

## **As Passed by the House**

**127th General Assembly**

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**Am. Sub. H. B. No. 404**

**Representatives Hottinger, Barrett**

**Cosponsors: Representatives Koziura, Driehaus, DeBose, Fende, Celeste, Aslanides, Bacon, Batchelder, Beatty, Bolon, Boyd, Brown, Budish, Collier, DeGeeter, Dodd, Domenick, Dyer, Evans, Flowers, Foley, Garrison, Gerberry, Huffman, Hughes, Letson, Luckie, Lundy, Mallory, McGregor, J., Mecklenborg, Patton, Sayre, Schindel, Sears, Setzer, Stewart, D., Szollosi, Williams, S., Wolpert, Yates, Yuko, Zehringer**

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## **A B I L L**

To amend sections 3916.01 to 3916.03, 3916.05 to 3916.20, and 3916.99 and to enact sections 3916.031 and 3916.171 of the Revised Code to make changes to the law governing viatical settlements.	1 2 3 4 5
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## **BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

<b>Section 1.</b> That sections 3916.01, 3916.02, 3916.03, 3916.05, 3916.06, 3916.07, 3916.08, 3916.09, 3916.10, 3916.11, 3916.12, 3916.13, 3916.14, 3916.15, 3916.16, 3916.17, 3916.18, 3916.19, 3916.20, and 3916.99 be amended and sections 3916.031 and 3916.171 of the Revised Code be enacted to read as follows:	6 7 8 9 10
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<b>Sec. 3916.01.</b> As used in this chapter:  (A) "Advertising" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the internet, or	11 12 13 14
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similar communications media, including, but not limited to, film strips, motion pictures, and videos, that is <del>directly or indirectly published, disseminated, circulated, or placed directly or indirectly before the public for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy pursuant to a viatical settlement contract.</del>	15
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(B) "Business of viatical settlements" means an activity involved, <del>but not limited to,</del> in the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, or hypothecating <del>or in any other manner acquiring an interest in a life insurance policy by means of viatical settlement contracts or purchase agreements or any similar activity related to viatical settlement contracts or purchase agreements.</del>	22
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(C) "Chronically ill" means <del>any of the following having been certified within the proceeding twelve-month period by a licensed health professional as:</del>	31
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(1) Being unable to perform, <del>without substantial assistance from another individual,</del> at least two activities of daily living, including, but not limited to, eating, toileting, transferring, bathing, dressing, or continence <del>for at least ninety days due to a loss of functional capacity; or</del>	34
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(2) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; <del>or</del>	39
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(3) Having a level of disability similar to that described in division (C)(1) of this section, as determined <del>under regulations prescribed by the United States secretary of the treasury in consultation with the United States secretary of health and human</del>	42
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services.	46
(D) <u>"Escrow agent"</u> means an independent third-party person who, pursuant to a written agreement signed by the viatical settlement provider and viator, provides escrow services related to the acquisition of a life insurance policy pursuant to a viatical settlement contract. "Escrow agent" does not include any person associated, affiliated with, or under the control of a person licensed under this chapter or person described in division (C) of section 3916.02 of the Revised Code.	47 48 49 50 51 52 53 54
(E)(1) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any other person that has a direct ownership interest in a policy or certificate that is the subject of a viatical settlement contract and to which both of the following apply:	55 56 57 58 59 60
(a) Its principal activity related to the transaction is providing funds to effect the viatical settlement or the purchase of one or more viaticated policies.	61 62 63
(b) It has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts.	64 65 66
(2) "Financing entity" does not include a non-accredited investor or viatical settlement purchaser.	67 68
(E) <u>"Fraudulent viatical settlement act"</u> means an act or omission committed by any person who, knowingly or with intent to defraud and for the purpose of depriving another of property or for pecuniary gain, commits, or permits any of its employees or agents to commit, any of the following acts:	69 70 71 72 73
(1) Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical	74 75 76

<del>settlement purchaser, financing entity, insurer, insurance broker, insurance agent, or any other person, any false material information, or concealing any material information, as part of, in support of, or concerning a fact material to, one or more of the following:</del>	77
<del>(a) An application for the issuance of a viatical settlement contract or insurance policy or certificate;</del>	82
<del>(b) The underwriting of a viatical settlement contract or insurance policy or certificate;</del>	84
<del>(c) A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy or certificate;</del>	86
<del>(d) Any premiums paid on an insurance policy or certificate;</del>	88
<del>(e) Any payments changes in ownership or beneficiary made in accordance with the terms in viatical settlement contract or insurance policy or certificate;</del>	90
<del>(f) The reinstatement or conversion of an insurance policy or certificate;</del>	92
<del>(g) The solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy or certificate;</del>	94
<del>(h) The issuance of written evidence of a viatical settlement contract or insurance policy or certificate;</del>	96
<del>(i) A financing transaction.</del>	98
<del>(2) In the furtherance of a fraud or to prevent the detection of a fraud, doing any of the following:</del>	99
<del>(a) Removing, concealing, altering, destroying, or sequestering from the superintendent the assets or records of a licensee or another person engaged in the business of viatical settlements;</del>	101
<del>(b) Misrepresenting or concealing the financial condition of</del>	105

a licensee, financing entity, insurer, or any other person;	106
(e) Transacting the business of viatical settlements in violation of any law of this state requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements;	107
(d) Filing with the superintendent of insurance or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing from the superintendent any information about a material fact.	111
(3) Presenting, causing to be presented, or preparing with knowledge or reason to believe that it will be presented, to or by a viatical settlement provider, viatical settlement broker, insurer, insurance agent, financing entity, viatical settlement purchaser, or any other person, in connection with a viatical settlement transaction or insurance transaction, an insurance policy or certificate that the actor knows was fraudulently obtained by the insured, the owner, or any agent of the insured or owner;	115
(4) Committing any embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner, or any other person engaged in the business of viatical settlements or insurance;	124
(5) Attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit any act or omission specified in divisions (E)(1) to (4) of this section.	129
(F) "Recklessly" has the same meaning as in section 2901.22 of the Revised Code.	132
(G) "Defraud" has the same meaning as in section 2913.01 of the Revised Code.	134

<u>(H) "Life expectancy"</u> means an opinion or evaluation as to how long a particular person is going to live.	136
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<u>(I) "Life expectancy provider"</u> means a person who determines, or claims to have the necessary education, training, and expertise to determine life expectancies or mortality ratings used to determine life expectancies on behalf of or in connection with any of the following:	138
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<u>(1) A viatical settlement provider, viatical settlement broker, or person engaged in the business of viatical settlements;</u>	143
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<u>(2) A viatical settlement investment as defined by section 1707.01 of the Revised Code;</u>	145
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<u>(3) A viatical settlement contract or viatical settlement investment.</u>	147
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<u>(J) Notwithstanding section 1.59 of the Revised Code, "person"</u> means a natural person or a legal entity, including, but not limited to, an individual, partnership, limited liability company, <u>limited liability partnership</u> , association, trust, <u>business trust</u> , or corporation.	149
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<u>(G)(K) "Policy"</u> means an individual or group policy, group certificate, contract, or arrangement of insurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.	154
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<u>(H)(L) "Related provider trust"</u> means a titling trust or any other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding ownership or beneficial interest in purchased policies in connection with a financing transaction, provided that the trust has 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	159
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and under which the trust agrees to make all records and files	167
related to viatical settlement transactions available to the	168
superintendent as if those records and files were maintained	169
directly by the licensed viatical settlement provider.	170
<u>(I)(M)</u> "Special purpose entity" means a corporation,	171
partnership, trust, limited liability company or other similar	172
entity formed solely to provide access, either directly or	173
indirectly, to institutional capital markets for a financing	174
entity or licensed viatical settlement provider <u>or in connection</u>	175
<u>with a transaction in which the securities in the special purpose</u>	176
<u>entity are acquired by qualified institutional buyers.</u>	177
<u>(J)(N)</u> "Terminally ill" means <u>certified by a physician as</u>	178
having an illness or <u>sickness physical condition</u> that can	179
reasonably be expected to result in death in twenty-four months or	180
less.	181
<u>(K)(O)</u> "Viatical settlement broker" means a person that, on	182
behalf of a viator and for a fee, commission, or other valuable	183
consideration, offers or attempts to negotiate viatical	184
settlements between a viator and one or more viatical settlement	185
providers <u>or viatical settlement brokers</u> . "Viatical settlement	186
broker" does not include an attorney, a certified public	187
accountant, or a financial planner accredited by a nationally	188
recognized accreditation agency, who is retained to represent the	189
viator <u>and</u> , whose compensation is not paid directly or indirectly	190
by the viatical settlement provider or purchaser, <u>provided the</u>	191
<u>viatical settlement activities are incidental to the professional</u>	192
<u>practice of the attorney, certified public accountant, or</u>	193
<u>financial planner.</u>	194
<u>(L)(P)(1)</u> "Viatical settlement contract" means any of the	195
following:	196
<u>(1)(a)</u> A written agreement <u>establishing between a viator and</u>	197

<u>a viatical settlement provider or any affiliate of the viatical</u>	198
<u>settlement provider that establishes the terms under which</u>	199
compensation or any thing of value, that is less than the expected	200
death benefit of the insurance policy <u>is</u> or <u>certificate</u> will be	201
paid in return for the viator's <u>present or future</u> assignment,	202
transfer, sale, <u>release</u> , devise, or bequest of the death benefit	203
or ownership of any portion of the insurance policy or <u>certificate</u>	204
<u>of insurance any beneficial interest in the policy or its</u>	205
<u>ownership;</u>	206
<u>(2) A contract for a loan or any other financing transaction</u>	207
<u>secured primarily by an individual or group life insurance policy</u>	208
<u>or certificate, other than a loan by a life insurance company</u>	209
<u>pursuant to the terms of the life insurance contract or a loan</u>	210
<u>secured by the cash value of a policy or certificate;</u>	211
<u>(3) An agreement to transfer ownership or change the</u>	212
<u>beneficiary designation of the policy or certificate at a later</u>	213
<u>date, regardless of the date that compensation is paid to the</u>	214
<u>viator (b) The transfer or acquisition for compensation or</u>	215
<u>anything of value for ownership or beneficial interest in a trust</u>	216
<u>or other person that owns such a policy if the trust or other</u>	217
<u>person was formed or availed of for the principal purpose of</u>	218
<u>acquiring one or more life insurance policies;</u>	219
<u>(c) A written agreement for a loan or other lending</u>	220
<u>transaction, secured primarily by an individual life insurance</u>	221
<u>policy or an individual certificate of a group life insurance</u>	222
<u>policy;</u>	223
<u>(d) A premium finance loan made for a life insurance policy</u>	224
<u>by a lender to a viator on, before, or after the date of issuance</u>	225
<u>of the policy in either of the following situations:</u>	226
<u>(i) The viator or the insured receives a guarantee of the</u>	227
<u>viatical settlement value of the policy.</u>	228

<u>(ii) The viator or the insured agrees to sell the policy or any portion of the policy's death benefit on any date before or after the issuance of the policy.</u>	229 230 231
<u>(2) "Viatical settlement contracts" include but are not limited to contracts that are commonly termed "life settlement contracts" and "senior settlement contracts."</u>	232 233 234
<u>(3) "Viatical settlement contract" does not include any of the following unless part of a plan, scheme, device, or artifice to avoid the application of this chapter:</u>	235 236 237
<u>(a) A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms whether issued with the original policy or a rider;</u>	238 239 240
<u>(b) Loan proceeds that are used solely to pay premiums for the policy and the costs of the loan including interest, arrangement fees, utilization fees and similar fees, 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;</u>	241 242 243 244 245 246
<u>(c) A loan made by a regulated financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, provided that neither the default itself nor the transfer is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter;</u>	247 248 249 250 251 252 253 254
<u>(d) A premium finance loan made by a lender that does not violate sections 1321.71 to 1321.83 of the Revised Code, if the premium finance loan is not described in division (P)(3)(b) of this section;</u>	255 256 257 258
<u>(e) An agreement where all parties are closely related to the</u>	259

