (a) there is no general or public advertising or solicitation, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director within thirty days after the first sale for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) any such transaction is effected in accordance with rules and regulations adopted and promulgated by the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors. For purposes of this subdivision, not involving a public offering means any offering in which the seller has reason to believe that the securities purchased are taken for investment and in which each offeree, by reason of his or her knowledge about the affairs of the issuer or otherwise, does not require the protections afforded by registration under sections 8-1104 to 8-1107 in order to make a reasonably informed judgment with respect to such investment;

(17) The issuance of any investment contract issued in connection with an employee's stock purchase, savings, pension, profit-sharing, or similar benefit plan if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer except to a registered agent of a registered broker-dealer and if the director is notified in writing within thirty days after the inception of the plan or, with respect to plans which were in effect prior to August 18, 1965, but closed on that date, within thirty days after they are reopened. Failure to provide such notice may be cured by an order issued by the director in his or her discretion;

(18) Any interest in a common trust fund or similar fund maintained by a bank or trust company organized and supervised under the laws of any state or a bank organized under the laws of the United States for the collective investment and reinvestment of funds contributed to such common trust fund or similar fund by the bank or trust company in its capacity as trustee, personal representative, administrator, or guardian and any interest in a collective investment fund or similar fund maintained by the bank or trust company for the collective investment of funds contributed to such collective investment fund or similar fund by the bank or trust company in its capacity as trustee or agent which interest is issued in connection with an employee's savings, pension, profit-sharing, or similar benefit plan or a self-employed person's retirement plan, if a notice generally describing the

terms of the collective investment fund or similar fund is filed by the bank or trust company with the director within thirty days after the establishment of the fund. Failure to give the notice may be cured by an order issued by the director in his or her discretion;

(19) Any transaction in which a United States Series EE Savings Bond is given or delivered with or as a bonus on account of any purchase of any item or thing; ~~or~~

(20) Any transaction in this state not involving a public offering by a Nebraska issuer selling solely to Nebraska residents, when (a) any such transaction is effected in accordance with rules and regulations adopted and promulgated by the director relating to this section when the director finds in adopting and promulgating such rules and regulations that the applicability of sections 8-1104 to 8-1107 is not necessary or appropriate in the public interest or for the protection of investors, (b) no commission or remuneration is paid directly or indirectly for soliciting any prospective buyer, except to a registered agent of a registered broker-dealer or registered issuer-dealer, (c) a notice generally describing the terms of the transaction and containing a representation that the conditions of this exemption are met is filed by the seller with the director no later than twenty days prior to any sales for which this exemption is claimed, except that failure to give such notice may be cured by an order issued by the director in his or her discretion, (d) a filing fee of two hundred dollars is paid at the time of filing the notice, and (e) there is no general or public advertising or solicitation; or

(21) Any offer or sale of any viatical settlement contract or any fractionalized or pooled interest therein in a transaction that meets all of the following criteria:

(a) Sales of such securities are made only to the following purchasers:

(i) A natural person who, either individually or jointly with the person's spouse, (A) has a minimum net worth of two hundred fifty thousand dollars and had taxable income in excess of one hundred twenty-five thousand dollars in each of the two most recent years and has a reasonable expectation of reaching the same income level in the current year or (B) has a minimum net worth of five hundred thousand dollars. Net worth shall be determined exclusive of home, home furnishings, and automobiles;

(ii) A corporation, partnership, or other organization specifically formed for the purpose of acquiring securities offered by the issuer in reliance upon this exemption if each equity owner of the corporation, partnership, or other organization is a person described in subdivision (21) of this section;

(iii) A pension or profit-sharing trust of the issuer, a self-employed individual retirement plan, or an individual retirement account, if the investment decisions made on behalf of the trust, plan, or account are made solely by persons described in subdivision (21) of this section; or

(iv) An organization described in section 501(c)(3) of the Internal Revenue Code as defined in section 49-801.01, or a corporation, Massachusetts or similar business trust, or partnership with total assets in excess of five million dollars according to its most recent audited financial statements;

(b) The amount of the investment of any purchaser, except a purchaser described in subdivision (a)(ii) of this subdivision, does not exceed five percent of the net worth, as determined by this subdivision, of that purchaser;

(c) Each purchaser represents that the purchaser is purchasing for the purchaser's own account or trust account, if the purchaser is a trustee, and not with a view to or for sale in connection with a distribution of the security;

(d)(i) Each purchaser receives, on or before the date the purchaser remits consideration pursuant to the purchase agreement, the following information in writing:

(A) The name, principal business and mailing addresses, and telephone number of the issuer;

(B) The suitability standards for prospective purchasers as set forth in subdivision (a) of this subdivision;

(C) A description of the issuer's type of business organization and the state in which the issuer is organized or incorporated;

(D) A brief description of the business of the issuer;

(E) If the issuer retains ownership or becomes the beneficiary of the insurance policy, an audit report from an independent certified public accountant together with a balance sheet and related statements of income, retained earnings, and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within fifteen months before the date of the initial issuance of

the securities described in this subdivision. The financial statements shall be prepared in conformity with generally accepted accounting principles. If the date of the audit report is more than one hundred twenty days before the date of the initial issuance of the securities described in this subdivision, the issuer shall provide unaudited interim financial statements;

(F) The names of all directors, officers, partners, members, or trustees of the issuer;

