HOUSE DOCKET, NO. FILED ON: 1/14/2009

**HOUSE . . . . . . . . . . . . . . No.**

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The Commonwealth of Massachusetts

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PRESENTED BY:

**Ronald Mariano**

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General
 Court assembled:*

 The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to stranger originated life insurance.

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PETITION OF:

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| --- | --- |
| Name: | District/Address: |
| Ronald Mariano | 3rd Norfolk |

The Commonwealth of Massachusetts

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**In the Year Two Thousand and Nine**

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An Act relative to stranger originated life insurance.

 *Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

SECTION 1. Chapter 175 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after section 123 the following section:-

123 ½. (a) An insurable interest, with reference to life and disability insurance, is an interest based upon a reasonable expectation of pecuniary advantage through the continued life, health, or bodily safety of another person and consequent loss by reason of that person’s death or disability or a substantial interest engendered by love and affection in the case of individuals closely related by blood or law.

(b) An individual has an unlimited insurable interest in his or her own life, health, and bodily safety and may lawfully take out a policy of insurance on his or her own life, health, or bodily safety and have the policy made payable to whomsoever he or she pleases, regardless of whether the beneficiary designated has an insurable interest.

(c) Except as provided in section 123A of this chapter an employer has an insurable interest, as referred to in sub-section (a), in the life or physical or mental ability of any of its directors, officers, or employees or the directors, officers, or employees of any of its subsidiaries or any other person whose death or physical or mental disability might cause financial loss to the employer; or, pursuant to any contractual arrangement with any shareholder concerning the reacquisition of shares owned by the shareholder at the time of his or her death or disability, on the life or physical or mental ability of that shareholder for the purpose of carrying out the contractual arrangement; or, pursuant to any contract obligating the employer as part of compensation arrangements or pursuant to a contract obligating the employer as guarantor or surety, on the life of the principal obligor. The trustee of an employer or trustee of a pension, welfare benefit plan, or trust established by an employer providing life, health, disability, retirement, or similar benefits to employees and retired employees of the employer or its affiliates and acting in a fiduciary capacity with respect to those employees, retired employees, or their dependents or beneficiaries has an insurable interest in the lives of employees and retired employees for whom those benefits are to be provided. The employer shall obtain the written consent of the individual being insured.

 (d) Trusts and special purpose entities, that are used to apply for and initiate the issuance of policies of insurance for investors, where one or more beneficiaries of those trusts or special purpose entities do not have an insurable interest in the life of the insured violate the insurable interest laws and the prohibition against wagering on life.

(e) Any device, scheme, or artifice designed to give the appearance of an insurable interest where there is no legitimate insurable interest violates the insurable interest laws.

(f) An insurable interest shall be required to exist at the time the contract of life or disability insurance becomes effective, but need not exist at the time the loss occurs.

(g) Any contract of life or disability insurance procured or caused to be procured upon another individual is void unless the person applying for the insurance has an insurable interest in the individual insured at the time of the application.

(h) Notwithstanding sub sections (a), (f), and (g), a charitable organization that meets the requirements of section 501(c)(3), (c)(6), (c)(8) or (c)(9) of the Internal Revenue Code may effectuate life or disability insurance on an insured who consents to the issuance of that insurance.

(i) This section shall not be interpreted to define all instances in which an insurable interest exists.

SECTION 2. Section 213 of chapter 175 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after the definition of “Accelerated benefits” the following two new definitions:-

“Advertisement”, 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 purchase or sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy or an interest in a life insurance policy pursuant to a viatical settlement contract.

“Business of viatical settlements”, an activity involved in, but not limited to, offering to enter into, soliciting, negotiating, procuring, effectuating, monitoring, or tracking of viatical settlement contracts.;

and further, by inserting after the definition of “Financing transaction” the following new definition:-

 “Fraudulent viatical settlement act” includes all of the following:

(1) Acts or omissions committed by any person that, for the purpose of depriving another of property or for pecuniary gain, commits or permits its employees or its agents to engage in acts, including, but not limited to, the following:

(A) Presenting, causing to be presented, or preparing with knowledge and belief that it will be presented to or by a viatical settlement provider, premium finance lender, viatical settlement broker, insurer, insurance producer, or any other person, false material information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

(i) An application for the issuance of a viatical settlement contract or insurance policy.

(ii) The underwriting of a viatical settlement contract or insurance policy.

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

(iv) Premiums paid on an insurance policy.