<u>insured by blood or law or have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or are persons or trusts established primarily for the benefit of such parties;</u>	260 261 262 263
<u>(f) Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee as described in section 3911.091 of the Revised Code;</u>	264 265 266 267 268
<u>(g) Any of the following business succession planning arrangements if those arrangements are bona fide arrangements:</u>	269 270
<u>(i) An arrangement between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more persons or trusts established by its shareholders;</u>	271 272 273 274
<u>(ii) An arrangement 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;</u>	275 276 277
<u>(iii) An arrangement 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.</u>	278 279 280 281
<u>(h) An agreement entered into by a service recipient, 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;</u>	282 283 284 285
<u>(i) Any other contract, transaction, or arrangement exempted from the definition of viatical settlement contract by rule adopted by the superintendent of insurance based on the superintendent's determination that the contract, transaction, or arrangement is not of the type regulated by this chapter.</u>	286 287 288 289 290

(M)(O)(1) "Viatical settlement provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract.	291 292 293
(2) "Viatical settlement provider" does not include any of the following:	294 295
(a) A bank, savings bank, savings and loan association, credit union, or other <u>regulated</u> financial institution <u>that takes an assignment of a life insurance policy solely as a collateral for a loan;</u>	296 297 298 299
(b) <u>A premium finance company exempted under section 1321.72 of the Revised Code from the licensure requirements of section 3921.73 of the Revised Code</u> that takes an assignment of a life insurance policy or certificate <u>solely</u> as collateral for a <u>premium finance</u> loan;	300 301 302 303 304
(c) <del>The issuer of a life insurance policy or certificate providing accelerated benefits as defined in section 3915.21 of the Revised Code and pursuant to the contract;</del>	305 306 307
(d) An individual who enters into or effectuates not more than one <del>agreement viatical settlement contract</del> in any calendar year for the transfer of life insurance policies <del>or certificates</del> for any value less than the expected death benefit;	308 309 310 311
(e) An authorized or eligible insurer that provides stop loss coverage <u>or financial guarantee insurance</u> to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;	312 313 314 315
(f) A financing entity;	316
(g) A special purpose entity;	317
(h) A related provider trust;	318
(i) A viatical settlement purchaser;	319
(j) Any other person the superintendent determines is not	320

<u>consistent with the definition of viatical settlement provider.</u>	321
(N)(R) "Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.	322 323 324
(O)(S) "Viator" means the owner of a life insurance policy or a certificate holder under a group policy <u>that has not previously been viaticated</u> who, in return for compensation or any thing of value that is less than the expected death benefit of the policy or certificate, assigns, transfers, sells, devises, or bequests the death benefit or ownership of any portion of the insurance policy or certificate of insurance. For the purposes of this chapter, a "viator" is not limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. "Viator" does not include any of the following:	325 326 327 328 329 330 331 332 333 334 335 336
(1) A licensee under this chapter;	337
(2) <del>An accredited investor or A qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Securities Act of 1933, as amended;</del>	338 339 340
(3) A financing entity;	341
(4) A special purpose entity;	342
(5) A related provider trust <u>or person</u> .	343
(P)(T) "Viatical settlement purchaser" means a person who <u>gives provides</u> a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy <u>that has been or will be the subject of a viatical settlement contract</u> , or a person who owns, acquires, or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life	344 345 346 347 348 349 350

insurance policy that has been or will be the subject of a	351
viatical settlement contract, for the purpose of deriving an	352
economic benefit. "Viatical settlement purchaser" does not include	353
any of the following:	354
(1) A licensee under this chapter;	355
(2) <del>An accredited investor or A qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Securities Act of 1933, as amended;</del>	356
(3) A financing entity;	359
(4) A special purpose entity;	360
(5) A related provider trust.	361
<u>(Q)(U) "Qualified institutional buyer" has the same meaning as in 17 C.F.R. 230.144A as that regulation exists on the effective date of this amendment.</u>	362
<u>(V) "Licensee" means a person licensed as a viatical settlement provider, viatical settlement broker, or life expectancy provider under this chapter.</u>	365
<u>(R)(W) "NAIC" means the national association of insurance commissioners.</u>	368
<u>(S) "Securities Act of 1933" has the same meaning as in section 1707.01 of the Revised Code</u>	370
<u>(X) "Regulated financial institution" means a bank, a savings association, or credit union operating under authority granted by the superintendent of financial institutions, the regulatory authority of any other state of the United States, the office of thrift supervision, the national credit union administration, or the office of the comptroller of the currency.</u>	371
<u>(Y)(1) "Stranger-originated life insurance," or "STOLI," means a plan or agreement that provides for both of the following at the time of the origination of a life insurance policy:</u>	378
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<u>(a) The purchase of a life insurance policy by an applicant primarily for the benefit of a third party investor that lacks insurable interest in the insured person;</u>	381
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<u>(b) The subsequent accrual, directly or indirectly, to that third party investor of the legal or beneficial ownership of the policy or the benefits of the policy.</u>	384
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<u>(2) "Stranger-originated life insurance" does not include viatical settlement transactions specifically permitted by this chapter.</u>	387
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 <b>Sec. 3916.02. <del>No</del> Notwithstanding division (C) of this section, no person shall operate in this state as a viatical settlement provider <del>or</del>, viatical settlement broker, or life expectancy provider without first having obtained a license from the superintendent of insurance and, if <del>different from the owner of the insurance policy to be viaticated is not a resident of this state, from the comparable official of the state of residence of the viator owner.</del> If</b>	390
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 <u>(B)(1) If</u> there is more than one <u>viator owner</u> on a single policy <del>or certificate</del> and the <u>viators owners</u> are residents of different states, the viatical settlement shall be governed by the law of the state in which the <u>viator owner</u> having the largest percentage ownership of the policy <del>or certificate</del> resides or, if the <u>viators owners</u> hold equal ownership, the state of residence of one <u>viator owner</u> agreed upon in writing by all <u>viators owners</u> .	398
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 <u>(2) If the viator is a resident of this state, all agreements to be signed by the viator shall provide exclusive jurisdiction to courts of this state and the laws of this state shall govern the agreements. Nothing in the agreements shall abrogate the viator's right to a trial by jury.</u>	405
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 <u>(C)(1) A person who represents the viator and is not</u>	410

<u>compensated directly or indirectly by the viatical settlement provider, who is licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency may negotiate viatical settlement contracts on behalf of a viator without obtaining a license pursuant to division (A) of this section if the viatical settlement activities are incidental to the professional practice of the attorney, certified public accountant, or financial planner.</u>	411
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 <u>(2) An individual insurance agent, in good standing, who has been licensed as a resident or nonresident insurance agent with a life line of authority in this state for at least five years may operate as a viatical settlement broker without obtaining a license pursuant to division (A) of this section if the viatical settlement broker activities of the insurance agent are incidental to the insurance agent's insurance business activities.</u>	420
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 <b>Sec. 3916.03.</b> (A) An applicant for a license as a viatical settlement provider <del>or,</del> viatical settlement broker, <u>or</u> life expectancy provider shall submit an application for the license in a manner prescribed by the superintendent of insurance. The application shall be accompanied by a fee established by the superintendent by rule adopted in accordance with chapter <u>Chapter</u> 119. of the Revised Code.	428
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 (B) A license issued under this chapter to a person other than an individual authorizes all partners, officers, members, or designated employees of the person to act as viatical settlement providers or viatical settlement brokers, as applicable, and all those partners, officers, members, or designated employees shall be named in the application and any supplements to the application.	435
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- (C) Upon the filing of an application under this section and 442  
the payment of the license fee, the superintendent shall make an 443  
investigation of the applicant and issue to the applicant a 444  
license that states in substance that the person is authorized to 445  
act as a viatical settlement provider ~~or~~, viatical settlement 446  
broker, or life expectancy provider, as applicable, if all of the 447  
following apply: 448
- (1) Regarding an application for a license as a viatical 449  
settlement provider, the applicant provides a all of the 450  
following: 451
- (a) A detailed plan of operation; 452
- (b) Evidence of financial responsibility in a format 453  
prescribed by the superintendent by possessing a minimum equity of 454  
not less than two hundred fifty thousand dollars in cash or cash 455  
equivalents reflected in the applicant's audited financial 456  
statements. In lieu of the minimum equity requirement, a viatical 457  
settlement provider with positive equity shall provide either a 458  
surety bond executed and issued by an insurer licensed in this 459  
state or an irrevocable line of credit in the amount of two 460  
hundred fifty thousand dollars; 461
- (c) A general description of the method the applicant will 462  
use to determine life expectancies, including a description of the 463  
applicant's intended receipt of life expectancies, the applicant's 464  
intended use of life expectancies, the applicant's intended use of 465  
life expectancy providers, and a written plan of policies and 466  
procedures used to determine life expectancies. 467
- (2) The superintendent finds all of the following: 468
- (a) The applicant is competent and trustworthy and intends to 469  
act in good faith in the capacity of a viatical settlement 470  
provider ~~or~~, viatical settlement broker, or life expectancy 471  
provider, as applicable. 472

(b) The applicant has a good business reputation and has had experience, training, or education so as to be qualified to act in the capacity of a viatical settlement provider <del>or, viatical settlement broker, or life expectancy provider</del> , as applicable.	473
(3) If the applicant is a person other than an individual, the applicant provides a certificate of good standing from the state of its domicile.	477
(4) The applicant provides an antifraud plan that meets the requirements of division (G) of section 3916.18 of the Revised Code.	480
(D)(1) <u>The superintendent may require an applicant to provide proof of financial responsibility in a format prescribed by the superintendent through either of the following means:</u>	483
(a) <u>A surety bond executed and issued by an insurer authorized to issue surety bonds in this state. The bond shall be in favor of this state and shall authorize recovery by the superintendent on behalf of any person in this state who sustains damages as a result of an erroneous act, failure to act, conviction of fraud or conviction of unfair practices committed by a licensee.</u>	486
(b) <u>A deposit of cash, certificates of deposit, or securities in any combination.</u>	493
(2) <u>If an applicant is licensed as a viatical settlement provider, viatical settlement broker, or life expectancy provider in another state, the superintendent may accept as valid any similar proof of financial responsibility the applicant filed in that state.</u>	495
(3) <u>The superintendent may request proof of financial responsibility at any time the superintendent considers necessary.</u>	500
(E) <u>An applicant shall provide all information requested by</u>	502

the superintendent. The superintendent may, at any time, require 503  
an applicant to fully disclose the identity of all stockholders, 504  
partners, officers, members, and employees, and may, in the 505  
exercise of the superintendent's discretion, refuse to issue a 506  
license to an applicant that is not an individual if the 507  
superintendent is not satisfied that each officer, employee, 508  
stockholder, partner, or member who may materially influence the 509  
applicant's conduct meets the standards set forth in this chapter. 510

(E)(F) Except as otherwise provided in this division, a 511  
license as a viatical settlement provider ~~or~~, viatical settlement 512  
broker, or life expectancy provider expires on the last day of 513  
March next after its issuance or continuance. A license as a 514  
viatical settlement provider ~~or~~, viatical settlement broker, or 515  
life expectancy provider may, in the discretion of the 516  
superintendent and the payment of an annual renewal fee 517  
established by the superintendent by rule adopted in accordance 518  
with ~~chapter~~ Chapter 119. of the Revised Code, be continued past 519  
the last day of March next after its issue and after the last day 520  
of March in each succeeding year. Failure to pay the renewal fee 521  
by the required date results in the expiration of the license 522  
without a hearing under Chapter 119. of the Revised Code. 523

(F)(G) Any individual licensed as a viatical settlement 524  
broker shall complete not less than fifteen hours of continuing 525  
education biennially. The superintendent shall approve continuing 526  
education courses that shall be related to viatical settlements 527  
and viatical settlement transactions. The superintendent shall 528  
adopt rules for the enforcement of this division. 529

(H) The superintendent shall not issue a license to a 530  
nonresident applicant, unless either of the following applies: 531

