S T A T E O F N E W Y O R K

1873

2009-2010 Regular Sessions

I N A S S E M B L Y

January 12, 2009

Introduced by M. of A. WRIGHT -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, the penal law and the banking law, in relation to viatical settlements; and to repeal certain provisions of the insurance law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Paragraphs 6 and 7 of subsection (r) of section 2101 of the insurance law, as added by chapter 687 of the laws of 2003, are amended and a new paragraph 8 is added to read as follows:

(6) personal lines: property/casualty insurance coverage sold to individuals and families for primarily noncommercial purposes; [and]

(7) any other line of insurance permitted pursuant to this chapter[.]; AND

(8) VIATICAL SETTLEMENT TRANSACTIONS PURSUANT TO ARTICLE SEVENTY-EIGHT OF THIS CHAPTER.

S 2. Section 2101 of the insurance law is amended by adding a new subsection (v) to read as follows:

(V) IN THIS ARTICLE, "VIATICAL SETTLEMENT BROKER" SHALL HAVE THE MEANING CONTAINED IN SUBSECTION (H) OF SECTION SEVEN THOUSAND EIGHT HUNDRED TWO OF THIS CHAPTER.

S 3. Paragraph 1 of subsection (a) of section 2102 of the insurance law, as amended by chapter 687 of the laws of 2003, is amended to read as follows:

(1) No person, firm, association or corporation shall act as an insurance producer [or], insurance adjuster, OR VIATICAL SETTLEMENT BROKER in this state without having authority to do so by virtue of a license issued and in force pursuant to the provisions of this chapter.

S 4. The insurance law is amended by adding a new section 2104-a to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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S 2104-A. VIATICAL SETTLEMENT BROKERS; LICENSING. (A) THE SUPERINTENDENT MAY ISSUE A LICENSE TO ANY INDIVIDUAL, FIRM, ASSOCIATION OR CORPORATION WHO OR WHICH HAS COMPLIED WITH THE REQUIREMENTS OF THIS CHAPTER, AUTHORIZING THE LICENSEE TO ACT AS A VIATICAL SETTLEMENT BROKER.

(B) ANY SUCH LICENSE ISSUED TO A FIRM OR ASSOCIATION SHALL AUTHORIZE ONLY THE MEMBERS AND KEY EMPLOYEES THEREOF, NAMED IN SUCH LICENSE AS SUB-LICENSEES, TO ACT INDIVIDUALLY AS VIATICAL SETTLEMENT BROKERS THEREUNDER, AND ANY SUCH LICENSE ISSUED TO A CORPORATION SHALL AUTHORIZE ONLY THE OFFICERS, DIRECTORS AND KEY EMPLOYEES THEREOF, NAMED IN SUCH LICENSE AS SUB-LICENSEES, TO ACT INDIVIDUALLY AS VIATICAL SETTLEMENT BROKERS THEREUNDER. EVERY SUB-LICENSEE, ACTING AS A VIATICAL SETTLEMENT BROKER PURSUANT TO SUCH A LICENSE SHALL BE AUTHORIZED SO TO ACT ONLY IN THE NAME OF THE LICENSEE.

(C) EVERY INDIVIDUAL APPLICANT FOR A LICENSE UNDER THIS SECTION AND EVERY PROPOSED SUB-LICENSEE SHALL BE EIGHTEEN YEARS OF AGE OR OVER AT THE TIME OF THE ISSUANCE OF SUCH LICENSE.

(D) (1) BEFORE ANY ORIGINAL VIATICAL SETTLEMENT BROKER'S LICENSE IS ISSUED THERE SHALL BE ON FILE IN THE OFFICE OF THE SUPERINTENDENT AN APPLICATION BY THE PROPOSED LICENSEE IN SUCH FORM OR FORMS, AND SUPPLEMENTS THERETO, AND CONTAINING INFORMATION THE SUPERINTENDENT PRESCRIBES AND FOR EACH BUSINESS ENTITY, THE SUB-LICENSEE OR SUB-LICENSEES NAMED IN THE APPLICATION SHALL BE DESIGNATED RESPONSIBLE FOR THE BUSINESS ENTITY'S COMPLIANCE WITH THE INSURANCE LAWS, RULES AND REGULATIONS OF THIS STATE. THE APPLICANT SHALL FULLY DISCLOSE THE IDENTITY OF ALL STOCKHOLDERS (EXCEPT STOCKHOLDERS OWNING FEWER THAN TEN PERCENT OF THE VOTING SHARES OF A VIATICAL SETTLEMENT BROKER WHOSE SHARES ARE PUBLICLY TRADED), PARTNERS, OFFICERS, MEMBERS, DIRECTORS AND PERSONS WITH A CONTROLLING INTEREST AND THE SUPERINTENDENT MAY, IN THE EXERCISE OF THE SUPERINTENDENT'S DISCRETION, REFUSE TO ISSUE A LICENSE IN THE NAME OF A LEGAL ENTITY IF NOT SATISFIED THAT ANY EMPLOYEE, STOCKHOLDER, PARTNER, OFFICER, MEMBER, DIRECTOR OR PERSON WITH A CONTROLLING INTEREST THEREOF WHO MAY MATERIALLY INFLUENCE THE APPLICANT'S CONDUCT MEETS THE STANDARDS OF THIS ARTICLE AND ARTICLE SEVENTY-EIGHT OF THIS CHAPTER. THEREAFTER, THE APPLICANT AND, IF A LICENSE HAS BEEN ISSUED, THE LICENSEE SHALL PROVIDE TO THE SUPERINTENDENT NEW OR REVISED INFORMATION ABOUT STOCKHOLDERS (EXCEPT STOCKHOLDERS OWNING FEWER THAN TEN PERCENT OF THE VOTING SHARES OF A VIATICAL SETTLEMENT BROKER WHOSE SHARES ARE PUBLICLY TRADED), PARTNERS, OFFICERS, MEMBERS, DIRECTORS AND PERSONS WITH A CONTROLLING INTEREST WITHIN THIRTY DAYS OF THE CHANGE. FOR PURPOSES OF THIS SECTION, "CONTROLLING INTEREST" MEANS A PERSON WHO DIRECTLY OR INDIRECTLY, HAS THE POWER TO CAUSE TO BE DIRECTED THE MANAGEMENT, CONTROL OR ACTIVITIES OF SUCH LICENSEE.

(2) EACH INDIVIDUAL SIGNING SUCH APPLICATION SHALL, UNLESS LICENSED AS AN INSURANCE PRODUCER WITH A LIFE LINE OF AUTHORITY, WITH SUCH APPLICATION, SUBMIT TO THE SUPERINTENDENT FINGERPRINTS OF HIS OR HER TWO HANDS RECORDED IN SUCH MANNER AS MAY BE SPECIFIED BY THE SUPERINTENDENT. SUCH FINGERPRINTS SHALL BE SUBMITTED TO THE DIVISION OF CRIMINAL JUSTICE SERVICES FOR A STATE CRIMINAL HISTORY RECORD CHECK, AS DEFINED IN SUBDIVISION ONE OF SECTION THREE THOUSAND THIRTY-FIVE OF THE EDUCATION LAW, AND MAY BE SUBMITTED TO THE FEDERAL BUREAU OF INVESTIGATION FOR A NATIONAL CRIMINAL HISTORY RECORD CHECK.

(E) (1) THE SUPERINTENDENT SHALL, IN ORDER TO DETERMINE THE COMPETENCY OF EVERY INDIVIDUAL APPLICANT AND OF EVERY PROPOSED SUB-LICENSEE FOR THE VIATICAL SETTLEMENT BROKER LICENSE REQUIRE SUCH INDIVIDUAL TO SUBMIT TO A PERSONAL WRITTEN EXAMINATION AND TO PASS THE SAME TO THE SATISFACTION OF THE SUPERINTENDENT. SUCH EXAMINATION SHALL BE HELD AT SUCH TIMES AND

PLACES AS THE SUPERINTENDENT SHALL FROM TIME TO TIME DETERMINE. EVERY INDIVIDUAL APPLYING TO TAKE ANY WRITTEN EXAMINATION SHALL, AT THE TIME OF APPLYING THEREFOR, PAY TO THE SUPERINTENDENT OR, AT THE DISCRETION OF THE SUPERINTENDENT, DIRECTLY TO ANY ORGANIZATION THAT IS UNDER CONTRACT TO PROVIDE EXAMINATION SERVICES, AN EXAMINATION FEE OF AN AMOUNT WHICH IS THE ACTUAL DOCUMENTED ADMINISTRATIVE COST OF CONDUCTING SAID QUALIFYING EXAMINATION AS CERTIFIED BY THE SUPERINTENDENT FROM TIME TO TIME. AN EXAMINATION FEE REPRESENTS AN ADMINISTRATIVE EXPENSE AND IS NOT REFUNDABLE. THE SUPERINTENDENT MAY ACCEPT, IN LIEU OF ANY SUCH EXAMINATION, THE RESULT OF ANY PREVIOUS WRITTEN EXAMINATION, GIVEN BY THE SUPERINTENDENT OR BY THE CHIEF INSURANCE REGULATOR OF ANOTHER STATE, WHICH IN THE SUPERINTENDENT'S JUDGMENT IS EQUIVALENT TO THE EXAMINATION FOR WHICH IT IS SUBSTITUTED.

(2) FOR INDIVIDUALS SEEKING TO QUALIFY TO OBTAIN A VIATICAL SETTLEMENT BROKER'S LICENSE, THE SUPERINTENDENT SHALL PRESCRIBE ONE EXAMINATION TO TEST THE QUALIFICATIONS OF AN INDIVIDUAL WITH RESPECT TO VIATICAL SETTLEMENTS. EVERY SUCH INDIVIDUAL SHALL BE REQUIRED TO PASS SUCH EXAMINATION BEFORE BECOMING LICENSED AS A VIATICAL SETTLEMENT BROKER. NO INDIVIDUAL SHALL BE DEEMED QUALIFIED TO TAKE THE EXAMINATION UNLESS HE OR SHE SHALL HAVE SUCCESSFULLY COMPLETED A COURSE OR COURSES, APPROVED AS TO METHOD AND CONTENT BY THE SUPERINTENDENT, COVERING THE PRINCIPAL BRANCHES OF VIATICAL SETTLEMENT TRANSACTIONS AND REQUIRING NOT LESS THAN FORTY HOURS OF CLASSROOM WORK.

(F)(1) NO SUCH WRITTEN EXAMINATION OR PRELICENSING EDUCATION SHALL BE REQUIRED:

(A) OF ANY INSURANCE PRODUCER WITH A LIFE LINE OF AUTHORITY LICENSED IN THIS STATE OR IN SUCH INSURANCE PRODUCER'S HOME STATE FOR AT LEAST ONE YEAR;

(B) IN THE DISCRETION OF THE SUPERINTENDENT, OF ANY INDIVIDUAL WHOSE LICENSE HAS BEEN REVOKED OR SUSPENDED;

(C) OF ANY APPLICANT WHO HAS PASSED THE WRITTEN EXAMINATION GIVEN BY THE SUPERINTENDENT FOR A VIATICAL SETTLEMENT BROKER'S LICENSE AND WAS LICENSED AS SUCH, OR OF AN APPLICANT WHO WAS LICENSED AS A VIATICAL SETTLEMENT BROKER BUT DID NOT PASS SUCH AN EXAMINATION; PROVIDED THE APPLICANT APPLIES WITHIN TWO YEARS FOLLOWING THE DATE OF TERMINATION OF THE APPLICANT'S LICENSE;

(D) IN THE DISCRETION OF THE SUPERINTENDENT, AS TO ALL OR ANY PART OF THE WRITTEN EXAMINATION OR THE PREREQUISITE MINIMUM FORTY-HOUR COURSE SPECIFIED IN PARAGRAPH TWO OF SUBSECTION (E) OF THIS SECTION, OF ANY INDIVIDUAL SEEKING TO BE NAMED A LICENSEE OR SUB-LICENSEE, UPON WHOM HAS BEEN CONFERRED THE CHARTERED LIFE UNDERWRITER (C.L.U.) OR CHARTERED LIFE UNDERWRITER ASSOCIATE DESIGNATION BY THE AMERICAN COLLEGE; OR

(E) IN THE DISCRETION OF THE SUPERINTENDENT, AS TO ALL OR ANY PART OF THE WRITTEN EXAMINATION OR THE PREREQUISITE MINIMUM FORTY-HOUR COURSE SPECIFIED IN PARAGRAPH TWO OF SUBSECTION (E) OF THIS SECTION, OF ANY INDIVIDUAL SEEKING TO BE NAMED A LICENSEE OR SUB-LICENSEE, WHO IS A NON-RESIDENT WHO IS LICENSED AS AN INSURANCE PRODUCER WITH A LIFE LINE OF AUTHORITY OR A VIATICAL SETTLEMENT BROKER IN HIS OR HER HOME STATE, PROVIDED, HOWEVER, THAT THE INDIVIDUAL'S HOME STATE GRANTS NON-RESIDENT LICENSES TO RESIDENTS OF THIS STATE ON THE SAME BASIS.

(2) NO PRELICENSING EDUCATION SHALL BE REQUIRED:

(A) OF ANY INDIVIDUAL REGULARLY EMPLOYED BY A VIATICAL SETTLEMENT PROVIDER, LIFE INSURANCE COMPANY, VIATICAL SETTLEMENT BROKER, OR AN INSURANCE PRODUCER WITH A LIFE LINE OF AUTHORITY, FOR A PERIOD OR PERIODS AGGREGATING NOT LESS THAN ONE YEAR DURING THE THREE YEARS NEXT PRECEDING THE DATE OF APPLICATION, IN RESPONSIBLE DUTIES RELATING TO THE

USE OF LIFE INSURANCE AND ANNUITY CONTRACTS IN THE DESIGN AND ADMINISTRATION OF PLANS FOR ESTATE CONSERVATION AND DISTRIBUTION, EMPLOYEE BENEFITS AND BUSINESS CONTINUATION, AND SETTLEMENTS OF LIFE INSURANCE AND ANNUITY CONTRACTS, PROVIDED THAT THE APPLICANT SUBMITS WITH THE APPLICATION A STATEMENT SUBSCRIBED AND AFFIRMED AS TRUE UNDER THE PENALTIES OF PERJURY BY SUCH EMPLOYER OR EMPLOYERS STATING FACTS WHICH SHOW COMPLIANCE WITH THIS REQUIREMENT; OR

(B) OF ANY INDIVIDUAL REGULARLY EMPLOYED BY A VIATICAL SETTLEMENT PROVIDER, LIFE INSURANCE COMPANY, VIATICAL SETTLEMENT BROKER, OR AN INSURANCE PRODUCER WITH A LIFE LINE OF AUTHORITY, FOR A PERIOD OR PERIODS AGGREGATING NOT LESS THAN ONE YEAR, DURING THE THREE YEARS NEXT PRECEDING THE DATE OF ENTRANCE INTO THE SERVICE OF THE ARMED FORCES OF THE UNITED STATES OR IMMEDIATELY FOLLOWING HIS OR HER DISCHARGE THEREFROM, IN RESPONSIBLE DUTIES RELATING TO THE USE OF LIFE INSURANCE AND ANNUITY CONTRACTS IN THE DESIGN AND ADMINISTRATION OF PLANS FOR ESTATE CONSERVATION AND DISTRIBUTION, EMPLOYEE BENEFITS AND BUSINESS CONTINUATION, AND SETTLEMENTS OF LIFE INSURANCE AND ANNUITY CONTRACTS; PROVIDED THE APPLICATION FOR SUCH LICENSE IS FILED WITHIN ONE YEAR FOLLOWING THE DATE OF DISCHARGE, AND THE APPLICANT SUBMITS WITH THE APPLICATION A STATEMENT SUBSCRIBED AND AFFIRMED AS TRUE UNDER THE PENALTIES OF PERJURY BY SUCH EMPLOYER OR EMPLOYERS STATING FACTS WHICH SHOW COMPLIANCE WITH THIS REQUIREMENT.

(G) THE SUPERINTENDENT MAY REFUSE TO ISSUE ANY VIATICAL SETTLEMENT BROKER'S LICENSE IF, IN THE SUPERINTENDENT'S JUDGMENT, THE PROPOSED LICENSEE OR ANY SUB-LICENSEE IS NOT TRUSTWORTHY AND COMPETENT TO ACT AS SUCH BROKER, OR HAS GIVEN CAUSE FOR LICENSE REVOCATION OR SUSPENSION, OR HAS FAILED TO COMPLY WITH ANY PREREQUISITE FOR THE ISSUANCE OF SUCH LICENSE.

(H) (1) EVERY LICENSE ISSUED TO A BUSINESS ENTITY PURSUANT TO SUBSECTION (A) OF THIS SECTION SHALL EXPIRE ON JUNE THIRTIETH OF ODD-NUMBERED YEARS.

(2) EVERY LICENSE ISSUED PURSUANT TO THIS SECTION TO AN INDIVIDUAL, WHO WAS BORN IN AN ODD-NUMBERED YEAR, SHALL EXPIRE ON THE INDIVIDUAL'S BIRTHDAY IN EACH ODD-NUMBERED YEAR. EVERY LICENSE ISSUED PURSUANT TO THIS SECTION TO AN INDIVIDUAL, WHO WAS BORN IN AN EVEN-NUMBERED YEAR, SHALL EXPIRE ON THE INDIVIDUAL'S BIRTHDAY IN EACH EVEN-NUMBERED YEAR. EVERY SUCH LICENSE MAY BE RENEWED FOR THE ENSUING PERIOD OF TWENTY-FOUR MONTHS UPON THE FILING OF AN APPLICATION IN CONFORMITY WITH THIS SUBSECTION.

(3) SUCH LICENSES MAY BE ISSUED FOR ALL OF SUCH TWO-YEAR TERMS, OR UPON APPLICATION MADE DURING ANY SUCH TERM, FOR THE BALANCE THEREOF.

(4) ANY LICENSE SHALL BE CONSIDERED IN GOOD STANDING WITHIN THE LICENSE TERM UNLESS:

(A) REVOKED OR SUSPENDED BY THE SUPERINTENDENT PURSUANT TO THIS ARTICLE; OR

(B) IF AT THE EXPIRATION DATE OF THE LICENSE TERM, PROVIDED THE LICENSE WAS IN GOOD STANDING DURING THE TERM, THE LICENSEE FAILS TO FILE A RENEWAL APPLICATION.

(5) BEFORE THE RENEWAL OF ANY VIATICAL SETTLEMENT BROKER'S LICENSE SHALL BE ISSUED, THE LICENSEE SHALL HAVE:

(A) FILED A COMPLETED RENEWAL APPLICATION IN SUCH FORM OR FORMS, AND SUPPLEMENTS THERETO, AND CONTAINING SUCH INFORMATION AS THE SUPERINTENDENT MAY PRESCRIBE; AND

(B) PAID SUCH FEES AS ARE PRESCRIBED BY THE SUPERINTENDENT.

