

PERSPECTIVES ON INSURABLE INTEREST

**ASSOCIATION OF LIFE INSURANCE COUNSEL
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The Insurable Interest Rule

- A. General common law statement of the insurable interest rule
[T]here must be a reasonable ground, founded upon the relations of the parties to each other, either pecuniary or of blood or affinity, to expect some benefit or advantage from the continuance of the life of the assured. Otherwise the contract is a mere wager, by which the party taking the policy is directly interested in the early death of the assured. Such policies have a tendency to create a desire for the event. They are, therefore, independently of any statute on the subject, condemned, as being against public policy. Warnock v. Davis, 104 U.S. 775, 779 (1882)
- B. Wagering in human life is the underlying public policy.
1. Wagering on human life is not new. As far back as the 1400's there are reported instances of wagering through insurance on the lives of nobility and Roman Catholic Popes.
 2. England passed the Gambling Act of 1774, which prohibited issuance of life insurance to a person who had no interest in the insured, thereby precluding issuance of insurance for gaming purposes.
- C. Statutory
1. All states have a statute addressing or defining insurable interest for life insurance.
 2. Some statutes are very comprehensive; define insurable interest in the context of a contract on one's own life and in the context of specifying what relationship (e.g., familial, lawful and substantial economic interest in continued life, employer, employer trust and charitable nonprofit organization) constitutes insurable interest when a person procures a policy on the life of another. e.g., Cal. Ins. Code §10110, 10110.1, 10110.4; Ga. Code Ann. §33-24-3; N.Y. Ins. Law §3205.
 3. Some statutes define limited relationships, thereby leaving the rest to common law, e.g., Mass Gen. Laws Ann., ch. 175, §123A (corporations and charitable organizations).
- D. Good general references on insurable interest: 3 Couch on Insurance 3d §41.1-41.26; Gorski, Insurable Interest, Am. Council Life Ins. Legal Sec. Proc. (1988); Gillon, Tort Liability of Life Insurers Resulting from Violation of the Insurable Interest Rule, Proc. Legal Sec. Am. Life Conv. 25-60 (1958); Salzman, Insurable Interest in Life Insurance, Ins. Law JI. 517 (September, 1965)

NAIC History - Viatical Settlement

In the late 1980's AIDs began to manifest itself and with it came a business called living benefits (or viatical settlements). In 1992, the NAIC began work on a model law regulating "living benefit" companies.

A Model regulating this business was controversial with a substantial number of regulators opposed.

In 1993 the Viatical Settlement Model Act was adopted and applied to sales of policies by those terminally ill with life expectancies of 24 months or less. A Model Regulation followed in 1994.

The Model included licensing and disclosure requirements and percentage floors on settlements.

In the years that followed drug therapies evolved resulting in a much larger lead-time from infection with HIV to the onset of AIDs.

The viatical settlement business and especially its investors were adversely affected by longer than expected lifetimes of viators.

The business changed from viatical to life settlement, with clients typically seniors with chronic conditions and seven to ten years life expectancies.

The Model Act was changed in 1998 and again in 2000. The Model Regulation was last changed in 2004.

Key features of the Models as amended pertinent to this discussion are:

1. The definition of viatical settlement contracts and its exceptions.
2. The definition of viatical settlement providers
3. The prohibition on settlements within two years of policy issuance.

The settlement industry began a campaign to adopt the new models shortly after NAIC approval of the model regulation in June 2004 with added elements opposed by the life insurance industry.

Over the course of 2005, the life industry engaged the settlement industry over areas of disagreement. Some bills passed after compromises were reached but further compromises fell apart over STOLI.

Stranger Owned Life Insurance

During 2005, the life insurance industry became increasingly aware of large face amount premium financed sales insuring the life of wealthy seniors.

The typical transaction involves an individual, age 70 or older who is encouraged to purchase millions of dollars of coverage on his or her life with a non-recourse premium loan and no or minimal amount of pocket expense.

Unlike traditional premium financing, the sole security for the loan is the policy's value on the secondary market, as determined by a viatical settlement company.

Typically the loan term is two or three years after which the loan plus interest comes due.