(1) The applicant files and maintains a written designation 532  
of an agent for service of process with the superintendent. 533

(2) 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.	534 535 536 537
(G)(I) A viatical settlement provider <del>or</del> viatical settlement broker, or life expectancy provider shall provide to the superintendent new or revised information regarding any change in its officers, <u>any stockholder owning</u> ten per cent or more of its <del>stockholders</del> stock, or its partners, directors, members, or designated employees within thirty days of the change.	538 539 540 541 542 543
(H)(J) Any fee collected under this section shall be paid into the state treasury to the credit of the department of insurance operating fund created by section 3901.021 of the Revised Code.	544 545 546 547
<u>Sec. 3916.031. Any corporation, partnership, or other business that is licensed as a viatical settlement broker shall maintain at least one designated individual who is individually licensed as a viatical settlement broker to be responsible for the business's compliance with this chapter.</u>	548 549 550 551 552
<u>Sec. 3916.05. (A) A person shall not use a viatical settlement contract form or provide a disclosure statement form to a viator in this state unless the viatical settlement contract form or the disclosure statement form is filed with and approved by the superintendent of insurance. The superintendent shall disapprove a viatical settlement contract form or a disclosure statement form if, in the superintendent's opinion, the viatical settlement contract form, the disclosure statement form, or any provision contained therein <u>fails to meet the requirements of section 3916.06 of the Revised Code,</u> is unreasonable, <u>is</u> contrary to the interests of the public, or <u>is</u> otherwise misleading or</u>	553 554 555 556 557 558 559 560 561 562 563

unfair to the viator. <del>At the superintendent's discretion, the superintendent may require the submission of advertising material to which section 3916.17 of the Revised Code applies.</del>	564
(B) The superintendent may adopt rules in accordance with Chapter 119. of the Revised Code to establish reasonable fees for any service or transaction performed by the department of insurance pursuant to division (A) of this section. Any fee collected pursuant to those rules shall be paid into the state treasury to the credit of the department of insurance operating fund created by section 3901.021 of the Revised Code.	567
<b>Sec. 3916.06.</b> (A)(1) With each application for a viatical settlement, a viatical settlement provider or viatical settlement broker shall disclose at least the following to a viator no later than the time all parties sign the application for the viatical settlement contract:	574
(a) That there are possible alternatives to viatical settlement contracts, including any accelerated death benefits offered under the viator's life insurance policy or certificate;	579
(b) That some or all of the proceeds of the viatical settlement may be subject to federal income taxation and state franchise and income taxation, and that assistance should be sought from a professional tax advisor;	582
(c) That the proceeds of the viatical settlement could be subject to the claims of creditors;	586
(d) That receipt of the proceeds of the viatical settlement may adversely affect the viator's eligibility for medical assistance under Chapter 5111. of the Revised Code or other government benefits or entitlements, and that advice should be obtained from the appropriate government agencies;	588
(e) That the viator has a right to rescind the viatical	593

settlement contract <del>for at least fifteen by providing notice of rescission and repaying all viatical settlement proceeds paid to the viator pursuant to the escrow agreement within sixty calendar days after all parties sign the viatical settlement contract or thirty</del> calendar days after the viator receives the viatical settlement proceeds, as provided in section 3916.08 of the Revised Code, <u>whichever is sooner.</u> If the insured dies during the rescission period, the <u>viatical</u> settlement contract shall be deemed to have been rescinded, subject to repayment <del>by the viator or the viator's estate</del> of all viatical settlement proceeds to the viatical settlement <del>company</del> provider within sixty days of the death of the insured.	594 595 596 597 598 599 600 601 602 603 604 605
(f) That funds will be sent to the viator within three business days after the viatical settlement provider has received <u>written</u> acknowledgment from the insurer or group administrator that ownership of the policy or interest in the certificate has been transferred and that the beneficiary has been designated pursuant to the viatical settlement contract;	606 607 608 609 610 611
(g) That entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator and that assistance should be sought from a financial advisor.	612 613 614 615 616
(h) <u>That following execution of the viatical settlement contract, the viatical settlement provider, the viatical settlement broker, or the authorized representative of the viatical settlement provider or viatical settlement broker may contact the insured for the purpose of determining the insured's health status and to confirm the insured's residential or business address and telephone number or for other purposes permitted by law. Any such contact shall be limited to once in any three-month period if the insured has a life expectancy of more than one year</u>	617 618 619 620 621 622 623 624 625

<u>or to once per month if the insured has a life expectancy of one year or less.</u>	626
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(2) The viatical settlement provider or viatical settlement broker shall provide the disclosures under division (A)(1) of this section in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker.	628
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(3) Disclosure to a viator under division (A)(1) of this section shall include distribution of a brochure describing the process of viatical settlements. The viatical settlement provider or viatical settlement broker shall use the NAIC's form for the brochure unless <u>another</u> one is developed <u>or approved</u> by the superintendent.	633
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(4) The disclosure document under division (A)(1) of this section shall contain the following language:	639
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"All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."	641
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(B)(1) A viatical settlement provider shall disclose at least the following to a viator prior to the date the viatical settlement contract is signed by all the necessary parties:	652
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(a) The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy <del>or certificate</del> to	655
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be viaticated;	657
(b) The name, <u>business</u> address, and telephone number of the viatical settlement provider;	658 659
(c) <del>Regarding a viatical settlement broker, the amount and method of calculating the broker's compensation. As used in this division, "compensation" includes anything of value paid or given to a viatical settlement broker for the placement of a policy or certificate. Any affiliations or contractual arrangements between the viatical settlement provider and the viatical settlement purchaser;</del>	660 661 662 663 664 665 666
(d) If an insurance policy <del>or certificate</del> to be viaticated has been issued as a joint policy <del>or certificate</del> or involves family riders or any coverage of a life other than the insured under the policy <del>or certificate</del> to be viaticated, the possible loss of coverage on the other lives under the policy <del>or certificate</del> and that advice should be sought from the viator's insurance <del>producer agent</del> or the company issuing the policy <del>or certificate</del> ;	667 668 669 670 671 672 673 674
(e) The dollar amount of the current death benefit payable to the viatical settlement provider under the policy <del>or certificate</del> , and, if known, the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy <del>or certificate</del> , and the <del>viatical settlement provider's extent to which the viator's</del> interest in those benefits <u>will be transferred as a result of the viatical settlement contract.</u>	675 676 677 678 679 680 681 682
(f) <del>The name, business address, and telephone number of the independent third party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents That an escrow agent shall provide escrow services to the parties pursuant to a written agreement,</del>	683 684 685 686 687

<u>signed by the viatical settlement provider, the viatical</u>	688
<u>settlement broker, and the viator. At the close of escrow, the</u>	689
<u>escrow agent will distribute the proceeds of the sale to the</u>	690
<u>viator, minus any compensation to be paid to any other persons who</u>	691
<u>provided services and to whom the viator has agreed to compensate</u>	692
<u>out of the gross amount offered by the viatical settlement</u>	693
<u>purchaser. All persons receiving any form of compensation under</u>	694
<u>the escrow agreement shall be clearly identified, including name,</u>	695
<u>business address, telephone number, and tax identification number.</u>	696
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<u>(2) The viatical settlement broker shall disclose at least</u>	698
<u>the following to a viator prior to the date the viatical</u>	699
<u>settlement contract is signed by all the necessary parties:</u>	700
<u>(a) The name, business address, and telephone number of the</u>	701
<u>viatical settlement broker;</u>	702
<u>(b) A full, complete, and accurate description of all offers,</u>	703
<u>counteroffers, acceptances, and rejections relating to the</u>	704
<u>proposed viatical settlement contract;</u>	705
<u>(c) Any affiliations or contractual agreements between the</u>	706
<u>viatical settlement broker and any person making an offer in</u>	707
<u>connection with the proposed viatical settlement contract;</u>	708
<u>(d) The amount and method of calculating the viatical</u>	709
<u>settlement broker's compensation and, if any portion of the</u>	710
<u>viatical settlement broker's compensation is taken from the</u>	711
<u>viatical settlement offer, the total amount of the viatical</u>	712
<u>settlement offer and the viatical settlement broker's compensation</u>	713
<u>as a percentage of that total. As used in this division,</u>	714
<u>"compensation" includes anything of value paid or given to a</u>	715
<u>viatical settlement broker related to the settlement of a policy.</u>	716
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<u>(3) The viatical settlement provider or viatical settlement</u>	718

broker shall conspicuously display the disclosures required under 719  
division divisions (B)(1) and (2) of this section in the viatical 720  
settlement contract or in a separate document signed by the viator 721  
and the viatical settlement provider or viatical settlement 722  
broker, as appropriate. 723

(C) If the viatical settlement provider transfers ownership 724  
or changes the beneficiary of the insurance policy or certificate, 725  
the viatical settlement provider shall communicate in writing the 726  
change in ownership or beneficiary to the insured within twenty 727  
days after the change. 728

(D) If, for the purpose of engaging in the business of 729  
viatical settlements, a viatical settlement broker or viatical 730  
settlement provider is party to a plan, transaction, or series of 731  
transactions to originate, renew, continue, or finance a life 732  
insurance policy with the insurer that issued the policy within 733  
the first five years of the issuance of that policy, the viatical 734  
settlement broker or viatical settlement provider shall fully 735  
disclose the plan, transaction, or series of transactions to that 736  
insurer prior to the initiation of the plan, transaction, or 737  
series of transactions. 738

**Sec. 3916.07.** (A) A viatical settlement provider entering 739  
into a viatical settlement contract shall first obtain all of the 740  
following: 741

(1) If the viator is the insured, a written statement from an 742  
attending physician that the viator is of sound mind and under no 743  
constraint or undue influence to enter into a viatical settlement 744  
contract. As used in this division, "physician" means a person 745  
authorized under Chapter 4731. of the Revised Code to practice 746  
medicine and surgery or osteopathic medicine and surgery. 747

(2) A document in which the insured consents in writing, as 748  
required by division (E) of section 3916.13 of the Revised Code, 749

to the release of the insured's medical records to a viatical settlement provider or viatical settlement broker and to the insurance company that issued the life insurance policy ~~or certificate~~ covering the life of the insured. 750  
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(B) Within twenty days after a viator executes documents necessary to transfer any rights under an insurance policy ~~or certificate~~ or within twenty days of entering any expressed or implied agreement, option, promise, or other form of understanding to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued that insurance policy ~~or certificate~~ that the policy ~~or certificate~~ has or will become a viaticated policy ~~or certificate~~. The notice shall be accompanied by the documents required by division (C) of this section. 754  
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(C) The viatical settlement provider shall deliver a copy of the medical release required under division (A)(2) of this section, a copy of the viator's application for the viatical settlement contract, the notice required under division (B) of this section, and a request for verification of coverage to the insurer that issued the life insurance policy ~~or certificate~~ that is the subject of the viatical transaction. The viatical settlement provider shall use the NAIC's form for verification of coverage unless ~~standards for verification are another form is developed or approved~~ by the superintendent of insurance. 764  
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(D) The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider or viatical settlement broker within thirty calendar days after the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at that time regarding possible fraud or the validity of the life insurance contract ~~or certificate~~ that is the subject of the request. The insurer shall 774  
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<u>accept an original or facsimile or electronic copy of such request</u>	782
<u>and any accompanying authorization signed by the viator.</u>	783
	784
(E) Prior to or at the time of execution of the viatical	785
settlement contract, the viatical settlement provider shall obtain	786
a witnessed document in which the viator consents to the viatical	787
settlement contract, represents that the viator has a full and	788
complete understanding of the viatical settlement contract and a	789
full and complete understanding of the benefits of the life	790
insurance policy <del>or certificate</del> , and acknowledges that the viator	791
is entering into the viatical settlement contract freely and	792
voluntarily and, for persons with a terminal or chronic illness or	793
condition, acknowledges that the insured has a terminal or chronic	794
illness and that the terminal or chronic illness or condition was	795
diagnosed after the life insurance policy <del>or certificate</del> was	796
issued.	797
(F) If a viatical settlement broker performs any of the	798
activities specified in this section on behalf of the viatical	799
settlement provider, the <u>viatical settlement</u> provider is deemed to	800
have fulfilled the requirements of this section.	801
(G) All medical information solicited or obtained by any	802
licensee shall be subject to the applicable provisions of state	803
law relating to confidentiality of medical information.	804
<b>Sec. 3916.08. (A)</b> Each viatical settlement contract entered	805
into in this state shall provide the viator with an <u>unconditional</u>	806
<u>absolute</u> right to rescind the contract <del>for at least fifteen by</del>	807
<u>providing notice of rescission and repaying all viatical</u>	808
<u>settlement proceeds paid to the viator pursuant to the escrow</u>	809
<u>agreement within sixty calendar days after all parties sign the</u>	810
<u>viatical settlement contract or thirty calendar days after the</u>	811
<u>receipt of the viatical settlement proceeds pursuant to division</u>	812