(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 to enter into, or effectuation of, a viatical settlement contract or insurance policy.

(viii) The issuance of written evidence of viatical settlement contracts or insurance.

(ix) Any application for, or the existence of or any payments related to, a loan secured directly or indirectly by any interest in a life insurance policy.

(B) Entering into Stranger-Originated Life Insurance (STOLI).

(C) Employing any device, scheme, or artifice to defraud in the business of viatical settlements.

(2) Any of the following that any person does, or permits his or her employees or agents to do, in the furtherance of a fraud, or to prevent the detection of a fraud:

(A) Remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements.

(B) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person.

(C) Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements.

(D) File with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the commissioner.

(E) Engage in embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policy owner, or any other person engaged in the business of viatical settlements or insurance.

(F) Enter into, broker, or otherwise deal in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information requested concerning any fact material to the policy, where the viator or the viator’s agent intended to defraud the policy’s issuer.

(G) Attempt to commit, assist, aid, or abet in the commission of, or conspiracy to commit the acts or omissions specified in this sub-section.

(H) Misrepresent the state of residence of a viator to be a state or jurisdiction that does not have a law substantially similar to this act for the purpose of evading or avoiding the provisions of this

act.;

and further, by inserting after the definition of “Insured” the following four new definitions:-

“Life expectancy”, the arithmetic mean of the number of months the insured under the life insurance policy to be settled can be expected to live as determined by a life expectancy company considering medical records and appropriate experiential data.

“Life insurance producer”, any person licensed in this state as a resident or nonresident insurance agent who has received qualification or authority for life insurance coverage or a life line of coverage pursuant to this chapter;

“Net death benefit”, the amount of the life insurance policy or certificate to be settled less any outstanding debts or liens.

“Patient identifying information”, an insured’s address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.;

and further, by inserting after the definition of “Person” the following seven new definitions:-

“Policy”, an individual or group policy, group certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

“Premium finance loan” is a loan made primarily for the purpose of making premium payments on a life insurance policy, which loan is secured by an interest in such life insurance policy.

“Purchaser”, a person who pays compensation or anything of value as consideration for a beneficial interest in a trust which is vested with, or for the assignment, transfer, or sale of, an ownership or other interest in a life insurance policy or a certificate issued pursuant to a group life insurance policy which has been the subject of a viatical settlement contract.

“Related provider trust”, 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. In order to qualify as a related provider trust, the trust must 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 relating to viatical settlement transactions available to the Division of Insurance as if those records and files were maintained directly by the licensed viatical settlement provider.

“Special purpose entity”, a corporation, partnership, trust, limited liability company, or other legal entity whose securities pay a fixed rate of return commensurate with established asset-backed capital markets, or has been formed solely to provide either directly or indirectly access to institutional capital markets:

(1) For a financing entity or viatical settlement provider.

(2) In connection with a transaction in which the securities in the special purpose entity are acquired by the viator or by a “qualified institutional buyer” as defined in Rule 144 promulgated under the federal Securities Act of 1933, as amended.

“Stranger-originated life insurance” or “STOLI” is an act, practice, or arrangement to initiate the issuance of a life insurance policy in this state for the benefit of a third-party investor who, at the time of policy origination, has no insurable interest, under the laws of this state, in the life of the insured. STOLI practices include, but are not limited to, cases in which life insurance is purchased with resources or guarantees from or through a person or entity, that, at the time of policy inception, could not lawfully initiate the policy himself, herself, or itself, and where, at the time of inception, there is an arrangement or agreement, to directly or indirectly transfer the ownership of the policy or the policy benefits to a third party. Trusts that are created to give the appearance of insurable interest and that are used to initiate policies for investors violate insurable interest laws and the prohibition against wagering on life. STOLI arrangements do not include otherwise lawful viatical settlement contracts as defined below.

“Terminally ill”, having an illness or sickness that can reasonably be expected to result in death in 24 months or less.;

and further, by striking the definitions of “Viatical settlement contract” and “Viatical settlement provider” and replacing them with the following two definitions:-

“Viatical settlement contract”, a written agreement entered into between a viatical settlement provider and a viator. The agreement shall establish the terms under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator’s assignment, transfer, sale, devise or bequest of the death benefit or ownership of all or a portion of the insurance policy or certificate of insurance for compensation, provided, however, that the minimum value for a viatical settlement contract shall be greater than a cash surrender value or accelerated death benefit available at the time of an application for a viatical settlement contract. “Viatical settlement contract” also includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of a person residing in this state.