(G) A description of any order, judgment, or decree that is final as to the issuing entity of any state, federal, or foreign governmental agency or administrator, or of any state, federal, or foreign court of competent jurisdiction (I) revoking, suspending, denying, or censuring for cause any license, permit, or other authority of the issuer or of any director, officer, partner, member, trustee, or person owning or controlling, directly or indirectly, ten percent or more of the outstanding interest or equity securities of the issuer, to engage in the securities, commodities, franchise, insurance, real estate, or lending business or in the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (II) permanently restraining, enjoining, barring, suspending, or censuring any such person from engaging in or continuing any conduct, practice, or employment in connection with the offer or sale of securities, commodities, franchises, insurance, real estate, or loans, (III) convicting any such person of, or pleading nolo contendere by any such person to, any felony or misdemeanor involving a security, commodity, franchise, insurance, real estate, or loan, or any aspect of the securities, commodities, franchise, insurance, real estate, or lending business, or involving dishonesty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property, or (IV) holding any such person liable in a civil action involving breach of a fiduciary duty, fraud, deceit, embezzlement, fraudulent conversion, or misappropriation of property. This subdivision does not apply to any order, judgment, or decree that has been vacated or overturned or is more than ten years old;

(H) Notice of the purchaser's right to rescind or cancel the investment and receive a refund;

(I) A statement to the effect that any projected rate of return to the purchaser from the purchase of a viatical settlement contract or any fractionalized or pooled interest therein is based on an estimated life expectancy for the person insured under the life insurance policy; that the return on the purchase may vary substantially from the expected rate of return based upon the actual life expectancy of the insured that may be less than, may be equal to, or may greatly exceed the estimated life expectancy; and that the rate of return would be higher if the actual life expectancy were less than, and lower if the actual life expectancy were greater than, the estimated life expectancy of the insured at the time the viatical settlement contract was closed;

(J) A statement that the purchaser should consult with his or her tax advisor regarding the tax consequences of the purchase of the viatical settlement contract or any fractionalized or pooled interest therein; and

(K) Any other information as may be prescribed by rule of the director.

(ii) The purchaser receives in writing at least five business days prior to closing the transaction:

(A) The name, address, and telephone number of the issuing insurance company and the name, address, and telephone number of the state or foreign country regulator of the insurance company;

(B) The total face value of the insurance policy and the percentage of the insurance policy the purchaser will own;

(C) The insurance policy number, issue date, and type;

(D) If a group insurance policy, the name, address, and telephone number of the group and, if applicable, the material terms and conditions of converting the policy to an individual policy, including the amount of increased premiums;

(E) If a term insurance policy, the term and the name, address, and telephone number of the person who will be responsible for renewing the policy if necessary;

(F) That the insurance policy is beyond the state statute for contestability and the reason therefor;

(G) The insurance policy premiums and terms of premium payments;

(H) The amount of the purchaser's money that will be set aside to pay premiums;

(I) The name, address, and telephone number of the person who will be the insurance policyowner and the person who will be responsible for paying premiums;

(J) The date on which the purchaser will be required to pay premiums and the amount of the premium, if known; and

(K) Any other information as may be prescribed by rule of the director;

(e) The purchaser may rescind or cancel the purchase for any reason by giving written notice of rescission or cancellation to the issuer or the issuer's agent within (i) fifteen calendar days after the date the purchaser remits the required consideration or receives the disclosure required under subdivision (d)(i) of this subdivision and (ii) five business days after the date the purchaser receives the disclosure required by subdivision (d)(ii) of this subdivision. No specific form is required for the rescission or cancellation. The notice is effective when personally delivered, deposited in the United States mail, or deposited with a commercial courier or delivery service. The issuer shall refund all the purchaser's money within seven calendar days after receiving the notice of rescission or cancellation;

(f) A notice of the issuer's intent to sell securities pursuant to this subdivision, signed by a duly authorized officer of the issuer and notarized, together with a filing fee of two hundred dollars, is filed with the Department of Banking and Finance before any offers or sales of securities are made under this subdivision. Such notice shall include:

(i) The issuer's name, the issuer's type of organization, the state in which the issuer is organized, the date the issuer intends to begin selling securities within or from this state, and the issuer's principal business;

(ii) A consent to service of process; and

(iii) An audit report of an independent certified public accountant together with a balance sheet and related statements of income, retained earnings and cash flows that reflect the issuer's financial position, the results of the issuer's operations, and the issuer's cash flows as of a date within fifteen months before the date of the notice prescribed in this subdivision. The financial statements shall be prepared in conformity with generally accepted accounting principles and shall be examined according to generally accepted auditing standards. If the date of the audit report is more than one hundred twenty days before the date of the notice prescribed in this subdivision, the issuer shall provide unaudited interim financial statements;

(g) No commission or remuneration is paid directly or indirectly for soliciting any prospective purchaser, except to a registered agent of a registered broker-dealer or registered issuer-dealer; and

(h) At least ten days before use within this state, the issuer files with the department all advertising and sales materials that will be published, exhibited, broadcast, or otherwise used, directly or indirectly, in the offer or sale of a viatical settlement contract in this state.

The director may by order deny or revoke the exemption specified in subdivision (2) of this section with respect to a specific security. Upon the entry of such an order, the director shall promptly notify all registered broker-dealers that it has been entered and of the reasons therefor and that within fifteen business days of the receipt of a written request the matter will be set down for hearing. If no hearing is requested within fifteen business days of the issuance of the order and none is ordered by the director, the order shall automatically become a final order and shall remain in effect until it is modified or vacated by the director. If a hearing is requested or ordered, the director, after notice of and opportunity for hearing to all interested persons, shall enter his or her written findings of fact and conclusions of law and may affirm, modify, or vacate the order. No such order may operate retroactively. No person may be considered to have violated the provisions of the Securities Act of Nebraska by reason of any offer or sale effected after the entry of any such order if he or she sustains the burden of proof that he or she did not know and in the exercise of reasonable care could not have known of the order. In any proceeding under the act, the burden of proving an exemption from a definition shall be upon the person claiming it.

