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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**

**Senators Amstutz, Stivers, Miller, D., Austria, Buehrer, Faber, Fedor, Goodman, Harris, Kearney, Morano, Mumper, Niehaus, Padgett, Sawyer, Schuler, Seitz, Spada, Jacobson, Mason**

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**A B I L L**

To amend sections 1321.72, 1321.78, 3916.01 to 1  
3916.03, 3916.05 to 3916.07, 3916.09 to 3916.20, 2  
and 3916.99 and to enact sections 3911.021, 3  
3916.031, 3916.171, 3916.172, and 3916.173 of the 4  
Revised Code to make changes to the law governing 5  
viatical settlements. 6

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 1321.72, 1321.78, 3916.01, 3916.02, 7  
3916.03, 3916.05, 3916.06, 3916.07, 3916.09, 3916.10, 3916.11, 8  
3916.12, 3916.13, 3916.14, 3916.15, 3916.16, 3916.17, 3916.18, 9  
3916.19, 3916.20, and 3916.99 be amended and sections 3911.021, 10  
3916.031, 3916.171, 3916.172, and 3916.173 of the Revised Code be 11  
enacted to read as follows: 12

**Sec. 1321.72.** ~~Sections~~ Except as provided in division (D) of section 1321.78, sections 1321.71 to 1321.83 of the Revised Code do not apply with respect to any of the following:

(A) Life, property, or casualty insurance companies authorized to do business in this state as to policies issued by those companies;

(B) The inclusion of a charge for insurance in connection with any installment transaction pursuant to Chapter 1317. of the Revised Code;

(C) The financing of insurance premiums at a rate of interest not exceeding the maximum rate permitted by section 1343.01 of the Revised Code;

(D) Persons lawfully doing business under the authority of any law of this state, another state, or the United States relating to banks, savings banks, trust companies, savings and loan associations, lenders authorized to make loans pursuant to sections 1321.01 to 1321.19 of the Revised Code, lenders authorized to make loans pursuant to sections 1321.51 to 1321.60 of the Revised Code, or any credit union;

(E) Any person who purchases or otherwise acquires a premium finance agreement from a licensee if the licensee remains responsible for collecting payments due under the agreement, and for otherwise servicing the agreement, in compliance with sections 1321.71 to 1321.83 of the Revised Code.

**Sec. 1321.78.** (A) A premium finance agreement shall:

(1) Be dated, signed by the insured, and the printed portion thereof shall be in at least eight-point type;

(2) Contain the name and place of business of the insurance agent or broker negotiating the related insurance contract, the

name and residence or the place of business of the insured as 42  
specified by him, the name and address of the premium finance 43  
company, and a description of the insurance contracts involved and 44  
the amount of the premium therefor; 45

(3) Set forth any charges the premium finance company elects 46  
to charge under sections 1321.79, 1321.791, and 1321.80 of the 47  
Revised Code. 48

(B) The premium finance company, agent, or agency shall 49  
deliver to the insured or send by regular mail to the insured at 50  
the address provided in the agreement, a complete copy of the 51  
premium finance agreement. 52

(C) A premium finance company shall give notice of its 53  
financing to the insurer not later than the thirtieth day after 54  
the date on which the premium financing agreement is accepted by 55  
the premium finance company. A notice given under this section 56  
shall be effective whether or not the insurer's policy number is 57  
set forth in the notice. 58

(D) Notwithstanding divisions (C) and (D) of section 1321.72 59  
of the Revised Code, in the case of a life insurance policy, any 60  
premium finance company shall give notice of its financing to the 61  
insurer either prior to the issuance of the life insurance policy 62  
if the financing agreement is accepted prior to the issuance of 63  
the policy or prior to the completion of the premium financing 64  
transaction if the financing agreement is accepted after the 65  
issuance of the policy. 66

(E) If premium financing is used in connection with a life 67  
insurance policy, and the premium finance company fails to provide 68  
notice of its financing to the insurer pursuant to division (D) of 69  
this section, the premium financing agreement is unenforceable as 70  
a matter of public policy. 71

Sec. 3911.021. Any insurance company that issues life insurance policies in this state shall file electronically, in a format prescribed by the superintendent of insurance, on or before June first of each year, a description of the measures taken by the insurance company to detect and prevent stranger-originated life insurance. The description shall be attested to by an officer of the company. The reports shall be maintained by the superintendent as confidential and not a matter of public record.

As used in this section, "stranger-originated life insurance" has the same meaning as in section 3916.01 of the Revised Code.

**Sec. 3916.01.** 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 similar communications media, including, but not limited to, film strips, motion pictures, and videos, that is ~~directly or indirectly~~ published, disseminated, circulated, or placed directly or indirectly before the public in this state 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.

(B) "Business of viatical settlements" means an activity involved, but not limited to, in the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, or hypothecating or in any other manner acquiring an interest in a policy by means of viatical settlement contracts ~~or purchase agreements or any similar activity related to viatical settlement contracts or~~

~~purchase agreements.~~ 102

(C) "~~Chronically ill~~" means ~~any of the following~~ having been certified within the preceding twelve-month period by a licensed health professional as: 103  
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(1) Being unable to perform, without substantial assistance from another individual, at least two activities of daily living, including, but not limited to, eating, toileting, transferring, bathing, dressing, or continence for at least ninety days due to a loss of functional capacity; or 106  
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(2) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or 111  
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(3) Having a level of disability similar to that described in division (C)(1) of this section, as determined under regulations prescribed by the United States secretary of the treasury in consultation with the United States secretary of health and human services+. 114  
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(D) "Escrow agent" 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 policy pursuant to a viatical settlement contract. "Escrow agent" does not include any person associated with, affiliated with, or under the control of a person licensed under this chapter or described in division (C) of section 3916.02 of the Revised Code. 119  
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(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: 127  
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(a) Its principal activity related to the transaction is 133  
providing funds to effect the business of viatical settlement 134  
settlements or the purchase of one or more viaticated policies. 135

(b) It has an agreement in writing with one or more licensed 136  
viatical settlement providers to finance the acquisition of 137  
viatical settlement contracts. 138

(2) "Financing entity" does not include a non-accredited 139  
investor or viatical settlement purchaser. 140

~~(E) "Fraudulent viatical settlement act" means an act or 141  
omission committed by any person who, knowingly or with intent to 142  
defraud and for the purpose of depriving another of property or 143  
for pecuniary gain, commits, or permits any of its employees or 144  
agents to commit, any of the following acts:~~ 145

~~(1) Presenting, causing to be presented, or preparing with 146  
knowledge or belief that it will be presented to or by a viatical 147  
settlement provider, viatical settlement broker, viatical 148  
settlement purchaser, financing entity, insurer, insurance broker, 149  
insurance agent, or any other person, any false material 150  
information, or concealing any material information, as part of, 151  
in support of, or concerning a fact material to, one or more of 152  
the following:~~ 153

~~(a) An application for the issuance of a viatical settlement 154  
contract or insurance policy or certificate;~~ 155

~~(b) The underwriting of a viatical settlement contract or 156  
insurance policy or certificate;~~ 157

~~(c) A claim for payment or benefit pursuant to a viatical 158  
settlement contract or insurance policy or certificate;~~ 159

~~(d) Any premiums paid on an insurance policy or certificate;~~ 160

~~(e) Any payments changes in ownership or beneficiary made in 161  
accordance with the terms in viatical settlement contract or 162~~

<del>insurance policy or certificate;</del>	163
<del>(f) The reinstatement or conversion of an insurance policy or certificate;</del>	164
<del>certificate;</del>	165
<del>(g) The solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy or certificate;</del>	166
<del>viatical settlement contract or insurance policy or certificate;</del>	167
<del>(h) The issuance of written evidence of a viatical settlement contract or insurance policy or certificate;</del>	168
<del>contract or insurance policy or certificate;</del>	169
<del>(i) A financing transaction.</del>	170
<del>(2) In the furtherance of a fraud or to prevent the detection of a fraud, doing any of the following:</del>	171
<del>of a fraud, doing any of the following:</del>	172
<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>	173
<del>sequestering from the superintendent the assets or records of a licensee or another person engaged in the business of viatical settlements;</del>	174
<del>licensee or another person engaged in the business of viatical settlements;</del>	175
<del>settlements;</del>	176
<del>(b) Misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or any other person;</del>	177
<del>a licensee, financing entity, insurer, or any other person;</del>	178
<del>(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;</del>	179
<del>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;</del>	180
<del>certificate of authority, or other legal authority for the transaction of the business of viatical settlements;</del>	181
<del>transaction of the business of viatical settlements;</del>	182
<del>(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.</del>	183
<del>insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing from the superintendent any information about a material fact.</del>	184
<del>containing false information or otherwise concealing from the superintendent any information about a material fact.</del>	185
<del>superintendent any information about a material fact.</del>	186
<del>(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</del>	187
<del>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</del>	188
<del>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</del>	189
<del>insurer, insurance agent, financing entity, viatical settlement purchaser, or any other person, in connection with a viatical settlement transaction or insurance transaction, an insurance</del>	190
<del>insurer, insurance agent, financing entity, viatical settlement purchaser, or any other person, in connection with a viatical settlement transaction or insurance transaction, an insurance</del>	191
<del>settlement transaction or insurance transaction, an insurance</del>	192