The policies are being financed with the expectation that they will be sold as the secondary market when they mature. See advertisement -- Appendix A

At the end of the two or three-year loan term, the loan comes due and the insured is either legally or economically compelled to settle the policy to pay off the loan.

The settlement and premium finance industries' public stance is that these transactions give the insured options and leverage the intrinsic value of his contract.

The insurance industry views them quite differently, as a clear evasion of the spirit if not the letter of the insurable interest laws and the prohibition on viatical settlements within two years of policy issuance.

IOLI and STOLI have the same objectives.

Who wins and who loses.

Insurance consumers and the insurance industry have much to lose if STOLI transactions continue unchecked.

Legislative and Regulatory responses.

Stranger-Owned Life Insurance Transactions effectively allow third-party investors to own and profit from life insurance taken out by individuals for the purpose of selling it to those investors. These transactions are designed to thwart the purposes of existing state insurable interest laws and are contrary to established public policy. ACLI amendments to the viatical settlement model act are aimed at stopping these transactions when they are arranged even though the actual policy ownership change to the investor may not happen until later. The ACLI amendments do not prevent life settlements arranged after two years from policy issuance or at any time by persons who are terminally or chronically ill.

1. What is a Stranger-Owned Life Insurance transaction?

A stranger-owned life insurance transaction is one in which an individual, typically age 70 or older, is assisted in obtaining life insurance on his or her own life for purposes of a later viatical settlement through a non-recourse premium loan from a bank or other premium financing company for the express purpose of creating an opportunity for a sale of that policy on the secondary market (a viatical settlement.) In making the non-recourse policy loan that is typically used in these transactions, the bank and the insured rely for collateral on a guaranty of the policy's secondary market (viatical settlement) "value" as prepared by a viatical settlement company or other protection provided the bank against loss. Contrary to the way traditional insurance premium financing is arranged, the policyholder is not held personally liable to pay off the loan. Generally, the bank lends the amount of the premiums for two or three years to the insured and at the end of this period, the insured transfers the policy to a viatical settlement company or investors, the loan is paid off and the investors become owners of the policy. In some cases, the insured receives a cash payment in addition to "free" insurance he has been provided for the two or three year period. The investors continue ownership of the policy and receive the death proceeds.

2. How do these transactions thwart existing state insurable interest laws?

The investors do not have a valid insurable interest which would allow them to purchase a policy from an insurance company insuring the life of the insured. To obtain ownership outside of the insurable interest requirement, they entice the insured to first obtain the policy himself, with a plan to transfer it at a later date. In the end, the insured has obtained "free" insurance for two or three years and the third-party investors have a policy insuring the life of an individual for whom the investors never had an insurable interest.

3. What is inappropriate about these transactions?

Although a viatical settlement is clearly contemplated or required by these arrangements, by arranging the actual policy ownership change two or three years after the policy is issued, they seek to avoid the state insurable interest laws. These laws are designed to ensure that life insurance is purchased only by those with an interest in the insured's continuing life, including their families, businesses, and charities. It is unsound public policy to permit unrelated third parties to take out life insurance on a person's life with no other desire than to collect death benefits. The viatical settlement model act prohibits settlements, with few exceptions, within two years of policy issuance, and also prohibits those formally arranged but not closed within that two-year period. However, certain arrangements are specifically designed to avoid even this provision. They do this by not

requiring that the policy be sold to investors after the two or three years, but making that result all but inevitable by charging a high rate of interest on the loan, making it very unlikely that the policyholder would choose to pay off two or three year's worth of premium and interest to keep the policy unless they were very sick. This is especially true if the policyholder only agreed to the transactions in order to obtain "free insurance" for two or three years, which is how many of these schemes are being advertised. The amendment is intended to close this loophole. Insurable interest, and life insurance itself should not be treated as a commodity unrelated to the public policy purposes for which it is intended. These stranger-owned life insurance transactions, in which insurance is obtained for the purpose of later sale to investors, undermine the life insurance mechanism and the favorable treatment it is afforded under the laws.