Sec. 45. Section 44-425, Reissue Revised Statutes of Nebraska, is amended to read:

44-425. Every opinion required by section 44-421 shall be governed by the following provisions in addition to the provisions of section 44-424:

(1) A memorandum, in form and substance acceptable to the director, shall be prepared to support each actuarial opinion and made available to the director upon request;

(2) If the insurance company fails to provide a supporting memorandum at the request of the director within a period specified by rule or regulation or the director determines that the supporting memorandum provided by the insurance company fails to meet the standards prescribed or is

otherwise unacceptable to the director, the director may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the director; ~~and~~

(3) ~~Any~~ Except as provided in subdivisions (4) and (5) of this section, any memorandum in support of the opinion, and any other material provided by the company to the director in connection ~~therewith~~ with the opinion, shall be kept confidential by the director and shall not be made public and shall not be subject to subpoena, other than for the purpose of defending an action seeking damages from any person by reason of any action required by this section or by rules and regulations adopted and promulgated hereunder, except that the memorandum or other material may otherwise be released by the director (a) with the written consent of the company or (b) to the American Academy of Actuaries upon request stating that the memorandum or other material is required for the purpose of professional disciplinary proceedings and setting forth procedures satisfactory to the director for preserving the confidentiality of the memorandum or other material. Once any portion of the confidential memorandum is released by the company to the news media or other governmental agency other than a state insurance department or is cited by the company in its marketing, all portions of the memorandum become public information and are no longer confidential;

(4) The director may provide the memorandum in support of the opinion, and any other material provided by the company to the director in connection with the opinion, to other state, federal, foreign, and international regulatory and law enforcement agencies and the National Association of Insurance Commissioners and its affiliates and subsidiaries if the recipient agrees in writing to maintain the confidentiality of the information, documents, and copies; and

(5) The director may receive memorandums in support of an opinion, and any other material provided by the company to the director in connection with an opinion, from other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries. The director shall maintain information received pursuant to this subdivision as confidential or privileged if received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the director who has received information pursuant to this subdivision, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subdivision as a result of information sharing authorized by this section.

Sec. 46. Section 44-1525, Revised Statutes Supplement, 2000, is amended to read:

44-1525. Any of the following acts or practices, if committed in violation of section 44-1524, shall be unfair trade practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated any estimate, illustration, circular, statement, sales presentation, omission, or comparison which:

(a) Misrepresents the benefits, advantages, conditions, or terms of any policy;

(b) Misrepresents the dividends or share of the surplus to be received on any policy;

(c) Makes any false or misleading statements as to the dividends or share of surplus previously paid on any policy;

(d) Misleads as to or misrepresents the financial condition of any insurer or the legal reserve system upon which any life insurer operates;

(e) Uses any name or title of any policy or class of policies which misrepresents the true nature thereof;

(f) Misrepresents for the purpose of inducing or tending to induce the purchase, lapse, forfeiture, exchange, conversion, or surrender of any policy, including intentionally misquoting any premium rate;

(g) Misrepresents for the purpose of effecting a pledge or assignment of or effecting a loan against any policy; or

(h) Misrepresents any policy as being shares of stock;

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance or with respect to any insurer in the conduct of his or her insurance business which is untrue, deceptive, or misleading;

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false or maliciously critical of or derogatory to the financial condition of any insurer and which is calculated to injure such insurer;

(4) Entering into any agreement to commit or by any concerted action committing any act of boycott, coercion, or intimidation resulting in or tending to result in unreasonable restraint of or monopoly in the business of insurance;

(5)(a) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or knowingly causing, directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of an insurer; or

(b) Knowingly making any false entry of a material fact in any book, report, or statement of any insurer or knowingly omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer;

(6) Issuing or delivering or permitting agents, officers, or employees to issue or deliver agency company stock or other capital stock, or benefit certificates or shares in any common-law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance;

(7)(a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any life insurance policy or annuity or in the dividends or other benefits payable thereon or in any other of the terms and conditions of such policy or annuity;

(b) Making or permitting any unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, or rates charged for any sickness and accident insurance policy or in the benefits payable thereunder, in any of the terms or conditions of such policy, or in any other manner, except that this subdivision shall not limit the negotiation of preferred provider policies and contracts under sections 44-4101 to 44-4113;

(c) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a property or casualty risk because of the geographic location of the risk unless:

(i) The refusal, cancellation, or limitation is for a business purpose which is not a pretext for unfair discrimination; or

(ii) The refusal, cancellation, or limitation is required by law, rule, or regulation;

(d) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to issue, refusing to renew, canceling, or limiting the amount of insurance coverage on a residential property risk, or the personal property contained therein, because of the age of the residential property unless:

(i) The refusal, cancellation, or limitation is for a business purpose which is not a pretext for unfair discrimination; or

(ii) The refusal, cancellation, or limitation is required by law, rule, or regulation;

(e) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual solely because of the sex or marital status of the individual. This subdivision shall not prohibit an insurer from taking marital status into account for the purpose of defining individuals eligible for dependent benefits; or

(f) Terminating or modifying coverage or refusing to issue or refusing to renew any property or casualty insurance policy solely because the applicant or insured or any employee of the applicant or insured is mentally

or physically impaired unless:

(i) The termination, modification, or refusal is for a business purpose which is not a pretext for unfair discrimination; or

(ii) The termination, modification, or refusal is required by law, rule, or regulation.