~~policy or certificate that the actor knows was fraudulently~~ 193  
~~obtained by the insured, the owner, or any agent of the insured or~~ 194  
~~owner;~~ 195

~~(4) Committing any embezzlement, theft, misappropriation, or~~ 196  
~~conversion of moneys, funds, premiums, credits or other property~~ 197  
~~of a viatical settlement provider, insurer, insured, viator,~~ 198  
~~insurance policyowner, or any other person engaged in the business~~ 199  
~~of viatical settlements or insurance;~~ 200

~~(5) Attempting to commit, assisting, aiding or abetting in~~ 201  
~~the commission of, or conspiracy to commit any act or omission~~ 202  
~~specified in divisions (E)(1) to (4) of this section.~~ 203

(F) "Recklessly" has the same meaning as in section 2901.22 204  
of the Revised Code. 205

(G) "Defraud" has the same meaning as in section 2913.01 of 206  
the Revised Code. 207

(H) "Life expectancy" means an opinion or evaluation as to 208  
how long a particular person is going to live. 209

(I) Notwithstanding section 1.59 of the Revised Code, 210  
"person" means a natural person or a legal entity, including, but 211  
not limited to, an individual, partnership, limited liability 212  
company, limited liability partnership, association, trust, 213  
business trust, or corporation. 214

~~(G)~~(J) "Policy" means an individual or group policy, group 215  
certificate, or other contract, or arrangement of life insurance 216  
affecting the rights of a resident of this state or bearing a 217  
reasonable relation to this state, regardless of whether delivered 218  
or issued for delivery in this state. 219

~~(H)~~(K) "Related provider trust" means a titling trust or any 220  
other trust established by a licensed viatical settlement provider 221  
or a financing entity for the sole purpose of holding ownership or 222



beneficial interest in purchased policies in connection with a 223  
financing transaction, provided that the trust has a written 224  
agreement with the licensed viatical settlement provider under 225  
which the licensed viatical settlement provider is responsible for 226  
ensuring compliance with all statutory and regulatory requirements 227  
and under which the trust agrees to make all records and files 228  
related to viatical settlement transactions available to the 229  
superintendent of insurance as if those records and files were 230  
maintained directly by the licensed viatical settlement provider. 231

~~(I)~~(L) "Special purpose entity" means a corporation, 232  
partnership, trust, limited liability company or other similar 233  
entity formed solely ~~to~~ for one of the following purposes: 234

(i) To provide access, either directly or indirectly, to 235  
institutional capital markets for a financing entity or licensed 236  
viatical settlement provider; 237

(ii) In connection with a transaction in which the securities 238  
in the special purpose entity are acquired by qualified 239  
institutional buyers. 240

~~(J)~~(M) "Terminally ill" means certified by a physician as 241  
having an illness or ~~sickness~~ physical condition that can 242  
reasonably be expected to result in death in twenty-four months or 243  
less. 244

~~(K)~~(N) "Viatical settlement broker" means a person that, on 245  
behalf of a viator and for a fee, commission, or other valuable 246  
consideration, offers or attempts to negotiate viatical 247  
settlements between a viator and one or more viatical settlement 248  
providers or viatical settlement brokers. "Viatical settlement 249  
broker" does not include an attorney, a certified public 250  
accountant, or a financial planner accredited by a nationally 251  
recognized accreditation agency, who is retained to represent the 252  
viator ~~and,~~ whose compensation is not paid directly or indirectly 253

by the viatical settlement provider or purchaser. 254

~~(1)~~(0)(1) "Viatical settlement contract" means any of the 255  
following: 256

~~(1)~~(a) A written agreement ~~establishing~~ between a viator and 257  
a viatical settlement provider that establishes the terms under 258  
which compensation or ~~any thing~~ anything of value, that is less 259  
than the expected death benefit of the ~~insurance~~ policy is or 260  
~~certificate~~ will be paid in return for the viator's present or 261  
future assignment, transfer, sale, release, devise, or bequest of 262  
the death benefit or ownership of any portion of the ~~insurance~~ 263  
policy or ~~certificate of insurance~~ any beneficial interest in the 264  
policy or its ownership; 265

~~(2)~~ A contract for a loan or any other financing transaction 266  
~~secured primarily by an individual or group life insurance policy~~ 267  
~~or certificate, other than a loan by a life insurance company~~ 268  
~~pursuant to the terms of the life insurance contract or a loan~~ 269  
~~secured by the cash value of a policy or certificate;~~ 270

~~(3)~~ An agreement to transfer ownership or change the 271  
beneficiary designation of the policy or certificate at a later 272  
date, regardless of the date that compensation is paid to the 273  
~~viator~~ (b) The transfer or acquisition for compensation or 274  
anything of value for ownership or beneficial interest in a trust 275  
or an interest in another person that owns such a policy if the 276  
trust or other person was formed or availed of for the principal 277  
purpose of acquiring one or more life insurance policies; 278

(c) A premium finance loan made for a policy by a lender to a 279  
viator on, before, or after the date of issuance of the policy in 280  
either of the following situations: 281

(i) The viator or the insured receives a guarantee of the 282  
viatical settlement value of the policy. 283

(ii) The viator or the insured agrees on, before, or after 284

the issuance of the policy to sell the policy or any portion of 285  
the policy's death benefit. 286

(2) "Viatical settlement contracts" include but are not 287  
limited to contracts that are commonly termed "life settlement 288  
contracts" and "senior settlement contracts." 289

(3) "Viatical settlement contract" does not include any of 290  
the following unless part of a plan, scheme, device, or artifice 291  
to avoid the application of this chapter: 292

(a) A policy loan or accelerated death benefit made by the 293  
insurer pursuant to the policy's terms whether issued with the 294  
original policy or a rider; 295

(b) Loan proceeds that are used solely to pay premiums for 296  
the policy and the costs of the loan including interest, 297  
arrangement fees, utilization fees and similar fees, closing 298  
costs, legal fees and expenses, trustee fees and expenses, and 299  
third-party collateral provider fees and expenses, including fees 300  
payable to letter of credit issuers; 301

(c) A loan made by a regulated financial institution in which 302  
the lender takes an interest in a policy solely to secure 303  
repayment of a loan or, if there is a default on the loan and the 304  
policy is transferred, the transfer of such a policy by the 305  
lender, provided that neither the default itself nor the transfer 306  
is pursuant to an agreement or understanding with any other person 307  
for the purpose of evading regulation under this chapter; 308

(d) A premium finance loan made by a lender that does not 309  
violate sections 1321.71 to 1321.83 of the Revised Code, if the 310  
premium finance loan is not described in division (O)(1)(c) of 311  
this section; 312

(e) An agreement where all parties are closely related to the 313  
insured by blood or law or have a lawful substantial economic 314  
interest in the continued life, health, and bodily safety of the 315

person insured, or are persons or trusts established primarily for 316  
the benefit of such parties; 317

(f) Any designation, consent, or agreement by an insured who 318  
is an employee of an employer in connection with the purchase by 319  
the employer, or trust established by the employer, of life 320  
insurance on the life of the employee as described in section 321  
3911.091 of the Revised Code; 322

(g) Any business succession planning arrangement including, 323  
but not limited to all of the following if the arrangements are 324  
bona fide arrangements: 325

(i) An arrangement between one or more shareholders in a 326  
corporation or between a corporation and one or more of its 327  
shareholders or one or more persons or trusts established by its 328  
shareholders; 329

(ii) An arrangement between one or more partners in a 330  
partnership or between a partnership and one or more of its 331  
partners or one or more trusts established by its partners; 332