4. How does this bill language address this problem?

This bill adds to the definition of "life settlement contract" those types of transactions described above which are arranged before policy issuance or within two years thereafter which guaranty a policy's viatical settlement value and/or compel a settlement at a later date. By including them in this definition they would no longer avoid the long-standing Model Act prohibition on viatical settlements within two years of policy issue. (See NAIC Viatical Settlements Model Act – Appendix B)

5. What about legitimate premium financing arrangements?

This amendment does not interfere with premium finance arrangements where the motivation is to help the insured finance insurance that he or she needs and expects to keep. The language provides an exception for these transactions from the definition of viatical settlement when a licensed lending institution takes a collateral assignment of a policy solely as collateral for a loan and not as part of or in connection with an agreement that directly or indirectly provides a guaranty to the insured or lender that the policy's settlement value will cover the loan and interest at the end of the term guaranteeing a viatical settlement value.

STOLI Insurable Interest Opinion

New York State Insurance Department Office of General Counsel Opinion
December 19, 2005

A. Proposed Transaction

1. Insured is high net worth individual
2. Insured takes full recourse loans from lender for the purpose of taking out life insurance policy and paying the policy premiums.
3. Transaction includes a put option, exercisable at least two years after policy issue, under which the insured has right to sell the policy to a third party for a prearranged amount equal to loan and loan interest. Put option provider is a hedge fund.
4. No loan principal or interest due until put option exercise date.

B. Insurance Department Analysis

1. Transaction does not meet N.Y. Ins. Law §2305(b)(1) permitting a person to procure on his own initiative a contract of insurance on his own life, because policy is arguably not obtained on the insured's own initiative.
2. Transaction does not meet N.Y. Ins. Law §2305(b)(2) permitting a person (other than the insured) to procure or cause to be procured an insurance contract on the insured's life, unless the procurer has an insurable interest in the insured's life. Department found the transaction to be intended to facilitate procurement of insurance policy solely for resale and to constitute a speculative investment for the ultimate benefit of a disinterested third party. Department further concluded the transaction would be "contrary to the long established public policy against gaming through life insurance purchases".
3. Department suggested that the transaction (a) might violate rebate law and (b) may constitute an illegal inducement since the insured would effectively receive cost free coverage.

C. Resulting Issues

1. Will the same legal analysis and result apply to transactions that do not involve a put option or a hedge fund and generally in which the intent to resell the policy is not as obvious?
2. Will other state Insurance Departments adopt similar positions based on their insurable interest laws?
3. Will New York and other states pursue the rebate/illegal inducement issue?

Investor Owned Life Insurance (IOLI)

Description

- A. Two basic arrangements have been observed.
 - 1. Charitable: Trust (or other entity) that Charity selects owns policies
 - a. Charity has in interest in trust (residual)
 - b. Others interests are owned by promoters and investors
 - 2. Pension Liabilities: Pension Fund/Retirement Trust owns policies

- B. Basic Features:
 - 1. Insuring elderly donors or retirees (age 72-90)
 - 2. Combined Single Premium Immediate Annuity (SPIA)/Life Insurance purchases
 - 3. Interests (via bonds or certificates) are sold to public investors, typically promising a fixed return. These certificates are backed by the entity's life insurance and life annuity contracts.
 - 4. The public sales proceeds are used to purchase the SPIA based on a pure life contingency (life annuity stream)
 - 5. SPIA income stream is used to pay life insurance premium, excess is used to pay certificate obligations and fees
 - 6. Who gets paid?
 - a. Charity version: The charity may get only a residual value, or may get a nominal value of the return – typically estimated at 5-7%. The remainder goes to the public investors and to promoter fees.
 - b. Pension:
 - i. Investors receive their return
 - ii. The pension receives amounts needed to meet pension obligations or to fund retiree health benefits,
 - iii. Excess goes to the investment bankers (who may have prefunded the Plan's liquidity needs)

Legislative/Regulatory Response to IOLI

- A. National Conference of Insurance Legislators adopted resolution on March 4, 2005.
 - 1. NCOIL opposes efforts to expand state insurable interest laws to permit third party entities to purchase life insurance on the lives of unrelated individuals.
 - 2. Resolution was adopted with reference to IOLI, but is broadly worded and may have implications for STOLI.