(1) A “Viatical settlement contract” includes a premium finance loan made for a policy on or before the date of issuance of the policy where one or more of the following conditions apply:

(A) The loan proceeds are not used solely to pay premiums for the policy and any costs or expenses incurred by the lender or the borrower in connection with the financing.

(B) The viator receives on the date of the premium finance loan a guarantee of the future viatical settlement value of the policy.

(C) The viator agrees on the date of the premium finance loan to sell the policy or any portion of the policy’s death benefit on any date following the issuance of the policy, not including an agreement to sell the policy in the event of a default, provided that the default is not pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this act.

(2) “Viatical settlement contract” does not include any of the following:

(A) A policy loan by a life insurance company pursuant to the terms of the life insurance policy or accelerated death provisions contained in the life insurance policy, whether issued with the original policy or as a rider.

(B) A premium finance loan, as defined herein, or any loan made by a bank or other licensed financial institution, provided that neither default on such loan nor the transfer of the policy in connection with such default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this act.

(C) A collateral assignment of a life insurance policy by a viator.

(D) A loan made by a lender that does not violate chapter 255C, provided such loan is not described in paragraph (1), and is not otherwise within the definition of viatical settlement contract.

(E) An agreement where all of the parties satisfy one of the following conditions:

(i) They are closely related to the insured by blood or law.

(ii) They have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured.

(iii) They are trusts established primarily for the benefit of those parties.

(F) Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or by a trust established by the employer of life

insurance on the life of the employee.

(G) A bona fide business succession planning arrangement:

(i) Between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trust established by its shareholders.

(ii) Between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trust established by its partners.

(iii) Between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members.

(H) An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient’s trade or business.

(I) Any other contract, transaction, or arrangement from the definition of “viatical settlement contract” that the commissioner determines is not of the type intended to be regulated by this act.

“Viatical settlement provider” a person, other than a viator, who enters into a viatical settlement contract, or who obtains financing from a financing entity for the purchase, acquisition, transfer or other assignment of one or more viatical settlement contracts, viaticated policies or interests therein or who otherwise sells, assigns, transfers, pledges, hypothecates or otherwise disposes of one or more viatical settlement contracts, viaticated policies or interests therein. A viatical settlement provider does not include:

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

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

(3) a natural person who enters into not more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;

(4) a family member or friend who is not in the business of providing or obtaining viatical settlements, who enters into a viatical settlement agreement for any value less than the expected death benefit; or

(5) a financing entity.

(6) a purchaser.

(7) Any authorized or eligible insurer that provides stop loss coverage to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust.

(8) A financing entity.

(9) A related provider trust.

(10) A viatical settlement broker.

(11) 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, who purchases a

viatical settlement policy from a viatical settlement provider.;

and further, by striking the definition of “Viator” and replacing it with the following new definition:-

“Viator”, the owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a catastrophic, life-threatening or chronic illness or condition who enters or seeks to enter into a viatical settlement contract. For the purposes of this article, an owner shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy that insures the life of an individual with a terminal illness or condition except where specifically addressed. The term “viator” does not include any of the following:

(1) Any viatical settlement provider or other licensee under this act.

(2) A qualified institutional buyer as defined in Rule 144A of the federal Securities Act of 1933, as amended.

(3) A financing entity.

(4) A special purpose entity.

(5) A related provider trust.

SECTION 3. Chapter 175 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking section 214 in its entirety and replacing with the following:-

214. (a) This section applies to any person entering into, brokering, or soliciting viatical settlements pursuant to sections 212 to 223.

(b) (1) Except as provided in subparagraph (B), no person may enter into, broker, or solicit viatical settlements pursuant to sections 212 to 223, unless that person has been licensed by the commissioner under this section. The person shall file an application for a license in the form prescribed by the commissioner, and the application shall be accompanied by a fee established by the commissioner. The license fees for a viatical settlement provider license shall be reasonable, and the license and renewal fees for a viatical settlement broker shall not exceed the license and renewal fees established for an insurance producer who is acting as a viatical settlement broker. The applicant shall provide any information the commissioner may require. The commissioner may issue a license, or deny the application if, in his or her discretion, it is determined that it is contrary to the interests of the public to issue a license to the applicant. The reasons for a denial shall be set forth in writing.

(A) An individual acting as a viatical settlement broker under this section shall complete at least 15 hours of continuing education related to viatical settlements and viatical settlement transactions, as required and approved by the commissioner, prior to operating as a viatical settlement broker. This requirement shall not apply to a life insurance producer who qualifies under subparagraph (D).