This subdivision (f) shall not apply to any sickness and accident insurance policy sold by a casualty insurer and shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any policy;

(8)(a) Except as otherwise expressly provided by law:

(i) Knowingly permitting or offering to make or making any life insurance policy, annuity, or sickness and accident insurance policy, or agreement as to any such policy or annuity, other than as plainly expressed in the policy or annuity issued thereon, or paying, allowing, or giving, or offering to pay, allow, or give, directly or indirectly, as inducement to such policy or annuity, any rebate of premiums payable on the policy or annuity, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the policy or annuity; or

(ii) Giving, selling, purchasing, or offering to give, sell, or purchase as inducement to such policy or annuity or in connection therewith any stocks, bonds, or other securities of any insurer or other corporation, association, partnership, or limited liability company, or any dividends or profits accrued thereon, or anything of value not specified in the policy or annuity.

(b) Nothing in subdivision (7) or (8)(a) of this section shall be construed as including within the definition of discrimination or rebates any of the following acts or practices:

(i) In the case of any life insurance policy or annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance if such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the insurer and its policyholders;

(ii) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses; or

(iii) Readjustment of the rate of premium for a group insurance policy based on the loss or expense thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for such policy year;

(9) Failing of any insurer to maintain a complete record of all the complaints received since the date of its last examination conducted pursuant to the Insurers Examination Act. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. For purposes of this subdivision, complaint shall mean any written communication primarily expressing a grievance;

(10) Making false or fraudulent statements or representations on or relative to an application for a policy for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual person;

(11) Failing of any insurer, upon receipt of a written inquiry from the department, to respond to such inquiry or request additional reasonable time to respond within fifteen working days; and

(12) Violating any provision of section 44-320, 44-348, 44-360, 44-361, 44-369, 44-393, 44-515 to 44-518, 44-522, 44-523, 44-2132 to 44-2134, 44-3606, 44-4809, 44-4812, 44-4817, or 44-5266, the Privacy of Insurance Consumer Information Act, or the Unfair Discrimination Against Subjects of Abuse in Insurance Act.

Sec. 47. Section 44-2138, Reissue Revised Statutes of Nebraska, is amended to read:

44-2138. (1) All information, documents, and copies thereof obtained by or disclosed to the director or any other person in the course of an examination or investigation made pursuant to section 44-2137 and all information reported pursuant to sections 44-2132 to 44-2136 shall be given confidential treatment, shall not be subject to subpoena, and shall not be made public by the director, the National Association of Insurance Commissioners and its affiliates and subsidiaries, or any other person, except to insurance departments of other states other state, federal, foreign, and international regulatory and law enforcement agencies if the recipient agrees in writing to maintain the confidentiality of the information, without the

prior written consent of the insurer to which it pertains unless the director, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in such manner as he or she may deem appropriate.

(2) The director may receive information, documents, and copies of information and documents disclosed to other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries pursuant to an examination of an insurance holding company system. The director shall maintain information, documents, and copies of information and documents received pursuant to this subsection as confidential or privileged if received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the director who has received information pursuant to this subsection, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subsection as a result of information sharing authorized by this section.

Sec. 48. Section 44-4405, Reissue Revised Statutes of Nebraska, is amended to read:

44-4405. Risk retention groups chartered and licensed in states other than this state and seeking to do business as a risk retention group in this state shall observe and abide by the laws of this state as follows:

(1) Before offering insurance in this state, a risk retention group shall submit to the director:

(a) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, the date of chartering and licensing, its principal place of business, and such other information, including information on its membership, as the director may require to verify that the risk retention group is qualified under subdivision (13) of section 44-4403. The identity and location of specific group members shall not be considered public record, except that such information may be provided to other state, federal, foreign, and international regulatory and law enforcement agencies and the National Association of Insurance Commissioners and its affiliates and subsidiaries if the recipient agrees in writing to maintain the confidentiality of the documents, material, or other information. The director may receive such information regarding the identity and location of specific group members from other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries. The director shall maintain as confidential or privileged information received pursuant to this subdivision with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the director who has received information pursuant to this subdivision, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subdivision as a result of information sharing authorized by this section; but may be disclosed to other insurance departments and the National Association of Insurance Commissioners;

(b) A copy of its plan of operation or a feasibility study and revisions of such plan or study submitted to the state in which the risk retention group is chartered and licensed, except that the provision relating to the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance which (i) was defined in the federal Product Liability Risk Retention Act of 1981

before October 27, 1986, and (ii) was offered before such date by any risk retention group which had been chartered and licensed and operating for not less than three years before such date. The risk retention group shall submit a copy of any revision to its plan of operation or feasibility study required by subsection (2) of section 44-4404 at the same time that such revision is submitted to the state in which the risk retention group is chartered and licensed; and

(c) A statement of registration which designates the director as its agent for the purpose of receiving service of legal documents or process; and

(2) Any risk retention group doing business in this state shall submit to the director:

(a) A copy of the group's financial statement submitted to the state in which the risk retention group is chartered and licensed which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist under criteria established by the National Association of Insurance Commissioners;

(b) A copy of each examination of the risk retention group as certified by the commissioner or public official conducting the examination;

(c) Upon request by the director, a copy of any audit performed with respect to the risk retention group; and

(d) Such information as may be required to verify its continuing qualification as a risk retention group under subdivision (13) of section 44-4403.

Sec. 49. Section 44-4811, Reissue Revised Statutes of Nebraska, is amended to read:

44-4811. (1) In all proceedings and judicial review thereof under section 44-4810, all records of the insurer, other documents, all department files, and court records and papers, so far as they pertain to or are a part of the record of the proceedings, shall be and remain confidential except as is necessary to obtain compliance therewith unless and until the court, after hearing arguments from the parties in chambers, orders otherwise or unless the insurer requests that the matter be made public. Until such court order, all papers filed with the clerk of the district court shall be held by him or her in a confidential file.