- B. National Association of Insurance Commissioners adopted resolution dated June 12, 2005.
 - 1. Resolution strongly opposes efforts to expand state insurable interest laws to permit the use of charities to allow private investors to purchase life insurance on individuals with whom the investors have no relationship.
 - 2. Resolution preamble stated more broadly that life insurance policies should not be purchased for use as investment vehicles by entities that have no relationship to the insured.

- C. State Laws

1. Most state laws do not recognize an insurable interest for IOLI. Notable exceptions were:
 - a. Texas' broad statute recognizes an insurable interest in an owner or beneficiary which is designated in accordance with Texas law, which in turn permits the insured to consent to purchase of a policy by a third party and to designate or consent to designation of any individual or entity as beneficiary or owner. (Tex. Ins. Code Ann. §§1103.053, 1103.056).
 - b. Virginia
 - i. Broad insurable interest statute construed to permit IOLI in 2004. Statute permitted a third party to procure a policy as long as benefits were payable to a beneficiary designated by the insured.
 - ii. In 2005 Virginia enacted legislation to prohibit IOLI by narrowing insurable interest statute. Amended statute deletes the broad permission and provides that a trust, other than a business trust, has an insurable interest in (i) the individual insured who established the trust, (ii) each individual in whom the trust owner for federal income tax purposes has an insurable interest, or (iii) each individual in whom a trust beneficiary has an insurable interest. Amendment grandfathered pre 12/31/04 IOLI agreements, even for life insurance subsequently issued. (VA Code Ann. §38.2-301)
2. Insurable Interest legislation to permit IOLI failed in approximately 5 states in 2004 and 7 states in 2005.
3. In 2004 legislation recognizing insurable interest in IOLI transactions was enacted in two states.
 - a. Tennessee -- recognizes insurable interest of any trust, partnership, limited liability company or similar entity approved in writing as owner and beneficiary of the policy by a 501(c)(3) or 170(c) organization. (Tenn. Code Ann. §56-7-314)
 - b. North Carolina – Until October 1, 2007, recognizes insurable interest of an entity, subject to following conditions:
 - i. Entity is a trust, business trust, partnership, corporation, limited liability company or similar entity which the insured has approved as owner and beneficiary of a life insurance policy and annuity contract.
 - ii. Entity is formed for the purpose, in part, of generating funds for benefit of a 501(c)(3) organization, and disclosure is provided of anticipated amount of policy death proceeds to be paid to the 501(c)(3) organization.
 - iii. Annuity payments must be enough to fund the life insurance premiums.
 - iv. Affidavit is provided certifying insured's status as an accredited investor.
 - v. No monetary remuneration to the insured for providing consent to transaction. (N.C. Gen. Stat. §58-58-86)

Trusts And Insurable Interest

Chawla v. Transamerica Occidental Life Insurance Co., 440 F.3d 639 (4th Cir. 2006), *aff'g in part and vacating in part Chawla ex rel. Geisinger v. Transamerica Occidental Life Ins Co.*, 2005 WL 405405 (E.D. Va. 2005)

A. Facts

1. Plaintiff Vera Chawla (“Chawla”) was friend of the insured Harold Geisinger and spouse of a doctor who examined Geisinger. No other relationship exists between plaintiff and insured.
2. Chawla and Geisinger were co-trustees of a personal trust. The Trust, which owned Geisinger’s residence, provided Geisinger with life tenancy and right to receive all income from the trust. Upon Geisinger’s death, the trust terminated and Chawla was the sole beneficiary of the trust assets.
3. In May, 2000 Chawla and Geisinger signed application for \$1 million of life insurance naming Chawla as owner and beneficiary. Transamerica rejected application due to lack of insurable interest.
4. Substitute application, signed by Chawla and naming the trust as policyowner and beneficiary, was accepted by Transamerica. Chawla paid first premium.
5. In September, 2000 Chawla and Geisinger signed application increasing coverage to \$2.45 million.
6. Chawla and Geisinger failed to disclose Geisinger’s history of brain surgery and alcohol abuse for which he received treatment from 1999 through August, 2000.
7. Geisinger died September 23, 2001. Transamerica denied the claim based on material misrepresentation. In the lawsuit subsequently brought by plaintiff, Transamerica also asserted the policy was void due to lack of insurable interest.