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

(C) A person licensed to act as a viatical settlement broker or viatical settlement provider as of December 31, 2010, shall be deemed qualified for licensure as a viatical settlement broker or viatical settlement provider, and shall be subject to all the provisions of this article as if such person were originally licensed as a viatical settlement broker or viatical settlement provider.

(D) (i) A life insurance producer who has been duly licensed as a life agent for at least one year or as a licensed nonresident producer in this state for one year shall be deemed to meet the licensing requirements of this section and shall be permitted to operate as a viatical settlement broker.

(ii) Not later than 10 days from the first day of operating as a viatical settlement broker, the life insurance producer shall notify the commissioner that he or she is acting as a viatical settlement broker, on a form prescribed by the commissioner, and shall pay any applicable fee to be determined by the commissioner. Notification shall include an acknowledgment by the life insurance producer that he or she will operate as a viatical settlement broker in accordance with this act.

(iii) The insurer that issued the policy that is the subject of a viatical settlement contract shall not be responsible for any act or omission of a viatical settlement broker or viatical settlement provider arising out of, or in connection with, the viatical settlement transaction, unless the insurer receives compensation for the replacement of the viatical settlement contract for the viatical settlement provider or viatical settlement broker.

(E) The commissioner shall review the examination for the licensing of life insurance agents and may recommend any changes to the examination to the department’s curriculum committee in order to carry out the purposes of sections 212 to 223.

 (2) Each licensee shall owe and pay in advance to the commissioner an annual renewal fee in an amount and form as prescribed by the commissioner.

(3) Any licensee that intends to discontinue transacting viatical settlements in this state shall so notify the commissioner, and shall surrender its license.

(c) Viatical settlements licensees shall be required to provide any applicant for a viatical settlement contract, at the time of application for the viatical settlement contract, all of the following disclosures in writing and signed by the viator, in at least 12-point type:

(1) That there are possible alternatives to viatical settlements, including, but not limited to, accelerated benefits options that may be offered by the life insurer.

(2) The fact that some or all of the proceeds of a viatical settlement may be taxable and that assistance should be sought from a professional tax adviser.

(3) Consequences for interruption of public assistance as provided by information provided by the state department of transitional assistance and the state department of social services.

(4) That the proceeds from a viatical settlement could be subject to the claims of creditors.

(5) That 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 of

a group policy to be forfeited by the viator and that assistance should be sought from a professional financial adviser.

(6) That a change in ownership of the settled policy could limit the insured’s ability to purchase insurance in the future on the insured’s life because there is a limit to how much coverage insurers will issue on one life.

(7) That the viator has a right to rescind a viatical settlement contract within 30 days of the date it is executed by all parties and the viator has received all required disclosures, or 15 days from receipt by the viator of the proceeds of the settlement, whichever is sooner. Rescission, if exercised by the viator, is effective only if both notice of rescission is given and the viator repays all proceeds and any premiums, loans, and loan interest paid on account of the viatical settlement provider within the rescission period. If the insured dies during the rescission period, the contract shall be deemed to have been rescinded subject to repayment by the viator or the viator’s estate of all proceeds and any premiums, loans, and loan interest to the viatical settlement provider.

(8) That proceeds will be sent to the viator within three business days after the viatical settlement provider has received the insurer or group administrator’s acknowledgment that ownership of the policy or the interest in the certificate has been transferred and the beneficiary has been designated in accordance with the terms of the viatical settlement contract.

(9) The date by which the funds will be available to the viator and the transmitter of the funds.

(10) The disclosure document shall include the following language:

“All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured’s identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the viatical settlement contract between the viator and 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.”

(11) That the insured may be contacted by either the viatical settlement provider or the viatical settlement broker or its authorized representative for the purpose of determining the insured’s health status or to verify the insured’s address. This contact is limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less.

(12) Any affiliations or contractual relations between the viatical settlement provider and the viatical settlement broker, and the affiliation, if any, between the viatical settlement provider and the issuer of the policy to be settled.

(13) That a viatical settlement broker represents exclusively the viator, and not the insurer or the viatical settlement provider or any other person, and owes a fiduciary duty to the viator, including a duty to act according to the viator’s instructions and in the best interest of the viator.

(14) The name, business address, and telephone number of the viatical settlement broker.