(2)(a) The records described in subsection (1) of this section may be provided to other state, federal, foreign, and international regulatory and law enforcement agencies and the National Association of Insurance Commissioners and its affiliates and subsidiaries if the recipient agrees in writing to maintain the confidentiality of the records.

(b) The director may receive supervision, rehabilitation, and liquidation records from other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries. The director shall maintain as confidential or privileged records received pursuant to this subdivision with notice or the understanding that they are confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the director who has received information pursuant to this subdivision, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subdivision as a result of information sharing authorized by this section.

Sec. 50. Section 44-5805, Reissue Revised Statutes of Nebraska, is amended to read:

44-5805. (1) Every third-party administrator shall maintain and make available to the insurer complete records of all transactions performed on behalf of the insurer. The records shall be maintained in accordance with prudent standards of insurance record keeping and shall be maintained for a period of not less than five years from the date of their creation. In the event the insurer and the third-party administrator cancel their written agreement, the third-party administrator may, by written agreement with the insurer, transfer all records to a new third-party administrator rather than retain them for five years. In such cases, the new third-party administrator shall acknowledge, in writing, that it is responsible for retaining the records of the prior third-party administrator as required in this subsection.

(2)(a) The director shall have access to records maintained by a third-party administrator for the purposes of examination, audit, and inspection. Any trade secrets contained in such records, including the identity and addresses of policyholders, contract holders, certificate holders, and subscribers, shall be kept confidential, except that the director may use such information in any proceeding instituted against the third-party administrator and as set forth in subdivisions (2)(b) and (c) of this section.

(b) Records relating to a third-party administrator maintained by the director may be provided to other state, federal, foreign, and international regulatory and law enforcement agencies and the National Association of Insurance Commissioners and its affiliates and subsidiaries if the recipient agrees in writing to maintain the confidentiality of the records.

(c) The director may receive records maintained by a third-party administrator from other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries. The director shall maintain as confidential or privileged records received pursuant to this subdivision with notice or the understanding that they are confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the director who has received information pursuant to this subdivision, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subdivision as a result of information sharing authorized by this section.

(3) The insurer shall own the records generated by the third-party administrator pertaining to the insurer; however, the third-party administrator shall retain the right to continuing access to records to permit the third-party administrator to fulfill all of its contractual obligations to policyholders, contract holders, certificate holders, subscribers, claimants, and the insurer.

Sec. 51. Section 44-5906, Reissue Revised Statutes of Nebraska, is amended to read:

44-5906. (1) All examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the company and its agents or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

(2) No later than forty-five days following completion of the examination, the examiner in charge shall submit to the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice which shall afford the company examined a reasonable opportunity of not more than thirty days to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) Within thirty days of the end of the period allowed for the receipt of written submissions or rebuttals, the director shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner's workpapers, and shall:

(a) Adopt the examination report as submitted or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, rule, regulation, or prior order of the director, the director may order the company to take any action the director considers necessary and appropriate to cure such violation; or

(b) Reject the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation, or information and to resubmit a report pursuant to subsection (2) of this section.

(4) Any company aggrieved by any action of the director pursuant to subsection (3) of this section may, within ten days of such action, make written request to the director for a hearing. Upon receipt of the company's request for a hearing, the director shall provide notice of the hearing no less than ten nor more than thirty days after the date of the company's request. The notice shall identify the subject of the hearing and the

specific issues.

(5) Any hearing on an examination report shall be held at such time and place as designated in the notice. A hearing may be adjourned from time to time without other or further notice than the announcement thereof at such hearing. The director shall not appoint an examiner to conduct the hearing. The hearing officer shall have power to administer oaths, examine and cross-examine witnesses, and receive documentary evidence. A full stenographic record may be made at the hearing of all testimony of witnesses and rulings by the hearing officer. Upon written request, a copy of the transcript of such record, if any, shall be furnished to the company at its expense. Any witness or party affected by the hearing shall be permitted to review a transcript of the record at the office of the department. Every person affected shall be allowed to be present and represented by counsel during the giving of all the testimony and shall be allowed a reasonable opportunity to inspect all adverse documentary proof, to examine and cross-examine witnesses, and to present proof in support of his or her interest. Nothing contained in this section shall require the observance at any such hearing of formal rules of pleading or evidence. Within twenty days of the conclusion of the hearing, the director shall enter an order, which may be appealed. The appeal shall be in accordance with the Administrative Procedure Act.

(6) The examination report, with any modifications and corrections thereof, shall be accepted by the director and filed for public inspection immediately after the expiration of the times specified in subsection (4) of this section in the event that the company has not requested a hearing. Within thirty days of the filing of such report for public inspection, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the report and related orders.

(7) Nothing in the Insurers Examination Act shall prevent or be construed as prohibiting the director from disclosing the contents of an examination report, a preliminary examination report, or any results, or any matter relating thereto, to the National Association of Insurance Commissioners, to the insurance department of any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time as long as the recipient of the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with the act.

(8) All workpapers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the director or any other person in the course of an examination conducted under the act shall be given confidential treatment and shall not be subject to subpoena and may not be made public by the director or any other person, except to the extent provided in subsection (7) of this section, and shall not be public records subject to disclosure pursuant to sections 84-712 to 84-712.09. Access may also be granted to the National Association of Insurance Commissioners. Such parties shall agree in writing prior to receiving the information to accord it the same confidential treatment as required by this section unless the prior written consent of the company to which it pertains has been obtained and its affiliates and subsidiaries and to state, federal, foreign, and international regulatory and law enforcement agencies if the recipient agrees in writing to maintain the confidentiality of the information.