B. Lower Court Decision

1. Maryland law governs, because policy delivery and payment of first premium took place in Maryland.
2. Summary Judgment entered for Transamerica on basis of material misrepresentation and lack of insurable interest.
3. Maryland insurable interest statute (Md. Code Ann., Ins. §12-201) provided that a person may not procure or cause to be procured insurance on the life of another, unless the benefits are payable to (a) the insured or the insured’s personal representative, or (b) a person with an insurable interest in the insured when the contract was made.
4. The court found that “person” includes a trustee (or trust) and the trust had no insurable interest because (a) the trust, which distributed to Chawla upon the insured Geisinger’s death, promised to gain more assets upon death (*i.e.*, the insurance death benefit) that if the insured had lived, and (b) the trust suffered no detriment, pecuniary or otherwise, upon Geisinger’s death.
5. At best, the District Court decision stands for the principle that a trust has no insurable interest, based on the specific facts of this case. At worst, if broadly construed, it stands for the proposition that a trust can never have an insurable interest.

C. Appeal

1. Chawla appealed.
2. *Amicus* Brief supporting Transamerica entered by League of Life and Health Insurers of Maryland, Banner Life and MassMutual seeking clarification of District Court's decision on insurable interest.
 - a. Clarification sought – that a trust has an insurable interest under Maryland law, if the trust beneficiaries have an insurable interest.
 - b. *Amici* were concerned about potential bad precedent set by District Court decision relative to any other state that had an insurable interest statute similar to Maryland.
3. In March, 2006 the Fourth Circuit Court of Appeals
 - a. Affirmed lower court decision on misrepresentation.
 - b. Vacated as unnecessary the lower court decision on insurable interest.
4. Court denied rehearing in April, 2006.

D. Fallout from *Chawla*

1. Maryland – legislation enacted April, 2006
 - a. Life insurance industry worked with Maryland Bar Association, which demanded a legislative solution.
 - b. Legislation recognizes a trustee as having insurable interest if
 - i. The insured is grantor of trust, is closely related by blood or law to grantor, or is an individual in whom the grantor otherwise has an insurable interest, and
 - ii. Insurance proceeds are primarily for the benefit of trust beneficiaries having an insurable interest in the insured's life. (Md. Code Ann. Ins. §12-201(b)(6).
2. Oklahoma – H.B. 2905 pending. Contains trust insurable interest language that is too broad.
3. Ohio – Bar Association considering legislative introduction.

This is a Paid Advertisement

Maybe you can do it too!

**“How Wealthy Senior Citizens Buy Life Insurance...
At No Cost Whatsoever...And...Make a Substantial Profit From It...
While... They Are Still Alive”**

Is this too good to be true?

After reading this message, you may be shaking your head and saying and thinking, “This is too good to be true.” I don’t blame you for being skeptical. Many dishonest people try to take advantage of Senior Citizens and scam them out of their money. That is not the case here. And, there is a “Test” that is a very accurate indicator of whether or not any business arrangement offered to you is true or not true. And that test is...

Money!

What I mean by that is, when you get involved with somebody that is trying to cheat you, they always paint a rosy picture of what you will get after you pay them a lot of money. What is different about the situation described on this page, is that you never have to pay a dime to become involved. Also, you never have to sign away the rights to your house or car or other personal property. If this were a scam, we would be asking you to pay money up front. But, you don’t have to pay any money and, in fact, you don’t have to pay any money ever! We can’t be cheating you out of your money because, in this situation, you can leave your check book at home. You don’t have to pay any money to come to the seminar...it’s absolutely free. And, if you decide to do business with us, no where in the whole process do you have to pay out money ever! All we ask is that you keep an open mind as we explain to you how this works.