(6) IF AN APPLICATION FOR A RENEWAL LICENSE SHALL HAVE BEEN FILED WITH THE SUPERINTENDENT BEFORE THE EXPIRATION OF SUCH LICENSE, THE LICENSE

SOUGHT TO BE RENEWED SHALL CONTINUE IN FULL FORCE AND EFFECT EITHER UNTIL THE ISSUANCE BY THE SUPERINTENDENT OF THE RENEWAL LICENSE APPLIED FOR OR UNTIL FIVE DAYS AFTER THE SUPERINTENDENT SHALL HAVE REFUSED TO ISSUE SUCH RENEWAL LICENSE AND SHALL HAVE GIVEN NOTICE OF SUCH REFUSAL TO THE APPLICANT AND TO EACH PROPOSED SUB-LICENSEE. BEFORE REFUSING TO RENEW ANY SUCH LICENSE, EXCEPT ON THE GROUND OF FAILURE TO PASS A WRITTEN EXAMINATION, THE SUPERINTENDENT SHALL NOTIFY THE APPLICANT OF THE SUPERINTENDENT'S INTENTION TO DO SO AND SHALL GIVE SUCH APPLICANT A HEARING.

(7) (A) THE SUPERINTENDENT MAY, IN ISSUING A RENEWAL LICENSE, DISPENSE WITH THE REQUIREMENTS OF A VERIFIED APPLICATION BY ANY INDIVIDUAL LICENSEE OR SUB-LICENSEE WHO, BY REASON OF BEING ENGAGED IN ANY MILITARY SERVICE FOR THE UNITED STATES, IS UNABLE TO MAKE PERSONAL APPLICATION FOR SUCH RENEWAL LICENSE, UPON THE FILING OF AN APPLICATION ON BEHALF OF SUCH INDIVIDUAL, IN SUCH FORM AS THE SUPERINTENDENT SHALL PRESCRIBE, BY SOME PERSON WHO IN HIS OR HER JUDGMENT HAS KNOWLEDGE OF THE FACTS AND WHO MAKES AFFIDAVIT SHOWING SUCH MILITARY SERVICE AND THE INABILITY OF SUCH VIATICAL SETTLEMENT BROKER TO MAKE PERSONAL APPLICATION.

(B) AN INDIVIDUAL LICENSEE OR SUB-LICENSEE WHO IS UNABLE TO COMPLY WITH LICENSE RENEWAL PROCEDURES DUE TO OTHER EXTENUATING CIRCUMSTANCES, SUCH AS A LONG-TERM MEDICAL DISABILITY, MAY REQUEST A WAIVER OF SUCH PROCEDURES, IN SUCH FORM AS THE SUPERINTENDENT SHALL PRESCRIBE. THE LICENSEE OR SUB-LICENSEE MAY ALSO REQUEST A WAIVER OF ANY EXAMINATION REQUIREMENT OR ANY OTHER FINE OR SANCTION IMPOSED FOR FAILURE TO COMPLY WITH RENEWAL PROCEDURES.

(8) IN ADDITION TO ANY EXAMINATION FEE REQUIRED BY SUBSECTION (E) OF THIS SECTION, THERE SHALL BE PAID TO THE SUPERINTENDENT FOR EACH INDIVIDUAL LICENSE APPLICANT AND EACH PROPOSED SUB-LICENSEE A LICENSING OR RENEWAL FEE TO BE DETERMINED BY THE SUPERINTENDENT.

(9) AN APPLICATION FOR THE RENEWAL OF A LICENSE SHALL BE FILED WITH THE SUPERINTENDENT NOT LESS THAN SIXTY DAYS PRIOR TO THE DATE THE LICENSE EXPIRES OR THE APPLICANT SHALL BE SUBJECT TO A FURTHER FEE FOR LATE FILING OF TEN DOLLARS.

(10) NO LICENSE FEE SHALL BE REQUIRED OF ANY PERSON WHO SERVED AS A MEMBER OF THE ARMED FORCES OF THE UNITED STATES AT ANY TIME AND WHO SHALL HAVE BEEN DISCHARGED THEREFROM, UNDER CONDITIONS OTHER THAN DISHONORABLE, IN A CURRENT LICENSING PERIOD, FOR THE DURATION OF SUCH PERIOD.

(11) EXCEPT WHERE A CORPORATION, ASSOCIATION OR FIRM LICENSED AS A VIATICAL SETTLEMENT BROKER IS APPLYING TO ADD A SUB-LICENSEE, THERE SHALL BE NO FEE REQUIRED FOR THE ISSUANCE OF AN AMENDED LICENSE.

(12) THE LICENSE SHALL CONTAIN THE LICENSEE'S NAME, ADDRESS, PERSONAL IDENTIFICATION NUMBER, THE DATE OF ISSUANCE, AND ANY OTHER INFORMATION THE SUPERINTENDENT DEEMS NECESSARY. THE SUPERINTENDENT MAY ISSUE THE VIATICAL SETTLEMENT BROKER'S LICENSE IN CONJUNCTION WITH ANY OTHER LICENSE, OR ITS RENEWAL, HELD BY THE APPLICANT.

(I) IF THE SUPERINTENDENT DEEMS IT NECESSARY, THE SUPERINTENDENT MAY REQUIRE ANY LICENSED VIATICAL SETTLEMENT BROKER TO SUBMIT A NEW APPLICATION AT ANY TIME.

(J) THE SUPERINTENDENT MAY ISSUE A REPLACEMENT FOR A CURRENTLY IN-FORCE LICENSE THAT HAS BEEN LOST OR DESTROYED. BEFORE SUCH REPLACEMENT LICENSE SHALL BE ISSUED, THERE SHALL BE ON FILE IN THE OFFICE OF THE SUPERINTENDENT A WRITTEN APPLICATION FOR SUCH REPLACEMENT LICENSE, AFFIRMING UNDER PENALTY OF PERJURY THAT THE ORIGINAL LICENSE HAS BEEN LOST OR DESTROYED, TOGETHER WITH A FEE OF FIFTEEN DOLLARS.

S 5. The section heading of section 2119 of the insurance law is amended, and a new subsection (e) is added to read as follows:

Insurance agents, brokers, consultants, AND VIATICAL SETTLEMENT BROKERS; written contract for compensation; excess charges prohibited.

(E)(1) NO PERSON LICENSED AS A VIATICAL SETTLEMENT BROKER MAY RECEIVE ANY COMPENSATION FROM ANY VIATOR, PROPOSED VIATOR OR INSURED FOR EXAMINING, APPRAISING, REVIEWING OR EVALUATING ANY VIATICAL SETTLEMENT CONTRACT OR FOR MAKING RECOMMENDATIONS OR GIVING ADVICE WITH REGARD TO SUCH CONTRACT; OR RECEIVE ANY COMPENSATION FROM ANY VIATOR OR PROPOSED VIATOR FOR OR ON ACCOUNT OF THE SOLICITATION OR NEGOTIATION OF, OR OTHER SERVICES IN CONNECTION WITH, ANY VIATICAL SETTLEMENT CONTRACT SUBJECT TO THIS CHAPTER OR FOR ANY OTHER SERVICES ON ACCOUNT OF SUCH CONTRACT; UNLESS SUCH COMPENSATION IS BASED UPON A WRITTEN MEMORANDUM SIGNED BY THE PARTY TO BE CHARGED AND SPECIFYING OR CLEARLY DEFINING THE AMOUNT OR EXTENT OF SUCH COMPENSATION.

(2) A COPY OF EVERY SUCH MEMORANDUM OR CONTRACT SHALL BE RETAINED BY THE LICENSEE FOR NOT LESS THAN THREE YEARS AFTER SUCH SERVICES HAVE BEEN FULLY PERFORMED.

(3) NO PERSON LICENSED AS A VIATICAL SETTLEMENT BROKER MAY RECEIVE ANY DIRECT OR INDIRECT COMPENSATION FOR OR ON ACCOUNT OF THE SOLICITATION OR NEGOTIATION OF, OR OTHER SERVICES IN CONNECTION WITH A VIATICAL SETTLEMENT CONTRACT SUBJECT TO THIS CHAPTER FROM ANY PERSON FOR WHOM ANY SUCH LICENSEE HAS PERFORMED ANY RELATED CONSULTING SERVICE FOR WHICH THE LICENSEE HAS RECEIVED A FEE OR CONTRACTED TO RECEIVE A FEE WITHIN THE PRECEDING TWELVE MONTHS UNLESS SUCH COMPENSATION IS PROVIDED FOR IN A WRITTEN MEMORANDUM OR CONTRACT REQUIRED PURSUANT TO PARAGRAPH ONE OF THIS SUBSECTION.

S 6. Section 2120 of the insurance law, subsection (d) as added by chapter 527 of the laws of 2004, is amended to read as follows:

S 2120. Fiduciary capacity of insurance agents, insurance brokers, VIATICAL SETTLEMENT BROKERS and reinsurance intermediaries. (a) Every insurance agent and every insurance broker acting as such in this state shall be responsible in a fiduciary capacity for all funds received or collected as insurance agent or insurance broker, and shall not, without the express consent of his OR HER or its principal, mingle any such funds with his OR HER or its own funds or with funds held by him OR HER or it in any other capacity.

(b) Every reinsurance intermediary acting as such in this state shall be responsible, in a fiduciary capacity for all funds received or collected in such capacity, and shall not, without the express consent of his OR HER or its principal or principals, mingle any such funds with his OR HER or its own funds or with funds held by him OR HER or it in any other capacity.

(c) EVERY VIATICAL SETTLEMENT BROKER ACTING AS SUCH IN THIS STATE SHALL BE RESPONSIBLE IN A FIDUCIARY CAPACITY FOR ALL FUNDS RECEIVED OR COLLECTED IN SUCH CAPACITY, AND SHALL NOT, WITHOUT THE EXPRESS CONSENT OF THE VIATICAL SETTLEMENT BROKER'S PRINCIPAL OR PRINCIPALS, MINGLE ANY SUCH FUNDS WITH THE VIATICAL SETTLEMENT BROKER'S OWN FUNDS OR WITH FUNDS HELD BY THE VIATICAL SETTLEMENT BROKER IN ANY OTHER CAPACITY.

(D) This section shall not require any such agent, broker [or], reinsurance intermediary, OR VIATICAL SETTLEMENT BROKER to maintain a separate bank deposit for the funds of each such principal, if and as long as the funds so held for each such principal are reasonably ascertainable from the books of account and records of such agent, broker [or], reinsurance intermediary, OR VIATICAL SETTLEMENT BROKER, as the case may be.

[(d)] (E) A retail insurance producer who violates paragraph (a) of subdivision two of section five hundred seventy-seven-a of the banking law shall be liable for actual damages for the failure to notify, in writing, the premium finance agency of the information required pursuant to such paragraph (a).

S 7. Subsections (a) and (b) of section 2132 of the insurance law, as added by chapter 656 of the laws of 1992, are amended to read as follows:

(a) This section shall apply to resident and non-resident persons licensed pursuant to this article with respect to [the following types of insurance]:

(1) life insurance, annuity contracts, variable annuity contracts and variable life insurance;

(2) sickness, accident and health insurance; [and]

(3) all lines of property and casualty insurance; AND

(4) VIATICAL SETTLEMENTS.

(b) This section shall not apply to:

(1) those persons holding licenses for which an examination is not required by the laws of this state; [or]

(2) any limited licensees or any other licensees as the superintendent may exempt subject to any continuing education requirements deemed appropriate by the superintendent; OR

(3) FOR PURPOSES OF THE CONTINUING EDUCATION REQUIREMENTS FOR VIATICAL SETTLEMENTS, AN INSURANCE PRODUCER WITH A LIFE LINE OF AUTHORITY WHO IS ACTING AS A VIATICAL SETTLEMENT BROKER PURSUANT TO SECTION TWO THOUSAND ONE HUNDRED FOUR-A OF THIS ARTICLE.

S 8. The section heading and subsections (a) and (b) of section 2110 of the insurance law, as amended by chapter 687 of the laws of 2003, are amended to read as follows:

Revocation or suspension of license of insurance producer, insurance consultant [or], adjuster OR VIATICAL SETTLEMENT BROKER. (a) The superintendent may refuse to renew, revoke, or may suspend for a period the superintendent determines the license of any insurance producer, insurance consultant [or], adjuster OR VIATICAL SETTLEMENT BROKER, if, after notice and hearing, the superintendent determines that the licensee or any sub-licensee has:

(1) violated any insurance laws, or violated any regulation, subpoena or order of the superintendent of insurance or of another state's insurance commissioner, or has violated any law in the course of his dealings in such capacity;

(2) provided materially incorrect, materially misleading, materially incomplete or materially untrue information in the license application;

(3) obtained or attempted to obtain a license through misrepresentation or fraud;

(4)(A) used fraudulent, coercive or dishonest practices;

(B) demonstrated incompetence;

(C) demonstrated untrustworthiness; or

(D) demonstrated financial irresponsibility in the conduct of business in this state or elsewhere;

(5) improperly withheld, misappropriated or converted any monies or properties received in the course of business in this state or elsewhere;

(6) intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance OR VIATICAL SETTLEMENT CONTRACT;

(7) has been convicted of a felony;

(8) admitted or been found to have committed any insurance unfair trade practice or fraud;

(9) had an insurance producer license OR A VIATICAL SETTLEMENT BROKER LICENSE, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

(10) forged another's name to an application for insurance OR VIATICAL SETTLEMENT CONTRACT or to any document related to an insurance OR VIATICAL SETTLEMENT transaction;

(11) improperly used notes or any other reference material to complete an examination for an insurance license OR VIATICAL SETTLEMENT BROKER LICENSE;

(12) knowingly accepted insurance OR VIATICAL SETTLEMENT business from an individual who is not licensed;

(13) failed to comply with an administrative or court order imposing a child support obligation; [or]

(14) failed to pay state income tax or comply with any administrative or court order directing payment of state income tax; OR

(15) CEASED TO MEET THE REQUIREMENTS FOR INITIAL LICENSURE.

(b) Before revoking or suspending the license of any insurance producer, VIATICAL SETTLEMENT BROKER or other licensee pursuant to the provisions of this article, the superintendent shall, except when proceeding pursuant to subsection (f) of this section, give notice to the licensee and to every sub-licensee and shall hold, or cause to be held, a hearing not less than ten days after the giving of such notice.

S 9. Subsection (a) of section 308 of the insurance law, as amended by chapter 11 of the laws of 2008, is amended to read as follows:

(a) The superintendent may also address to any health maintenance organization, ANY VIATICAL SETTLEMENT PROVIDER, any authorized insurer or rate service organization, or officers thereof, any inquiry in relation to its transactions or condition or any matter connected therewith. Every corporation or person so addressed shall reply in writing to such inquiry promptly and truthfully, and such reply shall be, if required by the superintendent, subscribed by such individual, or by such officer or officers of a corporation, as he OR SHE shall designate, and affirmed by them as true under the penalties of perjury. In the event any corporation or person does not provide a good faith response to an inquiry from the superintendent pursuant to this section relating to accident insurance, health insurance, accident and health insurance or health maintenance organization coverage, within a time period specified by the superintendent of not less than fifteen business days, the superintendent is authorized to levy a civil penalty, after notice and hearing, against such corporation or person not to exceed five hundred dollars per day for each day beyond the date specified by the superintendent for response, but in no event shall such penalty exceed seven thousand five hundred dollars.

S 10. Section 2401 of the insurance law is amended to read as follows:

S 2401. Purpose. The purpose of this article is to regulate trade practices in the business of insurance in accordance with the intent of congress as expressed in Public Law 15, 79th Congress, AND VIATICAL SETTLEMENTS, by defining, or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

S 11. Subsections (a) and (b) of section 2402 of the insurance law, subsection (b) as amended by chapter 631 of the laws of 2007, are amended to read as follows:

(a) "Person" means any individual and any legal entity subject to any provision of this chapter, engaged in the business of insurance in this state, including any reciprocal exchange or Lloyds insurer, OR IN THE BUSINESS OF VIATICAL SETTLEMENTS.

(b) "Defined violation" means the commission by a person of an act prohibited by: section one thousand two hundred fourteen, one thousand two hundred seventeen, one thousand two hundred twenty, one thousand three hundred thirteen, subparagraph (B) of paragraph two of subsection (i) of section one thousand three hundred twenty-two, subparagraph (B) of paragraph two of subsection (i) of section one thousand three hundred twenty-four, two thousand one hundred twenty-two, two thousand one hundred twenty-three, subsection (p) of section two thousand three hundred thirteen, section two thousand three hundred twenty-four, two thousand five hundred two, two thousand five hundred three, two thousand five hundred four, two thousand six hundred one, two thousand six hundred two, two thousand six hundred three, two thousand six hundred four, two thousand six hundred six, two thousand seven hundred three, three thousand one hundred nine, three thousand two hundred twenty-four-a, three thousand four hundred twenty-nine, three thousand four hundred thirty-three, paragraph seven of subsection (e) of section three thousand four hundred twenty-six, four thousand two hundred twenty-four, four thousand two hundred twenty-five, ARTICLE SEVENTY-EIGHT or SECTION four thousand two hundred twenty-six of this chapter; or section 135.60, 135.65, 175.05, 175.45, or 190.20, or article one hundred five of the penal law.

S 12. Subsection (c) of section 3220 of the insurance law is amended to read as follows:

(c) (1) Notwithstanding any provision of law, a person whose life is insured under any policy of group life insurance, whether or not such policy is otherwise subject to this section, is permitted to make an assignment of all or any part of his incidents of ownership in such insurance, including, without limitation, any right to designate a beneficiary or beneficiaries thereunder and any right to have an individual policy issued upon termination either of employment or of said policy of group life insurance, provided that the insurer and the group policyholder may prohibit or restrict such assignment by appropriate policy provisions EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH THREE OF THIS SUBSECTION.

(2) [This] PARAGRAPH ONE OF THIS subsection shall be construed as declaring the law as it existed prior to its enactment and not as modifying it.

(3) A GROUP POLICY THAT PERMITS ASSIGNMENT OF AN INSURED PERSON'S RIGHTS BY GIFT SHALL ALSO ALLOW ASSIGNMENT FOR VALUE TO THE SAME EXTENT THAT IT ALLOWS ASSIGNMENT BY GIFT.

S 13. Article 78 of the insurance law is REPEALED and a new article 78 is added to read as follows:

ARTICLE 78
VIATICAL SETTLEMENTS

SECTION 7801. SHORT TITLE.
7802. DEFINITIONS.
7803. LICENSE REQUIREMENTS FOR VIATICAL SETTLEMENT PROVIDERS.
7804. LICENSE REVOCATION.
7805. VIATICAL SETTLEMENT CONTRACT FORMS AND DISCLOSURE FORMS.
7806. REPORTING REQUIREMENTS.
7807. EXAMINATIONS OR INVESTIGATIONS.
7808. PRIVACY.

7809. DISCLOSURE.
7810. GENERAL RULES.
7811. PROHIBITED PRACTICES.
7812. AUTHORITY TO PROMULGATE REGULATIONS.
7813. NONCONFORMING CONTRACTS.
7814. APPLICABILITY.
7815. CONTRACT PROVISIONS REQUIRED BY LAWS OF OTHER JURISDICTIONS.
7816. SEVERABILITY.

S 7801. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "VIATICAL SETTLEMENTS ACT".

S 7802. DEFINITIONS. IN THIS ARTICLE:

(A) "ACCREDITED INVESTOR" SHALL HAVE THE MEANING SET FORTH IN RULE 501(A) OF THE FEDERAL SECURITIES ACT OF 1933, AS AMENDED.

(B) "BANK" SHALL MEAN ANY BANK AS SUCH TERM IS DEFINED IN 12 U.S.C. S1813(A), (B), (C) AND (S).