(iii) An arrangement between one or more members in a limited 333  
liability company or between a limited liability company and one 334  
or more of its members or one or more trusts established by its 335  
members. 336

(h) An agreement entered into by a service recipient, a trust 337  
established by the service recipient and a service provider, or a 338  
trust established by the service provider who performs significant 339  
services for the service recipient's trade or business; 340

(i) An arrangement or agreement with a special purpose 341  
entity; 342

(j) Any other contract, transaction, or arrangement exempted 343  
from the definition of viatical settlement contract by rule 344  
adopted by the superintendent based on the superintendent's 345

determination that the contract, transaction, or arrangement is 346  
not of the type regulated by this chapter. 347

~~(M)~~(P)(1) "Viatical settlement provider" means a person, 348  
other than a viator, that enters into or effectuates a viatical 349  
settlement contract. 350

(2) "Viatical settlement provider" does not include any of 351  
the following: 352

(a) A bank, savings bank, savings and loan association, 353  
credit union, or other regulated financial institution that takes 354  
an assignment of a policy solely as a collateral for a loan; 355

(b) A premium finance company exempted under section 1321.72 356  
of the Revised Code from the licensure requirements of section 357  
3921.73 of the Revised Code that takes an assignment of a life 358  
insurance policy or certificate solely as collateral for a premium 359  
finance loan; 360

~~(b)~~(c) The issuer of a life insurance policy or certificate 361  
providing accelerated benefits as defined in section 3915.21 of 362  
the Revised Code and pursuant to the contract; 363

~~(e)~~(d) An individual who enters into or effectuates not more 364  
than one agreement viatical settlement contract in any calendar 365  
year for the transfer of life insurance policies or certificates 366  
for any value less than the expected death benefit; 367

~~(d)~~(e) An authorized or eligible insurer that provides stop 368  
loss coverage or financial guarantee insurance to a viatical 369  
settlement provider, purchaser, financing entity, special purpose 370  
entity, or related provider trust; 371

~~(e)~~(f) A financing entity; 372

~~(f)~~(g) A special purpose entity; 373

~~(g)~~(h) A related provider trust; 374

~~(h)~~(i) A viatical settlement purchaser; 375

(j) Any other person the superintendent determines is not 376  
consistent with the definition of viatical settlement provider. 377

~~(N)(O)~~ "Viaticated policy" means a ~~life insurance~~ policy or 378  
~~certificate~~ that has been acquired by a viatical settlement 379  
provider pursuant to a viatical settlement contract. 380

~~(O)(R)~~ "Viator" means the owner of a ~~life insurance~~ policy or 381  
a certificate holder under a group policy that has not previously 382  
been viaticated who, in return for compensation or ~~any thing~~ 383  
anything of value that is less than the expected death benefit of 384  
the policy or certificate, assigns, transfers, sells, releases, 385  
devises, or bequests the death benefit or ownership of any portion 386  
of the ~~insurance~~ policy or certificate of insurance. For the 387  
purposes of this chapter, a "viator" is not limited to an owner of 388  
a ~~life insurance~~ policy or a certificate holder under a group 389  
policy insuring the life of an individual ~~with a terminal or~~ 390  
~~chronic illness or condition~~ who is terminally or chronically ill 391  
except where specifically addressed. "Viator" does not include any 392  
of the following: 393

(1) A licensee under this chapter; 394

(2) ~~An accredited investor or~~ A qualified institutional buyer 395  
~~as defined respectively in Regulation D, Rule 501 or Rule 144A of~~ 396  
~~the Securities Act of 1933, as amended;~~ 397

(3) A financing entity; 398

(4) A special purpose entity; 399

(5) A related provider trust. 400

~~(P)(S)~~ "Viatical settlement purchaser" means a person who 401  
~~gives~~ provides a sum of money as consideration for a ~~life~~ 402  
~~insurance~~ policy or an interest in the death benefits of a ~~life~~ 403  
~~insurance~~ policy from a viatical settlement provider that is the 404  
subject of a viatical settlement contract, or a person who owns, 405

acquires, or is entitled to a beneficial interest in a trust or 406  
person that owns a viatical settlement contract or is the 407  
beneficiary of a ~~life insurance~~ policy that ~~has been or will be~~ is 408  
the subject of a viatical settlement contract, for the purpose of 409  
deriving an economic benefit. "Viatical settlement purchaser" does 410  
not include any of the following: 411

(1) A licensee under this chapter; 412

(2) ~~An accredited investor or~~ A qualified institutional buyer 413  
~~as defined respectively in Regulation D, Rule 501 or Rule 144A of~~ 414  
~~the Securities Act of 1933, as amended;~~ 415

(3) A financing entity; 416

(4) A special purpose entity; 417

(5) A related provider trust. 418

~~(Q)~~(T) "Qualified institutional buyer" has the same meaning 419  
as in 17 C.F.R. 230.144A as that regulation exists on the 420  
effective date of this amendment. 421

(U) "Licensee" means a person licensed as a viatical 422  
settlement provider or viatical settlement broker under this 423  
chapter. 424

~~(R)~~(V) "NAIC" means the national association of insurance 425  
commissioners. 426

~~(S)~~ "~~Securities Act of 1933~~" has the same meaning as in 427  
section 1707.01 of the Revised Code (X) "Regulated financial 428  
institution" means a bank, a savings association, or credit union 429  
operating under authority granted by the superintendent of 430  
financial institutions, the regulatory authority of any other 431  
state of the United States, the office of thrift supervision, the 432  
national credit union administration, or the office of the 433  
comptroller of the currency. 434

(W)(1) "Stranger-originated life insurance," or "STOLI," 435

means a practice, arrangement, or agreement initiated at or prior 436  
to the issuance of a policy that includes both of the following: 437

(a) The purchase or acquisition of a policy primarily 438  
benefiting one or more persons who, at the time of issuance of the 439  
policy, lack insurable interest in the person insured under the 440  
policy; 441

(b) The transfer at any time of the legal or beneficial 442  
ownership of the policy or benefits of the policy or both, in 443  
whole or in part, including through an assumption or forgiveness 444  
of a loan to fund premiums. 445

(2) "Stranger-originated life insurance" also includes trusts 446  
or other persons that are created to give the appearance of 447  
insurable interest and are used to initiate one or more policies 448  
for investors but violate insurable interest laws and the 449  
prohibition against wagering on life. 450

(3) "Stranger-originated life insurance" does not include 451  
viatical settlement transactions specifically described in 452  
division (O)(3) of this section. 453

**Sec. 3916.02.** ~~Ne~~ (A) Notwithstanding division (C) of this 454  
section, no person shall operate in this state as a viatical 455  
settlement provider or viatical settlement broker without first 456  
having obtained a license from the superintendent of insurance 457  
and, if ~~different from~~ the owner of the policy to be viaticated is 458  
not a resident of this state, from the comparable official of the 459  
state of residence of the ~~viator~~ owner if that state issues 460  
licenses for viatical settlement providers or viatical settlement 461  
brokers. ~~If~~ 462

(B)(1) If there is more than one ~~viator~~ owner on a single 463  
policy or ~~certificate~~ and the ~~viators~~ owners are residents of 464  
different states, the viatical settlement contract shall be 465



governed by the law of the state in which the ~~viator~~ owner having 466  
the largest percentage ownership of the policy ~~or certificate~~ 467  
resides or, if the ~~viators~~ owners hold equal ownership, the state 468  
of residence of one ~~viator~~ owner agreed upon in writing by all 469  
~~viators~~ owners. 470

(2) If the viator is a resident of this state, all agreements 471  
to be signed by the viator shall provide exclusive jurisdiction to 472  
courts of this state and the laws of this state shall govern the 473  
agreements. Nothing in the agreements shall abrogate the viator's 474  
right to a trial by jury. 475

(C)(1) A person who represents the viator and is not 476  
compensated directly or indirectly by the viatical settlement 477  
provider or viatical settlement purchaser, who is licensed as an 478  
attorney, certified public accountant, or financial planner 479  
accredited by a nationally recognized accreditation agency may 480  
negotiate viatical settlement contracts on behalf of a viator 481  
without obtaining a license pursuant to division (A) of this 482  
section. 483

(2) An individual insurance agent, in good standing, who has 484  
been licensed as a resident or nonresident insurance agent with a 485  
life line of authority in this state for at least five years may 486  
operate as a viatical settlement broker without obtaining a 487  
license pursuant to division (A) of this section if the viatical 488  
settlement broker activities of the insurance agent are incidental 489  
to the insurance agent's insurance business activities. 490