<u>(A) of section 3916.09 of the Revised Code, whichever is sooner.</u>	813
If the insured dies during the rescission period, the viatical	814
settlement contract is deemed to have been rescinded, subject to	815
repayment of all viatical settlement proceeds to the viatical	816
settlement provider <u>within sixty days of the death of the insured.</u>	817
If	818
<u>(B) If the viator rescinds the viatical settlement contract</u>	819
<u>and any compensation has been paid to any person under the terms</u>	820
<u>of the escrow agreement, including the viatical settlement</u>	821
<u>provider, the viatical settlement broker, or any insurance agent,</u>	822
<u>the person that received the compensation shall refund the full</u>	823
<u>amount received to the viatical settlement provider within five</u>	824
<u>business days following receipt of written notice from the</u>	825
<u>viatical settlement provider. The notice shall include a copy of</u>	826
<u>the viator's notice of rescission or the notice of the death of</u>	827
<u>the viator.</u>	828
<u>(C) If a viatical settlement contract is rescinded by the</u>	829
viator pursuant to this section, ownership of the insurance policy	830
or certificate reverts to the viator or to the viator's estate if	831
the viator is deceased, irrespective of any transfer of ownership	832
of the policy or certificate by the viator, viatical settlement	833
provider, or any other person.	834
<b>Sec. 3916.09.</b> (A) The viatical settlement provider shall	835
instruct the viator to send the executed documents required to	836
effect the change in ownership, assignment, or change in	837
beneficiary directly to the <del>independent</del> escrow agent. Within three	838
business days after the date the escrow agent receives the	839
documents, or from the date the viatical settlement provider	840
receives the documents if the viator erroneously provides the	841
documents directly to the <u>viatical settlement</u> provider, the	842
<u>viatical settlement</u> provider shall pay or transfer the <del>proceeds of</del>	843

gross amount paid by the viatical settlement purchaser to an the 844  
escrow or agent for deposit in a trust account set up for that 845  
purpose by the escrow agent in a state or federally chartered 846  
regulated financial institution whose deposits are insured by the 847  
federal deposit insurance corporation. Upon payment of the 848  
settlement proceeds into the escrow or trust account, the escrow 849  
agent or trustee shall deliver the original change in ownership, 850  
assignment, or change in beneficiary forms to the viatical 851  
settlement provider, a representative of the viatical settlement 852  
provider, or related provider trust. Upon the licensed provider's 853  
escrow agent's receipt of the acknowledgment of the properly 854  
completed transfer of ownership, assignment, or designation of 855  
beneficiary from the insurance company, the licensed provider 856  
escrow agent shall instruct the escrow agent to pay the settlement 857  
proceeds to the viator and any other person pursuant to the 858  
viatical settlement contract and the escrow agreement. The escrow 859  
agent shall make payment within three business days of the date 860  
the provider received the acknowledged forms from the insurance 861  
company. Funds are considered sent by a viatical settlement 862  
provider to a viator as of the date that the escrow agent either 863  
releases the funds for wire transfer to the viator or places a 864  
check for delivery to the viator via United States postal service 865  
or other nationally recognized delivery service. 866  
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(B) Failure to transfer the proceeds to the viator within the 868  
period of time disclosed pursuant to division (A)(1)(f) of section 869  
3916.06 of the Revised Code renders the viatical settlement 870  
contract voidable by the viator for lack of consideration until 871  
the time consideration is tendered to and accepted by the viator. 872  
If a viatical settlement contract is voided by the viator pursuant 873  
to this division, ownership of the insurance policy or certificate 874  
reverts to the viator or to the viator's estate if the viator is 875

deceased, irrespective of any transfer of ownership of the policy 876  
or certificate by the viator, viatical settlement provider, or any 877  
other person. 878

**Sec. 3916.10.** After a viatical settlement has occurred, 879  
contact with the insured for the purpose of determining the health 880  
status of the insured by the viatical settlement provider or 881  
viatical settlement broker shall be made only by the viatical 882  
settlement provider ~~or, viatical settlement broker licensed in~~ 883  
~~this state, or the authorized representative of the viatical~~ 884  
~~settlement provider or viatical settlement broker.~~ The viatical 885  
settlement provider ~~or, viatical settlement broker, or authorized~~ 886  
~~representative~~ shall not contact the insured for the purpose of 887  
determining the insured's health status more than once every three 888  
months if the insured has a life expectancy of more than one year, 889  
or more than once per month if the insured has a life expectancy 890  
of one year or less. The viatical settlement provider or viatical 891  
settlement broker shall explain the procedure for making these 892  
contacts at the time the viatical settlement contract is entered 893  
into. 894

The limitations set forth in this section do not apply to 895  
contacts made with an insured under a viaticated policy for 896  
purposes other than to determine the insured's health status. 897

Viatical settlement providers and viatical settlement brokers 898  
are responsible for the actions of their authorized 899  
representatives, for the purposes of this section. 900

**Sec. 3916.11.** (A)(1) A licensee under this chapter shall, for 901  
five years, retain copies of all of the following: 902

(a) All proposed, offered, or executed contracts, purchase 903  
agreements, underwriting documents, policy forms, and applications 904  
from the date of the proposal, offer, or execution of the contract 905

or purchase agreement, whichever is later;	906
(b) All checks, drafts, or other evidence and documentation related to the payment, transfer, deposit, or release of funds from the date of the transaction;	907 908 909
(c) All other records and documents related to the requirements of this chapter.	910 911
(2) This section does not relieve a person of the obligation to produce the documents described in division (A)(1) of this section to the superintendent <u>of insurance</u> after the retention period specified in that division has expired if the person has retained the documents.	912 913 914 915 916
(3) Records required to be retained by this section must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.	917 918 919 920 921
(4) <u>If a licensee fails to comply with division (A) of this section, the superintendent may initiate proceedings in accordance with Chapter 119. of the Revised Code to revoke, suspend, or refuse to renew the license of the licensee.</u>	922 923 924 925
(B)(1) Upon determining that an examination should be conducted, subject to division (E) of this section, the superintendent shall appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. The superintendent may employ any guidelines or procedures for purposes of this division that the superintendent considers appropriate.	926 927 928 929 930 931 932
(2) Every licensee, or person from whom information is sought, and all officers, directors, employees, and agents of any licensee, or person from whom information is sought, shall provide to the examiners timely, convenient, and free access at all	933 934 935 936

reasonable hours at the licensee's or person's offices to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs of the licensee being examined. The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so.	937 938 939 940 941 942 943
The refusal of a licensee, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the superintendent shall be grounds for suspension, revocation, denial of issuance, or nonrenewal of any license <del>or authority</del> held by the licensee to engage in the viatical settlement business or other business subject to the superintendent's jurisdiction. Any proceedings for suspension, revocation, <del>or denial, or nonrenewal</del> of any license or authority is subject to <del>chapter</del> <u>Chapter</u> 119. of the Revised Code.	944 945 946 947 948 949 950 951 952
(3) The superintendent has the power to issue subpoenas, to administer oaths, and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the superintendent may petition a court of competent jurisdiction, and, upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.	953 954 955 956 957 958 959 960
(4) When making an examination under this chapter, the superintendent may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, and the licensee that is the subject of the examination shall bear the cost of those examiners <u>pursuant to division (F) of this section</u> . Examiners who are appointed by the superintendent, but who are not employees of the department of insurance, shall be compensated for their work,	961 962 963 964 965 966 967 968

travel, and living expenses at reasonable and customary rates.	969
(5) Nothing contained in this chapter limits the superintendent's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima-facie evidence in any legal or regulatory action.	970 971 972 973 974 975
(6) Nothing contained in this chapter limits the superintendent's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee working papers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the superintendent, in the superintendent's sole discretion, considers appropriate.	976 977 978 979 980 981 982 983
(C)(1) Examination reports shall be comprised of only facts appearing upon the books, records, or other documents of the licensee, its agents, or other persons examined, or as ascertained from the testimony of its officers, agents, or other persons examined concerning its affairs, and the conclusions and recommendations that the examiners find reasonably warranted from the facts.	984 985 986 987 988 989 990
(2) Upon completion of the examination, the examiner in charge shall file with the superintendent a verified written report of examination. Upon receipt of the verified report, the superintendent shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty days from receipt of the report to make a written submission or rebuttal with respect to any matters contained in the examination report.	991 992 993 994 995 996 997 998
(3) If the superintendent determines that regulatory action	999

is appropriate as a result of an examination, the superintendent	1000
may initiate any proceedings or actions provided by law.	1001
(D)(1) Names and individual identification data for all	1002
aviators shall be considered private and confidential information	1003
and shall not be disclosed by the superintendent, unless required	1004
by law.	1005
(2) Except as otherwise provided in this chapter or in the	1006
law of another state or jurisdiction that is substantially similar	1007
to this chapter, all examination reports, working papers, recorded	1008
information, documents, and copies of those reports, papers,	1009
information, documents, and copies produced by, obtained by, or	1010
disclosed to the superintendent or to any other person in the	1011
course of an examination made under this chapter or under the law	1012
of another state or jurisdiction that is substantially similar to	1013
this chapter, or in the course of the superintendent's analysis or	1014
investigation of the financial condition or market conduct of a	1015
licensee are confidential by law and privileged, are not a public	1016
record open for inspection under section 149.43 of the Revised	1017
Code, are not subject to subpoena, and are not subject to	1018
discovery or admissible in evidence in any private civil action.	1019
The superintendent may use the documents, materials, or other	1020
information in the furtherance of any regulatory or legal action	1021
brought as part of the superintendent's official duties.	1022
(3) Documents, materials, or other information, including,	1023
but not limited to, all working papers, and copies of working	1024
papers, in the possession or control of the NAIC and its	1025
affiliates and subsidiaries are confidential by law and	1026
privileged, are not subject to subpoena, and are not subject to	1027
discovery or admissible in evidence in any private civil action,	1028
if either of the following applies:	1029
(a) They are created, produced, or obtained by or disclosed	1030
to the NAIC and its affiliates and subsidiaries in the course of	1031

assisting an examination made under this chapter or assisting the superintendent or the comparable official in another state in the analysis or investigation of the financial condition or market conduct of a licensee.	1032 1033 1034 1035
(b) The superintendent or the comparable official in another state discloses them to the NAIC and its affiliates and subsidiaries under division (D)(5) of this section or under a comparable provision in the law of the other state.	1036 1037 1038 1039
(4) Neither the superintendent nor any person that received the documents, material, or other information while acting under the authority of the superintendent, including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials, or information subject to division (D)(1) of this section.	1040 1041 1042 1043 1044 1045 1046
(5)(a) In order to assist in the performance of the superintendent's duties, the superintendent may do any of the following:	1047 1048 1049
(i) Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to division (D)(1) of this section, with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, if the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication, or other information;	1050 1051 1052 1053 1054 1055 1056 1057
(ii) Receive documents, materials, communications, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions;	1058 1059 1060 1061 1062