Dear Friend,

How much life insurance would you have...if ...you didn’t have to pay anything to get it...and ...you could make a substantial profit from it while you are still alive?

I bet you would want all you could get. Isn’t that true?

Well, listen: If you are 70 to 89 years old, medically insurable and have a net worth of at least \$4,000,000 there is something very important you should know. And it's something life insurance companies do Not want you to know about.

You probably already know Life Insurance Companies are about the richest companies on earth. Perhaps you don't know why. Believe it or not, Life Insurance Companies...

**Never Pay Out A Dime
On 81% Of The Policies They Sell**

That's because most people give up their life insurance policy when they get older. They usually surrender their policies because it gets too hard to keep up the payments and/or they figure their children are doing so well they really don't need to inherit anymore money. Whatever the reason, Life Insurance Companies only have to pay off on a measly...

19% of The Policies They Sell

Do you remember how, years ago before everybody had a credit card, stores would sell a lot of merchandise on what was called the "Lay Away" plan? Back then, if you saw something you wanted...but ...it was too expensive for you to buy immediately, you could buy it on the "Lay Away" plan. That meant the store would hold ("Lay Away") whatever it was you wanted to buy while you paid small, manageable monthly payments.

Most Life Insurance Companies work sort of like this. They sell you insurance policies on which you make monthly payments and, they never have to payout a dime to anyone...until...you have passed away.

And, since 81% of policy holders surrender their policies well before they die...and...they don't get a refund on any of the payments they made...

**Life Insurance Companies
Have a virtual Goldmine!**

But, here's good news. You now get to enjoy these profits instead of the insurance companies. A few years ago, the most significant development to hit the life insurance industry over the past 200 years happened, yet the life insurance companies don't want you, the consumer, to know about it. What is it? It's the...

Secondary Market for Life Insurance Policies.

Until recently, you could only sell your unwanted life insurance policy back to the Life Insurance Company that originally sold it to you.

And guess what? Since there was only one company (the one that sold it to you) to buy back your policy, they would get the policy for nothing, or next to nothing.

But, along came the secondary market.

When you sell your unwanted policy to the secondary market, it is combined with thousands of other life insurance policies that are packaged into "blind pools" and sold to large institutional investors.

The buyers of these policies are large investment companies such as GE Capital, Merrill Lynch, Warren Buffet's Berkshire Hathaway, AIG and others.

Because of the secondary market for life insurance policies...

You Don't Have To Spend a Dime Of Your Own Money To Purchase a Life Insurance Policy On Your Life...

because Lenders are NOW eager to make safe, secure, non-recourse loans to you, so you can purchase a life insurance policy on your life, using the lenders money, and not yours, that you can eventually sell to the secondary market for a substantial profit.

This secondary market is spending more than 2 Billion dollars to buy life insurance policies from people who already have them.

There are ten plans that let you cash in big. I can't describe them all here, but let me give you just one example. You are a 75-year-old male and you decide to purchase a \$10,000,000 policy. A private lending institution pays all premiums and interest on your policy...you have no out of pocket cost...and...after a few years you sell the policy to one of the investment firms in the secondary market that pays off the lender...and...gives you maybe \$500,000 or \$600,000 of profit for the privilege of purchasing your policy.

Why is all this true? Well you are at the right place and at the right time to take advantage of a great opportunity. However, it won't be true for very much longer.

You see life insurance companies didn't sell many life insurance policies to people over age 70 because people didn't want to pay those high premiums for the rest of their life. So life insurance companies weren't much concerned with accurate pricing on those policies since they weren't selling many of them. As a result, the policies they do sell are under priced. Very sharp people in the secondary market for life insurance have discovered this and are paying serious cash for policies owned by senior citizens.

This gives you an abundance of money to use while you are still living to take vacations with your children and grandchildren, help with college tuitions, making gifts to charities you care about most and do other things that make life more enjoyable.

This is all true, 100% legal and completely above board.

But, it won't last forever. You see, the insurance companies have discovered their "mistake" and are working hard and fast to correct it.