**Sec. 3916.03.** (A) An applicant for a license as a viatical 492  
settlement provider or viatical settlement broker shall submit an 493  
application for the license in a manner prescribed by the 494  
superintendent of insurance. The application shall be accompanied 495  
by a fee established by the superintendent by rule adopted in 496

accordance with ~~chapter~~ Chapter 119. of the Revised Code. 497

(B) A license issued under this chapter to a person other 498  
than an individual authorizes all partners, officers, members, or 499  
designated employees of the person to act as viatical settlement 500  
providers or viatical settlement brokers, as applicable, and all 501  
those partners, officers, members, or designated employees shall 502  
be named in the application and any supplements to the 503  
application. 504

(C) Upon the filing of an application under this section and 505  
the payment of the license fee, the superintendent shall make an 506  
investigation of the applicant and issue to the applicant a 507  
license that states in substance that the person is authorized to 508  
act as a viatical settlement provider or viatical settlement 509  
broker, as applicable, if all of the following apply: 510

(1) Regarding an application for a license as a viatical 511  
settlement provider, the applicant provides a all of the 512  
following: 513

(a) A detailed plan of operation; 514

(b) Proof of financial responsibility pursuant to division 515  
(D) of this section; 516

(c) A general description of the method the applicant will 517  
use to determine life expectancies, including a description of the 518  
applicant's intended receipt of life expectancies, the applicant's 519  
intended use of life expectancies, the applicant's intended use of 520  
life expectancy providers, and a written plan of policies and 521  
procedures used to determine life expectancies. 522

(2) The superintendent finds all of the following: 523

(a) The applicant is competent and trustworthy and intends to 524  
act in good faith in the capacity of a viatical settlement 525  
provider or viatical settlement broker, as applicable. 526

(b) The applicant has a good business reputation and has had 527  
experience, training, or education so as to be qualified to act in 528  
the capacity of a viatical settlement provider or viatical 529  
settlement broker, as applicable. 530

(3) If the applicant is a person other than an individual, 531  
the applicant provides a certificate of good standing from the 532  
state of its ~~domicile~~ organization. 533

(4) The applicant provides an antifraud plan that meets the 534  
requirements of division (G) of section 3916.18 of the Revised 535  
Code. 536

(D)(1) An applicant for licensure as a viatical settlement 537  
provider may provide proof of financial responsibility through one 538  
of the following means: 539

(a) Submitting audited financial statements that show a 540  
minimum equity of not less than two hundred fifty thousand dollars 541  
in cash or cash equivalents; 542

(b) Submitting both audited annual financial statements that 543  
show positive equity and either of the following: 544

(i) A surety bond in the amount of two hundred fifty thousand 545  
dollars in favor of this state issued by an insurer authorized to 546  
issue surety bonds in this state; 547

(ii) An unconditional and irrevocable letter of credit, 548  
deposit of cash, or securities, in any combination, in the 549  
aggregate amount of two hundred fifty thousand dollars. 550

(2) If an applicant is licensed as a viatical settlement 551  
provider in another state, the superintendent may accept as valid 552  
any similar proof of financial responsibility the applicant filed 553  
in that state. 554

(3) The superintendent may request proof of financial 555  
responsibility at any time the superintendent considers necessary. 556

(E) An applicant shall provide all information requested by 557  
the superintendent. The superintendent may, at any time, require 558  
an applicant to fully disclose the identity of all ~~stockholders~~ 559  
shareholders, partners, officers, members, and employees, and may, 560  
in the exercise of the superintendent's discretion, refuse to 561  
issue a license to an applicant that is not an individual if the 562  
superintendent is not satisfied that each officer, employee, 563  
~~stockholder~~ shareholder, partner, or member who may materially 564  
influence the applicant's conduct meets the standards set forth in 565  
this chapter. 566

~~(E)~~(F) Except as otherwise provided in this division, a 567  
license as a viatical settlement provider or viatical settlement 568  
broker expires on the last day of March next after its issuance or 569  
continuance. A license as a viatical settlement provider or 570  
viatical settlement broker may, in the discretion of the 571  
superintendent and the payment of an annual renewal fee 572  
established by the superintendent by rule adopted in accordance 573  
with ~~chapter~~ Chapter 119. of the Revised Code, be continued past 574  
the last day of March next after its issue and after the last day 575  
of March in each succeeding year. Failure to pay the renewal fee 576  
by the required date results in the expiration of the license. 577

~~(F)~~(G) Any individual licensed as a viatical settlement 578  
broker shall complete not less than fifteen hours of continuing 579  
education biennially. The superintendent shall approve continuing 580  
education courses that shall be related to viatical settlements 581  
and viatical settlement transactions. The superintendent shall 582  
adopt rules for the enforcement of this division. 583

(H) The superintendent shall not issue a license to a 584  
nonresident applicant, unless either of the following applies: 585

(1) The applicant files and maintains a written designation 586  
of an agent for service of process with the superintendent. 587

(2) The applicant has filed with the superintendent the 588  
applicant's written irrevocable consent that any action against 589  
the applicant may be commenced against the applicant by service of 590  
process on the superintendent. 591

~~(G)~~(I) A viatical settlement provider or viatical settlement 592  
broker shall provide to the superintendent new or revised 593  
information regarding any change in its officers, any shareholder 594  
owning ten per cent or more of its ~~stockholders~~ voting securities, 595  
or its partners, directors, members, or designated employees 596  
within thirty days of the change. 597

~~(H)~~(J) Any fee collected under this section shall be paid 598  
into the state treasury to the credit of the department of 599  
insurance operating fund created by section 3901.021 of the 600  
Revised Code. 601

Sec. 3916.031. Any corporation, partnership, or other 602  
business that is licensed as a viatical settlement broker shall 603  
maintain at least one designated individual who is individually 604  
licensed as a viatical settlement broker to be responsible for the 605  
licensee's compliance with this chapter. 606

**Sec. 3916.05.** (A) A person shall not use a viatical 607  
settlement contract form or provide a disclosure statement form to 608  
a viator in this state unless the viatical settlement contract 609  
form or the disclosure statement form is filed with and approved 610  
by the superintendent of insurance. The superintendent shall 611  
disapprove a viatical settlement contract form or a disclosure 612  
statement form if, in the superintendent's opinion, the viatical 613  
settlement contract form, the disclosure statement form, or any 614  
provision contained therein fails to meet the requirements of 615  
section 3916.06 of the Revised Code, is unreasonable, is contrary 616  
to the interests of the public, or is otherwise misleading or 617

unfair to the viator. At the superintendent's discretion, the 618  
superintendent may require the submission of advertising material 619  
to which section 3916.17 of the Revised Code applies. If not 620  
disapproved by the superintendent, a filing made pursuant to this 621  
section shall be considered approved forty-five days after the 622  
contract form, disclosure form, or advertising material is filed. 623

(B) Any insurance company that issues life insurance policies 624  
in this state shall include questions in its life insurance 625  
applications that are reasonably structured to identify and 626  
prevent stranger-originated life insurance. The superintendent 627  
shall adopt rules under Chapter 119. of the Revised Code for the 628  
implementation of this section. Each insurer shall file with the 629  
superintendent copies of its amended applications for life 630  
insurance within twelve months following the effective date of the 631  
superintendent's adoption of rules pursuant to this division. 632

(C) The superintendent may adopt rules in accordance with 634  
Chapter 119. of the Revised Code to establish reasonable fees for 635  
any service or transaction performed by the department of 636  
insurance pursuant to division (A) of this section. Any fee 637  
collected pursuant to those rules shall be paid into the state 638  
treasury to the credit of the department of insurance operating 639  
fund created by section 3901.021 of the Revised Code. 640

**Sec. 3916.06.** (A)(1) With each application for a viatical 641  
settlement, a viatical settlement provider or viatical settlement 642  
broker shall disclose at least the following to a viator no later 643  
than the time all parties sign the application for the viatical 644  
settlement contract: 645

(a) That there are possible alternatives to viatical 646  
settlement contracts, including any accelerated death benefits 647

offered under the viator's ~~life insurance~~ policy or ~~certificate~~; 648

(b) That some or all of the proceeds of the viatical 649  
settlement may be subject to federal income taxation and state 650  
franchise and income taxation, and that assistance should be 651  
sought from a professional tax advisor; 652