(iii) Enter into agreements governing sharing and use of information consistent with this section.	1063 1064
(b) The superintendent shall maintain as confidential or privileged any document, material, or information received under division (D)(5)(a)(ii) of this section with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.	1065 1066 1067 1068 1069 1070
(6) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the superintendent under this section or as a result of sharing as authorized in division (D)(5) of this section.	1071 1072 1073 1074 1075
(7) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under division (D) of this section shall be available and enforced in any proceeding in, and in any court of, this state.	1076 1077 1078 1079 1080
(8) Nothing contained in this chapter prevents or prohibits the superintendent from disclosing the content of an examination report, preliminary examination report or results, or any matter relating to those reports or results, to the official of any other state or country that is comparable to the superintendent, or to law enforcement officials of this or any other state or agency of the federal government at any time, or to the NAIC, if the agency or office receiving the report or matters relating to it agrees in writing to hold it confidential and in a manner consistent with this chapter.	1081 1082 1083 1084 1085 1086 1087 1088 1089 1090
(E)(1) The superintendent may not appoint an examiner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of, or owns a	1091 1092 1093

pecuniary interest in, any person subject to examination under this chapter. This division does not automatically preclude any of the following from being an examiner:	1094 1095 1096
(a) A viator;	1097
(b) An insured in a viaticated insurance policy or certificate;	1098 1099
(c) A beneficiary in an insurance policy or certificate that is proposed to be viaticated.	1100 1101
(2) Notwithstanding the requirements of division (E) of this section, the superintendent may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.	1102 1103 1104 1105 1106 1107 1108
(F)(1) As used in division (F) of this section, "expenses" include all of the following:	1109 1110
(a) Compensation of examiners for each day or portion of a day worked;	1111 1112
(b) Travel and living expenses of examiners;	1113
(c) All other incidental expenses incurred by or on behalf of examiners;	1114 1115
(d) An allocated share of all expenses not described in division (F)(1), (2), or (3) of this section that are necessarily incurred in the performance of a market conduct examination, including the expenses of direct overhead and support staff for examiners.	1116 1117 1118 1119 1120
(2) When a market conduct examination is made of <del>an insurer a licensee under this chapter</del> , the <ins>insurer licensee</ins> shall pay the expenses of the examination. The expenses of an examination	1121 1122 1123

include those incurred on or after the date on which the	1124
superintendent notifies the <u>insurer licensee</u> of the examination	1125
through the issuance of the final examination report.	1126
(3) <del>Upon an insurer's failure to comply with division (A) of this section, the superintendent may initiate proceedings in accordance with Chapter 119. of the Revised Code to revoke, suspend, or refuse to renew the certificate of authority or license of the insurer. Additionally, the</del> The superintendent may request the attorney general to initiate a civil action in the court of common pleas of Franklin county to obtain and enforce a judgment for expenses incurred in the performance of a market conduct examination.	1127 1128 1129 1130 1131 1132 1133 1134 1135
(G)(1) No cause of action shall arise nor shall any liability be imposed against the superintendent, any authorized representative of the superintendent, or any examiner appointed by the superintendent for any statements made or conduct performed in good faith while carrying out the provisions of this chapter.	1136 1137 1138 1139 1140
(2) No cause of action shall arise nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the superintendent, any authorized representative of the superintendent, or any examiner appointed by the superintendent pursuant to an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. <del>Division (G)(2) of this section</del> <u>This division</u> does not abrogate or modify in any way any common law or statutory privilege or immunity previously enjoyed by any person identified in division (G)(1) of this section.	1141 1142 1143 1144 1145 1146 1147 1148 1149 1150 1151
(3) A person identified in division (G)(1) or (2) of this section shall be entitled to an award of attorney's fees and costs if the person is the prevailing party in a civil action for libel, slander, or any other relevant tort arising out of activities in	1152 1153 1154 1155

carrying out the provisions of this chapter and the party bringing 1156  
the action was not substantially justified in bringing the action. 1157  
For purposes of this division (C)(3) of this section, a proceeding 1158  
is "substantially justified" if it had a reasonable basis in law 1159  
or fact at the time that it was initiated. 1160

(H) The superintendent may investigate suspected fraudulent 1161  
viatical settlement acts and persons engaged in the business of 1162  
viatical settlements. 1163

**Sec. 3916.12.** (A) Each viatical settlement provider and 1164  
viatical settlement broker licensed licensee under this chapter 1165  
shall file with the superintendent of insurance, on or before the 1166  
first day of March of each year, an annual statement containing 1167  
the information required by the superintendent by rule adopted in 1168  
accordance with chapter 119. of the Revised Code verified under 1169  
oath by two officers in the form prescribed by the superintendent. 1170  
The annual statement for a viatical settlement provider shall 1171  
include the following information about the viatical settlement 1172  
provider's transactions during the previous calendar year, unless 1173  
newly licensed, in which case the superintendent may require 1174  
additional years: 1175

(1) A list of each life insurance policy, including policy 1176  
number, date of issue, viator, insured, insurance company issuing 1177  
policy, date viatical settlement contract signed by viator; 1178  
viatical settlement broker, agent of record on the policy, any 1179  
life insurance agents receiving compensation, regardless of the 1180  
form, and any premium finance companies; 1181

(2) Addresses and contact information for those persons 1182  
listed in division (A)(1) of this section; 1183

(3) A list of all life expectancy providers who have directly 1184  
or indirectly provided life expectancies to the viatical 1185  
settlement provider for use in connection with a viatical 1186

<u>settlement contract;</u>	1187
(4) Any other information required by the superintendent.	1188
(B) On or before the first day of May of each year, a viatical settlement provider licensed in this state shall file with the superintendent its financial statement, audited by an independent certified public accountant along with a letter stating whether any significant deficiencies or material weaknesses were detected during the audit pursuant to statement on auditing standards number 112 or as amended or superseded.	1189 1190 1191 1192 1193 1194 1195
(C)(1) Each viatical settlement provider shall file with the superintendent interim unaudited financial statements, including comparative results and footnotes to the financial statements, on a quarterly basis within forty-five days after the end of each quarter. The interim financial statements shall meet all of the following requirements:	1196 1197 1198 1199 1200 1201
(a) Be certified by the chief executive officer and chief financial officer as to the accuracy and fair presentation;	1202 1203
(b) Include disclosures either on the face of the financial statements or in accompanying footnotes sufficient so as to make the interim information not misleading.	1204 1205 1206
(2) Viatical settlement providers may assume that the users of the interim financial statements have access to the prior fiscal year-end audited financial statements and that the adequacy of additional disclosure needed for a fair presentation, except in regard to material contingencies, may be determined in that context. A footnote disclosure that would substantially duplicate the disclosure contained in the audited financial statements for the preceding fiscal year may be omitted. A footnote disclosure shall be provided if events subsequent to the fiscal year end have a material impact on the viatical settlement provider.	1207 1208 1209 1210 1211 1212 1213 1214 1215 1216
(D) A viatical settlement provider that willfully fails to	1217

<u>file the annual statements required by this section, or willfully fails to reply within thirty calendar days to a written inquiry from the superintendent or the superintendent's designee, shall, in addition to other penalties provided by this chapter, be subject to a penalty of up to two hundred fifty dollars per day, not to exceed twenty-five thousand dollars in the aggregate for each such failure.</u>	1218 1219 1220 1221 1222 1223 1224
<u>(E) The superintendent shall keep confidential and not a matter of public record all individual transaction data regarding the business of viatical settlements and data that could compromise the privacy of personal, financial, and health information of the viator or insured.</u>	1225 1226 1227 1228 1229
<b>Sec. 3916.13.</b> Except as otherwise permitted or required by law, a viatical settlement provider, viatical settlement broker, insurance company, insurance agent, insurance broker, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not disclose that identity as an insured, including the insured's name and individual identification data, or the insured's financial or medical information, unless any of the following apply:	1230 1231 1232 1233 1234 1235 1236 1237
(A) The disclosure is necessary to effect a viatical settlement between the viator and a viatical settlement provider, and the viator and insured have provided prior written consent to the disclosure.	1238 1239 1240 1241
(B) The disclosure is provided in response to an investigation or examination by the superintendent of insurance or by any other governmental officer or agency or pursuant to the requirements of division (C) of section 3916.18 of the Revised Code.	1242 1243 1244 1245 1246
(C) The disclosure is a term of, or condition to, the transfer of a viaticated policy by one viatical settlement	1247 1248

provider to another viatical settlement provider.	1249
(D) The disclosure is necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies <del>or certificates</del> by a viatical settlement provider, and the viator and insured have provided prior written consent to the disclosure.	1250 1251 1252 1253 1254
(E) The disclosure is necessary to allow the viatical settlement provider or viatical settlement broker or their authorized representatives to make contacts for the purpose of determining health status.	1255 1256 1257 1258
(F) The disclosure is required to purchase stop-loss coverage <u>or financial guaranty insurance.</u>	1259 1260
<b>Sec. 3916.14.</b> (A)(1) The superintendent of insurance may conduct an examination under this chapter of a licensee as often as the superintendent in the superintendent's sole discretion considers appropriate. <u>The superintendent shall consider all of</u> <u>the following to determine the nature, scope, and frequency of</u> <u>examinations:</u>	1261 1262 1263 1264 1265 1266
(a) <u>Consumer complaints;</u>	1267
(b) <u>The results of financial statement analyses and ratios;</u>	1268
(c) <u>Any changes in ownership, officers, or directors;</u>	1269
(d) <u>Actuarial opinions;</u>	1270
(e) <u>Any report of independent certified public accountants;</u>	1271
(f) <u>Any other criteria the superintendent determines to be</u> <u>appropriate.</u>	1272 1273
(2) For the purposes of completing an examination of a licensee under this chapter, the superintendent may examine or investigate any person, or the business of any person, insofar as the examination or investigation, in the sole discretion of the	1274 1275 1276 1277

superintendent, is necessary or material to the examination of the licensee.	1278 1279
(3) In lieu of an examination under this chapter of any foreign or alien licensee licensed under this chapter, the superintendent, at the superintendent's discretion, may accept an examination report on the licensee as prepared by the official of the licensee's state of domicile or port-of-entry state who is comparable to the superintendent. <u>As far as is practical, the superintendent shall cooperate with that official for any examination of a foreign or alien licensee.</u>	1280 1281 1282 1283 1284 1285 1286 1287
(B) The licensee or applicant shall pay to the superintendent all costs, assessments, forfeitures, or fines incurred in conducting an examination under this section. The superintendent shall deposit the money into the state treasury to the credit of the department of insurance operating fund created by section 3901.021 of the Revised Code.	1288 1289 1290 1291 1292 1293
<b>Sec. 3916.15.</b> (A) The superintendent of insurance may refuse to issue or suspend, revoke, or refuse to renew the license of a viatical settlement provider <del>or,</del> viatical settlement broker, <u>or life expectancy provider</u> , if the superintendent finds that any of the following apply:	1294 1295 1296 1297 1298
(1) There was a material misrepresentation in the application for the license.	1299 1300
(2) The applicant or licensee or any officer, partner, member, key management personnel, or designee of the applicant or licensee has been convicted of fraudulent or dishonest practices, is subject to a final administrative action in another state, <u>has been the subject of an administrative or civil action brought by the department of commerce, division of securities,</u> or is otherwise shown to be untrustworthy or incompetent.	1301 1302 1303 1304 1305 1306 1307