(C)(1) "BUSINESS OF VIATICAL SETTLEMENTS" SHALL MEAN AN ACTIVITY INVOLVED IN, BUT NOT LIMITED TO, THE OFFERING, SOLICITATION, NEGOTIATION, PROCUREMENT, EFFECTUATION, PURCHASING, INVESTING, FINANCING, MONITORING, TRACKING, UNDERWRITING, SELLING, TRANSFERRING, ASSIGNING, PLEDGING, OR HYPOTHECATING OF VIATICAL SETTLEMENT CONTRACTS SUBJECT TO THIS CHAPTER.

(2) FOR PURPOSES OF THIS ARTICLE, "BUSINESS OF VIATICAL SETTLEMENTS" SHALL INCLUDE SUCH ACTS OR TRANSACTIONS EFFECTUATED IN THIS STATE BY MAIL OR OTHERWISE FROM OUTSIDE THIS STATE WITH RESPECT TO TRANSACTIONS INVOLVING A VIATOR.

(D) "CHRONICALLY ILL" SHALL HAVE THE MEANING SET FORTH IN SECTION 7702B OF THE INTERNAL REVENUE CODE (26 U.S.C. SECTION 7702B(C)(2)), AS AMENDED, AND REGULATIONS THEREUNDER.

(E) "COMPENSATION" SHALL MEAN ANYTHING OF VALUE, INCLUDING MONEY, CREDITS, LOANS, INTEREST ON PREMIUM, FORGIVENESS OF PRINCIPAL OR INTEREST, VACATIONS, PRIZES, GIFTS OR THE PAYMENT OF EMPLOYEE SALARIES OR EXPENSES, WHETHER PAID AS COMMISSION OR OTHERWISE.

(F)(1) "FINANCING ENTITY" SHALL MEAN AN UNDERWRITER, PLACEMENT AGENT, LENDER, PURCHASER OF SECURITIES, PURCHASER OF A POLICY OR CERTIFICATE FROM A VIATICAL SETTLEMENT PROVIDER, CREDIT ENHANCER, OR ANY ENTITY THAT HAS A DIRECT OWNERSHIP IN A POLICY OR CERTIFICATE THAT IS THE SUBJECT OF A VIATICAL SETTLEMENT CONTRACT, BUT:

(A) WHOSE PRINCIPAL ACTIVITY RELATED TO THE TRANSACTION IS PROVIDING FUNDS TO EFFECT THE VIATICAL SETTLEMENT OR PURCHASE OF ONE OR MORE VIATICATED POLICIES; AND

(B) WHO HAS AN AGREEMENT IN WRITING WITH ONE OR MORE LICENSED VIATICAL SETTLEMENT PROVIDERS TO FINANCE THE ACQUISITION OF VIATICAL SETTLEMENT CONTRACTS.

(2) "FINANCING ENTITY" DOES NOT INCLUDE A VIATICAL SETTLEMENT PURCHASER, OR ANY ENTITY THAT IS NOT A QUALIFIED INSTITUTIONAL BUYER.

(G) "FRAUDULENT VIATICAL SETTLEMENT ACT" SHALL HAVE THE MEANING SET FORTH IN SECTION 176.40 OF THE PENAL LAW.

(H) "INSURER" SHALL MEAN A LIFE INSURANCE COMPANY OR A FRATERNAL BENEFIT SOCIETY.

(I) "PERSON" SHALL MEAN AN INDIVIDUAL OR A LEGAL ENTITY, INCLUDING A PARTNERSHIP, LIMITED LIABILITY COMPANY, ASSOCIATION, TRUST, OR CORPORATION.

(J) "POLICY" SHALL MEAN AN INDIVIDUAL OR GROUP POLICY, GROUP CERTIFICATE OR OTHER CONTRACT OR ARRANGEMENT OF LIFE INSURANCE OWNED BY AN INDIVIDUAL WHO HAS HIS OR HER PRIMARY RESIDENCE IN THIS STATE OR ANY

OTHER PERSON WHO HAS HIS OR HER PRINCIPAL PLACE OF BUSINESS OR TRUST ADMINISTRATION IN THIS STATE, REGARDLESS OF WHETHER DELIVERED OR ISSUED FOR DELIVERY IN THIS STATE. THE TERM "POLICY" DOES NOT INCLUDE ANY ANNUITY CONTRACT OTHER THAN AN ANNUITY CONTRACT WITH A GUARANTEED MINIMUM DEATH BENEFIT.

(K) "PREMIUM FINANCE COMPANY" SHALL MEAN A PREMIUM FINANCE AGENCY OR PREMIUM FINANCE COMPANY (1) LICENSED PURSUANT TO THIS STATE'S PREMIUM FINANCE AGENCY OR COMPANY LICENSING REQUIREMENTS; (2) EXEMPT FROM THIS STATE'S LICENSING REQUIREMENTS; OR (3) OTHERWISE NOT REQUIRED TO BE LICENSED PURSUANT TO THIS STATE'S LICENSING REQUIREMENTS.

(L) "QUALIFIED INSTITUTIONAL BUYER" SHALL HAVE THE MEANING SET FORTH IN RULE 144A PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED.

(M) "RELATED PROVIDER TRUST" SHALL MEAN A TITLING TRUST OR OTHER TRUST ESTABLISHED BY A LICENSED VIATICAL SETTLEMENT PROVIDER OR A FINANCING ENTITY FOR THE SOLE PURPOSE OF HOLDING THE OWNERSHIP OR BENEFICIAL INTEREST IN PURCHASED POLICIES IN CONNECTION WITH A FINANCING TRANSACTION. THE TRUST SHALL HAVE A WRITTEN AGREEMENT WITH THE LICENSED VIATICAL SETTLEMENT PROVIDER UNDER WHICH THE LICENSED VIATICAL SETTLEMENT PROVIDER IS RESPONSIBLE FOR ENSURING COMPLIANCE WITH ALL STATUTORY AND REGULATORY REQUIREMENTS AND UNDER WHICH THE TRUST AGREES TO MAKE ALL RECORDS AND FILES RELATED TO VIATICAL SETTLEMENT TRANSACTIONS AVAILABLE TO THE SUPERINTENDENT AS IF THOSE RECORDS AND FILES WERE MAINTAINED DIRECTLY BY THE LICENSED VIATICAL SETTLEMENT PROVIDER.

(N) "SPECIAL PURPOSE ENTITY" SHALL MEAN A CORPORATION, PARTNERSHIP, TRUST, LIMITED LIABILITY COMPANY OR OTHER SIMILAR ENTITY FORMED SOLELY TO PROVIDE EITHER DIRECTLY OR INDIRECTLY ACCESS TO INSTITUTIONAL CAPITAL MARKETS;

(1) FOR A FINANCING ENTITY OR LICENSED VIATICAL SETTLEMENT PROVIDER; OR

(2) IN CONNECTION WITH A TRANSACTION IN WHICH: (A) THE SECURITIES IN THE SPECIAL PURPOSE ENTITY ARE ACQUIRED BY QUALIFIED INSTITUTIONAL BUYERS; OR (B) THE SECURITIES PAY A FIXED RATE OF RETURN COMMENSURATE WITH ESTABLISHED ASSET-BACKED INSTITUTIONAL CAPITAL MARKETS.

(O) "TERMINALLY ILL" SHALL MEAN HAVING AN ILLNESS OR SICKNESS THAT CAN REASONABLY BE EXPECTED TO RESULT IN DEATH IN TWENTY-FOUR MONTHS OR LESS.

(P) "VIATICAL SETTLEMENT BROKER" SHALL MEAN A PERSON, INCLUDING A LIFE INSURANCE PRODUCER, WHO WORKING EXCLUSIVELY ON BEHALF OF A VIATOR AND FOR COMPENSATION, OFFERS OR ATTEMPTS TO NEGOTIATE VIATICAL SETTLEMENT CONTRACTS BETWEEN A VIATOR AND ONE OR MORE VIATICAL SETTLEMENT PROVIDERS OR ONE OR MORE VIATICAL SETTLEMENT BROKERS. 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. "VIATICAL SETTLEMENT BROKER" DOES NOT INCLUDE AN ATTORNEY, A CERTIFIED PUBLIC ACCOUNTANT, OR A FINANCIAL PLANNER ACCREDITED BY A NATIONALLY RECOGNIZED ACCREDITATION AGENCY, WHO IS RETAINED TO REPRESENT THE VIATOR AND WHOSE COMPENSATION IS NOT PAID DIRECTLY OR INDIRECTLY BY THE VIATICAL SETTLEMENT PROVIDER OR PURCHASER.

(Q) (1) "VIATICAL SETTLEMENT CONTRACT" SHALL MEAN A WRITTEN AGREEMENT BETWEEN A VIATOR AND A VIATICAL SETTLEMENT PROVIDER ESTABLISHING THE TERMS UNDER WHICH COMPENSATION IS OR WILL BE PAID, WHICH COMPENSATION OR VALUE IS LESS THAN THE EXPECTED DEATH BENEFITS OF THE POLICY, IN RETURN FOR THE VIATOR'S PRESENT OR FUTURE ASSIGNMENT, TRANSFER, SALE, DEVISE OR BEQUEST OF THE DEATH BENEFIT OR OWNERSHIP OF ANY PORTION OF THE POLICY.

(2) "VIATICAL SETTLEMENT CONTRACT" INCLUDES A PREMIUM FINANCE LOAN MADE FOR A POLICY BY A LENDER TO A VIATOR ON, BEFORE OR AFTER THE DATE OF ISSUANCE OF THE POLICY WHERE:

(A) THE VIATOR OR THE INSURED RECEIVES ON THE DATE OF THE PREMIUM FINANCE LOAN A GUARANTEE OF A FUTURE VIATICAL SETTLEMENT VALUE OF THE POLICY;

(B) THE VIATOR OR THE INSURED AGREES ON THE DATE OF THE PREMIUM FINANCE LOAN TO SELL THE POLICY OR ANY PORTION OF ITS DEATH BENEFIT ON ANY DATE FOLLOWING THE ISSUANCE OF THE POLICY; OR

(C) THE VIATOR OR THE INSURED AGREES ON THE DATE OF THE PREMIUM FINANCE LOAN TO SHARE ANY PORTION OF THE SETTLEMENT PROCEEDS, IF ANY; PROVIDED, HOWEVER, THAT NOTHING IN THIS SECTION SHALL PREVENT OR PROHIBIT A BANK OR PREMIUM FINANCE COMPANY FROM COLLECTING ANY AMOUNT DUE AND OWING UNDER THE PREMIUM FINANCE LOAN.

(3) "VIATICAL SETTLEMENT CONTRACT" DOES NOT INCLUDE:

(A) A POLICY LOAN OR ACCELERATED DEATH BENEFIT MADE BY THE INSURER PURSUANT TO THE POLICY'S TERMS;

(B) A PREMIUM FINANCE LOAN MADE FOR A POLICY BY A BANK OR A PREMIUM FINANCE COMPANY TO A VIATOR ON, BEFORE OR AFTER THE DATE OF ISSUANCE OF THE POLICY WHERE THE LOAN PROCEEDS ARE USED SOLELY TO PAY:

(I) PREMIUMS FOR THE POLICY; AND

(II) THE COSTS OF THE LOAN, INCLUDING, WITHOUT LIMITATION, INTEREST, ARRANGEMENT OR ORIGINATION FEES, UTILIZATION FEES AND SIMILAR FEES, PREPAYMENT FEES AND CHARGES, CLOSING COSTS, LEGAL FEES AND EXPENSES, TRUSTEE FEES AND EXPENSES, AND THIRD PARTY COLLATERAL PROVIDER FEES AND EXPENSES, INCLUDING FEES PAYABLE TO LETTER OF CREDIT ISSUERS;

(C) A LOAN MADE BY A BANK OR PREMIUM FINANCE COMPANY IN WHICH THE LENDER TAKES AN ASSIGNMENT OF A POLICY SOLELY AS COLLATERAL FOR A LOAN;

(D) ANY ACT OF FORECLOSURE ON A LOAN THAT PURSUANT TO THIS SECTION IS NOT A VIATICAL SETTLEMENT CONTRACT AND ANY SALE, WHETHER AT FORECLOSURE OR THEREAFTER, BY A BANK OR PREMIUM FINANCE COMPANY OF ANY POLICY THAT IS COLLATERALLY ASSIGNED TO IT IN CONNECTION WITH ANY SUCH LOAN;

(E) A LOAN MADE BY A BANK OR PREMIUM FINANCE COMPANY THAT DOES NOT VIOLATE THE PREMIUM FINANCE LAWS OF THIS STATE, PROVIDED THAT THE PREMIUM FINANCE LOAN IS NOT DESCRIBED IN PARAGRAPH TWO OF THIS SUBSECTION;

(F) AN AGREEMENT WHERE ALL THE PARTIES ARE CLOSELY RELATED TO THE INSURED BY BLOOD OR LAW OR HAVE A LAWFUL SUBSTANTIAL ECONOMIC INTEREST IN THE CONTINUED LIFE, HEALTH AND BODILY SAFETY OF THE INSURED, OR ARE TRUSTS ESTABLISHED PRIMARILY FOR THE BENEFIT OF SUCH PARTIES;

(G) ANY DESIGNATION, CONSENT OR AGREEMENT BY AN INSURED WHO IS AN EMPLOYEE OF AN EMPLOYER IN CONNECTION WITH THE PURCHASE BY THE EMPLOYER, OR TRUST ESTABLISHED BY THE EMPLOYER, OF LIFE INSURANCE ON THE LIFE OF THE EMPLOYEE;

(H) 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 TRUSTS 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 TRUSTS ESTABLISHED BY ITS PARTNERS; OR

(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;

(I) 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; OR

(J) ANY OTHER CONTRACT, TRANSACTION OR ARRANGEMENT EXEMPTED FROM THE DEFINITION OF VIATICAL SETTLEMENT CONTRACT BY THE SUPERINTENDENT BASED ON A DETERMINATION THAT THE CONTRACT, TRANSACTION OR ARRANGEMENT IS NOT OF THE TYPE INTENDED TO BE REGULATED BY THIS ARTICLE.

(R)(1) "VIATICAL SETTLEMENT PROVIDER" SHALL MEAN A PERSON, OTHER THAN A VIATOR, THAT ENTERS INTO OR EFFECTUATES A VIATICAL SETTLEMENT CONTRACT WITH A VIATOR.

(2) "VIATICAL SETTLEMENT PROVIDER" DOES NOT INCLUDE:

(A) A BANK THAT TAKES AN ASSIGNMENT OF A POLICY SOLELY AS COLLATERAL FOR A LOAN;

(B) A PREMIUM FINANCE COMPANY MAKING PREMIUM FINANCE LOANS THAT TAKES AN ASSIGNMENT OF A POLICY SOLELY AS COLLATERAL FOR A LOAN;

(C) THE ISSUER OF A POLICY;

(D) AN AUTHORIZED OR ELIGIBLE INSURER THAT PROVIDES STOP LOSS COVERAGE OR FINANCIAL GUARANTY INSURANCE TO A VIATICAL SETTLEMENT PROVIDER, VIATICAL SETTLEMENT PURCHASER, FINANCING ENTITY, SPECIAL PURPOSE ENTITY OR RELATED PROVIDER TRUST;

(E) A NATURAL PERSON WHO ENTERS INTO OR EFFECTUATES NO MORE THAN ONE AGREEMENT IN A CALENDAR YEAR FOR THE TRANSFER OF LIFE INSURANCE POLICIES FOR ANY VALUE LESS THAN THE EXPECTED DEATH BENEFIT;

(F) A FINANCING ENTITY;

(G) A SPECIAL PURPOSE ENTITY;

(H) A RELATED PROVIDER TRUST;

(I) A VIATICAL SETTLEMENT PURCHASER; OR

(J) ANY OTHER PERSON THAT THE SUPERINTENDENT DETERMINES IS NOT THE TYPE OF PERSON INTENDED TO BE COVERED BY THE DEFINITION OF VIATICAL SETTLEMENT PROVIDER.

(S)(1) "VIATICAL SETTLEMENT PURCHASER" SHALL MEAN A PERSON WHO PROVIDES A SUM OF MONEY AS CONSIDERATION FOR A POLICY OR AN INTEREST IN THE DEATH BENEFITS OF A POLICY, OR A PERSON WHO OWNS OR ACQUIRES OR IS ENTITLED TO A BENEFICIAL INTEREST IN A TRUST THAT OWNS A VIATICAL SETTLEMENT CONTRACT OR IS THE BENEFICIARY OF A POLICY THAT HAS BEEN OR WILL BE THE SUBJECT OF A VIATICAL SETTLEMENT CONTRACT, FOR THE PURPOSE OF DERIVING AN ECONOMIC BENEFIT.

(2) "VIATICAL SETTLEMENT PURCHASER" DOES NOT INCLUDE:

(A) A LICENSEE UNDER THIS ARTICLE;

(B) AN ACCREDITED INVESTOR, OR A QUALIFIED INSTITUTIONAL BUYER;

(C) A FINANCING ENTITY;

(D) A SPECIAL PURPOSE ENTITY; OR

(E) A RELATED PROVIDER TRUST.

(T) "VIATICATED POLICY" SHALL MEAN A POLICY THAT HAS BEEN ACQUIRED BY A VIATICAL SETTLEMENT PROVIDER DIRECTLY OR ON BEHALF OF A RELATED PROVIDER TRUST OR SPECIAL PURPOSE ENTITY PURSUANT TO A VIATICAL SETTLEMENT CONTRACT.

(U) (1) "VIATOR" SHALL MEAN THE OWNER OF A POLICY WHO: (A) IF AN INDIVIDUAL, HAS HIS OR HER PRIMARY RESIDENCE IN THIS STATE, AND IF ANY OTHER PERSON, HAS HIS OR HER PRINCIPAL PLACE OF BUSINESS OR TRUST ADMINISTRATION IN THIS STATE; AND (B) ENTERS OR SEEKS TO ENTER INTO A VIATICAL SETTLEMENT CONTRACT. FOR THE PURPOSES OF THIS ARTICLE, A VIATOR SHALL NOT BE LIMITED TO AN OWNER OF A POLICY INSURING THE LIFE OF AN INDIVIDUAL WHO IS TERMINALLY ILL OR CHRONICALLY ILL EXCEPT WHERE SPECIFICALLY ADDRESSED. IF THERE IS MORE THAN ONE OWNER OF A SINGLE POLICY AND THE OWNERS ARE RESIDENTS OF DIFFERENT STATES, THE TRANSACTION SHALL BE GOVERNED BY THE LAW OF THE STATE IN WHICH THE OWNER HAVING THE LARGEST

PERCENTAGE OWNERSHIP IN THE POLICY HAS HIS OR HER PRIMARY RESIDENCE OR PRINCIPAL PLACE OF BUSINESS OR TRUST ADMINISTRATION, AS APPLICABLE. ALTERNATIVELY, IF THE OWNERS HOLD EQUAL OWNERSHIP IN THE POLICY, THE TRANSACTION SHALL BE GOVERNED BY THE STATE OF RESIDENCE OR PRINCIPAL PLACE OF BUSINESS OR TRUST ADMINISTRATION OF AT LEAST ONE OWNER, AS AGREED UPON IN WRITING BY ALL OWNERS OF THE POLICY.