(c) That the proceeds of the viatical settlement could be 653  
subject to the claims of creditors; 654

(d) That receipt of the proceeds of the viatical settlement 655  
may adversely affect the viator's eligibility for medical 656  
assistance under Chapter 5111. of the Revised Code or other 657  
government benefits or entitlements, and that advice should be 658  
obtained from the appropriate government agencies; 659

(e) That the viator has a right to rescind the viatical 660  
settlement contract for at least fifteen calendar days after the 661  
viator receives the viatical settlement proceeds, as provided in 662  
section 3916.08 of the Revised Code<sup>7</sup>. If the insured dies during 663  
the rescission period, the viatical settlement contract shall be 664  
deemed to have been rescinded, subject to repayment of all 665  
viatical settlement proceeds to the viatical settlement company. 666

(f) That funds will be sent to the viator within three 667  
business days after the viatical settlement provider has received 668  
written acknowledgment from the insurer or group administrator 669  
that ownership of the policy or interest in the certificate has 670  
been transferred and that the beneficiary has been designated 671  
pursuant to the viatical settlement contract; 672

(g) That entering into a viatical settlement contract may 673  
cause other rights or benefits, including conversion rights and 674  
waiver of premium benefits that may exist under the policy ~~or~~ 675  
~~certificate~~, to be forfeited by the viator and that assistance 676  
should be sought from a financial advisor. 677

(h) That following execution of the viatical settlement 678

contract, the viatical settlement provider or the authorized 679  
representative of the viatical settlement provider may contact the 680  
insured for the purpose of determining the insured's health status 681  
and to confirm the insured's residential or business address and 682  
telephone number or for other purposes permitted by law. Any such 683  
contact shall be limited to once in any three-month period if the 684  
insured has a life expectancy of more than one year or to once per 685  
month if the insured has a life expectancy of one year or less. 686

687

(2) The viatical settlement provider or viatical settlement 688  
broker shall provide the disclosures under division (A)(1) of this 689  
section in a separate document that is signed by the viator and 690  
the viatical settlement provider or viatical settlement broker. 691

692

(3) Disclosure to a viator under division (A)(1) of this 693  
section shall include distribution of a brochure describing the 694  
process of viatical settlements. The viatical settlement provider 695  
or viatical settlement broker shall use the NAIC's form for the 696  
brochure unless ~~one~~ another form is developed or approved by the 697  
superintendent. 698

(4) The disclosure document under division (A)(1) of this 699  
section shall contain the following language: 700

"All medical, financial, or personal information solicited or 701  
obtained by a viatical settlement provider or viatical settlement 702  
broker about an insured, including the insured's identity or the 703  
identity of family members, a spouse, or a significant other may 704  
be disclosed as necessary to effect the viatical settlement 705  
between the viator and the viatical settlement provider. If you 706  
are asked to provide this information, you will be asked to 707  
consent to the disclosure. The information may be provided to 708  
someone who buys the policy or provides funds for the purchase. 709  
You may be asked to renew your permission to share information 710



every two years." 711

(B)(1) A viatical settlement provider shall disclose at least 712  
the following to a viator prior to the date the viatical 713  
settlement contract is signed by all the necessary parties: 714

(a) The affiliation, if any, between the viatical settlement 715  
provider and the issuer of the ~~insurance~~ policy ~~or certificate~~ to 716  
be viaticated; 717

(b) The name, business address, and telephone number of the 718  
viatical settlement provider; 719

(c) Regarding a viatical settlement broker, the amount and 720  
method of calculating the broker's compensation. As used in this 721  
division, "compensation" includes anything of value paid or given 722  
to a viatical settlement broker for the placement of a policy or 723  
certificate. 724

(d) Any affiliations or contractual arrangements between the 725  
viatical settlement provider and the viatical settlement broker; 726

~~(d)~~(e) If an ~~insurance~~ a policy ~~or certificate~~ to be 727  
viaticated has been issued as a joint policy ~~or certificate~~ or 728  
involves family riders or any coverage of a life other than the 729  
insured under the policy ~~or certificate~~ to be viaticated, the 730  
possible loss of coverage on the other lives under the policy ~~or~~ 731  
~~certificate~~ and that advice should be sought from the viator's 732  
insurance ~~producer~~ agent or the company issuing the policy ~~or~~ 733  
~~certificate~~; 734

~~(e)~~(f) The dollar amount of the current death benefit payable 735  
to the viatical settlement provider under the policy ~~or~~ 736  
~~certificate~~, and, if known, the availability of any additional 737  
guaranteed insurance benefits, the dollar amount of any accidental 738  
death and dismemberment benefits under the policy ~~or certificate~~, 739  
and the ~~viatical settlement provider's~~ extent to which the 740  
viator's interest in those benefits will be transferred as a 741

result of the viatical settlement contract. 742

~~(f) The name, business address, and telephone number of the~~ 743  
~~independent third party escrow agent, and the fact that the viator~~ 744  
~~or owner may inspect or receive copies of the relevant escrow or~~ 745  
~~trust agreements or documents~~ (g) That an escrow agent shall 746  
provide escrow services to the parties pursuant to a written 747  
agreement, signed by the viatical settlement provider, the 748  
viatical settlement broker, and the viator. At the close of 749  
escrow, the escrow agent will distribute the proceeds of the sale 750  
to the viator, minus any compensation to be paid to any other 751  
persons who provided services and to whom the viator has agreed to 752  
compensate out of the gross amount offered by the viatical 753  
settlement purchaser. All persons receiving any form of 754  
compensation under the escrow agreement shall be clearly 755  
identified, including name, business address, telephone number, 756  
and tax identification number. 757

(2) The viatical settlement broker shall disclose at least 758  
the following to a viator prior to the execution of the viatical 759  
settlement contract: 760

(a) The name, business address, and telephone number of the 761  
viatical settlement broker; 762

(b) A full, complete, and accurate description of all offers, 763  
counteroffers, acceptances, and rejections relating to the 764  
proposed viatical settlement contract; 765

(c) Any affiliations or contractual agreements between the 766  
viatical settlement broker and any person making an offer in 767  
connection with the proposed viatical settlement contract; 768

(d) The amount and method of calculating the viatical 769  
settlement broker's compensation and, if any portion of the 770  
viatical settlement broker's compensation is taken from the 771  
viatical settlement offer, the total amount of the viatical 772

settlement offer and the viatical settlement broker's compensation 773  
as a percentage of that total. As used in this division, 774  
"compensation" includes anything of value paid or given to a 775  
viatical settlement broker related to the settlement of a policy. 776

777

(3) The viatical settlement provider or viatical settlement 778  
broker shall conspicuously display the disclosures required under 779  
~~division~~ divisions (B)(1) and (2) of this section in the viatical 780  
settlement contract or in a separate document signed by the viator 781  
and the viatical settlement provider or viatical settlement 782  
broker, as appropriate. 783

(C) If the viatical settlement provider transfers ownership 784  
or changes the beneficiary of the ~~insurance~~ policy ~~or certificate,~~ 785  
the viatical settlement provider shall communicate in writing the 786  
change in ownership or beneficiary to the insured within twenty 787  
days after the change. 788

**Sec. 3916.07.** (A) A viatical settlement provider entering 789  
into a viatical settlement contract shall first obtain all of the 790  
following: 791

(1) If the viator is the insured, a written statement from an 792  
attending physician that the viator is of sound mind and under no 793  
constraint or undue influence to enter into a viatical settlement 794  
contract. As used in this division, "physician" means a person 795  
authorized under Chapter 4731. of the Revised Code to practice 796  
medicine and surgery or osteopathic medicine and surgery. 797

(2) A document in which the insured consents in writing, as 798  
required by division (E) of section 3916.13 of the Revised Code, 799  
to the release of the insured's medical records to a viatical 800  
settlement provider or viatical settlement broker and to the 801  
insurance company that issued the ~~life insurance~~ policy ~~or~~ 802  
~~certificate~~ covering the life of the insured. 803

(B) Within twenty days after a viator executes documents 804  
necessary to transfer any rights under ~~an insurance~~ a policy ~~or~~ 805  
~~certificate~~ or within twenty days of entering any expressed or 806  
implied agreement, option, promise, or other form of understanding 807  
to viaticate the policy, the viatical settlement provider shall 808  
give written notice to the insurer that issued that ~~insurance~~ 809  
policy ~~or certificate~~ that the policy ~~or certificate~~ has or will 810  
become a viaticated policy ~~or certificate~~. The notice shall be 811  
accompanied by the documents required by division (C) of this 812  
section. 813