(d) The viatical settlement broker shall provide the viator and the insured with at least all of the following disclosures in writing prior to the signing of the viatical settlement contract by all parties. The disclosures shall be clearly displayed in the viatical settlement contract or in a separate document signed by the viator:

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

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

(3) A disclosure of any affiliations or contractual arrangements between the viatical settlement broker and any person making an offer in connection with the proposed viatical settlement contract.

(4) A complete reconciliation of the gross offer or bid by the viatical settlement provider to the net amount of proceeds or value to be received by the viator. For the purpose of this section, gross offer or bid shall mean the total amount or value offered by the viatical settlement provider for the purchase of one or more life insurance policies, inclusive of commissions and fees.

(5) All estimates of the life expectancy of the insured which are obtained by the licensee in connection with the viatical settlement, unless such disclosure would violate any Massachusetts or federal privacy laws.

(6) The commissioner may consider any failure to provide the disclosures or rights described in this section as a basis for suspending or revoking a viatical settlement broker’s or viatical settlement provider’s license pursuant to section 218 of this chapter.

(e) All medical information solicited or obtained by any person soliciting or entering into a viatical settlement is subject to the provisions of chapter 175I of the general laws, concerning confidentiality of medical information.

(f) 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 the identity of an insured or information that there is a reasonable basis to believe that could be used to identify the insured or the insured’s financial or medical information to any other person unless the disclosure is one of the following:

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

(2) It is necessary to effectuate the sale of viatical settlement contracts, or interests therein, as investments, provided the sale is conducted in accordance with applicable state and federal securities law and provided further that the viator and the insured have both provided prior written consent to the disclosure.

(3) It is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or any other provision of law.

(4) It is a term or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider, in which case the receiving viatical settlement provider shall be required to comply with the confidentiality requirements of chapter 175I of the general laws.

(5) It is necessary to allow the viatical settlement provider or viatical settlement broker or their authorized representatives to make contacts for the purpose of determining health status. For the purposes of this section, the term “authorized representative” shall not include any person who has or may have any financial interest in the settlement contract other than a viatical settlement provider, licensed viatical settlement broker; further, a viatical settlement provider or viatical settlement broker shall require its authorized representative to agree in writing to adhere to the privacy provisions of this act.

(6) It is required to purchase stop loss coverage.

(g) In addition to other questions an insurance carrier may lawfully pose to a life insurance applicant, insurance carriers may inquire in the application for insurance whether the proposed viator intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing.

(1) If the premiumfinanceloan provides funds which can be used for a purpose other than paying for the premiums, costs, and expenses associated with obtaining and maintaining the life insurance policy and loan, the application maybe rejected as a prohibited practice under this act.

(2) If the financing does not violate paragraph (1) or violate the insurer’s lawful underwriting guidelines, the insurer may not reject life insurance application solely because the premiums will be financed. The insurance carrier may make disclosures to the applicant, either on the application or an amendment to the application to be completed no later than the delivery of the policy, including, but not limited to, the following:

“If you have entered into a loan arrangement where the policy is used as collateral, and the policy changes ownership at some point in the future in satisfaction of the loan, the following may be true:

“(A) A change of ownership could lead to a stranger owning an interest in the insured’s life.

“(B) A change of ownership could in the future limit your ability to purchase insurance on the insured’s life because there is a limit to how much coverage insurers will issue on a life.

“(C) You should consult a professional adviser since a change in ownership in satisfaction of the loan may result in tax consequences to the viator, depending on the structure of the loan.”

(3) In addition to the disclosures in paragraph (2), the insurance carrier may require the following certifications from the applicant or the insured:

“(A) I have not entered into any agreement or arrangement under which I have agreed to make a future sale of this life insurance policy.”

“(B) My loan arrangement for this policy provides funds sufficient to pay for some or all of the premiums, costs, and expenses associated with obtaining and maintaining my life insurance policy, but I have not entered into any agreement by which I am to receive consideration in exchange for procuring this policy.”

“(C) The borrower has an insurable interest in the insured.”

(h) Life insurers shall provide individual life insurance policyholders with a statement informing them that if they are considering making changes in the status of their policy, they should consult with a licensed insurance or financial advisor. Such statement may accompany or be included in notices or mailings otherwise provided to such policyholders.

(i) The commissioner may adopt rules and regulations reasonably necessary to govern viatical settlements and transactions.

(j) The commissioner may, whenever he or she deems it reasonably necessary to protect the interests of the public, examine the business and affairs of any licensee or applicant for a license.