(2) "VIATOR" DOES NOT INCLUDE:

(A) A LICENSEE UNDER THIS ARTICLE, INCLUDING A LIFE INSURANCE PRODUCER ACTING AS A VIATICAL SETTLEMENT BROKER PURSUANT TO THIS ARTICLE;

(B) AN ACCREDITED INVESTOR;

(C) A QUALIFIED INSTITUTIONAL BUYER;

(D) A FINANCING ENTITY;

(E) A SPECIAL PURPOSE ENTITY; OR

(F) A RELATED PROVIDER TRUST.

S 7803. LICENSE REQUIREMENTS FOR VIATICAL SETTLEMENT PROVIDERS. (A) (1) NO PERSON SHALL ENGAGE IN THE BUSINESS OF VIATICAL SETTLEMENTS AS A VIATICAL SETTLEMENT PROVIDER IN THIS STATE WITHOUT HAVING AUTHORITY TO DO SO BY VIRTUE OF A VIATICAL SETTLEMENT PROVIDER LICENSE ISSUED AND IN FORCE PURSUANT TO THIS ARTICLE. A LICENSE ISSUED TO A LEGAL ENTITY PURSUANT TO THIS ARTICLE AUTHORIZES ALL PARTNERS, OFFICERS, MEMBERS AND DESIGNATED EMPLOYEES TO ACT AS VIATICAL SETTLEMENT PROVIDERS UNDER THE LICENSE, AND ALL THOSE NATURAL PERSONS SHALL BE NAMED IN THE APPLICATION AND ANY SUPPLEMENTS TO THE APPLICATION.

(2) NOTWITHSTANDING PARAGRAPH ONE OF THIS SUBSECTION, WITH RESPECT TO A VIATICAL SETTLEMENT CONTRACT THAT IS LAWFULLY NEGOTIATED AND MADE OUTSIDE THIS STATE, NO SUCH LICENSE SHALL BE REQUIRED IF THE VIATICAL SETTLEMENT PROVIDER EFFECTUATES FROM OUTSIDE THE STATE ANY ACT OR TRANSACTION OCCURRING SUBSEQUENT TO SUCH MAKING.

(B)(1) THE SUPERINTENDENT MAY ISSUE A VIATICAL SETTLEMENT PROVIDER LICENSE TO ANY PERSON WHO IS DEEMED BY THE SUPERINTENDENT TO BE TRUSTWORTHY AND COMPETENT TO ACT AS A VIATICAL SETTLEMENT PROVIDER AND WHO IS OTHERWISE QUALIFIED AS REQUIRED IN THIS ARTICLE AND WHO HAS COMPLIED WITH THE PREREQUISITES PRESCRIBED IN THIS ARTICLE.

(2) EVERY LICENSE ISSUED PURSUANT TO THIS SECTION SHALL EXPIRE ON JUNE THIRTIETH OF ODD-NUMBERED YEARS.

(C) (1) APPLICATION FOR A VIATICAL SETTLEMENT PROVIDER LICENSE SHALL BE MADE TO THE SUPERINTENDENT BY THE APPLICANT ON A FORM PRESCRIBED BY THE SUPERINTENDENT, AND THE APPLICATION SHALL BE ACCOMPANIED BY A FEE IN AN AMOUNT TO BE ESTABLISHED BY THE SUPERINTENDENT.

(2) THE APPLICANT FOR A VIATICAL SETTLEMENT PROVIDER LICENSE SHALL:

(A) FULLY DISCLOSE THE IDENTITY OF ALL STOCKHOLDERS (EXCEPT STOCKHOLDERS OWNING FEWER THAN TEN PERCENT OF THE VOTING SHARES OF A VIATICAL SETTLEMENT PROVIDER WHOSE SHARES ARE PUBLICLY TRADED), PARTNERS, OFFICERS, MEMBERS, DIRECTORS AND PERSONS WITH A CONTROLLING INTEREST. FOR PURPOSES OF THIS SECTION, "CONTROLLING INTEREST" MEANS A PERSON WHO DIRECTLY OR INDIRECTLY, HAS THE POWER TO CAUSE TO BE DIRECTED THE MANAGEMENT, CONTROL OR ACTIVITIES OF SUCH LICENSEE;

(B) PROVIDE A DETAILED PLAN OF OPERATION;

(C) PROVIDE, IF A LEGAL ENTITY, A CERTIFICATE OF GOOD STANDING FROM THE STATE OF ITS DOMICILE;

(D) PROVIDE AN ANTI-FRAUD PLAN THAT MEETS THE REQUIREMENTS OF ARTICLE FOUR OF THIS CHAPTER;

(E) DEMONSTRATE FINANCIAL ACCOUNTABILITY AS EVIDENCED BY EITHER A SURETY BOND ISSUED BY AN AUTHORIZED CORPORATE SURETY OR DEPOSIT OF CASH, CERTIFICATES OF DEPOSIT OR SECURITIES, OR ANY COMBINATION THEREOF, IN THE AMOUNT OF ONE HUNDRED THOUSAND DOLLARS. THE SUPERINTENDENT SHALL

ACCEPT AS EVIDENCE OF FINANCIAL RESPONSIBILITY PROOF THAT FINANCIAL INSTRUMENTS IN ACCORDANCE WITH THESE REQUIREMENTS HAVE BEEN FILED WITH ONE OR MORE STATES WHERE THE APPLICANT IS LICENSED AS A VIATICAL OR LIFE SETTLEMENT PROVIDER. EVIDENCE OF ERRORS AND OMISSIONS IN INSURANCE COVERAGE IN THE AMOUNT OF NOT LESS THAN FIVE MILLION DOLLARS SHALL BE ACCEPTED IN LIEU OF ANY BOND OR DEPOSIT REQUIRED BY THIS SECTION; AND

(F) PROVIDE ANY OTHER INFORMATION REQUIRED BY THE SUPERINTENDENT.

(D) EACH INDIVIDUAL NAMED IN SUCH APPLICATION SHALL, WITH SUCH APPLICATION, SUBMIT TO THE SUPERINTENDENT FINGERPRINTS OF HIS OR HER TWO HANDS RECORDED IN SUCH MANNER AS MAY BE SPECIFIED BY THE SUPERINTENDENT. SUCH FINGERPRINTS SHALL BE SUBMITTED TO THE DIVISION OF CRIMINAL JUSTICE SERVICES FOR A STATE CRIMINAL HISTORY RECORD CHECK, AS DEFINED IN SUBDIVISION ONE OF SECTION THREE THOUSAND THIRTY-FIVE OF THE EDUCATION LAW, AND MAY BE SUBMITTED TO THE FEDERAL BUREAU OF INVESTIGATION FOR A NATIONAL CRIMINAL HISTORY RECORD CHECK.

(E) THE SUPERINTENDENT SHALL NOT ISSUE A VIATICAL SETTLEMENT PROVIDER LICENSE TO A NONRESIDENT APPLICANT UNLESS A WRITTEN DESIGNATION OF A RESIDENT AGENT FOR SERVICE OF PROCESS IS FILED AND MAINTAINED WITH THE SUPERINTENDENT OR THE APPLICANT HAS FILED WITH THE SUPERINTENDENT THE APPLICANT'S WRITTEN IRREVOCABLE CONSENT THAT ANY ACTION AGAINST THE APPLICANT MAY BE COMMENCED AGAINST THE APPLICANT BY SERVICE OF PROCESS ON THE SUPERINTENDENT.

(F) THE SUPERINTENDENT, IN THE EXERCISE OF HIS OR HER DISCRETION, MAY REFUSE TO ISSUE A VIATICAL SETTLEMENT PROVIDER LICENSE IN THE NAME OF ANY FIRM, PARTNERSHIP, CORPORATION OR LEGAL ENTITY IF NOT SATISFIED THAT ANY OFFICER, EMPLOYEE, STOCKHOLDER, PARTNER, DIRECTOR, MEMBER, OR AGENT THEREOF WHO MAY MATERIALLY INFLUENCE THE APPLICANT'S CONDUCT MEETS THE STANDARDS OF THIS ARTICLE.

(G) EVERY LICENSE ISSUED PURSUANT TO THIS SECTION MAY BE RENEWED FOR THE ENSUING PERIOD OF TWENTY-FOUR MONTHS UPON THE FILING OF AN APPLICATION IN CONFORMITY WITH THIS SECTION.

(H)(1) BEFORE THE RENEWAL OF ANY VIATICAL SETTLEMENT PROVIDER LICENSE SHALL BE ISSUED, AN APPLICATION FOR RENEWAL OF SUCH LICENSE SHALL BE MADE TO THE SUPERINTENDENT BY THE APPLICANT ON A FORM PRESCRIBED BY THE SUPERINTENDENT AND CONTAINING SUCH INFORMATION AS THE SUPERINTENDENT MAY PRESCRIBE, AND THE APPLICATION SHALL BE ACCOMPANIED BY A FEE IN AN AMOUNT TO BE ESTABLISHED BY THE SUPERINTENDENT.

(2) IF AN APPLICATION FOR RENEWAL LICENSE SHALL HAVE BEEN FILED WITH THE SUPERINTENDENT BEFORE THE EXPIRATION OF THE LICENSE, THE LICENSE SOUGHT TO BE RENEWED SHALL CONTINUE IN FULL FORCE AND EFFECT EITHER UNTIL THE ISSUANCE BY THE SUPERINTENDENT OF THE RENEWAL LICENSE APPLIED FOR OR UNTIL FIVE DAYS AFTER THE SUPERINTENDENT SHALL HAVE REFUSED TO ISSUE SUCH RENEWAL LICENSE AND SHALL HAVE GIVEN NOTICE OF SUCH REFUSAL TO THE APPLICANT. BEFORE REFUSING TO RENEW ANY SUCH LICENSE, THE SUPERINTENDENT SHALL NOTIFY THE APPLICANT OF HIS OR HER INTENTION TO DO SO AND SHALL GIVE SUCH APPLICANT A HEARING.

(3) AN APPLICATION FOR THE RENEWAL OF A LICENSE SHALL BE FILED WITH THE SUPERINTENDENT NOT LESS THAN SIXTY DAYS PRIOR TO THE DATE THE LICENSE EXPIRES OR THE APPLICANT MAY BE SUBJECT TO A FURTHER FEE FOR LATE FILING, AS PRESCRIBED BY THE SUPERINTENDENT.

(I) A VIATICAL SETTLEMENT PROVIDER LICENSEE SHALL PROVIDE TO THE SUPERINTENDENT NEW OR REVISED INFORMATION ABOUT STOCKHOLDERS (EXCEPT STOCKHOLDERS OWNING FEWER THAN TEN PERCENT OF THE VOTING SHARES OF A VIATICAL SETTLEMENT PROVIDER WHOSE SHARES ARE PUBLICLY TRADED), PARTNERS, OFFICERS, MEMBERS, DIRECTORS, DESIGNATED EMPLOYEES OR PERSONS WITH A CONTROLLING INTEREST WITHIN THIRTY DAYS OF THE CHANGE.

S 7804. LICENSE REVOCATION. (A) THE SUPERINTENDENT MAY REFUSE TO RENEW, REVOKE, OR MAY SUSPEND FOR A PERIOD THE SUPERINTENDENT DETERMINES THE LICENSE OF ANY VIATICAL SETTLEMENT PROVIDER, IF, AFTER NOTICE AND HEARING, THE SUPERINTENDENT DETERMINES THAT THE VIATICAL SETTLEMENT PROVIDER OR ANY OFFICER, PARTNER, MEMBER, OR KEY MANAGEMENT PERSONNEL HAS:

(1) VIOLATED ANY INSURANCE LAWS, OR VIOLATED ANY REGULATION, SUBPOENA OR ORDER OF THE SUPERINTENDENT OR OF ANOTHER STATE'S INSURANCE COMMISSIONER, OR HAS VIOLATED ANY LAW IN THE COURSE OF HIS OR HER DEALINGS IN SUCH CAPACITY;

(2) PROVIDED MATERIALLY INCORRECT, MATERIALLY MISLEADING, MATERIALLY INCOMPLETE OR MATERIALLY UNTRUE INFORMATION IN THE LICENSE APPLICATION;

(3) OBTAINED OR ATTEMPTED TO OBTAIN A LICENSE THROUGH MISREPRESENTATION OR FRAUD;

(4)(A) USED FRAUDULENT, COERCIVE OR DISHONEST PRACTICES;

(B) DEMONSTRATED INCOMPETENCE;

(C) DEMONSTRATED UNTRUSTWORTHINESS; OR

(D) DEMONSTRATED FINANCIAL IRRESPONSIBILITY IN THE CONDUCT OF BUSINESS IN THIS STATE OR ELSEWHERE;

(5) IMPROPERLY WITHHELD, MISAPPROPRIATED OR CONVERTED ANY MONIES OR PROPERTIES RECEIVED IN THE COURSE OF BUSINESS IN THIS STATE OR ELSEWHERE;

(6) INTENTIONALLY MISREPRESENTED THE TERMS OF ANY INSURANCE CONTRACT OR VIATICAL SETTLEMENT CONTRACT OR ANY APPLICATION THEREFOR;

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

(8) ADMITTED OR BEEN FOUND TO HAVE COMMITTED ANY INSURANCE UNFAIR TRADE PRACTICE OR FRAUD;

(9) HAD A VIATICAL SETTLEMENT PROVIDER LICENSE OR ITS EQUIVALENT DENIED, SUSPENDED OR REVOKED IN ANY OTHER STATE, PROVINCE, DISTRICT OR TERRITORY;

(10) FORGED ANOTHER'S NAME TO AN APPLICATION FOR INSURANCE OR VIATICAL SETTLEMENT CONTRACT OR TO ANY DOCUMENT RELATED TO AN INSURANCE OR VIATICAL SETTLEMENT TRANSACTION;

(11) KNOWINGLY ACCEPTED VIATICAL SETTLEMENT BUSINESS FROM A PERSON WHO IS NOT LICENSED UNLESS SUCH PERSON IS NOT REQUIRED TO BE LICENSED;

(12) DEMONSTRATED A PATTERN OF UNREASONABLE PAYMENTS TO VIATORS;

(13) FAILED TO HONOR CONTRACTUAL OBLIGATIONS SET OUT IN A VIATICAL SETTLEMENT CONTRACT; OR

(14) SOLD, ASSIGNED, PLEDGED OR OTHERWISE TRANSFERRED THE OWNERSHIP OF A VIATICATED POLICY TO A PERSON OTHER THAN ANOTHER (A) VIATICAL SETTLEMENT PROVIDER LICENSED IN THIS STATE; (B) VIATICAL SETTLEMENT PURCHASER; (C) QUALIFIED INSTITUTIONAL BUYER; (D) ACCREDITED INVESTOR; (E) FINANCING ENTITY; (F) SPECIAL PURPOSE ENTITY; OR (G) RELATED PROVIDER TRUST.

(B)(1) BEFORE THE SUPERINTENDENT SUSPENDS, REVOKES OR REFUSES TO RENEW THE LICENSE OF A VIATICAL SETTLEMENT PROVIDER, THE SUPERINTENDENT SHALL GIVE NOTICE TO THE LICENSEE AND SHALL HOLD, OR CAUSE TO BE HELD, A HEARING NOT LESS THAN TEN DAYS AFTER THE GIVING OF SUCH NOTICE, EXCEPT THAT, IN CASES WHERE IN THE JUDGMENT OF THE SUPERINTENDENT THE PUBLIC WELFARE REQUIRES IT, A LICENSE MAY BE SUSPENDED FOR UP TO TEN DAYS PRIOR TO A HEARING.

(2) IN LIEU OF REVOKING OR SUSPENDING THE LICENSE FOR ANY OF THE CAUSES ENUMERATED IN THIS SECTION, THE SUPERINTENDENT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN TEN THOUSAND DOLLARS FOR EACH VIOLATION.

(3) UPON THE FAILURE OF SUCH LICENSEE TO PAY SUCH PENALTY ORDERED PURSUANT TO PARAGRAPH TWO OF THIS SUBSECTION WITHIN TWENTY DAYS AFTER THE MAILING OF SUCH ORDER, POSTAGE PREPAID, REGISTERED, AND ADDRESSED TO THE LAST KNOWN PLACE OF BUSINESS OF SUCH LICENSEE; UNLESS SUCH ORDER IS STAYED BY A COURT OF COMPETENT JURISDICTION, THE SUPERINTENDENT MAY REVOKE THE LICENSE OF SUCH LICENSEE OR MAY SUSPEND THE SAME FOR SUCH PERIOD AS THE SUPERINTENDENT DETERMINES.

S 7805. VIATICAL SETTLEMENT CONTRACT FORMS AND DISCLOSURE FORMS. (A) NO LICENSED VIATICAL SETTLEMENT PROVIDER SHALL ENTER INTO A VIATICAL SETTLEMENT CONTRACT SUBJECT TO THIS CHAPTER UNLESS THE VIATICAL SETTLEMENT CONTRACT FORM, APPLICATION FORM, AND ANY OTHER FORM, INCLUDING DISCLOSURE FORMS, AS MAY BE PRESCRIBED BY REGULATION, HAS BEEN FILED WITH AND APPROVED BY THE SUPERINTENDENT. THE SUPERINTENDENT MAY DISAPPROVE ANY SUCH FORM IF THE SUPERINTENDENT FINDS IT TO BE UNREASONABLE, CONTRARY TO LAW OR TO THE INTERESTS OF THE PUBLIC, OR OTHERWISE MISLEADING OR UNFAIR.

(B) NO LICENSED VIATICAL SETTLEMENT PROVIDER SHALL ENTER INTO A VIATICAL SETTLEMENT CONTRACT SUBJECT TO THIS ARTICLE UNLESS THE VIATICAL SETTLEMENT PROMOTIONAL, ADVERTISING, AND MARKETING MATERIALS, AS MAY BE PRESCRIBED BY REGULATION, HAVE BEEN FILED WITH AND APPROVED BY THE SUPERINTENDENT. IN NO EVENT SHALL ANY SUCH MARKETING MATERIALS EXPRESSLY REFERENCE THAT SUCH INSURANCE IS "FREE" FOR ANY PERIOD OF TIME. THE INCLUSION OF ANY REFERENCE IN SUCH MATERIALS THAT WOULD CAUSE A VIATOR TO REASONABLY BELIEVE THAT SUCH INSURANCE IS FREE FOR ANY PERIOD OF TIME SHALL BE CONSIDERED A VIOLATION UNDER THIS ARTICLE.

(C) WHENEVER BY THE PROVISIONS OF THIS CHAPTER THE SUPERINTENDENT HAS APPROVED ANY VIATICAL SETTLEMENT CONTRACT FORM, APPLICATION FORM, DISCLOSURE FORM AND ANY OTHER FORM, THE SUPERINTENDENT MAY, AFTER NOTICE AND HEARING GIVEN TO THE VIATICAL SETTLEMENT PROVIDER THAT SUBMITTED THE FORM FOR APPROVAL, WITHDRAW AN APPROVAL PREVIOUSLY GIVEN, IF THE USE OF THE FORM IS CONTRARY TO THE REQUIREMENTS APPLICABLE TO THE FORM AT THE TIME OF SUCH WITHDRAWAL. ANY SUCH WITHDRAWAL SHALL BE EFFECTIVE AT THE EXPIRATION OF SUCH PERIOD, NOT LESS THAN NINETY DAYS AFTER THE GIVING OF NOTICE OF WITHDRAWAL, AS THE SUPERINTENDENT SHALL IN SUCH NOTICE PRESCRIBE.