(C) The viatical settlement provider shall deliver a copy of 814  
the medical release required under division (A)(2) of this 815  
section, a copy of the viator's application for the viatical 816  
settlement contract, the notice required under division (B) of 817  
this section, and a request for verification of coverage to the 818  
insurer that issued the ~~life insurance~~ policy ~~or certificate~~ that 819  
is the subject of the viatical transaction. The viatical 820  
settlement provider shall use the NAIC's form for verification of 821  
coverage unless ~~standards for verification are~~ another form is 822  
developed or approved by the superintendent of insurance. 823

(D) The insurer shall respond to a request for verification 824  
of coverage submitted on an approved form by a viatical settlement 825  
provider or viatical settlement broker within thirty calendar days 826  
after the date the request is received and shall indicate whether, 827  
based on the medical evidence and documents provided, the insurer 828  
intends to pursue an investigation at that time regarding possible 829  
fraud or the validity of the life insurance ~~contract or~~ 830  
~~certificate~~ policy that is the subject of the request. The insurer 831  
shall accept an original or facsimile or electronic copy of such 832  
request and any accompanying authorization signed by the viator. 833

(E) Prior to or at the time of execution of the viatical 834  
835

settlement contract, the viatical settlement provider shall obtain 836  
a witnessed document in which the viator consents to the viatical 837  
settlement contract, represents that the viator has a full and 838  
complete understanding of the viatical settlement contract and a 839  
full and complete understanding of the benefits of the ~~life~~ 840  
~~insurance policy or certificate~~, and acknowledges that the viator 841  
is entering into the viatical settlement contract freely and 842  
voluntarily and, for persons ~~with a terminal or chronic illness or~~ 843  
~~condition who are terminally or chronically ill~~, acknowledges that 844  
the insured ~~has a terminal or chronic illness is terminally or~~ 845  
~~chronically ill~~ and that the terminal or chronic illness ~~or~~ 846  
~~condition~~ was diagnosed after the ~~life insurance policy or~~ 847  
~~certificate~~ was issued. 848

(F) If a viatical settlement broker performs any of the 849  
activities specified in this section on behalf of the viatical 850  
settlement provider, the viatical settlement provider is deemed to 851  
have fulfilled the requirements of this section. 852

(G) All medical information solicited or obtained by any 853  
licensee shall be subject to the applicable provisions of state 854  
law relating to confidentiality of medical information. 855

**Sec. 3916.09.** (A) The viatical settlement provider shall 856  
instruct the viator to send the executed documents required to 857  
effect the change in ownership, assignment, or change in 858  
beneficiary directly to the ~~independent~~ escrow agent. Within three 859  
business days after the date the escrow agent receives the 860  
documents, or from the date the viatical settlement provider 861  
receives the documents if the viator erroneously provides the 862  
documents directly to the viatical settlement provider, the 863  
viatical settlement provider shall pay or transfer the ~~proceeds of~~ 864  
gross amount to be paid by the viatical settlement provider to an 865  
the escrow or agent for deposit in a trust or escrow account set 866

up for that purpose by the escrow agent in a state or federally 867  
chartered regulated financial institution whose deposits are 868  
insured by the federal deposit insurance corporation. Upon payment 869  
of the settlement proceeds into the escrow or trust account, the 870  
escrow agent or trustee shall deliver the original change in 871  
ownership, assignment, or change in beneficiary forms to the 872  
viatical settlement provider, a representative of the viatical 873  
settlement provider, or related provider trust. Upon the ~~licensed~~ 874  
~~provider's~~ escrow agent's receipt of the acknowledgment of the 875  
properly completed transfer of ownership, assignment, or 876  
designation of beneficiary from the insurance company, the 877  
~~licensed provider~~ escrow agent shall ~~instruct the escrow agent to~~ 878  
pay the settlement proceeds to the viator and any other person 879  
pursuant to the viatical settlement contract and the escrow 880  
agreement. The escrow agent shall make payment within three 881  
business days of the date the ~~provider~~ escrow agent received the 882  
acknowledged forms from the insurance company. Funds are 883  
considered sent to a viator as of the date that the escrow agent 884  
either releases the funds for wire transfer to the viator or 885  
places a check for delivery to the viator via United States postal 886  
service or other nationally recognized delivery service. 887

(B) Failure to transfer the proceeds to the viator within the 888  
period of time disclosed pursuant to division (A)(1)(f) of section 889  
3916.06 of the Revised Code renders the viatical settlement 890  
contract voidable by the viator for lack of consideration until 891  
the time consideration is tendered to and accepted by the viator. 892  
If a viatical settlement contract is voided by the viator pursuant 893  
to this division, ownership of the ~~insurance policy or certificate~~ 894  
reverts to the viator or to the viator's estate if the viator is 895  
deceased, irrespective of any transfer of ownership of the policy 896  
~~or certificate~~ by the viator, viatical settlement provider, or any 897  
other person. 898

**Sec. 3916.10.** After a viatical settlement has occurred, 899  
contact with the insured for the purpose of determining the health 900  
status of the insured ~~by the viatical settlement provider or~~ 901  
~~viatical settlement broker~~ shall be made only by the viatical 902  
settlement provider ~~or broker licensed in this state, or the~~ 903  
authorized representative of the viatical settlement provider. The 904  
viatical settlement provider ~~or viatical settlement broker, or~~ 905  
authorized representative shall not contact the insured for the 906  
purpose of determining the insured's health status more than once 907  
every three months if the insured has a life expectancy of more 908  
than one year, or more than once per month if the insured has a 909  
life expectancy of one year or less. The viatical settlement 910  
provider ~~or viatical settlement broker~~ shall explain the procedure 911  
for making these contacts at the time the viatical settlement 912  
contract is entered into. 913

The limitations set forth in this section do not apply to 914  
contacts made with an insured under a viaticated policy for 915  
purposes other than to determine the insured's health status. 916

Viatical settlement providers ~~and viatical settlement brokers~~ 917  
are responsible for the actions of their authorized 918  
representatives, for the purposes of this section except viatical 919  
settlement providers are not responsible for the actions of 920  
subsequent purchasers of a policy. 921

**Sec. 3916.11.** (A)(1) A licensee under this chapter shall, for 922  
five years, retain copies of all of the following: 923

(a) All proposed, offered, or executed contracts, purchase 924  
agreements, underwriting documents, policy forms, and applications 925  
from the date of the proposal, offer, or execution of the contract 926  
or purchase agreement, whichever is later; 927

(b) All checks, drafts, or other evidence and documentation 928

related to the payment, transfer, deposit, or release of funds 929  
from the date of the transaction; 930

(c) All other records and documents related to the 931  
requirements of this chapter. 932

(2) This section does not relieve a person of the obligation 933  
to produce the documents described in division (A)(1) of this 934  
section to the superintendent of insurance after the retention 935  
period specified in that division has expired if the person has 936  
retained the documents. 937

(3) Records required to be retained by this section must be 938  
legible and complete and may be retained in paper, photograph, 939  
microprocess, magnetic, mechanical, or electronic media, or by any 940  
process that accurately reproduces or forms a durable medium for 941  
the reproduction of a record. 942

(4) If a licensee fails to comply with division (A) of this 943  
section, the superintendent may initiate proceedings in accordance 944  
with Chapter 119. of the Revised Code to revoke, suspend, or 945  
refuse to renew the license of the licensee. 946

(B)(1) Upon determining that an examination should be 947  
conducted, subject to division (E) of this section, the 948  
superintendent shall appoint one or more examiners to perform the 949  
examination and instruct them as to the scope of the examination. 950  
The superintendent may employ any guidelines or procedures for 951  
purposes of this division that the superintendent considers 952  
appropriate. 953

(2) Every licensee, or person from whom information is 954  
sought, and all officers, directors, employees, and agents of any 955  
licensee, or person from whom information is sought, shall provide 956  
to the examiners timely, convenient, and free access at all 957  
reasonable hours at the licensee's or person's offices to all 958  
books, records, accounts, papers, documents, assets, and computer 959



or other recordings relating to the property, assets, business, 960  
and affairs of the licensee being examined. The officers, 961  
directors, employees, and agents of the licensee or person shall 962  
facilitate the examination and aid in the examination so far as it 963  
is in their power to do so. 964