The commissioner shall have the authority to order any licensee or applicant to produce any records, books, files, or other information as is reasonably necessary to ascertain whether or not the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

(k) The commissioner may investigate the conduct of any licensee, its officers, employees, agents, or any other person involved in the business of the licensee, or any applicant for a license, whenever the commissioner has reason to believe that the licensee or applicant for a license may have acted, or may be acting, in violation of the law, or otherwise contrary to the interests of the public. The commissioner may initiate an investigation on his or her own, or upon a complaint filed by any other person.

(l) The commissioner may issue orders to licensees whenever he or she determines that it is reasonably necessary to ensure or obtain compliance with this section, or chapter 220A. This authority includes, but is not limited to, orders directing a licensee to cease and desist in any practice that is in violation of this section, or chapter 220A, or otherwise contrary to the interests of the public. Any licensee to which an order pursuant to this sub-section is issued may, within 15 days of receipt of that order, request a hearing at which the licensee may challenge the order.

(m) The commissioner may, after notice and a hearing at which it is determined that a licensee has violated this section or chapter 220A or any order issued pursuant to this section, order the licensee to pay a monetary penalty of up to ten thousand dollars ($10,000), which may be recovered in a civil action. Any hearing conducted pursuant to this section shall be in accordance with section 11A ½ of chapter 30A of the general laws, except that the hearing may be conducted by administrative law judges or appointed by the commissioner, and the commissioner shall have the powers granted therein.

(n) Each licensed viatical settlement provider shall file with the commissioner on or before March 1 of each year an annual statement in the form prescribed by the commissioner. The information that the commissioner may require in the annual statement shall include, but not be limited to, the total number, aggregate face amount, and viatical settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year. The annual statement shall also include the names of the insurance companies whose policies have been settled and the viatical settlement brokers that have settled those policies, and that information shall be received in confidence within the meaning of chapter 66 and chapter 66A of the general laws and exempt from disclosure. The annual statement shall not include individual transaction data regarding the business of viatical settlements or information that there is a reasonable basis to believe could be used to identify the viator or the insured.

(o) No person who is not a resident of the commonwealth may receive or maintain a license unless a written designation of an agent for service of process is filed and maintained with the commissioner. The provisions of section 151 of this chapter shall apply to viatical settlement licensees as if they were foreign insurers, their license a certificate of authority, and the viatical settlement a policy, and the commissioner may modify the agreement set forth in section 151of this chapter accordingly.

 (p)No person licensed pursuant to this section shall engage in any false or misleading advertising, solicitation, or practice. In no case shall a viatical settlement broker or viatical settlement provider, directly or indirectly, market, advertise, solicit, or otherwise promote the purchase of a new policy for the sole purpose of or with a primary emphasis on settling the policy or use the words “free,” “no cost,” or words of similar import in the marketing, advertising, soliciting, or otherwise promoting of the purchase of a policy. The provisions of section 176D and section 181 of this chapter shall apply to viatical settlement licensees as if they were insurers, their license a certificate of authority or producer’s license, and the viatical settlements a policy, and the commissioner shall liberally construe these provisions so as to protect the interests of the public.

(q)Records of all consummated transactions and viatical settlement contracts shall be maintained by the viatical settlement provider for three years after the death of the insured and shall be available to the commissioner for inspection during reasonable business hours.

(r) A violation of this section is a misdemeanor.

SECTION 4. Chapter 175 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by inserting after section 220 the following new section:-

220A. (a) A viatical settlement provider entering into a viatical settlement contract with any viator of a policy, wherein the insured is terminally ill, shall first obtain the following:

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

(2) A document in which the insured consents to the release of his or her medical records to a viatical settlement provider, viatical settlement broker, or insurance producer and, if the policy was issued less than two years from the date of application for a settlement contract, to the insurance company that issued the policy.

(b) The insurer shall respond to a request for verification of coverage submitted by a viatical settlement provider, viatical settlement broker, or life insurance producer not later than 30 calendar days of the date the request is received. The request for verification of coverage must be made on a form approved by the commissioner. The insurer shall complete and issue the verification of coverage or indicate in which respects it is unable to respond. In its response, the insurer 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.

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

(d) The insurer shall not unreasonably delay effecting change of ownership or beneficiary with any viatical settlement contract lawfully entered into in this state or with a resident of this state.