S 7806. REPORTING REQUIREMENTS. (A) EVERY LICENSED VIATICAL SETTLEMENT PROVIDER SHALL FILE IN THE OFFICE OF THE SUPERINTENDENT, ANNUALLY ON OR BEFORE THE FIRST DAY OF MARCH, A STATEMENT, TO BE KNOWN AS ITS ANNUAL STATEMENT, EXECUTED IN DUPLICATE, VERIFIED BY THE OATH OF AT LEAST TWO OF ITS PRINCIPAL OFFICERS, SHOWING ITS CONDITION AT LAST YEAR-END. THE STATEMENT SHALL BE IN SUCH FORM AND SHALL CONTAIN SUCH MATTERS AS THE SUPERINTENDENT SHALL PRESCRIBE. REPORTS AND ANNUAL STATEMENTS FILED BY A LICENSED VIATICAL SETTLEMENT PROVIDER MAY BE FILED ON A CONFIDENTIAL BASIS AND SHALL BE DEEMED TO BE A TRADE SECRET WITHIN THE MEANING OF THIS STATE'S PUBLIC RECORDS DISCLOSURE LAWS. THE SUPERINTENDENT SHALL NOT REQUIRE ANY ANNUAL STATEMENT OR REPORT TO INCLUDE INFORMATION REGARDING VIATICAL SETTLEMENT CONTRACTS BETWEEN THE VIATICAL SETTLEMENT PROVIDER AND A PERSON OTHER THAN A VIATOR, AND SHALL NOT REQUIRE REPORTING OF INDIVIDUAL TRANSACTION DATA OR DATA WHICH COULD COMPROMISE THE PRIVACY OF PERSONAL, FINANCIAL OR HEALTH INFORMATION OF THE VIATOR OR THE INSURED.

(B) EVERY LICENSED VIATICAL SETTLEMENT PROVIDER THAT WILLFULLY FAILS TO FILE AN ANNUAL STATEMENT AS REQUIRED IN THIS SECTION, OR WILLFULLY FAILS TO REPLY WITHIN THIRTY DAYS TO A WRITTEN INQUIRY BY THE SUPERINTENDENT IN CONNECTION THEREWITH, SHALL, IN ADDITION TO OTHER PENALTIES PROVIDED BY THIS CHAPTER, BE SUBJECT, UPON DUE NOTICE AND OPPORTUNITY TO

BE HEARD, TO A PENALTY OF UP TO TWO HUNDRED FIFTY DOLLARS PER DAY OF DELAY, NOT TO EXCEED TWENTY-FIVE THOUSAND DOLLARS IN THE AGGREGATE, FOR EACH SUCH FAILURE.

S 7807. EXAMINATIONS OR INVESTIGATIONS. THE SUPERINTENDENT MAY MAKE AN EXAMINATION OR INVESTIGATION INTO THE AFFAIRS OF ANY VIATICAL SETTLEMENT PROVIDER, VIATICAL SETTLEMENT BROKER OR APPLICANT FOR LICENSURE AS A VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT BROKER AS PRESCRIBED UNDER ARTICLE THREE OF THIS CHAPTER.

S 7808. PRIVACY. (A) EXCEPT AS OTHERWISE ALLOWED OR REQUIRED BY LAW, NO VIATICAL SETTLEMENT PROVIDER, VIATICAL SETTLEMENT BROKER, INSURANCE COMPANY, INSURANCE PRODUCER, INFORMATION BUREAU, RATING AGENCY OR AUTHORIZED REPRESENTATIVE THEREOF, OR ANY OTHER PERSON WHO LEARNS THE INSURED'S OR VIATOR'S IDENTITY IN CONNECTION WITH A PROPOSED OR ACTUAL VIATICAL SETTLEMENT CONTRACT SUBJECT TO THIS CHAPTER SHALL DISCLOSE THE IDENTITY OF THE INSURED OR VIATOR, OR INFORMATION THAT THERE IS A REASONABLE BASIS TO BELIEVE COULD BE USED TO IDENTIFY THE INSURED OR VIATOR, TO ANY OTHER PERSON UNLESS THE DISCLOSURE IS:

(1) TO A LICENSED VIATICAL SETTLEMENT PROVIDER, LICENSED VIATICAL SETTLEMENT BROKER, FINANCING ENTITY, RELATED PROVIDER TRUST, SPECIAL PURPOSE ENTITY OR THE AUTHORIZED REPRESENTATIVE OF THE VIATICAL SETTLEMENT PROVIDER, VIATICAL SETTLEMENT BROKER, FINANCING ENTITY, RELATED PROVIDER TRUST OR SPECIAL PURPOSE ENTITY AS REASONABLY NECESSARY FOR THE PURPOSE OF FINANCING OR EFFECTUATING A VIATICAL SETTLEMENT CONTRACT BETWEEN A VIATICAL SETTLEMENT PROVIDER AND A VIATOR AND UPON THE WRITTEN CONSENT OF SUCH INSURED OR VIATOR;

(2) PROVIDED IN RESPONSE TO AN INVESTIGATION OR EXAMINATION BY THE SUPERINTENDENT OR ANY OTHER GOVERNMENTAL OFFICER OR AGENCY OR PURSUANT TO THE REQUIREMENTS OF ARTICLE FOUR OF THIS CHAPTER;

(3) TO ANOTHER LICENSED VIATICAL SETTLEMENT PROVIDER, FINANCING ENTITY, RELATED PROVIDER TRUST OR SPECIAL PURPOSE ENTITY WHEN THE OWNERSHIP OR ADMINISTRATION OF A VIATICATED POLICY IS OR MAY BE TRANSFERRED TO THE OTHER VIATICAL SETTLEMENT PROVIDER;

(4) NECESSARY TO ALLOW THE LICENSED VIATICAL SETTLEMENT PROVIDER OR ITS AUTHORIZED REPRESENTATIVE TO CONTACT THE INSURED OR THE INSURED'S DESIGNEE FOR THE PURPOSE OF DETERMINING THE HEALTH STATUS OF THE INSURED;

(5) NECESSARY TO OBTAIN A DEATH CERTIFICATE OR PREPARE, SUBMIT OR COLLECT UPON A CLAIM FOR DEATH BENEFITS UNDER THE POLICY;

(6) REQUIRED TO PURCHASE ANY STOP LOSS OR GAP COVERAGE, REINSURANCE, OR GUARANTEE IN CONNECTION WITH THE FINANCING OF THE SETTLEMENT OR TRANSFER OF THE POLICY; OR

(7) OTHERWISE CONSENTED TO BY THE INSURED AND SUCH INFORMATION IS PROVIDED SOLELY TO A (A) QUALIFIED INSTITUTIONAL BUYER WITH INTERNAL PROCEDURES TO PROTECT THE IDENTITY OF THE INSURED AND THE INSURED'S PROTECTED HEALTH INFORMATION; (B) NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION; (C) NATIONALLY RECOGNIZED AUDITING FIRM; AND (D) PERSONS IN THE BUSINESS OF PROVIDING LIFE EXPECTANCIES.

NOTWITHSTANDING ANYTHING IN THIS SECTION TO THE CONTRARY, 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, MAY DISCLOSE ALL INFORMATION RELATING TO THE INSURED TO ANY OTHER PERSON IN COMPLIANCE WITH THE GRAMM-LEACH-BLILEY ACT, THE FAIR CREDIT REPORTING ACT, ANY SUCCESSOR ACTS AND OTHER APPLICABLE FEDERAL PRIVACY LAWS.

(B) 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 VIATICAL SETTLEMENT CONTRACT OTHER THAN A LICENSED VIATICAL SETTLEMENT PROVIDER, LICENSED VIATICAL SETTLEMENT BROKER, FINANCING ENTITY, RELATED PROVIDER TRUST OR SPECIAL PURPOSE ENTITY.

(C) 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 ARTICLE.

(D) MEDICAL INFORMATION SOLICITED OR OBTAINED IN CONNECTION WITH A PROPOSED OR ACTUAL VIATICAL SETTLEMENT CONTRACT SHALL BE SUBJECT TO THE PROVISIONS APPLICABLE TO HEALTH CARE PROVIDERS UNDER THE PUBLIC HEALTH LAW AND ALL OTHER FEDERAL, STATE AND COMMON LAWS RELATING TO CONFIDENTIALITY OF MEDICAL INFORMATION.

S 7809. DISCLOSURE. (A) A VIATICAL SETTLEMENT PROVIDER SHALL PROVIDE THE VIATOR WITH AT LEAST THE FOLLOWING DISCLOSURES PRIOR TO THE TIME THAT THE APPLICATION FOR THE VIATICAL SETTLEMENT CONTRACT IS SIGNED BY THE VIATOR. THE DISCLOSURES SHALL BE PROVIDED IN A SEPARATE DOCUMENT THAT IS SIGNED BY THE VIATOR AND SHALL STATE THAT:

(1) THERE MAY BE ALTERNATIVES TO VIATICAL SETTLEMENT CONTRACTS INCLUDING, BUT NOT LIMITED TO, ANY ACCELERATED DEATH BENEFITS, CASH SURRENDER VALUES OR POLICY LOANS AVAILABLE UNDER THE VIATOR'S POLICY;

(2) ALTHOUGH THE VIATICAL SETTLEMENT BROKER MAY BE COMPENSATED BY A VIATICAL SETTLEMENT PROVIDER OR ANOTHER VIATICAL SETTLEMENT BROKER, THE VIATICAL SETTLEMENT BROKER REPRESENTS ONLY THE VIATOR AND OWES A FIDUCIARY DUTY TO THE VIATOR TO ACT ACCORDING TO THE VIATOR'S INSTRUCTIONS AND IN THE BEST INTEREST OF THE VIATOR;

(3) SOME OR ALL OF THE PROCEEDS OF THE VIATICAL SETTLEMENT CONTRACT MAY BE TAXABLE UNDER FEDERAL INCOME TAX AND STATE FRANCHISE AND INCOME TAXES, AND ASSISTANCE SHOULD BE SOUGHT FROM A PROFESSIONAL TAX ADVISOR;

(4) PROCEEDS OF THE VIATICAL SETTLEMENT CONTRACT COULD BE SUBJECT TO THE CLAIMS OF CREDITORS;

(5) RECEIPT OF PROCEEDS OF A VIATICAL SETTLEMENT CONTRACT MAY AFFECT ELIGIBILITY FOR PUBLIC ASSISTANCE PROGRAMS SUCH AS MEDICAL ASSISTANCE (MEDICAID), FAMILY ASSISTANCE, SUPPLEMENTARY SOCIAL SECURITY INCOME AND AIDS OR OTHER DRUG ASSISTANCE PROGRAMS AND THAT PRIOR TO ENTERING INTO A VIATICAL SETTLEMENT CONTRACT, A POLICYOWNER SHOULD CONSULT WITH THE APPROPRIATE SOCIAL SERVICES AGENCY CONCERNING HOW RECEIPT WILL AFFECT THE ELIGIBILITY OF THE RECIPIENT AND THE RECIPIENT'S SPOUSE OR DEPENDENTS;

(6) THE VIATOR HAS THE RIGHT TO RESCIND A VIATICAL SETTLEMENT CONTRACT FOR FIFTEEN CALENDAR DAYS AFTER THE RECEIPT OF THE VIATICAL SETTLEMENT PROCEEDS BY THE VIATOR. RESCISSION, IF EXERCISED BY THE VIATOR IS EFFECTIVE ONLY IF BOTH NOTICE OF THE RESCISSION IS GIVEN, AND ALL PROCEEDS AND ANY PREMIUMS, LOANS AND LOAN INTEREST PAID BY THE VIATICAL SETTLEMENT PROVIDER IS REPAID TO THE VIATICAL SETTLEMENT PROVIDER, WITHIN THE RESCISSION PERIOD. IF THE INSURED DIES DURING THE RESCISSION PERIOD, THE SETTLEMENT CONTRACT SHALL BE DEEMED TO HAVE BEEN RESCINDED, SUBJECT TO REPAYMENT OF ALL VIATICAL SETTLEMENT PROCEEDS AND ANY PREMIUMS, LOANS AND LOAN INTEREST PAID BY THE VIATICAL SETTLEMENT PROVIDER;

(7) PROCEEDS WILL BE SENT TO THE VIATOR WITHIN THREE BUSINESS DAYS AFTER THE VIATICAL SETTLEMENT PROVIDER HAS RECEIVED FROM THE INSURER OR ITS AUTHORIZED REPRESENTATIVE WRITTEN ACKNOWLEDGMENT THAT OWNERSHIP OF THE POLICY HAS BEEN TRANSFERRED AND THE BENEFICIARY HAS BEEN DESIGNATED AND VERIFICATION OF COVERAGE;

(8) 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, TO BE FORFEITED BY THE VIATOR AND ASSISTANCE SHOULD BE SOUGHT FROM AN APPROPRIATE ADVISOR; AND

(9) PRIOR TO ENTERING INTO THE VIATICAL SETTLEMENT CONTRACT, THE VIATICAL SETTLEMENT PROVIDER AND THE VIATICAL SETTLEMENT BROKER SHALL EACH PROVIDE A WRITTEN NOTIFICATION TO THE VIATOR STATING THE VIATICAL SETTLEMENT PROVIDER'S FINAL OFFER, THE PROCEEDS PAYABLE TO THE VIATOR AND THE COMPENSATION PAYABLE TO THE VIATICAL SETTLEMENT BROKER OR ANY OTHER PERSON.

(B) A VIATICAL SETTLEMENT PROVIDER SHALL ALSO PROVIDE TO THE VIATOR A BROCHURE DESCRIBING THE PROCESS OF VIATICAL SETTLEMENTS, IN A FORM PRESCRIBED BY THE SUPERINTENDENT, PRIOR TO THE TIME THAT THE APPLICATION FOR THE VIATICAL SETTLEMENT CONTRACT IS SIGNED BY THE VIATOR. IN THE EVENT THAT THE SUPERINTENDENT DOES NOT PUBLISH OR OTHERWISE APPROVE A PRESCRIBED FORM, THE VIATICAL SETTLEMENT PROVIDER SHALL USE A FORM OF BROCHURE SUBSTANTIALLY SIMILAR TO THAT APPROVED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (NAIC).

(C) A VIATICAL SETTLEMENT PROVIDER SHALL PROVIDE THE VIATOR AND THE INSURED WITH AT LEAST THE FOLLOWING DISCLOSURES PRIOR TO THE TIME THAT THE APPLICATION FOR THE VIATICAL SETTLEMENT CONTRACT IS SIGNED BY THE VIATOR. THE DISCLOSURES SHALL BE PROVIDED IN A SEPARATE DOCUMENT THAT IS SIGNED BY THE VIATOR AND THE INSURED AND SHALL STATE THAT:

(1) "MEDICAL, FINANCIAL OR PERSONAL INFORMATION 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 THE VIATICAL SETTLEMENT PROVIDER. IF YOU ARE ASKED TO PROVIDE THIS INFORMATION, YOU WILL BE ASKED TO CONSENT TO THE DISCLOSURE. THE INFORMATION MAY ALSO BE PROVIDED TO ANOTHER VIATICAL SETTLEMENT PROVIDER WHEN THE OWNERSHIP OR ADMINISTRATION OF THE VIATICATED POLICY IS OR MAY BE TRANSFERRED TO SUCH OTHER VIATICAL SETTLEMENT PROVIDER. YOU MAY BE ASKED TO RENEW YOUR PERMISSION TO SHARE INFORMATION EVERY TWO YEARS."; AND

(2) THE INSURED MAY BE CONTACTED BY EITHER THE VIATICAL SETTLEMENT PROVIDER OR ITS AUTHORIZED REPRESENTATIVE FOR THE PURPOSE OF DETERMINING THE INSURED'S HEALTH STATUS AND TO CONFIRM THE INSURED'S RESIDENTIAL ADDRESS AND TELEPHONE NUMBER, OR AS OTHERWISE PROVIDED IN THIS ARTICLE. THIS CONTACT SHALL BE 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.

(D) A VIATICAL SETTLEMENT PROVIDER SHALL PROVIDE THE VIATOR WITH AT LEAST THE FOLLOWING DISCLOSURES PRIOR TO THE SIGNING OF THE VIATICAL SETTLEMENT CONTRACT BY THE VIATOR. THE DISCLOSURES SHALL BE CONSPICUOUSLY DISPLAYED IN THE VIATICAL SETTLEMENT CONTRACT OR IN A SEPARATE DOCUMENT SIGNED BY THE VIATOR AND THE VIATICAL SETTLEMENT PROVIDER AND SHALL PROVIDE THE FOLLOWING INFORMATION:

(1) THE AFFILIATION, IF ANY, BETWEEN THE VIATICAL SETTLEMENT PROVIDER AND THE ISSUER OF THE POLICY TO BE VIATICATED;

(2) THE NAME, BUSINESS ADDRESS AND TELEPHONE NUMBER OF THE VIATICAL SETTLEMENT PROVIDER;

(3) IF OTHER PERSONS ARE INSURED UNDER THE POLICY, THERE MAY BE A POSSIBLE LOSS OF COVERAGE ON THE OTHER LIVES UNDER THE POLICY AND THE VIATOR SHALL BE ADVISED TO CONSULT WITH HIS OR HER INSURANCE PRODUCER OR THE INSURER ISSUING THE POLICY FOR ADVICE ON THE PROPOSED VIATICAL SETTLEMENT;

(4) THE DOLLAR AMOUNT OF THE CURRENT DEATH BENEFIT PAYABLE TO THE VIATICAL SETTLEMENT PROVIDER UNDER THE POLICY AND THE AVAILABILITY OF ANY ADDITIONAL GUARANTEED INSURANCE BENEFITS AND THE DOLLAR AMOUNT OF ANY ACCIDENTAL DEATH OR ACCIDENTAL DEATH AND DISMEMBERMENT BENEFITS UNDER THE POLICY; AND

(5) THE NAME, BUSINESS ADDRESS, AND TELEPHONE NUMBER OF THE INDEPENDENT THIRD-PARTY ESCROW AGENT, AND THE FACT THAT THE VIATOR MAY INSPECT OR RECEIVE COPIES OF THE RELEVANT ESCROW AGREEMENTS OR DOCUMENTS.

(E)(1) A VIATICAL SETTLEMENT BROKER SHALL PROVIDE THE VIATOR WITH THE FOLLOWING DISCLOSURES PRIOR TO THE SIGNING OF THE VIATICAL SETTLEMENT CONTRACT BY THE VIATOR. THE DISCLOSURES SHALL BE PROVIDED IN A SEPARATE DOCUMENT THAT IS SIGNED BY THE VIATOR AND THE VIATICAL SETTLEMENT BROKER AND SHALL PROVIDE THE VIATOR WITH:

(A) THE FINAL OFFER FROM THE VIATICAL SETTLEMENT PROVIDER, THE PROCEEDS TO BE PAID TO THE VIATOR FROM THE FINAL OFFER AND THE COMPENSATION TO BE PAID TO THE VIATICAL SETTLEMENT BROKER AND ANY OTHER PERSON; AND

(B) ALL OTHER OFFERS OBTAINED BY THE VIATICAL SETTLEMENT BROKER FROM ANY OTHER VIATICAL SETTLEMENT PROVIDER.