(8)(a) Except as set forth in subsection (7) of this section and in this subsection, workpapers, recorded information, documents, and copies of workpapers, recorded information, and documents produced by, obtained by, or disclosed to the director or any other person, including the National Association of Insurance Commissioners and its affiliates and subsidiaries, in the course of an examination conducted under the act shall be given confidential treatment and shall not be subject to subpoena and may not be made public by the director or any other person, except to the extent provided in subsection (7) of this section, and shall not be public records subject to disclosure pursuant to sections 84-712 to 84-712.09. Such workpapers, recorded information, documents, and copies may be provided to other state, federal, foreign, and international regulatory and law enforcement agencies, and the National Association of Insurance Commissioners and its affiliates and subsidiaries if the recipient agrees in writing to maintain the confidentiality of the workpapers, recorded information, documents, and copies.

(b) The director may receive such workpapers, recorded information, documents, and copies from other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries. The director shall maintain as confidential or privileged information received pursuant to

this subdivision if received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the director who has received information pursuant to this subdivision, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subdivision as a result of information sharing authorized by this section.

Sec. 52. Section 44-6021, Revised Statutes Supplement, 2000, is amended to read:

44-6021. (1)(a) All risk-based capital reports, to the extent the information in the reports is not required to be set forth in a publicly available annual statement schedule and risk-based capital plans, including the results or reports of any examination or analysis of an insurer or a health organization performed pursuant to the Insurers and Health Organizations Risk-Based Capital Act and any corrective order issued by the director pursuant to examination or analysis, with respect to any domestic insurer or domestic health organization or foreign insurer or foreign health organization which are filed with the director shall constitute information that might be damaging to the insurer or health organization if made available to its competitors and therefor shall be kept confidential by the director and shall not be public records subject to disclosure pursuant to sections 84-712 to 84-712.09. This information shall not be made public or be subject to subpoena other than by the director and then only for the purpose of enforcement actions taken by the director pursuant to the act or any other provision of the insurance laws of this state. ~~Nothing in the act shall prevent or be construed to prohibit the director from disclosing risk-based capital reports and risk-based capital plans to the National Association of Insurance Commissioners and to the insurance department of any other state or country if the association or department agrees in writing to keep them confidential.~~

(b) Such risk-based capital reports, risk-based capital plans, and corrective orders may be provided to other state, federal, foreign, and international regulatory and law enforcement agencies and the National Association of Insurance Commissioners and its affiliates and subsidiaries if the recipient agrees in writing to maintain the confidentiality of the information.

(c) The director may receive such risk-based capital reports, risk-based capital plans, and corrective orders from other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries. The director shall maintain as confidential or privileged information received pursuant to this subdivision if received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the director who has received information pursuant to this subdivision, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subdivision as a result of information sharing authorized by this section.

(2) It is the judgment of the Legislature that the comparison of an insurer's or a health organization's total adjusted capital to any of its risk-based capital levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer or health organization and is not intended as a means to rank insurers or health organizations generally. Therefor, except as otherwise required under the ~~act~~ Insurers and Health Organizations Risk-Based Capital Act, the making, publishing, disseminating, circulating, or placing before the public or the causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or

in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of any insurer or health organization or of any component derived in the calculation, by any insurer or health organization, agent, broker, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited. If any materially false statement with respect to the comparison regarding an insurer's or a health organization's total adjusted capital to any of its risk-based capital levels, or any of them, or an inappropriate comparison of any other amount to the insurers' or health organizations' risk-based capital levels is published in any written publication and the insurer or health organization is able to demonstrate to the director with substantial proof the falsity of such statement or the inappropriateness, as the case may be, the insurer or health organization may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.

(3) It is the further judgment of the Legislature that the risk-based capital instructions, risk-based capital reports, adjusted risk-based capital reports, risk-based capital plans, and revised risk-based capital plans are intended solely for use by the director in monitoring the solvency of insurers and health organizations and the need for possible corrective action with respect to insurers and health organizations and shall not be used by the director for ratemaking nor considered or introduced as evidence in any rate proceeding nor used by the director to calculate or derive any elements of an appropriate premium level or rate of return for any line of insurance which an insurer or a health organization or any affiliate is authorized to write.

Sec. 53. Section 44-6119.01, Reissue Revised Statutes of Nebraska, is amended to read:

44-6119.01. (1) All information, documents, and copies thereof of such information and documents obtained by or disclosed to the director or any other person in the course of preparing, filing, and processing an application to convert to a stock insurer pursuant to section 44-6105, other than information or documents distributed to policyholders in connection with the meeting of policyholders under section 44-6109 or filed or submitted as evidence in connection with the public hearing under section 44-6107, shall be given confidential treatment.

(2) The information, documents, and copies described in subsection (1) of this section shall not be subject to subpoena.

(3) The information, documents, and copies described in subsection (1) of this section shall not be made public by the director, the National Association of Insurance Commissioners or its subsidiaries or affiliates, or any other person without the prior written consent of the insurer to which it pertains except that:

(a) If the director, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication of such information, documents, and copies, the director may publish all or any part of such information, documents, and copies; and

(b) The director may provide the information, documents, and copies described in subsection (1) of this section to state, federal, foreign, and international regulatory and law enforcement agencies, and the National Association of Insurance Commissioners and its affiliates and subsidiaries if the recipient agrees in writing to maintain the confidentiality of the information, documents, and copies.

(4) The director may receive information, documents, and copies described in subsection (1) of this section from other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries. The director shall maintain as confidential or privileged information received pursuant to this subsection if received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the director who has received information pursuant to this subsection, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section

shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subsection as a result of information sharing authorized by this section. 7 shall not be subject to subpoena, and shall not be made public by the director, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the director, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in such manner as he or she may deem appropriate.