The refusal of a licensee, by its officers, directors, 965  
employees, or agents, to submit to examination or to comply with 966  
any reasonable written request of the superintendent shall be 967  
grounds for suspension, revocation, denial of issuance, or 968  
nonrenewal of any license ~~or authority~~ held by the licensee to 969  
engage in the business of viatical settlement business settlements 970  
or other business subject to the superintendent's jurisdiction. 971  
Any proceedings for suspension, revocation, denial, or ~~nonrenewal~~ 972  
~~of refusal to renew~~ any license or authority ~~is~~ are subject to 973  
~~chapter~~ Chapter 119. of the Revised Code. 974

(3) The superintendent has the power to issue subpoenas, to 975  
administer oaths, and to examine under oath any person as to any 976  
matter pertinent to the examination. Upon the failure or refusal 977  
of a person to obey a subpoena, the superintendent may petition a 978  
court of competent jurisdiction, and, upon proper showing, the 979  
court may enter an order compelling the witness to appear and 980  
testify or produce documentary evidence. Failure to obey the court 981  
order shall be punishable as contempt of court. 982

(4) When making an examination under this chapter, the 983  
superintendent may retain attorneys, appraisers, independent 984  
actuaries, independent certified public accountants, or other 985  
professionals and specialists as examiners, and the licensee that 986  
is the subject of the examination shall bear the cost of those 987  
examiners pursuant to division (F) of this section. Examiners who 988  
are appointed by the superintendent, but who are not employees of 989  
the department of insurance, shall be compensated for their work, 990  
travel, and living expenses at reasonable and customary rates. 991

(5) Nothing contained in this chapter limits the 992  
superintendent's authority to terminate or suspend an examination 993  
in order to pursue other legal or regulatory action pursuant to 994  
the insurance laws of this state. Findings of fact and conclusions 995  
made pursuant to any examination shall be prima-facie evidence in 996  
any legal or regulatory action. 997

(6) Nothing contained in this chapter limits the 998  
superintendent's authority to use and, if appropriate, to make 999  
public any final or preliminary examination report, any examiner 1000  
or licensee working papers or other documents, or any other 1001  
information discovered or developed during the course of any 1002  
examination in the furtherance of any legal or regulatory action 1003  
that the superintendent, in the superintendent's sole discretion, 1004  
considers appropriate. 1005

(C)(1) Examination reports shall be comprised of only facts 1006  
appearing upon the books, records, or other documents of the 1007  
licensee, its agents, or other persons examined, or as ascertained 1008  
from the testimony of its officers, agents, or other persons 1009  
examined concerning its affairs, and the conclusions and 1010  
recommendations that the examiners find reasonably warranted from 1011  
the facts. 1012

(2) Upon completion of the examination, the examiner in 1013  
charge shall file with the superintendent a verified written 1014  
report of examination. Upon receipt of the verified report, the 1015  
superintendent shall transmit the report to the licensee examined, 1016  
together with a notice that shall afford the licensee examined a 1017  
reasonable opportunity of not more than thirty days from receipt 1018  
of the report to make a written submission or rebuttal with 1019  
respect to any matters contained in the examination report. 1020

(3) If the superintendent determines that regulatory action 1021  
is appropriate as a result of an examination, the superintendent 1022  
may initiate any proceedings or actions provided by law. 1023

(D)(1) Names and individual identification data for all 1024  
viators shall be considered private and confidential information 1025  
and shall not be disclosed by the superintendent, unless required 1026  
by law. 1027

(2) Except as otherwise provided in this chapter or in the 1028  
law of another state or jurisdiction that is substantially similar 1029  
to this chapter, all examination reports, working papers, recorded 1030  
information, documents, and copies of those reports, papers, 1031  
information, documents, and copies produced by, obtained by, or 1032  
disclosed to the superintendent or to any other person in the 1033  
course of an examination made under this chapter or under the law 1034  
of another state or jurisdiction that is substantially similar to 1035  
this chapter, or in the course of the superintendent's analysis or 1036  
investigation of the financial condition or market conduct of a 1037  
licensee are confidential by law and privileged, are not a public 1038  
record open for inspection under section 149.43 of the Revised 1039  
Code, are not subject to subpoena, and are not subject to 1040  
discovery or admissible in evidence in any private civil action. 1041  
The superintendent may use the documents, materials, or other 1042  
information in the furtherance of any regulatory or legal action 1043  
brought as part of the superintendent's official duties. 1044

(3) Documents, materials, or other information, including, 1045  
but not limited to, all working papers, and copies of working 1046  
papers, in the possession or control of the NAIC and its 1047  
affiliates and subsidiaries are confidential by law and 1048  
privileged, are not subject to subpoena, and are not subject to 1049  
discovery or admissible in evidence in any private civil action, 1050  
if either of the following applies: 1051

(a) They are created, produced, or obtained by or disclosed 1052  
to the NAIC and its affiliates and subsidiaries in the course of 1053  
assisting an examination made under this chapter or assisting the 1054  
superintendent or the comparable official in another state in the 1055

analysis or investigation of the financial condition or market 1056  
conduct of a licensee. 1057

(b) The superintendent or the comparable official in another 1058  
state discloses them to the NAIC and its affiliates and 1059  
subsidiaries under division (D)(5) of this section or under a 1060  
comparable provision in the law of the other state. 1061

(4) Neither the superintendent nor any person that received 1062  
the documents, material, or other information while acting under 1063  
the authority of the superintendent, including the NAIC and its 1064  
affiliates and subsidiaries, shall be permitted to testify in any 1065  
private civil action concerning any confidential documents, 1066  
materials, or information subject to division (D)(1) of this 1067  
section. 1068

(5)(a) In order to assist in the performance of the 1069  
superintendent's duties, the superintendent may do any of the 1070  
following: 1071

(i) Share documents, materials, or other information, 1072  
including the confidential and privileged documents, materials, or 1073  
information subject to division (D)(1) of this section, with other 1074  
state, federal, and international regulatory agencies, with the 1075  
NAIC and its affiliates and subsidiaries, and with state, federal, 1076  
and international law enforcement authorities, if the recipient 1077  
agrees to maintain the confidentiality and privileged status of 1078  
the document, material, communication, or other information; 1079

(ii) Receive documents, materials, communications, or 1080  
information, including otherwise confidential and privileged 1081  
documents, materials, or information, from the NAIC and its 1082  
affiliates and subsidiaries, and from regulatory and law 1083  
enforcement officials of other foreign or domestic jurisdictions; 1084

(iii) Enter into agreements governing sharing and use of 1085  
information consistent with this section. 1086

(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.

(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.

(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.

(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.

(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 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:

(a) A viator;	1119
(b) An insured in a viaticated <del>insurance</del> policy <del>or</del> <del>certificate</del> ;	1120 1121
(c) A beneficiary in <del>an insurance a</del> policy <del>or certificate</del> that is proposed to be viaticated.	1122 1123
(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.	1124 1125 1126 1127 1128 1129 1130
(F)(1) As used in division (F) of this section, "expenses" include all of the following:	1131 1132
(a) Compensation of examiners for each day or portion of a day worked;	1133 1134
(b) Travel and living expenses of examiners;	1135
(c) All other incidental expenses incurred by or on behalf of examiners;	1136 1137
(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.	1138 1139 1140 1141 1142
(2) When a market conduct examination is made of <del>an insurer a</del> <u>licensee under this chapter</u> , the <del>insurer</del> <u>licensee</u> shall pay the expenses of the examination. The expenses of an examination include those incurred on or after the date on which the superintendent notifies the <del>insurer</del> <u>licensee</u> of the examination through the issuance of the final examination report.	1143 1144 1145 1146 1147 1148

(3) ~~Upon an insurer's failure to comply with division (A) of~~ 1149  
~~this section, the superintendent may initiate proceedings in~~ 1150  
~~accordance with Chapter 119. of the Revised Code to revoke,~~ 1151  
~~suspend, or refuse to renew the certificate of authority or~~ 1152  
~~license of the insurer. Additionally, the The superintendent may~~ 1153  
request the attorney general to initiate a civil action in the 1154  
court of common pleas of Franklin county to obtain and enforce a 1155  
judgment for expenses incurred in the performance of a market 1156  
conduct examination. 1157