(2) IF, AFTER NOTICE AND HEARING, THE SUPERINTENDENT DETERMINES THAT SUCH DISCLOSURE WAS OMITTED OR DELAYED TO THE MATERIAL DETRIMENT OF THE VIATOR, THE SUPERINTENDENT MAY REQUIRE THE VIATICAL SETTLEMENT BROKER TO PAY THE VIATOR AN AMOUNT NOT EXCEEDING THE COMPENSATION THAT WOULD OTHERWISE HAVE BEEN DUE TO THE VIATICAL SETTLEMENT BROKER. IF THE VIATICAL SETTLEMENT BROKER HAS ALREADY RECEIVED SUCH COMPENSATION, THE VIATICAL SETTLEMENT BROKER SHALL REMIT SUCH AMOUNT TO THE VIATOR.

(F) IF THE VIATICAL SETTLEMENT PROVIDER TRANSFERS OWNERSHIP OF THE POLICY, THE VIATICAL SETTLEMENT PROVIDER SHALL COMMUNICATE THE CHANGE IN OWNERSHIP TO THE INSURED WITHIN TWENTY DAYS AFTER THE CHANGE.

(G) A VIATICAL SETTLEMENT BROKER MAY PROVIDE ANY OF THE DISCLOSURES REQUIRED BY SUBSECTION (A), (B) OR (C) OF THIS SECTION. IF A VIATICAL SETTLEMENT BROKER PROVIDES ANY OF THESE DISCLOSURES, THE REQUIREMENTS OF SUBSECTIONS (A), (B) AND (C) SHALL BE DEEMED TO BE SATISFIED AS TO THE DISCLOSURES SO PROVIDED.

S 7810. GENERAL RULES. (A)(1) A VIATICAL SETTLEMENT PROVIDER ENTERING INTO A VIATICAL SETTLEMENT CONTRACT SHALL FIRST OBTAIN:

(A) IF THE VIATOR IS THE INSURED, A SIGNED STATEMENT FROM A LICENSED ATTENDING PHYSICIAN THAT THE VIATOR IS OF SOUND MIND TO ENTER INTO A VIATICAL SETTLEMENT CONTRACT AND UNDER NO CONSTRAINT OR UNDUE INFLUENCE TO ENTER INTO A VIATICAL SETTLEMENT CONTRACT; AND

(B) A WRITTEN CONSENT FROM THE INSURED TO THE RELEASE OF HIS OR HER MEDICAL RECORDS:

(I) TO A LICENSED VIATICAL SETTLEMENT PROVIDER;

(II) TO A LICENSED VIATICAL SETTLEMENT BROKER; AND

(III) IF THE POLICY WAS ISSUED LESS THAN TWO YEARS FROM THE DATE OF APPLICATION FOR A VIATICAL SETTLEMENT CONTRACT, TO THE INSURANCE COMPANY THAT ISSUED THE LIFE INSURANCE POLICY COVERING THE LIFE OF THE INSURED.

(2) WITHIN FIFTEEN CALENDAR DAYS AFTER THE VIATICAL SETTLEMENT CONTRACT IS EXECUTED, THE VIATICAL SETTLEMENT PROVIDER SHALL GIVE WRITTEN NOTICE TO THE INSURER THAT ISSUED THAT INSURANCE POLICY THAT A VIATICAL SETTLEMENT CONTRACT HAS BEEN EXECUTED. THE NOTICE SHALL BE ACCOMPANIED BY:

(A) A COPY OF THE MEDICAL RELEASE REQUIRED UNDER SUBPARAGRAPH (B) OF PARAGRAPH ONE OF THIS SUBSECTION IF THE POLICY WAS ISSUED LESS THAN TWO YEARS PRIOR TO THE DATE OF APPLICATION FOR A VIATICAL SETTLEMENT CONTRACT;

(B) A COPY OF THE VIATOR'S APPLICATION FOR THE VIATICAL SETTLEMENT CONTRACT IF THE POLICY WAS ISSUED LESS THAN TWO YEARS PRIOR TO THE DATE OF APPLICATION FOR A VIATICAL SETTLEMENT CONTRACT; AND

(C) A REQUEST FOR VERIFICATION OF COVERAGE TO THE INSURER THAT ISSUED THE POLICY THAT IS THE SUBJECT OF THE VIATICAL SETTLEMENT TRANSACTION.

(3) THE INSURER SHALL RESPOND TO A REQUEST FOR VERIFICATION OF COVERAGE SUBMITTED BY A VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT BROKER WITHIN TEN CALENDAR DAYS FROM THE DATE THE REQUEST IS RECEIVED AND SHALL INDICATE WHETHER, BASED ON THE MEDICAL EVIDENCE AND DOCUMENTS PROVIDED, THE INSURER INTENDS TO PURSUE AN INVESTIGATION AT THIS TIME REGARDING THE VALIDITY OF THE INSURANCE CONTRACT.

(4) UNLESS THE INSURER INTENDS TO PURSUE AN INVESTIGATION UNDER PARAGRAPH THREE OF THIS SUBSECTION, THE INSURER SHALL, WITHIN TEN CALENDAR DAYS OF RECEIPT OF A REQUEST FOR A CHANGE OF OWNERSHIP OR ASSIGNMENT USED TO EFFECTUATE THE TRANSFER OR ASSIGNMENT OF THE VIATOR'S RIGHTS OR BENEFITS UNDER A POLICY TO A VIATICAL SETTLEMENT PROVIDER, PROCESS THE CHANGE OF OWNERSHIP OR ASSIGNMENT AND NOTIFY THE VIATICAL SETTLEMENT PROVIDER AND THE VIATOR THAT THE TRANSFER OR ASSIGNMENT HAS BEEN EFFECTUATED.

(5) PRIOR TO OR AT THE TIME OF EXECUTION OF THE VIATICAL SETTLEMENT CONTRACT, THE VIATICAL SETTLEMENT PROVIDER SHALL OBTAIN A WITNESSED DOCUMENT IN WHICH THE VIATOR CONSENTS TO THE VIATICAL SETTLEMENT CONTRACT, REPRESENTS THAT THE VIATOR HAS A FULL AND COMPLETE UNDERSTANDING OF THE VIATICAL SETTLEMENT CONTRACT, THAT HE OR SHE HAS A FULL AND COMPLETE UNDERSTANDING OF THE BENEFITS OF THE POLICY, ACKNOWLEDGES THAT HE OR SHE IS ENTERING INTO THE VIATICAL SETTLEMENT CONTRACT FREELY AND VOLUNTARILY AND, FOR PERSONS WHO ARE CHRONICALLY ILL OR TERMINALLY ILL, ACKNOWLEDGES THAT SUCH CHRONICALLY ILL OR TERMINALLY ILL CONDITION WAS DIAGNOSED AFTER THE POLICY WAS ISSUED.

(B) EVERY VIATICAL SETTLEMENT CONTRACT ENTERED INTO WITH A VIATOR SHALL PROVIDE THE VIATOR WITH AN UNCONDITIONAL RIGHT TO RESCIND THE CONTRACT FOR AT LEAST FIFTEEN CALENDAR DAYS FROM THE RECEIPT OF THE VIATICAL SETTLEMENT PROCEEDS BY THE VIATOR. RESCISSION, IF EXERCISED BY THE VIATOR, IS EFFECTIVE ONLY IF BOTH NOTICE OF THE RESCISSION IS GIVEN, AND ALL PROCEEDS AND ANY PREMIUMS, LOANS AND LOAN INTEREST PAID BY THE VIATICAL SETTLEMENT PROVIDER IS REPAID TO THE VIATICAL SETTLEMENT PROVIDER, WITHIN THE RESCISSION PERIOD. IF THE INSURED DIES DURING THE RESCISSION PERIOD, THE VIATICAL SETTLEMENT CONTRACT SHALL BE DEEMED TO HAVE BEEN RESCINDED, SUBJECT TO REPAYMENT OF ALL VIATICAL SETTLEMENT PROCEEDS AND ANY PREMIUMS, LOANS AND LOAN INTEREST PAID BY THE VIATICAL SETTLEMENT PROVIDER.

(C) UPON EXECUTION OF THE VIATICAL SETTLEMENT CONTRACT BY ALL PARTIES, THE VIATICAL SETTLEMENT PROVIDER SHALL INSTRUCT THE VIATOR TO SEND THE EXECUTED DOCUMENTS REQUIRED TO EFFECT THE CHANGE IN OWNERSHIP, ASSIGNMENT OR CHANGE IN BENEFICIARY DIRECTLY TO THE INDEPENDENT ESCROW AGENT. WITHIN THREE BUSINESS DAYS AFTER THE DATE THE ESCROW AGENT RECEIVES THE DOCUMENT (OR FROM THE DATE THE VIATICAL SETTLEMENT PROVIDER RECEIVES THE DOCUMENTS, IF THE VIATOR ERRONEOUSLY PROVIDES THE DOCUMENTS DIRECTLY TO THE PROVIDER), THE VIATICAL SETTLEMENT PROVIDER SHALL PAY OR TRANSFER THE PROCEEDS OF THE VIATICAL SETTLEMENT INTO AN ESCROW ACCOUNT MAINTAINED IN AN INSURED BANK LOCATED IN NEW YORK STATE OR A NATIONALLY CHARTERED BANK LOCATED WITHIN THE UNITED STATES, OR OTHER BANK ACCEPTABLE BY THE SUPERINTENDENT. 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, RELATED PROVIDER TRUST OR OTHER DESIGNATED REPRESENTATIVE OF THE VIATICAL SETTLEMENT PROVIDER. UPON THE ESCROW AGENT'S RECEIPT OF THE ACKNOWLEDGMENT OF THE PROPERLY COMPLETED TRANSFER OF OWNERSHIP, ASSIGNMENT OR DESIGNATION OF BENEFICIARY FROM THE INSURER, THE ESCROW AGENT SHALL PAY THE SETTLEMENT PROCEEDS TO THE VIATOR.

(D) FAILURE TO TENDER CONSIDERATION TO THE VIATOR FOR THE VIATICAL SETTLEMENT CONTRACT WITHIN THE TIME REQUIRED SHALL RENDER THE VIATICAL SETTLEMENT CONTRACT VOIDABLE BY THE VIATOR FOR LACK OF CONSIDERATION UNTIL THE TIME CONSIDERATION IS TENDERED TO AND ACCEPTED BY THE VIATOR.

(E) WITH RESPECT TO EACH VIATICATED POLICY, AND NOTWITHSTANDING ANY SUBSEQUENT TRANSFER OF SUCH VIATICATED POLICY, THE VIATICAL SETTLEMENT PROVIDER SHALL RETAIN RESPONSIBILITY FOR TRACKING OF THE INSURED, INCLUDING, WITHOUT LIMITATION, MONITORING THE INSURED'S RESIDENTIAL ADDRESS, CONTACT INFORMATION AND HEALTH STATUS, PREPARATION AND SUBMISSION OF A DEATH CLAIM, OR ASSISTING THE BENEFICIARY IN THE SUBMISSION OF THE DEATH CLAIM. 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 CONTRACT HAS BEEN EXECUTED SHALL BE MADE ONLY BY A LICENSED VIATICAL SETTLEMENT PROVIDER, VIATICAL SETTLEMENT BROKER OR THEIR AUTHORIZED REPRESENTATIVE AND SHALL BE LIMITED TO ONCE EVERY THREE MONTHS FOR AN INSURED WITH A LIFE EXPECTANCY OF MORE THAN ONE YEAR, AND TO NO MORE THAN ONCE PER MONTH FOR AN INSURED WITH A LIFE EXPECTANCY OF ONE YEAR OR LESS. A VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT BROKER SHALL BE RESPONSIBLE FOR THE ACTIONS OF ITS AUTHORIZED REPRESENTATIVE. THE VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT 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.

(F) ALTHOUGH THE VIATICAL SETTLEMENT BROKER MAY BE COMPENSATED BY A VIATICAL SETTLEMENT PROVIDER OR ANOTHER VIATICAL SETTLEMENT BROKER, THE VIATICAL SETTLEMENT BROKER SHALL, EXCEPT AS PROVIDED IN SECTION TWO THOUSAND ONE HUNDRED TWENTY OF THIS CHAPTER, REPRESENT ONLY THE VIATOR AND OWES A FIDUCIARY DUTY TO THE VIATOR.

(G)(1) A VIATICAL SETTLEMENT PROVIDER MAY SELL, ASSIGN, PLEDGE OR OTHERWISE TRANSFER THE OWNERSHIP OF A VIATICATED POLICY ONLY TO ANOTHER LICENSED VIATICAL SETTLEMENT PROVIDER, FINANCING ENTITY, RELATED PROVIDER TRUST, SPECIAL PURPOSE ENTITY OR QUALIFIED INSTITUTIONAL BUYER; PROVIDED, HOWEVER, THAT THE VIATICAL SETTLEMENT PROVIDER CONTINUES TO RETAIN RESPONSIBILITY FOR TRACKING OF THE INSURED RELATED TO THE VIATICATED POLICY PURSUANT TO THE PROVISIONS OF SUBSECTION (E) OF THIS SECTION, AND PROVIDED FURTHER THAT THE VIATICAL SETTLEMENT PROVIDER SHALL REQUIRE ANY SUCH PARTY TO AGREE IN WRITING, AS A CONDITION OF ANY SUCH SALE, ASSIGNMENT, PLEDGE OR TRANSFER OF THE POLICY, THAT EACH SUCH VIATICAL SETTLEMENT PROVIDER, FINANCING ENTITY, RELATED PROVIDER TRUST, SPECIAL PURPOSE ENTITY OR QUALIFIED INSTITUTIONAL BUYER SHALL MAINTAIN THE CONFIDENTIALITY OF ALL PERSONAL, PRIVATE, FINANCIAL AND MEDICAL INFORMATION RELATED TO THE VIATOR OR THE INSURED, WHICH SHALL NOT BE DISCLOSED EXCEPT AS PURSUANT TO THIS ARTICLE.

(2) A BENEFICIAL INTEREST IN A VIATICATED POLICY HELD BY A PERSON OTHER THAN A VIATICAL SETTLEMENT PROVIDER AND ANY FUNDS DEPOSITED BY SUCH BENEFICIARY THAT ARE ESCROWED AND EXPRESSLY IDENTIFIED FOR THE PAYMENT OF PREMIUMS ON BEHALF OF SUCH PERSON SHALL NOT BE SUBJECT TO CLAIMS BY CREDITORS OF THE VIATICAL SETTLEMENT PROVIDER THAT OWNS SUCH POLICY. A PERSON HOLDING SUCH BENEFICIAL INTEREST SHALL BE ENTITLED TO PROCEEDS OF THE POLICY AS AGAINST THE CREDITORS, PERSONAL REPRESENTATIVES, TRUSTEES IN BANKRUPTCY AND RECEIVERS IN STATE AND FEDERAL COURTS OF THE VIATICAL SETTLEMENT PROVIDER. AN EXECUTOR OR ADMINISTRATOR OF ANY SUCH PERSON, OR A PERSON ENTITLED TO THE PROCEEDS OF SUCH POLICY IN TRUST FOR SUCH PERSON SHALL NOT BE DEEMED A THIRD PERSON BENE-

FICIARY, ASSIGNEE OR PAYEE. THIS SUBSECTION SHALL BE APPLICABLE WHETHER OR NOT THE RIGHT IS RESERVED IN ANY SUCH POLICY TO CHANGE THE DESIGNATED BENEFICIARY AND WHETHER OR NOT SUCH PERSON SHALL PREDECEASE THE INSURED.

S 7811. PROHIBITED PRACTICES. (A) A VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT BROKER SHALL NOT DIRECTLY OR INDIRECTLY:

(1) DISCRIMINATE IN THE AVAILABILITY OF A VIATICAL SETTLEMENT CONTRACT ON THE BASIS OF RACE, COLOR, SEX, NATIONAL ORIGIN, CREED, RELIGION, OCCUPATION, MARITAL OR FAMILY STATUS, OR DISCRIMINATE BETWEEN VIATORS WITH DEPENDENTS AND THOSE WITHOUT;

(2) DIRECTLY OR INDIRECTLY PAY OR OFFER TO PAY ANY COMPENSATION TO ANY PERSON FOR OR BECAUSE OF SUCH PERSON ACTING IN THIS STATE AS A VIATICAL SETTLEMENT BROKER, UNLESS SUCH PERSON IS A LICENSED VIATICAL SETTLEMENT BROKER PURSUANT TO THE PROVISIONS OF SECTION TWO THOUSAND ONE HUNDRED FOUR-A OF THIS CHAPTER;

(3) DIRECTLY OR INDIRECTLY PAY OR OFFER TO PAY ANY REFERRAL OR FINDER'S FEE OR OTHER COMPENSATION TO ANY VIATOR'S PHYSICIAN, ATTORNEY, ACCOUNTANT OR OTHER PERSON PROVIDING MEDICAL, LEGAL OR FINANCIAL PLANNING SERVICES TO THE VIATOR, OR TO ANY OTHER PERSON, OTHER THAN A LICENSED VIATICAL SETTLEMENT BROKER, ACTING AS AGENT OF THE VIATOR WITH RESPECT TO THE VIATICAL SETTLEMENT CONTRACT;

(4) ENTER INTO ANY VIATICAL SETTLEMENT CONTRACT IN WHICH PAYMENTS OF PROCEEDS ARE MADE IN INSTALLMENTS;

(5) PAY OR OFFER TO PAY COMPENSATION TO A VIATICAL SETTLEMENT BROKER, EXCEPT WHERE THE COMPENSATION IS CLEARLY DISCLOSED TO THE VIATOR AS REQUIRED IN THIS ARTICLE; OR

(6) ENGAGE IN ANY OTHER ACT DETERMINED BY THE SUPERINTENDENT TO BE AN UNFAIR OR DECEPTIVE ACT OR PRACTICE PURSUANT TO THIS CHAPTER.

(B) (1) A VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT BROKER SHALL NOT DIRECTLY OR INDIRECTLY:

(A) ENTER INTO AN AGREEMENT OR UNDERSTANDING LIMITING OR RESTRICTING A VIATOR'S OR VIATICAL SETTLEMENT BROKER'S ABILITY TO SEEK COMPETITIVE BIDS ON POLICIES;

(B) MONOPOLIZE OR ATTEMPT TO MONOPOLIZE, OR COMBINE OR CONSPIRE WITH ANY OTHER PERSON OR PERSONS TO MONOPOLIZE, IN THIS STATE, THE BUSINESS OF VIATICAL SETTLEMENTS;

(C) ENTER INTO AN AGREEMENT WITH ANY OTHER VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT BROKER TO FIX OR LIMIT THE VALUE PAID TO VIATORS;

(D) ENTER INTO ANY AGREEMENT OR COMMUNICATION WITH ANY OTHER VIATICAL SETTLEMENT PROVIDER WITH RESPECT TO THE TERMS TO BE OFFERED TO A VIATOR; OR

(E) ENTER INTO ANY AGREEMENT WITH ANY OTHER VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT BROKER OR OTHER PERSON TO RESTRAIN TRADE OR ENGAGE IN ANY OTHER ANTICOMPETITIVE BEHAVIOR AFFECTING THE BUSINESS OF VIATICAL SETTLEMENTS IN THIS STATE;

(2) NOTWITHSTANDING PARAGRAPH ONE OF THIS SUBSECTION, SUBSEQUENT TO THE EXPIRATION OF THE FIFTEEN DAY RESCISSION PERIOD OF THE VIATICAL SETTLEMENT CONTRACT AS PROVIDED IN SUBSECTION (B) OF SECTION SEVEN THOUSAND EIGHT HUNDRED TEN OF THIS ARTICLE, A VIATICAL SETTLEMENT PROVIDER MAY SELL, ASSIGN, PLEDGE OR OTHERWISE TRANSFER THE OWNERSHIP OF A VIATICATED POLICY TO ANOTHER LICENSED VIATICAL SETTLEMENT PROVIDER PURSUANT TO THIS ARTICLE.