Sec. 54. Section 44-6140, Reissue Revised Statutes of Nebraska, is amended to read:

44-6140. (1) All information, documents, and copies thereof of such information and documents obtained by or disclosed to the director or any other person in the course of preparing, filing, and processing an application to reorganize pursuant to section 44-6126, other than information or documents distributed to policyholders in connection with the meeting of policyholders under section 44-6129 or filed or submitted as evidence in connection with the public hearing under section 44-6127, shall be given confidential treatment.

(2) The information, documents, and copies described in subsection (1) of this section shall not be subject to subpoena.

(3) The information, documents, and copies described in subsection (1) of this section shall not be made public by the director, the National Association of Insurance Commissioners or its subsidiaries or affiliates, or any other person without the prior written consent of the insurer to which it pertains, except that:

(a) If the director, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication of such information, documents, and copies, the director may publish all or any part of such information, documents, and copies; and

(b) The director may provide the information, documents, and copies described in subsection (1) of this section to other state, federal, foreign, and international regulatory and law enforcement agencies and the National Association of Insurance Commissioners and its affiliates and subsidiaries if the recipient agrees in writing to maintain the confidentiality of the information, documents, and copies.

(4) The director may receive information, documents, and copies described in subsection (1) of this section from other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries. The director shall maintain as confidential or privileged information received pursuant to this subsection if received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the director who has received information pursuant to this subsection, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subsection as a result of information sharing authorized by this section. 7 shall not be subject to subpoena, and shall not be made public by the director, the National Association of Insurance Commissioners, or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains unless the director, after giving the insurer and its affiliates who would be affected thereby notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication thereof, in which event he or she may publish all or any part thereof in such manner as he or she may deem appropriate.

Sec. 55. Section 44-6303, Reissue Revised Statutes of Nebraska, is amended to read:

44-6303. (1) Every insurer domiciled in this state shall file a report with the director disclosing any of the following transactions: Material acquisitions and dispositions of assets or material nonrenewals,

cancellations, or revisions of ceded reinsurance agreements, unless such acquisitions and dispositions of assets or material nonrenewals, cancellations, or revisions of ceded reinsurance agreements have been submitted to the director for review, approval, or information purposes pursuant to other provisions of the insurance laws of this state, rules and regulations adopted and promulgated thereunder, or other requirements.

(2) The report shall be filed within fifteen days after the end of the calendar month in which any of the transactions occur.

(3) One complete copy of the report, including any exhibits or other attachments filed as part thereof, shall also be filed with the National Association of Insurance Commissioners.

(4) All reports obtained by or disclosed to the director pursuant to the Disclosure of Material Insurance Transactions Act shall be given confidential treatment and shall not be subject to subpoena and shall not be made public by the director, the National Association of Insurance Commissioners, ~~or any other person, except to insurance departments of other states or its affiliates and subsidiaries, or any other person, except to other state, federal, foreign, and international regulatory and law enforcement agencies if the recipient agrees in writing to maintain the confidentiality of the information,~~ without the prior written consent of the insurer to which it pertains unless the director, after giving the insurer who would be affected thereby, notice and an opportunity to be heard, determines that the interest of policyholders, shareholders, or the public will be served by the publication thereof, in which event the director may publish all or any part thereof in such manner as he or she deems appropriate.

(5) The director may receive reports described in subsection (1) of this section for foreign or alien insurers from other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries. The director shall maintain as confidential or privileged information received pursuant to this subsection if received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the director who has received information pursuant to this subsection, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subsection as a result of information sharing authorized by this section.

Sec. 56. Section 44-6606, Reissue Revised Statutes of Nebraska, is amended to read:

44-6606. (1) In order to investigate activities involving insurance fraud, the director shall appoint a sufficient staff to be known as the Insurance Fraud Prevention Division.

(2)(a) As specified by the director, division investigators who are certified law enforcement officers of the State of Nebraska shall be vested with the authority and power of a peace officer to carry out the laws of this state administered by the director. The general laws of this state applicable to peace officers shall be applicable to such investigators. Such investigators shall be empowered, among other powers, to search and arrest with or without a warrant, file and serve any lien, seize property, serve and return a summons, warrant, or subpoena issued by a court of law or the director, and bring an offender before any court with jurisdiction in this state, except that such investigators shall not be authorized to enforce any laws other than laws administered by the director.

(b) Subdivision (a) of this subsection shall not be construed to restrict any other law enforcement officer of this state from enforcing any state law, insurance or otherwise.

(3) The division shall:

(a) Initiate independent inquiries and conduct independent investigations when the division has cause to believe that an act of insurance fraud has been or is currently being committed;

(b) Review reports or complaints of alleged insurance fraud to determine whether such reports require further investigation and to conduct such investigation;

(c) Conduct independent examinations of alleged fraudulent insurance acts and undertake independent studies to determine the extent of fraudulent

insurance acts; and

(d) Cooperate with federal, state, and local law enforcement, prosecuting attorneys, and the Attorney General in the investigation and prosecution of insurance fraud violations. At the request of the division, through the director, the Attorney General shall prosecute fraudulent insurance acts through criminal or civil proceedings as authorized by the Insurance Fraud Act if, after investigation, the Attorney General is convinced that there is sufficient legal merit to justify the proceeding. The Attorney General, after consultation with the director, may refer cases of fraudulent insurance acts to a special assistant attorney general or county attorney for prosecution. Any costs directly associated with the prosecution and attorney's fees for any special assistant attorney general shall be paid by the division.

(4)(a) The director or his or her designee may: Administer oaths and affirmations; subpoena witnesses; compel attendance of witnesses; take evidence; and require the production of any books, papers, correspondence, memoranda, agreements, documents, records, and other tangible things which constitute or contain evidence that is deemed relevant or material to an investigation or enforcement of the Insurance Fraud Act, when it shall appear that such action is necessary and proper. The attendance of witnesses and the production of records shall be required from any place within the State of Nebraska. Witnesses summoned by the director or by his or her designee shall be paid the same fees that are paid witnesses in the courts of the State of Nebraska and mileage at the rate provided in section 81-1176.