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

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

(g) Within 20 days after a viator executes the viatical settlement contract, the viatical settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has become subject to a viatical settlement contract. The notice shall be accompanied by the documents required under the definition of “Fraudulent viatical settlement act” provided in section 214 of this chapter.

(h) All medical information solicited or obtained by any licensee shall be subject to the applicable provision of state law relating to confidentiality of medical information, if not otherwise provided in this act.

(i) All viatical settlement contracts entered into in this state shall provide that the viator may rescind the contract on or before 30 days after the date it is executed by all parties thereto, and the viator has received all required disclosures, or 15 days from receipt by the viator of the full payment of the proceeds as specified below, whichever is sooner. Rescission, if exercised by the viator, is effective only if both notice of the rescission is given, and the viator repays all proceeds and any premiums, loans, and loan interest paid on account of the viatical settlement provider within the rescission period. If the insured dies during the rescission period, the contract shall be deemed to have been rescinded subject to repayment by the viator or the viator’s estate of all proceeds and any premiums, loans, and loan interest to the viatical settlement provider.

(j) Within three business days after receipt from the viator of documents to effect the transfer of the insurance policy, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a state or federally chartered financial institution pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent shall be required to transfer the proceeds due to the viator within three business days of acknowledgment of the transfer from the insurer.

(k) Failure to tender the viatical settlement contract proceeds to the viator by the date disclosed to the viator renders the contract voidable by the viator for lack of consideration until the time the proceeds are tendered to and accepted by the viator. A failure to give written notice of the right of rescission hereunder shall toll the right of rescission until 30 days after the written notice of the right of rescission has been given.

(l) Any fee paid by a viatical settlement provider, party, individual, or an viator to a viatical settlement broker in exchange for services provided to the viator pertaining to a viatical settlement contract shall be computed as a percentage of the offer obtained, not the face value of the policy. Nothing in this section shall be construed as prohibiting a viatical settlement broker from reducing such viatical settlement broker’s fee below this percentage if the viatical settlement broker so chooses.

(m) The viatical settlement broker shall disclose to the viator anything of value paid or given to a viatical settlement broker, which relates to a viatical settlement contract.

(n) No person at any time prior to, or at the time of, the application for, or issuance of, a policy, or during a two-year period commencing with the date of issuance of the policy, shall enter into a viatical settlement regardless of the date the compensation is to be provided and regardless of the date the assignment, transfer, sale, devise, bequest, or surrender of the policy is to occur.

(1) This prohibition shall not apply if the viator certifies to the viatical settlement provider that 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 24 months. The time covered under a group policy must be calculated without regard to a change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship.

(2) This prohibition shall not apply if 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.

(B) The viator or insured disposes of his or her ownership interests in a closely held corporation, pursuant to the terms of a buyout or other similar agreement in effect at the time the insurance policy was initially issued.

(C) The viator’s spouse dies.

(D) The viator divorces his or her spouse.

(E) The viator retires from full-time employment.

(F) The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment.

(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.

(3) (A) Copies of the independent evidence required by paragraph (2) 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. Nothing in this section shall prohibit an insurer from exercising its right to contest the validity of any policy.

(B) If the viatical settlement provider submits to the insurer a copy of independent evidence provided for in subparagraph (A) of paragraph (2) when the viatical settlement 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 establish that the settlement contract satisfies the requirements of this section.

(4) This prohibition shall apply only to policies issued on or after the effective date of this section.

(o) An insurer shall not:

(1) Engage in any transaction, act, or practice that restricts, limits, or impairs the lawful transfer of ownership, change of beneficiary, or assignment of a policy.

(2) Make any false or misleading statement for the purpose of dissuading a viator or insured from a lawful viatical settlement contract.

(p) No person providing premium financing shall receive any proceeds, fees, or other consideration from the policy or viator of the policy that are in addition to the amounts required to pay principal, interest, and any reasonable costs or expenses incurred by the lender or borrower in connection with the premium finance agreement, except for the event of a default, unless either the default on the loan or transfer of the policy occurs pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this act.

(q) If there is more than one viator on a single policy, and the viators are residents of different states, the viatical settlement contract 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 of the viators. The law of the state of the insured shall govern in the event that equal viators fail to agree in writing upon a state of residence for jurisdictional purposes.