(3) The licensee is a viatical settlement provider that demonstrates a pattern of unreasonable payments to viators.	1308 1309
(4) The licensee or any officer, partner, member, key management personnel, or designee of the licensee has been convicted of or has pleaded guilty or no contest to a felony or to a misdemeanor involving fraud, moral turpitude, dishonesty, or breach of trust, regardless of whether a judgment of conviction has been entered by the court.	1310 1311 1312 1313 1314 1315
(5) The licensee is a viatical settlement provider that has used a viatical settlement contract form that has not been approved under this chapter.	1316 1317 1318
(6) The licensee is a viatical settlement provider that has failed to honor contractual obligations set out in a viatical settlement contract.	1319 1320 1321
(7) The licensee no longer meets the requirements for initial licensure.	1322 1323
(8) The licensee is a viatical settlement provider that has assigned, transferred, or pledged a viaticated policy to a person that is not a <u>one of the following:</u>	1324 1325 1326
(a) A viatical settlement provider licensed in this state, <del>or</del> a;	1327
(b) A <u>viatical settlement purchaser</u> ;	1328
(c) A <u>qualified institutional buyer</u> ;	1329
(d) A financing entity, <del>or</del> a;	1330
(e) A special purpose entity, <del>or</del> a;	1331
(f) A related provider trust.	1332
(9) The licensee or any officer, partner, member, key management personnel, or designee of the licensee has violated any provision of this chapter or any rule adopted under this chapter.	1333 1334 1335
(10) The licensee or any officer, partner, member, key	1336

management personnel, or designee of the licensee has committed any coercive, fraudulent, or dishonest act, or made any untrue, deceptive, or misleading statement, in connection with a viatical transaction or a proposed viatical transaction.	1337 1338 1339 1340
(B) Before the superintendent refuses to issue a license under this chapter, or suspends, <u>or</u> revokes, <u>or</u> refuses to renew the license of a viatical settlement provider <del>or</del> , viatical settlement broker, <u>or</u> life expectancy provider, the superintendent shall provide the licensee or applicant with notice and an opportunity for hearing as provided in <del>chapter</del> Chapter 119. of the Revised Code, except as follows:	1341 1342 1343 1344 1345 1346 1347
(1)(a) Any notice of opportunity for hearing, the hearing officer's findings and recommendations, or the superintendent's order shall be served by certified mail at the last known address of the licensee or applicant. Service shall be evidenced by return receipt signed by any person.	1348 1349 1350 1351 1352
For purposes of this section, the "last known address" is the address that appears in the licensing records of the department of insurance.	1353 1354 1355
(b) If the certified mail envelope is returned with an endorsement showing that service was refused, or that the envelope was unclaimed, the notice and all subsequent notices required by Chapter 119. of the Revised Code may be served by ordinary mail to the last known address of the licensee or applicant. The mailing shall be evidenced by a certificate of mailing. Service is deemed complete as of the date of such certificate provided that the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery. The time period in which to request a hearing, as provided in Chapter 119. of the Revised Code, begins to run on the date of mailing.	1356 1357 1358 1359 1360 1361 1362 1363 1364 1365 1366
(c) If service by ordinary mail fails, the superintendent may	1367

cause a summary of the substantive provisions of the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known place of residence or business of the licensee or applicant is located. The notice is considered served on the date of the third publication.	1368 1369 1370 1371 1372
(d) Any notice required to be served under Chapter 119. of the Revised Code shall also be served upon the attorney of the licensee or applicant by ordinary mail if the attorney has entered an appearance in the matter.	1373 1374 1375 1376
(e) The superintendent may, at any time, perfect service on a licensee or applicant by personal delivery of the notice by an employee of the department.	1377 1378 1379
(f) Notices regarding the scheduling of hearings and all other matters not described in division (B)(1)(a) of this section shall be sent by ordinary mail to the licensee or applicant and to the attorney of the licensee or applicant.	1380 1381 1382 1383
(2) Any subpoena for the appearance of a witness or the production of documents or other evidence at a hearing, or for the purpose of taking testimony for use at a hearing, shall be served by certified mail, return receipt requested, by an attorney or by an employee of the department designated by the superintendent. Such subpoenas shall be enforced in the manner provided in section 119.09 of the Revised Code. Nothing in this section shall be construed as limiting the superintendent's other statutory powers to issue subpoenas.	1384 1385 1386 1387 1388 1389 1390 1391 1392
<b>Sec. 3916.16.</b> (A) <u>(1)</u> It is a violation of this chapter for any person to enter into a viatical settlement contract <u>prior to the application for or issuance of a policy that is the subject of the viatical settlement contract.</u>	1393 1394 1395 1396
<u>(2) It is a violation of this chapter for any person to</u>	1397

<u>issue, solicit, market, or otherwise promote the purchase of a life insurance policy for the purpose of or with an emphasis on selling the policy.</u>	1398
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<u>(B) It is a violation of this chapter for any person to enter into a viatical settlement contract within a two-year five-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within that two year period five years after the issuance of the policy:</u>	1401
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<u>(1) The policy or certificate was issued upon the viator's exercise of conversion rights arising out of a group policy or certificate, provided the total of the time covered under the conversion policy or certificate plus the time covered under the group prior policy or certificate is at least twenty-four sixty months. The time covered under the a group policy or certificate shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship.</u>	1408
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<u>(2) The viator is a charitable organization exempt from taxation under 26 U.S.C. section 501(c)(3).</u>	1417
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<u>(3) The viator is not an individual.</u>	1419
<u>(4) The viator certifies and submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within that two year five-year period:</u>	1420
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<u>(a) The viator or insured is terminally or chronically ill.</u>	1424
<u>(b) The viator's spouse dies.</u>	1425
<u>(c) The viator divorces the viator's spouse.</u>	1426
<u>(d) The viator retires from full-time full-time employment.</u>	1427

(e) The viator becomes physically or mentally disabled, and a physician determines that the disability prevents the viator from maintaining full-time employment.	1428 1429 1430
(f) <del>The viator was the insured's employer at the time the policy or certificate was issued and the employment relationship terminated.</del>	1431 1432 1433
(g) A court of competent jurisdiction enters a final order, <del>judgement judgment</del> , or decree on the application of a creditor of the viator and adjudicates the viator bankrupt or insolvent or approves 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.	1434 1435 1436 1437 1438 1439
(h) <del>The viator experiences a significant decrease in income that is unexpected and that impairs the viator's reasonable ability to pay the policy premium.</del>	1440 1441 1442
(i) <del>The viator or insured disposes of the viator's or insured's ownership interests in a closely held corporation</del>	1443 1444
(q) <u>The sole beneficiary of the policy is a family member of the viator and the beneficiary dies.</u>	1445 1446
(3) <u>The viator enters into a viatical settlement contract more than two years after the date of issuance of a policy, and all of the following have been true with respect to that policy at all times during those two years:</u>	1447 1448 1449 1450
(a) <u>The viator has funded policy premiums using one or more of the following methods:</u>	1451 1452
(i) <u>Unencumbered assets provided by the insured which may include an interest in the life insurance policy being viaticated up to the amount of the policy's net cash surrender value;</u>	1453 1454 1455
(ii) <u>Full recourse liability financing incurred by the insured;</u>	1456 1457

<u>(iii) An agreement described in division (P)(3)(e) of section 3916.01 of the Revised Code.</u>	1458
<u>(b) The viator does not have an agreement or understanding with any other person to guarantee any such liability, to purchase, or to stand ready to purchase the policy, including through an assumption or forgiveness of the loan;</u>	1460
<u>(c) Neither the insured nor the policy has been evaluated for settlement in connection with the issuance of the policy.</u>	1464
<u>(B)(C) Copies of the independent evidence described in division (A)(4)(B)(2) of this section and documents required by section 3916.07 of the Revised Code shall be submitted to the insurer when the viatical settlement provider or any other party entering into a viatical settlement contract with a viator submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.</u>	1466
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<u>(C)(D) If the viatical settlement provider submits to the insurer a copy of the owner or insured's certification and independent evidence described in division (A)(4)(B)(2) of this section when the viatical settlement provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy conclusively establishes that the viatical settlement contract satisfies the requirements of this section, and the insurer shall timely respond to the request.</u>	1476
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<u>(E) No insurer, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a viatical settlement contract, may require the viator, insured, viatical settlement provider, or viatical</u>	1485
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<u>settlement broker to sign any form, disclosure, consent, or waiver</u>	1489
<u>form that has not been approved by the superintendent of insurance</u>	1490
<u>for use in connection with viatical settlement contracts.</u>	1491
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<u>(F) Upon receipt of a properly completed request for change</u>	1493
<u>of ownership or beneficiary of a policy, the insurer shall respond</u>	1494
<u>in writing within thirty calendar days to confirm that the insurer</u>	1495
<u>has made the change or specify reasons that the change cannot be</u>	1496
<u>processed. No insurer shall unreasonably delay effecting change in</u>	1497
<u>ownership or beneficiary or seek to interfere with any viatical</u>	1498
<u>settlement contract lawfully entered into in this state.</u>	1499
<u>(G) A viatical settlement provider or viatical settlement</u>	1500
<u>broker that is party to a plan, transaction, or series of</u>	1501
<u>transactions to originate, renew, continue, or finance a life</u>	1502
<u>insurance policy with the insurer for the purpose of engaging in</u>	1503
<u>the business of viatical settlements at any time prior to or</u>	1504
<u>during the first five years after the insurer issues the policy</u>	1505
<u>shall fully disclose the plan, transaction, or series of</u>	1506
<u>transactions to the insurer that issued that policy.</u>	1507
<b>Sec. 3916.17. (A) The general assembly hereby declares that</b>	1508
<b>the purpose of this section is to provide prospective viators with</b>	1509
<b>clear and unambiguous statements in the advertisement of viatical</b>	1510
<b>settlements and to assure the clear, truthful, and adequate</b>	1511
<b>disclosure of the benefits, risks, limitations, and exclusions of</b>	1512
<b>any viatical settlement contract. This purpose is intended to be</b>	1513
<b>accomplished by the establishment of guidelines and standards of</b>	1514
<b>permissible and impermissible conduct in the advertising of</b>	1515
<b>viatical settlements to assure that product descriptions are</b>	1516
<b>presented in a manner that prevents unfair, deceptive, or</b>	1517
<b>misleading advertising and is conducive to accurate presentation</b>	1518
<b>and description of viatical settlements through the advertising</b>	1519

media and material used by viatical settlement licensees.	1520
Divisions (B) to <del>(P)(Q)</del> of this section apply to any advertising of viatical settlement contracts, or any related products or services intended for dissemination in this state, including, but not limited to, internet advertising viewed by persons located in this state. In cases in which disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.	1521 1522 1523 1524 1525 1526 1527 1528
<u>(B)(1) Every person licensed under this chapter shall file with the superintendent of insurance all advertisements of its contract, products, and services.</u>	1529 1530 1531
<u>(2) No person licensed under this chapter shall enter into a viatical settlement contract unless the materials promoting, advertising, and marketing the viatical settlement contract have been filed with the superintendent.</u>	1532 1533 1534 1535
<u>(3) All materials filed with the superintendent pursuant to division (B)(1) of this section shall be filed in a format prescribed by the superintendent. Any filings not disapproved by the superintendent within sixty days of the superintendent's receipt of the materials shall be considered approved unless the superintendent requests additional time, in writing, from the person that filed the materials. The superintendent may assess fees for the review of the materials under this division.</u>	1536 1537 1538 1539 1540 1541 1542 1543
<u>(C) Every viatical settlement licensee shall establish and at all times shall maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products, and services. All advertisements, regardless of by whom they are written, created, designed, or presented, shall be the responsibility of the viatical settlement licensee and of the individual who created or presented the advertisement.</u>	1544 1545 1546 1547 1548 1549 1550