Can you qualify for this? Can you jump on this bandwagon? Should you? The true answer is "maybe". But what you should do for sure is find out more about it. A seminar company called The No Cost Life Insurance Group is about to give a FREE SEMINAR and explain all the facts of these programs to everybody that attends. These people are not pushy life insurance sales people. They just give you the facts and let you decide for yourself if you are interested.

After attending their Seminar, if you are interested, just call the NO Cost Life Insurance Group and they will have an agent take it from there and handle all the details.

II. *The seminar is going to be held on...*

**Wednesday, February 8th
1:30 p.m. to 3:00 p.m.
Miramonte Resort
45-000 Indian Wells Lane**

Please call toll free...1-800-459-2202 to reserve your seat.

When you call, most likely a woman named Suzanne will answer the phone. Just give her your name and the number of seats you would like to reserve.

Thank you for reading this message.

CA ic #OE63423

EXTRACT FROM ACLI AMENDMENTS

NAIC VIATICAL SETTLEMENTS MODEL ACT
(ACLI Amendments May 2006)

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Section 1. Short Title

This Act may be cited as the Viatical Settlements Act.

Section 2. Definitions

- A. “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, assign, devise, bequest or transfer the death benefit or ownership of a life insurance policy pursuant to a viatical settlement contract.
- B. “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, hypothecating or in any other manner, of viatical settlement contracts.
- C. “Chronically ill” means:

JL. “Terminally ill” means having an illness or sickness that can reasonably be expected to result in death in twenty-four (24) months or less.

KM. “Viatical settlement broker” means a person, including a life insurance producer as provided for in Section 3 of this Act, 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 not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator to act according to the viator’s instructions and in the best interest of the viator. The term does not include an attorney, certified public accountant or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider.

LN. “Viatical settlement contract” means a written agreement establishing the terms under which compensation or anything of value is paid, which compensation or value is less than the expected death benefit of the policy, in return for the viator’s assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the policy. ~~A viatical settlement contract also includes a contract for a loan or other financing transaction with a viator secured primarily by a 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 with a viator to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator. It includes (a) any agreement under which the insured, viator, policyowner or the designee of the insured, policyowner or viator receives or is to receive consideration in exchange for the designation of or consent to assignment or transfer of the ownership or beneficiary interest in a policy regardless of the date that the consideration is to be provided to such person or the transfer or assignment is to occur, and (b) any premium financing transaction or agreement collateral thereto, whether or not the viator is a party, which directly or indirectly provides (i) a guaranty of the policy’s viatical settlement value or (ii) protection to the premium financing transaction lender against loss with respect to the loan or some or all of the lender’s loans of which the premium financing transaction loan is a part. For purposes of the preceding sentence and paragraph 2 below, protection to the lender in the form of a personal guarantee (or the provision of collateral) by the insured, viator, a member of the insured’s family, or a person having a lawful and substantial economic interest in having the life, health or bodily safety of the person insured continue, shall not be taken into account. A viatical settlement contract does not include one or more of the following:~~

- (1) A policy loan or accelerated benefit provided by the insurer of the policy.

- (2) A loan by a licensed lending institution which takes a collateral assignment of policy solely as security for the loan and not as part of or in connection with an agreement, whether or not the viator is a party thereto, which directly or indirectly provides (a) a guaranty of policy's viatical settlement value or (b) protection to the lender against loss with respect to the loan or some or all of the lender's loans of which the loan is a part.
- (3) An agreement where all parties are (i) closely related to the insured by blood or law or (ii) have a lawful and substantial economic interest in the continued life, health and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties.
- (4) Any designation, consent or agreement by an insured who is an employee of an employer in connection with the purchase by such employer, or trust established by such employer, of life insurance on the life of such employee.
- (5) A bona fide business succession planning arrangement: (a) between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders; (b) between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or (c) between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members.
- (6) An agreement entered into by a service recipient (or a trust established by such service recipient) and a service provider (or a trust established by such service provider) who performs significant services for the service recipient's trade or business.