(C)(1) NO PERSON SHALL ENTER INTO A VIATICAL SETTLEMENT CONTRACT WITHIN A TWO-YEAR PERIOD COMMENCING WITH THE DATE OF ISSUANCE OF THE POLICY UNLESS THE VIATOR CERTIFIES TO THE VIATICAL SETTLEMENT PROVIDER THAT ONE

OR MORE OF THE FOLLOWING CONDITIONS HAVE BEEN MET WITHIN THE TWO-YEAR PERIOD:

(A) THE POLICY WAS ISSUED UPON THE VIATOR'S EXERCISE OF CONVERSION RIGHTS ARISING OUT OF A POLICY, PROVIDED THE TOTAL OF THE TIME COVERED UNDER THE CONVERSION POLICY PLUS THE TIME COVERED UNDER THE PRIOR POLICY IS AT LEAST TWO YEARS. THE TIME COVERED UNDER A GROUP POLICY SHALL BE CALCULATED WITHOUT REGARD TO ANY CHANGE IN INSURER, PROVIDED THE COVERAGE HAS BEEN CONTINUOUS AND UNDER THE SAME GROUP SPONSORSHIP; OR

(B) 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:

(I) THE VIATOR OR INSURED IS TERMINALLY ILL OR CHRONICALLY ILL;

(II) THE VIATOR OR INSURED DISPOSES OF HIS OR HER OWNERSHIP INTERESTS IN A CLOSELY HELD CORPORATION THAT OWNS THE POLICY PURSUANT TO THE TERMS OF A BUYOUT OR SIMILAR AGREEMENT IN EFFECT AT THE TIME THE POLICY WAS INITIALLY ISSUED;

(III) THE VIATOR'S SPOUSE DIES;

(IV) THE VIATOR DIVORCES HIS OR HER SPOUSE;

(V) THE VIATOR RETIRES FROM FULL-TIME EMPLOYMENT;

(VI) THE VIATOR BECOMES PHYSICALLY OR MENTALLY DISABLED AND A PHYSICIAN DETERMINES THAT THE DISABILITY PREVENTS THE VIATOR FROM MAINTAINING FULL-TIME EMPLOYMENT; OR

(VII) 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.

(2) A COPY OF THE CERTIFICATIONS AND INDEPENDENT EVIDENCE REQUIRED BY THIS SUBSECTION AND DOCUMENTS REQUIRED PURSUANT TO SUBSECTION (A) OF SECTION SEVEN THOUSAND EIGHT HUNDRED TEN OF THIS ARTICLE SHALL BE SUBMITTED TO THE INSURER WHEN THE VIATICAL SETTLEMENT PROVIDER SUBMITS A REQUEST TO THE INSURER FOR VERIFICATION OF COVERAGE PURSUANT TO THIS SECTION. 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.

(D) NO PERSON SHALL:

(1) REMOVE, CONCEAL, ALTER, DESTROY OR SEQUESTER FROM THE SUPERINTENDENT THE ASSETS OR RECORDS OF A VIATICAL SETTLEMENT PROVIDER, VIATICAL SETTLEMENT BROKER OR OTHER PERSON ENGAGED IN THE BUSINESS OF VIATICAL SETTLEMENTS;

(2) MISREPRESENT OR CONCEAL THE FINANCIAL CONDITION OF A VIATICAL SETTLEMENT PROVIDER; OR

(3) IN RELATION TO THE BUSINESS OF VIATICAL SETTLEMENTS, FILE WITH THE SUPERINTENDENT A DOCUMENT CONTAINING MATERIAL FALSE INFORMATION CONCERNING ANY FACT MATERIAL THERETO OR OTHERWISE CONCEAL INFORMATION ABOUT A FACT MATERIAL THERETO FROM THE SUPERINTENDENT.

(E) NO VIATICAL SETTLEMENT PROVIDER, VIATICAL SETTLEMENT BROKER OR OTHER PERSON, SHALL, BY ANY ADVERTISEMENT OR PUBLIC ANNOUNCEMENT IN THIS STATE, CALL ATTENTION TO ANY UNAUTHORIZED INSURER OR UNAUTHORIZED VIATICAL SETTLEMENT PROVIDER.

(F) (1) NO PERSON OR PREMIUM FINANCE AGENCY THAT ENTERS INTO A PREMIUM FINANCE AGREEMENT, AS SUCH TERMS ARE DEFINED PURSUANT TO ARTICLE TWELVE-B OF THE BANKING LAW, WITH THE OWNER OF A POLICY WITH REGARD TO SUCH POLICY, AND NO PERSON AFFILIATED OR ASSOCIATED WITH SUCH PERSON OR PREMIUM FINANCE AGENCY, SHALL RECEIVE ANY PROCEEDS, FEES OR OTHER CONSIDERATION, DIRECTLY OR INDIRECTLY, FROM THE OWNER OF THE POLICY OR

ANY OTHER PERSON WITH RESPECT TO ANY VIATICAL SETTLEMENT CONTRACT OR OTHER TRANSACTION RELATED TO SUCH POLICY OTHER THAN PAYMENTS OF PRINCIPAL, INTEREST AND SERVICE CHARGES AS ARE AUTHORIZED AND LIMITED BY ARTICLE TWELVE-B OF THE BANKING LAW AND SPECIFIED IN THE PREMIUM FINANCE AGREEMENT OR SUBSEQUENT SALE OF SUCH AGREEMENT.

(2) IF AT ANY TIME, A POLICY THAT IS THE SUBJECT OF A PREMIUM FINANCE AGREEMENT IS SOLD, ASSIGNED, TRANSFERRED, DEVISED OR BEQUEATHED TO A PERSON OR PREMIUM FINANCE AGENCY SPECIFIED IN PARAGRAPH ONE OF THIS SUBSECTION OR TO A VIATICAL SETTLEMENT PROVIDER PURSUANT TO THE TERMS OF A PREMIUM FINANCE AGREEMENT, ANY PROCEEDS OR OTHER CONSIDERATION RECEIVED OTHER THAN THE AMOUNTS SPECIFIED IN PARAGRAPH ONE OF THIS SUBSECTION SHALL BE REMITTED TO THE ORIGINAL OWNER OF THE POLICY OR TO HIS OR HER ESTATE IF HE OR SHE IS NOT THEN LIVING.

(G) NO PERSON SHALL, DIRECTLY OR INDIRECTLY, MARKET, ADVERTISE, SOLICIT OR OTHERWISE PROMOTE THE PURCHASE OF A LIFE INSURANCE POLICY FOR THE PURPOSE OF OR WITH AN EMPHASIS ON VIATICATING SUCH POLICY.

(H) NO PERSON MAY PURCHASE, DIRECTLY OR INDIRECTLY, A POLICY SUBJECT TO A VIATICAL SETTLEMENT CONTRACT WHERE SUCH PERSON, DIRECTLY OR THROUGH AN AFFILIATE, ACTED AS THE VIATICAL SETTLEMENT BROKER ON BEHALF OF THE VIATOR WITH RESPECT TO SUCH VIATICAL SETTLEMENT CONTRACT.

(I) NO PERSON LICENSED UNDER THE INSURANCE LAWS OF THIS STATE MAY PROHIBIT, RESTRICT, LIMIT OR IMPAIR A LICENSED LIFE PRODUCER FROM OPERATING AS A VIATICAL SETTLEMENT BROKER, LAWFULLY NEGOTIATING A VIATICAL SETTLEMENT CONTRACT ON BEHALF OF A VIATOR, AIDING AND ASSISTING A VIATOR WITH A VIATICAL SETTLEMENT CONTRACT OR OTHERWISE PARTICIPATING IN A VIATICAL SETTLEMENT TRANSACTION UNDER THIS ARTICLE.

(J) NO PERSON LICENSED UNDER THE INSURANCE LAWS OF THIS STATE MAY ENGAGE IN ANY TRANSACTION, ACT, PRACTICE OR COURSE OF BUSINESS OR DEALING WHICH RESTRICTS, LIMITS, INTERFERES WITH, OR IMPAIRS IN ANY WAY THE LAWFUL TRANSFER OF OWNERSHIP, CHANGE OF BUSINESS OR ASSIGNMENT OF A POLICY TO EFFECTUATE A VIATICAL SETTLEMENT CONTRACT.

S 7812. AUTHORITY TO PROMULGATE REGULATIONS. THE SUPERINTENDENT MAY PROMULGATE REGULATIONS IMPLEMENTING THIS ARTICLE.

S 7813. NONCONFORMING CONTRACTS. (A) EXCEPT AS OTHERWISE SPECIFICALLY PROVIDED IN THIS CHAPTER, ANY VIATICAL SETTLEMENT CONTRACT SUBJECT TO THIS CHAPTER THAT IS IN VIOLATION OF ANY OF THE PROVISIONS OF THIS CHAPTER SHALL BE VALID AND BINDING UPON THE VIATICAL SETTLEMENT PROVIDER, BUT IN ALL RESPECTS IN WHICH THE CONTRACT'S PROVISIONS ARE IN VIOLATION OF THE REQUIREMENTS OR PROHIBITIONS OF THIS CHAPTER IT SHALL BE ENFORCEABLE AS IF IT CONFORMED WITH SUCH REQUIREMENTS OR PROHIBITIONS.

(B) NO VIATICAL SETTLEMENT CONTRACT SUBJECT TO THIS CHAPTER SHALL PROVIDE THAT THE RIGHTS OR OBLIGATIONS OF THE VIATOR OR OF ANY PERSON RIGHTFULLY CLAIMING THEREUNDER SHALL BE GOVERNED BY THE LAWS OF ANY JURISDICTION OTHER THAN THIS STATE.

(C) IN ANY ACTION TO RECOVER UNDER THE PROVISIONS OF ANY VIATICAL SETTLEMENT CONTRACT THAT THE SUPERINTENDENT IS AUTHORIZED BY THIS CHAPTER TO APPROVE, IF IN THE SUPERINTENDENT'S OPINION ITS PROVISIONS ARE MORE FAVORABLE TO VIATORS, THE COURT SHALL ENFORCE SUCH CONTRACT AS IF ITS PROVISIONS WERE THE SAME AS THOSE SPECIFIED IN THIS CHAPTER UNLESS THE COURT FINDS THAT ITS ACTUAL PROVISIONS WERE MORE FAVORABLE TO VIATORS AT THE DATE WHEN THE CONTRACT WAS ENTERED INTO.

S 7814. APPLICABILITY. THE PROVISIONS OF THIS ARTICLE SHALL APPLY TO ANY VIATICAL SETTLEMENT CONTRACT MADE OR PROPOSED TO BE MADE, OR SOLICITED WITH A VIATOR.

S 7815. CONTRACT PROVISIONS REQUIRED BY LAWS OF OTHER JURISDICTIONS. A LICENSED VIATICAL SETTLEMENT PROVIDER MAY INCLUDE, IN A VIATICAL

SETTLEMENT CONTRACT MADE IN THIS STATE WITH THE OWNER OF A POLICY THAT IS A RESIDENT OF ANOTHER STATE OR IN A VIATICAL SETTLEMENT CONTRACT MADE IN ANOTHER STATE WITH A VIATOR, ANY PROVISION REQUIRED BY THE LAWS OF SUCH OTHER STATE APPLICABLE TO THE CONTRACT IF SUCH PROVISIONS ARE NOT SUBSTANTIALLY IN CONFLICT WITH THE LAWS OF THIS STATE.

S 7816. SEVERABILITY. IF ANY CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURISDICTION TO BE INVALID AND AFTER EXHAUSTION OF ALL FURTHER JUDICIAL REVIEW, THE JUDGMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE REMAINDER THEREOF, BUT SHALL BE CONFINED IN ITS OPERATION TO THE CLAUSE, SENTENCE, PARAGRAPH, SECTION OR PART OF THIS ARTICLE DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH THE JUDGMENT SHALL HAVE BEEN RENDERED.

S 14. Subsection (b) of section 403 of the insurance law, as amended by chapter 805 of the laws of 1984, is amended to read as follows:

(b) For the purpose of section one hundred nine of this chapter, it is a violation of this chapter for any individual, firm, association or corporation subject to the provisions of this chapter to commit a fraudulent insurance act OR A FRAUDULENT VIATICAL SETTLEMENT ACT.

S 15. Section 403 of the insurance law is amended by adding a new subsection (f) to read as follows:

(F) IN THIS ARTICLE, "FRAUDULENT VIATICAL SETTLEMENT ACT" MEANS A FRAUD AS DEFINED IN SECTION 176.40 OF THE PENAL LAW.

S 16. Subsection (c) of section 403 of the insurance law, as amended by chapter 262 of the laws of 1998, is amended to read as follows:

(c) In addition to any criminal liability arising under the provisions of this section, the superintendent shall be empowered to levy a civil penalty not exceeding five thousand dollars and the amount of the claim for each violation upon any person, including those persons and their employees licensed pursuant to this chapter, who is found to have: (i) committed a fraudulent insurance act, FRAUDULENT VIATICAL SETTLEMENT ACT or otherwise violates the provisions of this section; or (ii) knowingly and with intent to defraud files, makes, or assists, solicits or conspires with another to file or make an application for a premium reduction, pursuant to subsection (a) of section two thousand three hundred thirty-six of this chapter, containing any materially false information or which, for the purpose of misleading, conceals information concerning any fact material thereto.

S 17. Subsection (a) of section 404 of the insurance law is amended to read as follows:

(a) If the insurance frauds bureau has reason to believe that a person has engaged in, or is engaging in, an act defined in section 155.05 of the penal law, with respect to personal or commercial insurance transactions [or], VIATICAL SETTLEMENT TRANSACTIONS, section 176.05 OR SECTION 176.40 of such law, the superintendent may make such investigation within or without this state as [he] THE SUPERINTENDENT deems necessary to aid in the enforcement of this chapter or to determine whether any person has violated or is about to violate any such provision of the penal law.

S 18. Subsections (a), (c) and (d) of section 405 of the insurance law, subsection (a) as amended by chapter 635 of the laws of 1996, subsection (d) as added by chapter 57 of the laws of 1993, the opening paragraph of subsection (d) as amended by chapter 191 of the laws of 2008, paragraphs 9 and 10 of subsection (d) as amended and paragraph 11 of subsection (d) as added by chapter 678 of the laws of 1997, are amended to read as follows:

(a) Any person licensed pursuant to the provisions of this chapter, and any person engaged in the business of insurance OR VIATICAL SETTLEMENTS in this state who is exempted from compliance with the licensing requirements of this chapter, including the state insurance fund of this state, who has reason to believe that an insurance transaction OR VIATICAL SETTLEMENT TRANSACTION may be fraudulent, or has knowledge that a fraudulent insurance transaction OR FRAUDULENT VIATICAL SETTLEMENT TRANSACTION is about to take place, or has taken place shall, within thirty days after determination by such person that the transaction appears to be fraudulent, send to the insurance frauds bureau on a form prescribed by the superintendent, the information requested by the form and such additional information relative to the factual circumstances of the transaction and the parties involved as the superintendent may require. The insurance frauds bureau shall accept reports of suspected fraudulent insurance transactions OR FRAUDULENT VIATICAL SETTLEMENT TRANSACTIONS from any self insurer, including but not limited to self insurers providing health insurance coverage or those defined in section fifty of the workers' compensation law, and shall treat such reports as any other received pursuant to this section.

(c) Whenever the superintendent is satisfied that a material fraud, deceit, or intentional misrepresentation has been committed in an insurance OR VIATICAL SETTLEMENT transaction or purported insurance OR VIATICAL SETTLEMENT transaction, he OR SHE shall report any such violation of law to the appropriate licensing agency, the district attorney of the county in which such acts were committed, when authorized by law, to the attorney general, and where appropriate, to the person who submitted the report of fraudulent activity, as provided by the provisions of this article. Within one hundred twenty days of receipt of the superintendent's report, the attorney general or the district attorney concerned shall inform the superintendent as to the status of the reported violations.

(d) No later than March fifteenth of each year, beginning in nineteen hundred ninety-four, the superintendent shall furnish to the governor, the speaker of the assembly and the TEMPORARY president [pro tem] of the senate a report containing:

(1) a comprehensive summary and assessment of the frauds bureau's efforts in discovering, investigating and halting fraudulent activities and assisting in the prosecution of persons who are parties to insurance fraud OR VIATICAL SETTLEMENTS FRAUD;

(2) the number of reports received from any person or persons engaged in the business of insurance OR VIATICAL SETTLEMENTS, the number of investigations undertaken by the bureau pursuant to any reports received, the number of investigations undertaken not as a result of reports received, the number of investigations that resulted in a referral to a licensing agency, a local prosecutor or the attorney general, the number of such referrals pursued by a licensing agency, a local prosecutor or the attorney general, and the disposition of such cases;

(3) a delineation of the number of reported and investigated cases by line of insurance AND THOSE THAT RELATE TO VIATICAL SETTLEMENTS;

(4) a comparison of the frauds bureau's experience, with regard to paragraphs two and three of this subdivision, to the bureau's experience of years past;

(5) the total number of employees assigned to the frauds bureau delineated by title and location of bureau assigned;

(6) an assessment of THE ACTIVITIES OF insurance [company activities] COMPANIES AND VIATICAL SETTLEMENT PROVIDERS in regard to detecting,

investigating and reporting fraudulent activities, including a list of companies which maintain special investigative units for the sole purpose of detecting, investigating and reporting fraudulent activities and the number of investigators assigned to such units per every thirty thousand policies OR VIATICAL SETTLEMENT CONTRACTS in force with such company OR PROVIDER;

(7) the amount of technical and monetary assistance requested and received by the frauds bureau from any insurance company or companies, ANY VIATICAL SETTLEMENT PROVIDER OR PROVIDERS, or any organization funded by insurance companies OR VIATICAL SETTLEMENT PROVIDERS;

(8) the amount of money returned by the frauds bureau to insurance companies pursuant to any fraudulent claims that were recouped by the bureau;

(9) the number and amount of civil penalties levied by the frauds bureau pursuant to chapter four hundred eighty of the laws of nineteen hundred ninety-two;

(10) recommendations for further statutory or administrative changes designed to meet the objectives of this article; and

(11) an assessment of law enforcement and insurance company activities to detect and curtail the incidence of operating a motor vehicle without proper insurance coverage as required by this chapter.