A system of control shall include regular routine notification, at least once a year, to agents and others authorized by the viatical settlement licensee who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the viatical settlement licensee.	1551 1552 1553 1554 1555 1556
 <u>(C)(D)</u> All advertisements that are subject to this section shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract shall be sufficiently complete and clear so as to avoid deception and shall not have the capacity or tendency to mislead or deceive. The determination of whether an advertisement has the capacity or tendency to mislead or deceive shall be made by the superintendent <del>of insurance</del> , from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.	1557 1558 1559 1560 1561 1562 1563 1564 1565 1566 1567
 <u>(D)(E)</u> Viatical settlement advertisements containing any representation set forth in this division are deemed false and misleading on their face and are prohibited. False and misleading viatical settlement advertisements include, but are not limited to, those including any of the following representations:	1568 1569 1570 1571 1572
(1) "Guaranteed," "fully secured," "100 percent secured," "fully insured," "secure," "safe," "backed by rated insurance companies," "backed by federal law," "backed by state law," or "state guaranty funds," or similar representations;	1573 1574 1575 1576
(2) "No risk," "minimal risk," "low risk," "no speculation," "no fluctuation," or similar representations;	1577 1578
(3) "Qualified or approved for individual retirement accounts (IRAs), Roth IRAs, 401(k) plans, simplified employee pensions (SEPs), 403(b), Keogh plans, TSA, or other retirement account	1579 1580 1581

rollovers," "tax deferred," or similar representations;	1582
(4) Utilization of the word "guaranteed" to describe the fixed return, annual return, principal, earnings, profits, investment, or similar representations;	1583
(5) "No sales charges or fees" or similar representations;	1586
(6) "High yield," "superior return," "excellent return," "high return," "quick profit," or similar representations;	1587
(7) Purported favorable representations or testimonials about the benefits of viatical settlement contracts or viatical settlement purchase agreements as an investment, taken out of context from any newspaper, trade paper, journal, radio or television program, or any other form of print and electronic media.	1589
(E)(F)(1) The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.	1595
An advertisement shall not omit material information or use any words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving viators, as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the viatical settlement contract offered is made available for inspection prior to consummation of the sale, that an offer is made to refund the payment if the viator is not satisfied, or that the viatical settlement contract includes a "free look" period that satisfies or exceeds legal requirements, does not remedy any misleading statements.	1599
(2) An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by <del>the insurer</del> <u>that company</u> .	1610
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(3) An advertisement shall not represent that any premium payments will not be required to be paid on the life insurance policy that is the subject of a viatical settlement contract or viatical settlement purchase agreement in order to maintain that policy, unless that is the fact.	1613 1614 1615 1616 1617
(4) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or in any manner an incorrect or improper practice.	1618 1619 1620 1621
(5) The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," or words of similar import shall not be used with respect to any <u>life insurance policy or to any</u> benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.	1622 1623 1624 1625 1626 1627
(6)(a) <del>Ter</del> <u>Testimonials</u> , appraisals, analyses, or endorsements used in advertisements must satisfy all of the following:	1628 1629 1630
(i) They must be genuine.	1631
(ii) They must represent the current opinion of the author.	1632
(iii) They must be applicable to the viatical settlement <del>contrat</del> <u>contract</u> product or service advertised, if any.	1633 1634
(iv) They must be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisals, analyses, or endorsements.	1635 1636 1637 1638
(b) In using testimonials, appraisals, analyses, or endorsements, the viatical settlement licensee makes as its own all the statements contained in the testimonials, appraisals, analyses, or endorsements, and the statements are subject to all	1639 1640 1641 1642

the provisions of this section.	1643
(c) If the individual making a testimonial, <del>appraisal appraisal</del> , analysis, or endorsement has a <del>financial financial</del> interest in the <del>viatical settlement provider or related entity</del> subject of that testimonial, <del>appraisal, analysis, or endorsement</del> directly or indirectly as a stockholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.	1644 1645 1646 1647 1648 1649 1650 1651
(d) An advertisement shall not state or <del>imply imply</del> that a viatical settlement contract benefit or service has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between the <del>individual group of individuals</del> , society, association, or organization and the viatical settlement provider is disclosed. If the entity making the endorsement or testimonial is owned, controlled, or managed by the viatical settlement provider, or receives any payment or other consideration from the viatical settlement provider for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.	1652 1653 1654 1655 1656 1657 1658 1659 1660 1661 1662
(e) When an endorsement refers to benefits received under a viatical settlement contract, all pertinent information shall be retained for a period of at least five years after its use.	1663 1664 1665
(F)(G) An advertisement shall not contain statistical information unless the information accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.	1666 1667 1668 1669
(G)(H) An advertisement shall not disparage any insurer, viatical settlement provider, viatical settlement broker, <del>viatical settlement investment agent</del> , insurance producer, policy, service, or method of marketing.	1670 1671 1672 1673

<u>(H)(I)</u> All advertisements about a viatical settlement provider or its viatical settlement contract, products, or services shall clearly identify the viatical settlement provider's name. If any specific viatical settlement contract is advertised, the viatical settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.	1674 1675 1676 1677 1678 1679 1680 1681
<u>(I)(J)</u> An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the viatical settlement licensee, if either of the following applies regarding the advertisement:	1682 1683 1684 1685 1686 1687 1688
(1) It would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee.	1689 1690 1691
(2) It would have the capacity or tendency to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a viatical settlement contract.	1692 1693 1694 1695
<u>(J)(K)</u> An advertisement shall not use any combination of words, symbols, or physical materials that, by their content, phraseology, shape, color, or other characteristics, are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.	1696 1697 1698 1699 1700 1701 1702 1703
<u>(K)(L)</u> An advertisement may state that a viatical settlement	1704

provider is licensed in the state in which the advertisement 1705  
appears, provided it does not exaggerate that fact or suggest or 1706  
imply that competing viatical settlement providers may not be so 1707  
licensed. The advertisement may ask the audience to consult the 1708  
~~licensee's viatical settlement provider's~~ web site or contact the 1709  
department of insurance to find out if the state in which the 1710  
advertisement appears requires licensing and, if it does, whether 1711  
the viatical settlement provider or viatical settlement broker is 1712  
licensed. 1713

(L)(M) An advertisement shall not create the impression that 1714  
the viatical settlement provider, its financial condition or 1715  
status, the payment of its claims, or the merits, desirability, or 1716  
advisability of its viatical settlement contracts are recommended 1717  
or endorsed by any government entity. 1718

(M)(N) All advertisements of an actual licensee shall state 1719  
the name of the actual licensee. An advertisement shall not use a 1720  
trade name, any group designation, name of any affiliate or 1721  
controlling entity of the licensee, service mark, slogan, symbol, 1722  
or other device in a manner that would have the capacity or 1723  
tendency to mislead or deceive as to the true identity of the 1724  
actual licensee or create the false impression that an affiliate 1725  
or controlling entity would have any responsibility for the 1726  
financial obligation of the licensee. 1727

(N)(O) An advertisement shall not directly or indirectly 1728  
create the impression that any division or agency of this state, 1729  
any other state, or the United States government endorses, 1730  
approves, or favors any of the following: 1731

(1) Any viatical settlement licensee or its business 1732  
practices or methods of operation; 1733

(2) The merits, desirability, or advisability of any viatical 1734  
settlement contract, ~~or viatical settlement program~~; 1735

(3) Any viatical settlement contract, or <del>viatical settlement program;</del>	1736 1737
(4) Any life insurance policy or <del>certificate</del> or life insurance company.	1738 1739
(+) (P) If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame, from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.	1740 1741 1742 1743 1744
(P) (Q) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a per cent of face value obtained by viators contracting with the licensee during the past six months.	1745 1746 1747 1748
<b><u>Sec. 3916.171.</u></b> (A) No person shall commit a <u>fraudulent viatical settlement act.</u>	1749 1750
(B) <u>All of the following acts are fraudulent viatical settlement acts when committed by any person who, knowingly or with intent to defraud and for the purpose of depriving another of property or for pecuniary gain, commits, or permits any of its employees or its agents to commit them:</u>	1751 1752 1753 1754 1755
(1) <u>Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, life expectancy provider, viatical settlement purchaser, financing entity, insurer, insurance broker, insurance agent, or any other person, any false material information, or concealing any material information, as part of, in support of, or concerning a fact material to, one or more of the following:</u>	1756 1757 1758 1759 1760 1761 1762 1763
(a) <u>An application for the issuance of a viatical settlement contract or insurance policy;</u>	1764 1765

<u>(b) The underwriting of a viatical settlement contract or insurance policy;</u>	1766 1767
<u>(c) A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy;</u>	1768 1769
<u>(d) Any premiums paid on an insurance policy;</u>	1770
<u>(e) Any payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy;</u>	1771 1772 1773
<u>(f) The reinstatement or conversion of an insurance policy;</u>	1774
<u>(g) The solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy;</u>	1775 1776
<u>(h) The issuance of written evidence of a viatical settlement contract or insurance policy;</u>	1777 1778
<u>(i) A financing transaction;</u>	1779
<u>(j) Any application for or the existence of or any payments related to a loan secured directly or indirectly by any interest in a life insurance policy.</u>	1780 1781 1782
<u>(2) Failing to disclose to the insurer, where the insurer has requested such disclosure, that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insurer or its authorized representatives in connection with the application, underwriting, and issuance of the policy.</u>	1783 1784 1785 1786 1787 1788
<u>(3) In the furtherance of a fraud or to prevent the detection of a fraud, doing any of the following:</u>	1789 1790
<u>(a) Removing, concealing, altering, destroying, or sequestering from the superintendent of insurance the assets or records of a licensee or another person engaged in the business of viatical settlements;</u>	1791 1792 1793 1794

<u>(b) Misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or any other person;</u>	1795 1796
<u>(c) Transacting the business of viatical settlements in violation of any law of this state requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements;</u>	1797 1798 1799 1800
<u>(d) Filing with the superintendent of insurance or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing from the superintendent any information about a material fact.</u>	1801 1802 1803 1804
<u>(4) Recklessly entering into, negotiating, brokering, or otherwise dealing in a viatical settlement contract involving a life insurance policy that was obtained by presenting false, deceptive, or misleading information of any fact material to the policy, or by concealing information concerning any fact material to the policy, for the purpose of misleading and with the intent to defraud the issuer of the policy, the viatical settlement provider, or the viator;</u>	1805 1806 1807 1808 1809 1810 1811 1812
<u>(5) Committing any embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner, or any other person engaged in the business of viatical settlements or insurance;</u>	1813 1814 1815 1816 1817
<u>(6) Employing any plan, financial structure, device, scheme, or artifice to defraud in the business of viatical settlements;</u>	1818 1819
<u>(7) Misrepresenting the state of residence or facilitating the change of the state in which a person owns a policy or the state of residency of a viator to a state or jurisdiction that does not have laws similar to this chapter for the express purposes of evading or avoiding the provisions of this chapter;</u>	1820 1821 1822 1823 1824
<u>(8) In the solicitation, application, or issuance of a life</u>	1825

<u>insurance policy, employing any device, scheme, or artifice in violation of sections 3911.09 or 3911.091 of the Revised Code;</u>	1826
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<u>(9) Engaging in any conduct related to a viatical settlement contract if the person knows or reasonably should have known that the intent of the transaction was to avoid the disclosure and notice requirements of section 3916.06 of the Revised Code;</u>	1828
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<u>(10) Entering into a premium finance agreement with any person pursuant to which the person will receive, directly or indirectly, any proceeds, fees, or other considerations from the insurance policy, the owner of the insurance policy, or from any other person with respect to the premium finance agreement or any viatical settlement contract, or from any transaction related to the insurance policy, that are in addition to the amount required to pay the principal, interest, and service charges related to the policy premiums pursuant to the premium finance agreement or subsequent sale of the agreement. Any payments, charges, fees, or other amounts in addition to the amounts required to pay the principal, interest, and service charges related to policy premiums paid under the premium finance agreement shall be remitted to the original owner of the policy or, if the owner is not living at the time of the determination of the overpayment, to the estate of the owner.</u>	1832
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<u>(11) With respect to any viatical settlement contract or insurance policy, for a viatical settlement broker or an agent registered under this chapter as operating as a viatical settlement broker to knowingly solicit an offer from, effectuate a viatical settlement with, or make a sale to any viatical settlement provider, viatical settlement purchaser, financing entity, or related provider trust that is controlling, controlled by, or under common control with such viatical settlement broker or registered agent;</u>	1848
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<u>(12) With respect to any viatical settlement contract or</u>	1857