MO. "Viatical settlement provider" means a person, other than a viator, that, from this state, in this state or with a resident of this state, enters into or effectuates a viatical settlement contract. Viatical settlement provider does not include:

- (1) A bank, savings bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a policy solely as collateral for a loan and not as part of any transaction or agreement defined in this act as a viatical settlement contract;
- (2) The issuer of a policy ~~providing accelerated benefits under Section [refer to law or regulation implementing the Accelerated Benefits Model Regulation or similar provision] and pursuant to the contract;~~
- (3) An authorized or eligible insurer that provides stop loss coverage to a viatical settlement provider, financing entity, special purpose entity or related provider trust;
- (4) A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of policies for any value less than the expected death benefit;

- (5) A financing entity;
- (6) A special purpose entity; or
- (7) A related provider trust; ~~or,~~
- ~~(8) 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 amended, and who purchases a viaticated policy from a viatical settlement provider.~~

QP. “Viaticated policy” means a policy that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

RQ. “Viator” means the owner of a policy who enters or seeks to enter into a viatical settlement contract. For the purposes of this Act, a viator shall not be limited to an owner of policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one viator on a single policy and the viators are residents of different states, the transaction 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 owner agreed upon in writing by all owners. Viator does not include:

- (1) A licensee under this Act, including a life insurance producer operating as a viatical settlement broker;
- ~~(2) An accredited investor or a~~ A qualified institutional buyer as defined ~~respectively in Regulation D, Rule 501 or in Rule 144A of the Federal Securities Act of 1933, as amended;~~
- (3) A financing entity;
- (4) A special purpose entity; or
- (5) A related provider trust.

rescinded, subject to repayment to the viatical settlement provider within sixty (60) days of the insured’s death of all viatical settlement proceeds and any premiums, loans and loan interest that have been paid by the viatical settlement provider.

D. 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 (3) business days after the date the escrow agent receives the document (or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the provider), the provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a state or federally-chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the

original change in ownership, assignment or change in beneficiary forms to the viatical settlement provider or related provider trust. 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.

- E. Failure to tender consideration to the viator for the viatical settlement contract within the time ~~disclosed~~ set forth in the disclosure required pursuant to Section 8A(67) 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.
- F. Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or broker licensed in this state or its authorized representatives and shall be limited to once every three (3) months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations 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.

Section 10. Prohibited Practices

It is a violation of this Act for any person to enter into a viatical settlement contract at any time prior to the application or issuance of a policy which is the subject of a viatical settlement contract or for within a two-year period commencing with the date of issuance of the policy or certificate unless the viator certifies to the viatical settlement provider that the insured is terminally or chronically ill and one or more of the following conditions have been met ~~within the two-year period:~~

- A. ~~The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least twenty-four (24) months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;~~
- B. ~~The viator is a charitable organization exempt from taxation under 26 U.S.C. Section 501(c)(3);~~
- C. ~~The viator is not a natural person (e.g., the owner is a corporation, limited liability company, partnership, etc.);~~

~~D.~~ (1) ~~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 ill or chronically ill;~~
- ~~b. The viator's spouse dies;~~
- ~~c. The viator divorces his or her spouse;~~
- ~~d. The viator retires from full time employment;~~
- ~~e. The viator becomes physically or mentally disabled and a physician determines that the disability prevents 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 is 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 to all or a substantial part of the viator's assets;~~
- ~~h. The viator experiences a significant decrease in income that is unexpected and that impairs the viator's reasonable ability to pay the policy premium; or~~
- ~~i. The viator or insured disposes of his or her ownership interests in a closely held corporation.~~

~~A. (2) Copies of the independent evidence described in Paragraph (1) of this subsection and documents required by Section 9A to support the viator certification 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.~~

EB. If the viatical settlement provider submits to the insurer a copy of the ~~owner or insured's~~ viator certification described in Subsection D, and the independent evidence required by this Section when the provider submits a request to the insurer to effect the transfer of the policy 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.

Section 11. Advertising for Viatical Settlements

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 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 through the advertising media and material used by viatical settlement licensees.

- A. This section shall apply 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. Where disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

- B. Every viatical settlement licensee shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its contracts, products and services. All advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the viatical settlement 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 viatical settlement licensee who disseminate advertisements of the requirements