(r) A viatical settlement provider from this state who enters into a viatical settlement contract with a viator who is a resident of another state that has enacted statutes or adopted regulations governing viatical settlement contracts shall be governed in the effectuation of that viatical settlement contract by the statutes and regulations of the viator’s state of residence. If the state in which the viator is a resident has not enacted statutes or regulations governing viatical settlement contracts, the viatical settlement provider shall give the viator notice that neither state regulates the transaction upon which he or she is entering. For transactions in those states, however, the viatical settlement provider is to maintain all records required if the transactions were executed in the state of residence. The forms used in those states need not be approved by the department.

(s) If there is a conflict in the laws that apply to an viator and a purchaser in any individual transaction, the laws of the state that apply to the viator shall take precedence and the viatical settlement provider shall comply with those laws.

(t) It is a fraudulent viatical settlement act and a violation of this section for any person to do any of the following, or any of the acts listed as a “Fraudulent viatical settlement act” as provided in section 214 of this chapter.

(1) Enter into a viatical settlement contract if a person knows or reasonably should have known that the life insurance policy was obtained by means of a false, deceptive, or misleading application for such policy.

(2) Engage in any transaction, practice, or course of business if a person knows or reasonably should have known that the intent was to avoid the notice requirements of this section.

(3) Engage in any fraudulent act or practice in connection with any transaction relating to any settlement involving a viator who is a resident of this state.

(4) Fail to provide the disclosures or file the required reports with the commissioner as required by this act.

(5) Issue, solicit, or market, the purchase of a new life insurance policy for the purpose of, or with a primary emphasis on, settling the policy.

(6) Enter into a premium finance agreement with any person or agency, or any person affiliated with a person or agency that is prohibited under sub-section (p).

(7) With respect to any settlement contract or insurance policy and a viatical settlement broker, knowingly solicit an offer from, effectuate a viatical settlement contract with, or make a sale to any viatical settlement provider, financing entity, or related provider trust that is controlling, controlled by, or under common control with a viatical settlement broker, unless the relationship has been fully disclosed to the viator.

(8) With respect to any viatical settlement contract or insurance policy and a viatical settlement provider, knowingly enter into a viatical settlement contract with an viator, if, in connection with a viatical settlement contract, anything of value will be paid to a viatical settlement broker that is controlling, controlled by, or under common control with a viatical settlement provider or the financing entity, or related provider trust that is involved in a settlement contract, unless the relationship has been fully disclosed to the viator.

(9) With respect to a viatical settlement provider, enter into a viatical settlement contract unless the viatical settlement promotional, advertising, and marketing materials, as may be prescribed by regulation, have been filed with the commissioner. In no event shall any marketing materials expressly reference that the insurance is “free” for any period of time. The inclusion of any reference in the marketing materials that would cause a viator to reasonably believe that the insurance is free for any period of time shall be considered a violation of this act; or with respect to any life insurance producer, insurance company, viatical settlement broker, or viatical settlement provider make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

(u) Viatical settlement contracts and applications for viatical settlement contracts, 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 for a viatical settlement contract may be subject to criminal or civil liability.”

(1) The lack of a statement as required by this sub-section does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

(2) This 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) Preempt, supersede, or limit any provision of any state securities law or any rule, order, or notice issued thereunder.

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

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

(v) A viatical settlement provider lawfully transacting business in this state prior to the effective date of this act may continue to do so, pending approval or disapproval of that person’s application for a license as long as the application is filed with the commissioner not later than 30 days after publication by the commissioner of an application form and instructions for licensure of viatical settlement providers. If the publication of the application form and instructions is prior to the effective date of this chapter, then the filing of the application shall not be later than 30 days after the effective date of this act. During the time that an application is pending with the commissioner, the applicant may use any form of viatical settlement contract that has been filed with the commissioner pending approval thereof, provided that such form is otherwise in compliance with the provisions of this act. Any person transacting business in this state under this provision shall be obligated to comply with all other requirements of this act. A person who has lawfully acted as a viatical settlement broker and negotiated viatical settlement contracts between any viator residing in this state and one or more viatical settlement providers for at least one year immediately prior to the effective date of this act may continue to do so pending approval or disapproval of that person’s application for a license, as long as the application is filed with the commissioner not later than 30 days after publication by the commissioner of an application form and instructions for licensure of viatical settlement brokers. If the publication of the application form and instructions is prior to the effective date of this chapter, then the filing of the application shall not be later than 30 days after the effective date of this act. Any person transacting business in this state under this provision shall be obligated to comply with all other requirements of this act.

SECTION 5. This act shall apply to all viatical settlement contracts entered into after July 1, 2010. This act shall apply to any transaction involving any life insurance policy in effect, or entered into, on or after the operative date of this act.