S 19. Section 406 of the insurance law, as amended by chapter 6 of the laws of 2007, is amended to read as follows:

S 406. Immunity. (A) In the absence of fraud or bad faith, no person shall be subject to civil liability, and no civil cause of action of any nature shall arise against such person [(i)] (1) for any information relating to suspected fraudulent insurance transactions OR FRAUDULENT VIATICAL SETTLEMENT ACTS furnished to law enforcement officials, their agents and employees; and [(ii)] (2) for any information relating to suspected fraudulent insurance transactions OR FRAUDULENT VIATICAL SETTLEMENT ACTS furnished to other persons subject to the provisions of this chapter; and [(iii)] (3) for any such information furnished in reports to the insurance frauds bureau, its agents or employees or any state agency investigating fraud or misconduct relating to workers' compensation insurance, its agents or employees. Nor shall the superintendent or any employee of the insurance frauds bureau, in the absence of fraud or bad faith, be subject to civil liability and no civil cause of action of any nature shall arise against them by virtue of the publication of any report or bulletin related to the official activities of the insurance frauds bureau. Nothing herein is intended to abrogate or modify in any way any common law privilege of immunity heretofore enjoyed by any person.

(B) A PERSON IDENTIFIED IN SUBSECTION (A) OF THIS SECTION SHALL BE ENTITLED TO AN AWARD OF ATTORNEY'S FEES AND COSTS IF HE OR SHE IS THE PREVAILING PARTY IN A CIVIL CAUSE OF ACTION FOR LIBEL, SLANDER OR ANY OTHER RELEVANT TORT ARISING OUT OF ACTIVITIES IN CARRYING OUT THE PROVISIONS OF THIS ARTICLE AND THE PARTY BRINGING THE ACTION WAS NOT SUBSTANTIALLY JUSTIFIED IN DOING SO. FOR PURPOSES OF THIS SECTION A PROCEEDING IS "SUBSTANTIALLY JUSTIFIED" IF IT HAD A REASONABLE BASIS IN LAW OR FACT AT THE TIME THAT IT WAS INITIATED.

(C) (1) THE DOCUMENTS AND EVIDENCE PROVIDED PURSUANT TO SUBSECTION (A) OF SECTION FOUR HUNDRED FIVE OF THIS ARTICLE OR OBTAINED BY THE SUPERINTENDENT IN AN INVESTIGATION OF SUSPECTED OR ACTUAL FRAUDULENT INSURANCE ACTS OR FRAUDULENT VIATICAL SETTLEMENT ACTS SHALL BE PRIVILEGED AND CONFIDENTIAL AND SHALL NOT BE A PUBLIC RECORD.

(2) PARAGRAPH ONE OF THIS SUBSECTION SHALL NOT PROHIBIT RELEASE BY THE SUPERINTENDENT OF DOCUMENTS AND EVIDENCE OBTAINED IN AN INVESTIGATION OF SUSPECTED OR ACTUAL FRAUDULENT INSURANCE ACTS OR VIATICAL SETTLEMENT ACTS:

(A) IN ADMINISTRATIVE OR JUDICIAL PROCEEDINGS TO ENFORCE LAWS ADMINISTERED BY THE SUPERINTENDENT; OR

(B) TO FEDERAL, STATE OR LOCAL LAW ENFORCEMENT OR REGULATORY AGENCIES, OR TO AN ORGANIZATION ESTABLISHED FOR THE PURPOSE OF DETECTING AND PREVENTING FRAUDULENT INSURANCE ACTS OR FRAUDULENT VIATICAL SETTLEMENT ACTS OR TO THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (NAIC).

(3) RELEASE OF DOCUMENTS AND EVIDENCE UNDER PARAGRAPH TWO OF THIS SUBSECTION DOES NOT ABROGATE OR MODIFY THE PRIVILEGE GRANTED IN PARAGRAPH ONE OF THIS SUBSECTION.

S 20. The insurance law is amended by adding a new section 411 to read as follows:

S 411. VIATICAL SETTLEMENTS FRAUD PREVENTION PLANS. (A) EVERY VIATICAL SETTLEMENT PROVIDER SHALL FILE WITH THE SUPERINTENDENT A PLAN FOR THE DETECTION, INVESTIGATION AND PREVENTION OF FRAUDULENT VIATICAL SETTLEMENT ACTS IN THIS STATE AND THOSE FRAUDULENT VIATICAL SETTLEMENT ACTS AFFECTING VIATICAL SETTLEMENT CONTRACTS IN THIS STATE.

(1) THE PLAN SHALL PROVIDE THE TIME AND MANNER IN WHICH SUCH PLAN SHALL BE IMPLEMENTED, INCLUDING PROVISIONS FOR A SPECIAL INVESTIGATIONS UNIT AND STAFFING LEVELS WITHIN SUCH UNIT. SUCH INVESTIGATORS SHALL BE RESPONSIBLE FOR INVESTIGATING INFORMATION ON OR CASES OF SUSPECTED FRAUDULENT ACTIVITY AND FOR EFFECTIVELY IMPLEMENTING FRAUD PREVENTION AND REDUCTION ACTIVITIES PURSUANT TO THE PLAN FILED WITH THE SUPERINTENDENT. A VIATICAL SETTLEMENT PROVIDER SHALL INCLUDE IN SUCH PLAN STAFFING LEVELS AND ALLOCATIONS OF RESOURCES OF SUCH SPECIAL INVESTIGATIONS UNIT THAT SHALL BE SUFFICIENT AND APPROPRIATE FOR THE PROPER IMPLEMENTATION OF THE PLAN AND APPROVAL OF SUCH PLAN PURSUANT TO SUBSECTION (C) OF THIS SECTION.

(2) IN LIEU OF A SPECIAL INVESTIGATIONS UNIT, A VIATICAL SETTLEMENT PROVIDER MAY CONTRACT WITH A PROVIDER OF SERVICES RELATED TO THE INVESTIGATION OF INFORMATION ON OR CASES OF SUSPECTED FRAUDULENT ACTIVITIES; PROVIDED, HOWEVER, THAT A VIATICAL SETTLEMENT PROVIDER THAT OPTS FOR CONTRACTING WITH A SEPARATE PROVIDER OF SERVICES, SHALL PROVIDE TO THE SUPERINTENDENT A DETAILED PLAN THEREFOR, PURSUANT TO REQUIREMENTS SET FORTH IN REGULATION BY THE SUPERINTENDENT.

(3) A PERSON EMPLOYED BY A SPECIAL INVESTIGATIONS UNIT OR AN INDEPENDENT PROVIDER OF INVESTIGATIVE SERVICES UNDER CONTRACT WITH A VIATICAL SETTLEMENT PROVIDER SHALL BE QUALIFIED BY EDUCATION OR EXPERIENCE TO ACT IN SUCH CAPACITY, SUBJECT TO REQUIREMENTS ESTABLISHED BY THE SUPERINTENDENT IN A REGULATION.

(B) THE PLAN SHALL PROVIDE FOR THE FOLLOWING:

(1) INTERFACE OF SPECIAL INVESTIGATIONS UNIT PERSONNEL WITH LAW ENFORCEMENT AND PROSECUTORIAL AGENCIES, INCLUDING THE INSURANCE FRAUDS BUREAU OF THE STATE INSURANCE DEPARTMENT;

(2) REPORTING OF FRAUD DATA TO A CENTRAL ORGANIZATION APPROVED BY THE SUPERINTENDENT;

(3) IN-SERVICE EDUCATION AND TRAINING FOR UNDERWRITING AND CLAIMS PERSONNEL IN IDENTIFYING AND EVALUATING INSTANCES OF SUSPECTED FRAUDULENT ACTIVITY IN UNDERWRITING OR CLAIMS ACTIVITIES;

(4) COORDINATION WITH OTHER UNITS OF A VIATICAL SETTLEMENT PROVIDER FOR THE INVESTIGATION AND INITIATION OF CIVIL ACTIONS BASED UPON INFORMATION RECEIVED BY OR THROUGH THE SPECIAL INVESTIGATION UNIT;

(5) PUBLIC AWARENESS OF THE COST AND FREQUENCY OF FRAUDULENT ACTIVITIES, AND THE METHODS OF PREVENTING FRAUD;

(6) DEVELOPMENT AND USE OF A FRAUD DETECTION AND PROCEDURES MANUAL TO ASSIST IN THE DETECTION AND ELIMINATION OF FRAUDULENT ACTIVITY; AND

(7) THE TIME AND MANNER IN WHICH SUCH PLAN SHALL BE IMPLEMENTED AND A DEMONSTRATION THAT THE FRAUD PREVENTION AND REDUCTION MEASURES OUTLINED IN THE PLAN WILL BE FULLY IMPLEMENTED.

(C) (1) A FRAUD DETECTION AND PREVENTION PLAN FILED BY A VIATICAL SETTLEMENT PROVIDER WITH THE SUPERINTENDENT PURSUANT TO THIS SECTION SHALL BE DEEMED APPROVED BY THE SUPERINTENDENT IF NOT RETURNED BY THE SUPERINTENDENT FOR REVISION WITHIN ONE HUNDRED TWENTY DAYS OF THE DATE OF FILING. IF THE SUPERINTENDENT RETURNS A PLAN FOR REVISION, THE SUPERINTENDENT SHALL STATE THE POINTS OF OBJECTION WITH SUCH PLAN, AND ANY AMENDMENTS AS THE SUPERINTENDENT MAY REQUIRE CONSISTENT WITH THE PROVISIONS OF THIS SECTION, INCLUDING, BUT NOT LIMITED TO, STAFFING LEVELS, RESOURCE ALLOCATION, OR OTHER POLICY OR OPERATIONAL CONSIDERATIONS. AN AMENDED PLAN REFLECTING THE CHANGES SHALL BE FILED WITH THE SUPERINTENDENT WITHIN FORTY-FIVE DAYS FROM THE DATE OF RETURN.

(2) IF THE SUPERINTENDENT HAS RETURNED A PLAN FOR REVISION MORE THAN ONE TIME, THE VIATICAL SETTLEMENT PROVIDER SHALL BE ENTITLED TO A HEARING PURSUANT TO THE PROVISIONS OF ARTICLE THREE OF THIS CHAPTER AND REGULATIONS PROMULGATED THEREUNDER.

(3) IF A VIATICAL SETTLEMENT PROVIDER FAILS TO SUBMIT A FINAL PLAN WITHIN THIRTY DAYS AFTER A DETERMINATION OF THE SUPERINTENDENT AFTER THE HEARING HELD PURSUANT TO PARAGRAPH TWO OF THIS SUBSECTION, OR OTHERWISE FAILS TO SUBMIT A PLAN, OR FAILS TO IMPLEMENT THE PROVISIONS OF A PLAN IN A TIME AND MANNER PROVIDED FOR IN SUCH PLAN, OR OTHERWISE REFUSES TO COMPLY WITH THE PROVISIONS OF THIS SECTION, THE SUPERINTENDENT MAY: (A) IMPOSE A FINE OF NOT MORE THAN TWO THOUSAND DOLLARS PER DAY FOR SUCH FAILURE BY A VIATICAL SETTLEMENT PROVIDER UNTIL THE SUPERINTENDENT DEEMS THE VIATICAL SETTLEMENT PROVIDER TO BE IN COMPLIANCE; OR (B) IMPOSE UPON THE VIATICAL SETTLEMENT PROVIDER A FRAUD DETECTION AND PREVENTION PLAN DEEMED TO BE APPROPRIATE BY THE SUPERINTENDENT, WHICH SHALL BE IMPLEMENTED BY THE VIATICAL SETTLEMENT PROVIDER; OR (C) IMPOSE THE PROVISIONS OF BOTH SUBPARAGRAPHS (A) AND (B) OF THIS PARAGRAPH.

(D) ANY PLAN, THE INFORMATION CONTAINED THEREIN, OR CORRESPONDENCE RELATED THERETO, OR ANY OTHER INFORMATION FURNISHED PURSUANT TO THIS SECTION SHALL BE DEEMED TO BE A CONFIDENTIAL COMMUNICATION AND SHALL NOT BE OPEN FOR REVIEW OR BE SUBJECT TO A SUBPOENA EXCEPT BY A COURT ORDER OR BY REQUEST FROM ANY LAW ENFORCEMENT AGENCY OR AUTHORITY.

(E) EVERY VIATICAL SETTLEMENT PROVIDER REQUIRED TO FILE A FRAUD PREVENTION PLAN SHALL REPORT TO THE SUPERINTENDENT ON AN ANNUAL BASIS, NO LATER THAN JANUARY FIFTEENTH, DESCRIBING THE PROVIDER'S EXPERIENCE, PERFORMANCE AND COST EFFECTIVENESS IN IMPLEMENTING THE PLAN, UTILIZING SUCH FORMS AS THE SUPERINTENDENT MAY PRESCRIBE. UPON CONSIDERATION OF SUCH REPORTS, THE SUPERINTENDENT MAY REQUIRE AMENDMENTS TO THE PROVIDER'S FRAUD PREVENTION PLAN AS DEEMED NECESSARY.

S 21. The penal law is amended by adding seven new sections 176.40, 176.45, 176.50, 176.55, 176.60, 176.65 and 176.70 to read as follows:

S 176.40 FRAUDULENT VIATICAL SETTLEMENT ACT; DEFINED.

A FRAUDULENT VIATICAL SETTLEMENT ACT IS COMMITTED BY ANY PERSON WHO, KNOWINGLY AND WITH INTENT TO DEFRAUD, PRESENTS, CAUSES TO BE PRESENTED, OR PREPARES WITH KNOWLEDGE OR BELIEF THAT IT WILL BE PRESENTED TO, OR BY, A VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT BROKER, OR ANY AGENT THEREOF, OR TO ANY VIATOR ANY WRITTEN STATEMENT OR OTHER PHYSICAL EVIDENCE AS PART OF, OR IN SUPPORT OF, AN APPLICATION FOR A VIATICAL

SETTLEMENT CONTRACT, OR A CLAIM FOR PAYMENT OR OTHER BENEFIT UNDER A VIATICAL SETTLEMENT CONTRACT WHICH THE PERSON KNOWS TO (A) CONTAIN MATERIALLY FALSE INFORMATION CONCERNING ANY MATERIAL FACT THERETO; OR (B) CONCEAL, FOR THE PURPOSE OF MISLEADING, INFORMATION CONCERNING ANY FACT MATERIAL THERETO.

S 176.45 VIATICAL SETTLEMENT FRAUD IN THE FIFTH DEGREE.

A PERSON IS GUILTY OF VIATICAL SETTLEMENT FRAUD IN THE FIFTH DEGREE WHEN HE OR SHE COMMITS A FRAUDULENT VIATICAL SETTLEMENT ACT.

VIATICAL SETTLEMENT FRAUD IN THE FIFTH DEGREE IS A CLASS A MISDEMEANOR.

S 176.50 VIATICAL SETTLEMENT FRAUD IN THE FOURTH DEGREE.

A PERSON IS GUILTY OF VIATICAL SETTLEMENT FRAUD IN THE FOURTH DEGREE WHEN HE OR SHE COMMITS A FRAUDULENT VIATICAL SETTLEMENT ACT AND THEREBY WRONGFULLY TAKES, OBTAINS OR WITHHOLDS, OR ATTEMPTS TO WRONGFULLY TAKE, OBTAIN OR WITHHOLD PROPERTY WITH A VALUE IN EXCESS OF TWENTY-FIVE THOUSAND DOLLARS.

VIATICAL SETTLEMENT FRAUD IN THE FOURTH DEGREE IS A CLASS E FELONY.

S 176.55 VIATICAL SETTLEMENT FRAUD IN THE THIRD DEGREE.

A PERSON IS GUILTY OF VIATICAL SETTLEMENT FRAUD IN THE THIRD DEGREE WHEN HE OR SHE COMMITS A FRAUDULENT VIATICAL SETTLEMENT ACT AND THEREBY WRONGFULLY TAKES, OBTAINS OR WITHHOLDS, OR ATTEMPTS TO WRONGFULLY TAKE, OBTAIN OR WITHHOLD PROPERTY WITH A VALUE IN EXCESS OF FIFTY THOUSAND DOLLARS.

VIATICAL SETTLEMENT FRAUD IN THE THIRD DEGREE IS A CLASS D FELONY.

S 176.60 VIATICAL SETTLEMENT FRAUD IN THE SECOND DEGREE.

A PERSON IS GUILTY OF VIATICAL SETTLEMENT FRAUD IN THE SECOND DEGREE WHEN HE OR SHE COMMITS A FRAUDULENT VIATICAL SETTLEMENT ACT AND THEREBY WRONGFULLY TAKES, OBTAINS OR WITHHOLDS, OR ATTEMPTS TO WRONGFULLY TAKE, OBTAIN OR WITHHOLD PROPERTY WITH A VALUE IN EXCESS OF ONE HUNDRED THOUSAND DOLLARS.

VIATICAL SETTLEMENT FRAUD IN THE SECOND DEGREE IS A CLASS C FELONY.

S 176.65 VIATICAL SETTLEMENT FRAUD IN THE FIRST DEGREE.

A PERSON IS GUILTY OF VIATICAL SETTLEMENT FRAUD IN THE FIRST DEGREE WHEN HE OR SHE COMMITS A FRAUDULENT VIATICAL SETTLEMENT ACT AND THEREBY WRONGFULLY TAKES, OBTAINS OR WITHHOLDS, OR ATTEMPTS TO WRONGFULLY TAKE, OBTAIN OR WITHHOLD PROPERTY WITH A VALUE IN EXCESS OF ONE MILLION DOLLARS.

VIATICAL SETTLEMENT FRAUD IN THE FIRST DEGREE IS A CLASS B FELONY.

S 176.70 AGGRAVATED VIATICAL SETTLEMENT FRAUD.

A PERSON IS GUILTY OF AGGRAVATED VIATICAL SETTLEMENT FRAUD WHEN HE OR SHE COMMITS A FRAUDULENT VIATICAL SETTLEMENT ACT, AND HAS BEEN PREVIOUSLY CONVICTED WITHIN THE PRECEDING FIVE YEARS OF ANY OFFENSE, AN ESSENTIAL ELEMENT OF WHICH IS THE COMMISSION OF A FRAUDULENT VIATICAL SETTLEMENT ACT.

AGGRAVATED VIATICAL SETTLEMENT FRAUD IS A CLASS D FELONY.

S 22. Section 570 of the banking law, as added by chapter 488 of the laws of 1960, is amended to read as follows:

S 570. Restrictions on premium finance agreements. [1.] No premium finance agreement shall contain any provision by which:

[(a)] 1. In the absence [of] OR default of the insured, the premium finance agency holding the agreement may, arbitrarily and without reasonable cause, accelerate the maturity of any part or all of the amount owing thereunder;

[(b)] 2. A power of attorney is given to confess judgment in this state; [or

(c)] 3. The insured relieves the insurance agent or broker or the premium finance agency holding the agreement from liability for any legal rights or remedies which the insured may otherwise have against him[.]OR HER; OR

4. SUCH AGREEMENT, AS IT RELATES TO A LIFE INSURANCE CONTRACT, ATTEMPTS TO EVADE ANY REQUIREMENT OF ARTICLE SEVENTY-EIGHT OF THE INSURANCE LAW.

S 23. This act shall take effect immediately; provided, however, that upon such date, a person lawfully acting or operating as a viatical settlement provider or viatical settlement broker in this state as of or within the twelve months preceding the effective date of this act may continue to do so pending approval or disapproval of the person's application for a license as long as the application is filed with the superintendent of insurance's office not later than thirty days after publication of the superintendent of insurance of an application form and instructions for applications for such licensure. The superintendent of insurance shall publish application forms and instructions for applications for viatical settlement provider licenses and viatical settlement broker licenses not later than sixty days after the effective date of this act.