(b) A subpoena of the director or of his or her designee may be served by any person designated in the subpoena to serve it. Service upon a natural person may be made by certified mail or personal delivery of the subpoena to him or her. Service may be made upon a domestic or foreign insurer, corporation, or partnership, upon a domestic or foreign limited liability company, or upon any other unincorporated association which is subject to suit under a common name, or any other entity by delivering the subpoena to an officer, a managing or general agent, a member, or any other agent authorized by appointment or by law to receive service of process. The affidavit of the person serving the subpoena entered on a true copy thereof by the person serving it shall be proof of service.

(c) If any person refuses to obey a subpoena issued by the director or by his or her designee, the director or his or her designee may invoke the aid of any court of the State of Nebraska within the jurisdiction of which the investigation is carried on or of which the subpoenaed person is an inhabitant, carries on business, or may otherwise be found, to compel compliance with such subpoena.

(d) The court may issue an order requiring the subpoenaed person to appear before the director or his or her designee to produce records, if so ordered, or to give testimony concerning the matter under investigation. Nothing in this section shall be construed to suspend or otherwise interfere with the operation of the Free Flow of Information Act.

(e) Any failure to obey the order of the court may be punished by the court as contempt. All process in any such case may be served in the judicial district in which the subpoenaed person is an inhabitant, carries on business, or may otherwise be found.

(5) If the division seeks evidence, documentation, or related materials located outside this state pertinent to an investigation or examination, it may designate representatives or deputies, including officials of the state where the matter is located, to secure and inspect the evidence, documentation, or materials on its behalf.

(6) The papers, documents, reports, and evidence of the department regarding the subject of an investigation of insurance fraud shall not be subject to public inspection for so long as the director deems reasonably necessary to complete the investigation or to protect the person investigated from unwarranted injury or so long as the director deems it to be in the public interest. Such papers, documents, reports, and evidence regarding the subject of an investigation of insurance fraud shall not be subject to subpoena until they are opened for public inspection by the department, unless the director consents, or until after notice to the department and a hearing, the court determines the department would not be unnecessarily hindered by such subpoena. Department investigators shall not be subject to subpoena in civil actions by any court of this state to testify concerning any matter of which they have knowledge regarding a pending insurance fraud investigation by the department.

(7)(a) The director may provide the papers, documents, reports, and evidence described in subsection (6) of this section to other state, federal, foreign, and international regulatory and law enforcement agencies and the

National Association of Insurance Commissioners and its affiliates and subsidiaries if the recipient agrees in writing to maintain the confidentiality of the information.

(b) The director may receive papers, documents, reports, and evidence described in subsection (6) of this section from other state, federal, foreign, or international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and its affiliates and subsidiaries. The director shall maintain as confidential or privileged information received pursuant to this subdivision if received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the information. Such information shall not be a public record subject to disclosure by the director pursuant to sections 84-712 to 84-712.09, subject to subpoena, subject to discovery, or admissible in evidence in any private civil action, except that the director may use such information in any regulatory or legal action brought by the director. The director, and any other person while acting under the authority of the director who has received information pursuant to this subdivision, may not, and shall not be required to, testify in any private civil action concerning any information subject to this section. Nothing in this section shall constitute a waiver of any applicable privilege or claim of confidentiality in the information received pursuant to this subdivision as a result of information sharing authorized by this section.

(8) On or before March 1 each year, each insurer as defined in section 44-103 holding a certificate of authority to transact the business of insurance in this state shall pay a fee as established by the director not to exceed two hundred dollars to the director to be remitted to the State Treasurer for credit to the Department of Insurance Cash Fund, which fees may be appropriated only to carry out the purposes of the Insurance Fraud Act. Assessment associations and unincorporated mutual associations shall not be subject to this subsection.

Sec. 57. Section 59-1803, Reissue Revised Statutes of Nebraska, is amended to read:

59-1803. Issuance of a charitable gift annuity does not constitute:

- (1) Engaging in business as a trust company subject to the Nebraska Trust Company Act;
- (2) Engaging in the business of insurance subject to Chapter 44;
- (3) Engaging in an act in violation of sections 59-801 to 59-831;
- (4) Engaging in an act in violation of the Viatical Settlements Act;

or

~~(4)~~ (5) Engaging in an act in violation of the Uniform Deceptive Trade Practices Act. Conduct other than issuance of a charitable gift annuity, including the marketing of a charitable gift annuity, is not exempt from application of the Uniform Deceptive Trade Practices Act pursuant to this subdivision.

Sec. 58. The Revisor of Statutes shall assign section 26 of this act to Chapter 44, article 1.

Sec. 59. Sections 26 to 42, 45, 47 to 57, and 61 of this act become operative three calendar months after adjournment of this legislative session. Sections 16 to 20 of this act become operative on January 1, 2003. The other sections of this act become operative on their effective date.

Sec. 60. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 61. Original sections 44-425, 44-2138, 44-4405, 44-4811, 44-5805, 44-5906, 44-6119.01, 44-6140, 44-6303, 44-6606, and 59-1803, Reissue Revised Statutes of Nebraska, and section 44-6021, Revised Statutes Supplement, 2000, are repealed.

Sec. 62. Original section 8-1101, Reissue Revised Statutes of Nebraska, and sections 8-1111 and 44-1525, Revised Statutes Supplement, 2000, are repealed.

Sec. 63. Since an emergency exists, this act takes effect when passed and approved according to law.