<u>insurance policy, for a viatical settlement provider to knowingly enter into a viatical settlement contract with a viator if, in connection with such viatical settlement contract, anything of value will be paid to a viatical settlement broker or an agent registered under this chapter as operating as a viatical settlement broker that is controlling, controlled by, or under common control with such viatical settlement provider or the viatical settlement purchaser, financing entity, or related provider trust that is involved in such viatical settlement contract;</u>	1858
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<u>(13) Issuing, soliciting, marketing, or otherwise promoting the purchase of an insurance policy for the purpose of or with emphasis on settling the policy;</u>	1868
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<u>(14) Issuing or using a pattern of false, misleading, or deceptive life expectancies;</u>	1871
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<u>(15) Issuing, soliciting, marketing, or otherwise promoting stranger-originated life insurance;</u>	1873
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<u>(16) Attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit any act or omission specified in divisions (B)(1) to (15) of this section.</u>	1875
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<b>Sec. 3916.18. (A)(1) <del>No person shall commit a fraudulent viatical settlement act.</del></b>	1878
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<u>(2) No person shall knowingly or intentionally interfere with the enforcement of the provisions of this chapter or investigations of suspected or actual violations of this chapter.</u>	1880
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<u>(3)(2) No person in the business of viatical settlements shall knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.</u>	1883
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<u>(B)(1) Each viatical settlement contract and each application</u>	1887

for a viatical settlement, regardless of the form of transmission,	1888
shall contain the following statement or a substantially similar	1889
statement:	1890
"Any person who knowingly presents false information in an	1891
application for insurance or viatical settlement contract is	1892
guilty of a crime and may be subject to fines and imprisonment."	1893
(2) The lack of a statement as required in division (B)(1) of	1894
this section does not constitute a defense in any prosecution for	1895
a fraudulent viatical settlement act.	1896
(C)(1) Every person engaged in the business of viatical	1897
settlements having knowledge or a reasonable belief that a	1898
fraudulent viatical settlement act is being, will be, or has been	1899
committed shall provide to the superintendent of insurance the	1900
information required by the superintendent. The person shall	1901
provide the information in a manner prescribed by the	1902
superintendent.	1903
(2) Every person having knowledge or a reasonable <del>belief</del>	1904
<u>suspicion</u> that a fraudulent viatical settlement act is being, will	1905
be, or has been committed may provide to the superintendent the	1906
information required by the superintendent. The person shall	1907
provide the information under this division in a manner prescribed	1908
by the superintendent.	1909
(D)(1) No civil liability shall be imposed on, and no cause	1910
of action shall arise from, a person's furnishing information	1911
concerning suspected, anticipated, or completed fraudulent	1912
viatical settlement acts or suspected or completed fraudulent	1913
insurance acts, if the information is provided to or received from	1914
any of the following:	1915
(a) The superintendent, or the superintendent's employees,	1916
agents, or representatives;	1917
(b) Law enforcement or regulatory officials of this state,	1918

another state, the <del>united states</del> <u>United States</u> , or a political subdivision of this state or another state, or any employee, agent, or representative of any of those officials+ <u>i</u>	1919
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(c) A person involved in the prevention and detection of fraudulent viatical settlement acts or any agent, employee, or representative of any person so involved;	1922
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(d) The NAIC, <del>national association of securities dealers</del> <del>(NASD)</del> <u>financial industry regulatory authority (FINRA)</u> , the north american <u>American securities administrators</u> <u>administrators</u> association (NASA) <u>A</u> any employee <u>A</u> agent, or representative of any of those associations <u>A</u> or other regulatory body overseeing life insurance, viatical settlements, securities, or investment fraud;	1925
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(e) The life insurer that issued the life insurance policy or certificate covering the life of the insured.	1932
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(2) The immunity provided in division (D)(1) of this section shall not apply to any statement made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act <del>or a fraudulent insurance act</del> , the party bringing the action shall plead specifically any allegation that the immunity provided in division (D)(1) of this section does not apply because the person filing the report or furnishing the information did so with actual malice.	1934
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(3) If a person is the prevailing party in a civil action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter, if the prevailing party is a person identified in division (D)(1) of this section and the immunity described in that division applies to the person, and if the party who brought the action was not substantially justified in doing so, the person who is the	1943
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prevailing party is entitled to an award of attorney's fees and costs arising out of the action. <u>However, the person is not entitled to an award of attorney's fees if the person provided information about the person's own fraudulent viatical settlement acts.</u> For purposes of this division, an action is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.	1950 1951 1952 1953 1954 1955 1956
(4) This section does not abrogate or modify any common law or statutory privilege or immunity enjoyed by a person described in division (D)(1) of this section.	1957 1958 1959
(E)(1) The documents and evidence provided pursuant to division (D) of this section or obtained by the superintendent in an investigation of any suspected or actual fraudulent viatical settlement act is privileged and confidential, is not a public record open for inspection under section 149.43 of the Revised Code, and is not subject to discovery or subpoena in a civil or criminal action.	1960 1961 1962 1963 1964 1965 1966
(2) Division (E)(1) of this section does not prohibit release by the superintendent of any document or evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts, in any of the following manners or circumstances:	1967 1968 1969 1970
(a) In any administrative or judicial proceeding to enforce any laws <del>administered</del> <u>administered</u> by the superintendent;	1971 1972
(b) To any law enforcement or regulatory agency of this state, another state, the <del>united states</del> <u>United States</u> , or a <u>political</u> subdivision of this state or another state, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement <del>act</del> <u>acts</u> , or to the <del>NAIC</del> <u>NAIC</u> ;	1973 1974 1975 1976 1977 1978
(c) At the discretion of the superintendent, to a person in the business of viatical settlements that is aggrieved by a	1979 1980

fraudulent viatical settlement act.	1981
(3) Release of documents and evidence under division (E)(2) of this section does not abrogate or modify the privilege granted in division (E)(1) of this section.	1982 1983 1984
(F) The provisions of this chapter do not do any of the following:	1985 1986
(1) Preempt the authority or relieve the duty of any other law enforcement or regulatory agencies to investigate, examine, or prosecute suspected violations of law;	1987 1988 1989
(2) Prevent or prohibit a person from disclosing voluntarily any information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the department of insurance;	1990 1991 1992 1993
(3) Limit any power granted elsewhere by the law of this state to the superintendent or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.	1994 1995 1996 1997
(G)(1) Viatical settlement providers and viatical settlement brokers shall adopt and have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent viatical settlement acts. At the discretion of the superintendent, the superintendent may order, or a licensee <u>viatical settlement provider</u> or <u>viatical settlement broker</u> may request and the superintendent may grant, any modifications of the following required initiatives described in divisions (G)(1)(a) and (b) of this section that are necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section. Antifraud initiatives under this division shall include all of the following:	1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011

(a) Fraud investigators, who may be <u>licensed</u> viatical settlement provider or <u>licensed</u> viatical settlement broker employees or independent contractors;	2012 2013 2014
(b) An antifraud plan that includes, but <del>not</del> is not limited to, all of the following:	2015 2016
(i) A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;	2017 2018 2019 2020
(ii) A description of the procedures for reporting possible fraudulent viatical settlement acts to the superintendent;	2021 2022
(iii) A description of the plan for <del>atifraud</del> <u>antifraud</u> education and training of underwriters and other personnel;	2023 2024
(iv) A description or <del>chart</del> <u>chart</u> outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications;	2025 2026 2027 2028 2029 2030
(v) <u>A description of the procedures used to perform initial and continuing review of the accuracy of life expectancies used in connection with a viatical settlement contract.</u>	2031 2032 2033
(2) The superintendent, by rule adopted in accordance with Chapter 119. of the Revised Code, may require that antifraud plans required under division (G)(1) of this section be submitted to the superintendent. If the superintendent requires that antifraud plans be submitted to the superintendent, the plans so submitted are privileged and confidential, are not a public record open for inspection under section 149.43 of the <del>revised code</del> <u>Revised Code</u> , and are not subject to discovery or subpoena in a civil or criminal action.	2034 2035 2036 2037 2038 2039 2040 2041 2042

(H) <u>No insurer that issued a policy being viaticated shall be responsible, under this chapter, for any act or omission of a viatical settlement broker or viatical settlement provider arising out of or in connection with the viatical settlement transaction unless the insurer receives compensation for the placement of a viatical settlement contract from the viatical settlement provider or viatical settlement broker in connection with the viatical settlement contract.</u>	2043 2044 2045 2046 2047 2048 2049 2050
 <b>Sec. 3916.19.</b> (A) In addition to the penalties and other enforcement provisions contained in this chapter, if any person violates any provision of this chapter or any rule or regulation implementing any provision of this chapter <u>that constitutes a fraudulent viatical settlement act</u> , the superintendent of insurance may seek an injunction in a court of competent jurisdiction and may apply for any temporary or permanent order that the superintendent determines is necessary to restrain the person from committing the violation.	2051 2052 2053 2054 2055 2056 2057 2058 2059
(B) Any person damaged by any act of a person in violation of any provision of this chapter may bring a civil action against the person committing the violation in a court of competent jurisdiction. A civil action brought under this division does not preclude the superintendent from exercising any regulatory, enforcement, or other authority available to the superintendent under this chapter.	2060 2061 2062 2063 2064 2065 2066
(C) In addition to the penalties and other enforcement provisions contained in this chapter, any person who violates any provision of this chapter <u>that constitutes a fraudulent viatical settlement act</u> is subject to a civil penalty of up to ten thousand dollars per violation. Imposition of civil penalties described in this division shall be pursuant to an order of the superintendent issued under Chapter 119. of the Revised Code. The	2067 2068 2069 2070 2071 2072 2073

superintendent's order may require a person found to be in violation of this chapter to make restitution to persons aggrieved by violations of this chapter.	2074 2075 2076
<u>(D) Any transaction related to the sale or financing of an interest or investment in a viatical settlement is subject to Chapter 1707. of the Revised Code and the rules adopted thereunder. Nothing in this chapter shall preempt, supersede, or limit the application of Chapter 1707. of the Revised Code and the rules adopted thereunder.</u>	2077 2078 2079 2080 2081 2082
<b>Sec. 3916.20.</b> The superintendent of insurance may adopt rules in accordance with Chapter 119. of the Revised Code for purposes of implementing this chapter, including, but not limited to, rules that do the following:	2083 2084 2085 2086
(A) Govern the relationship and responsibilities of <del>both</del> insurers <del>and</del> viatical settlement providers, and viatical settlement brokers during the viatication of a life insurance policy <del>or certificate</del> .	2087 2088 2089 2090
(B) Establish standards for evaluating the reasonableness of payments under viatical settlement contracts for persons with a terminal or chronic illness or condition. This authority includes, but is not limited to, the regulation of discount rates used to determine the amount paid in exchange for the assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy <del>or certificate</del> <u>insuring persons with a terminal or chronic illness or condition.</u>	2091 2092 2093 2094 2095 2096 2097 2098
(C) Establish appropriate licensing requirements, fees, and standards for continued licensure for viatical settlement providers <del>and</del> viatical settlement brokers, and <u>life expectancy providers</u> ;	2099 2100 2101 2102
<del>(D) Require a bond or other mechanism for ensuring the</del>	2103

<del>financial accountability of viatical settlement providers and viatical settlement brokers.</del>	2104 2105
<b>Sec. 3916.99.</b> (A) Whoever violates section 3916.02 of the Revised Code is guilty of a felony of the third degree.	2106 2107
(B) Whoever violates division (A) <del>(1)</del> of section <del>3916.18</del> <u>3916.171</u> of the Revised Code is guilty of a violation of section 2913.02 of the Revised Code.	2108 2109 2110
<b>Section 2.</b> That existing sections 3916.01, 3916.02, 3916.03, 3916.05, 3916.06, 3916.07, 3916.08, 3916.09, 3916.10, 3916.11, 3916.12, 3916.13, 3916.14, 3916.15, 3916.16, 3916.17, 3916.18, 3916.19, 3916.20, and 3916.99 of the Revised Code are hereby repealed.	2111 2112 2113 2114 2115
<b>Section 3.</b> Division (A) of section 3916.02 as amended by this act shall take effect 90 days after the effective date of this act.	2116 2117 2118
<b>Section 4.</b> Nothing in Chapter 3916. of the Revised Code as amended by this act shall be construed as affecting the incontestability period provided in division (C) of section 3915.05 of the Revised Code.	2119 2120 2121 2122