(G)(1) No cause of action shall arise nor shall any liability 1158  
be imposed against the superintendent, any authorized 1159  
representative of the superintendent, or any examiner appointed by 1160  
the superintendent for any statements made or conduct performed in 1161  
good faith while carrying out the provisions of this chapter. 1162

(2) No cause of action shall arise nor shall any liability be 1163  
imposed against any person for the act of communicating or 1164  
delivering information or data to the superintendent, any 1165  
authorized representative of the superintendent, or any examiner 1166  
appointed by the superintendent pursuant to an examination made 1167  
under this chapter, if the act of communication or delivery was 1168  
performed in good faith and without fraudulent intent or the 1169  
intent to deceive. ~~Division (G)(2) of this section~~ This division 1170  
does not abrogate or modify in any way any common law or statutory 1171  
privilege or immunity previously enjoyed by any person identified 1172  
in division (G)(1) of this section. 1173

(3) A person identified in division (G)(1) or (2) of this 1174  
section shall be entitled to an award of attorney's fees and costs 1175  
if the person is the prevailing party in a civil action for libel, 1176  
slander, or any other relevant tort arising out of activities in 1177  
carrying out the provisions of this chapter and the party bringing 1178  
the action was not substantially justified in bringing the action. 1179  
For purposes of this division ~~(G)(3) of this section, a proceeding~~ 1180

an action is "substantially justified" if it had a reasonable 1181  
basis in law or fact at the time that it was initiated. 1182

(H) The superintendent may investigate suspected fraudulent 1183  
viatical settlement acts and persons engaged in the business of 1184  
viatical settlements. 1185

**Sec. 3916.12.** ~~(A) Each viatical settlement provider and~~ 1186  
~~viatical settlement broker licensed licensee~~ under this chapter 1187  
shall file with the superintendent of insurance, on or before the 1188  
first day of March of each year, an annual statement ~~containing~~ 1189  
~~the information required by the superintendent by rule adopted in~~ 1190  
~~accordance with chapter 119. of the Revised Code verified under~~ 1191  
~~oath by two officers in the form prescribed by the superintendent.~~ 1192  
The annual statement for a viatical settlement provider shall 1193  
include the following information about the viatical settlement 1194  
provider's transactions: 1195

(1) Aggregate total of the value of unsettled viatical 1196  
settlement contracts that have been signed by the viator but have 1197  
not been settled as of the date of the report categorized by the 1198  
number of days since the viator signed the contract; 1199

(2) Number of policies purchased, total amount of settlement 1200  
paid for policies purchased, total face value of policies 1201  
purchased beginning with the reporting year and most recent five 1202  
years; 1203

(3) Number of settlements paid in the preceding calendar 1204  
year, allocated by state or territory; 1205

(4) Any other information required by the superintendent. 1206

(B) On or before the first day of May of each year, a 1207  
viatical settlement provider licensed in this state shall file 1208  
with the superintendent its financial statement, audited by an 1209  
independent certified public accountant along with a letter 1210



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. 1211  
1212  
1213

(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: 1214  
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(a) Be certified by the chief executive officer and chief financial officer as to the accuracy and fair presentation; 1220  
1221

(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. 1222  
1223  
1224

(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. 1225  
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(D) A viatical settlement provider that willfully fails to 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 1235  
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each such failure. 1242

(E) The superintendent shall keep confidential and not a 1243  
matter of public record all proprietary information of the 1244  
licensee, all individual transaction data regarding the business 1245  
of viatical settlements, and data that could compromise the 1246  
privacy of personal, financial, and health information of the 1247  
viator or insured. 1248

**Sec. 3916.13.** Except as otherwise permitted or required by 1249  
law, a viatical settlement provider, viatical settlement broker, 1250  
insurance company, insurance agent, insurance broker, information 1251  
bureau, rating agency or company, or any other person with actual 1252  
knowledge of a viator or an insured's identity, shall not disclose 1253  
that identity ~~as an insured~~, including the viator or insured's 1254  
name and individual identification data, or the viator or 1255  
insured's financial or medical information, unless any of the 1256  
following apply: 1257

(A) The disclosure is necessary to effect a viatical 1258  
settlement ~~between the viator and a viatical settlement provider,~~ 1259  
and the viator and insured have provided prior written consent to 1260  
the disclosure. 1261

(B) The disclosure is provided in response to an 1262  
investigation or examination by the superintendent of insurance or 1263  
by any other governmental officer or agency or pursuant to the 1264  
requirements of division (C) of section 3916.18 of the Revised 1265  
Code. 1266

(C) The disclosure is a term of, or condition to, the 1267  
transfer of a viaticated policy by one viatical settlement 1268  
provider to another viatical settlement provider. 1269

(D) The disclosure is necessary to permit a financing entity, 1270  
related provider trust, or special purpose entity to finance the 1271

purchase of policies ~~or certificates~~ by a viatical settlement 1272  
provider, and the viator and insured have provided prior written 1273  
consent to the disclosure. 1274

(E) The disclosure is necessary to allow the viatical 1275  
settlement provider ~~or viatical settlement broker~~ or their its 1276  
authorized representatives to make contacts for the purpose of 1277  
determining health status. 1278

(F) The disclosure is required to purchase stop-loss coverage 1279  
or financial guaranty insurance. 1280

**Sec. 3916.14.** (A)(1) The superintendent of insurance may 1281  
conduct an examination under this chapter of a licensee as often 1282  
as the superintendent in the superintendent's sole discretion 1283  
considers appropriate. The superintendent shall consider all of 1284  
the following to determine the nature, scope, and frequency of 1285  
examinations: 1286

(a) Consumer complaints; 1287

(b) The results of financial statement analyses and ratios; 1288

(c) Any changes in ownership, officers, or directors; 1289

(d) Any report of independent certified public accountants; 1290

(e) Any other criteria the superintendent determines to be 1291  
appropriate. 1292

(2) For the purposes of completing an examination of a 1293  
licensee under this chapter, the superintendent may examine or 1294  
investigate any person, or the business of any person, insofar as 1295  
the examination or investigation, in the sole discretion of the 1296  
superintendent, is necessary or material to the examination of the 1297  
licensee. 1298

(3) In lieu of an examination under this chapter of any 1299  
foreign or alien licensee licensed under this chapter, the 1300

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. As far as is practical, the  
superintendent shall cooperate with that official for any  
examination of a foreign or alien licensee.

(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.

**Sec. 3916.15.** (A) The superintendent of insurance may refuse  
to issue or may suspend, revoke, or refuse to renew the license of  
a viatical settlement provider or viatical settlement broker, if  
the superintendent finds that any of the following apply:

(1) There was a material misrepresentation in the application  
for the license.

(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, has  
been the subject of an administrative or civil action brought by  
the department of commerce, division of securities, or is  
otherwise shown to be untrustworthy or incompetent.

(3) The licensee is a viatical settlement provider that  
demonstrates a pattern of unreasonable payments to viators.

(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 1331  
breach of trust, regardless of whether a judgment of conviction 1332  
has been entered by the court. 1333

(5) The licensee is a viatical settlement provider that has 1334  
used a viatical settlement contract form that has not been 1335  
approved under this chapter. 1336

(6) The licensee is a viatical settlement provider that has 1337  
failed to honor contractual obligations set out in a viatical 1338  
settlement contract. 1339

(7) The licensee no longer meets the requirements for initial 1340  
licensure. 1341

(8) The licensee is a viatical settlement provider that has 1342  
assigned, transferred, or pledged a viaticated policy to a person 1343  
that ~~is~~ the licensee knew or should have known was not a one of 1344  
the following: 1345

(a) A viatical settlement provider licensed in this state, ~~a~~ 1346

(b) A viatical settlement purchaser; 1347

(c) A qualified institutional buyer; 1348

(d) A financing entity, ~~a~~ 1349

(e) A special purpose entity, ~~or a~~ 1350

(f) A related provider trust. 1351

(9) The licensee or any officer, partner, member, key 1352  
management personnel, or designee of the licensee has violated any 1353  
provision of this chapter or any rule adopted under this chapter. 1354

(10) The licensee or any officer, partner, member, key 1355  
management personnel, or designee of the licensee has committed 1356  
any coercive, fraudulent, or dishonest act, or made any untrue, 1357  
deceptive, or misleading statement, in connection with a viatical 1358  
settlement transaction or a proposed viatical settlement 1359

transaction. 1360

(B) Before the superintendent refuses to issue a license 1361  
under this chapter, or suspends, revokes, or refuses to renew the 1362  
license of a viatical settlement provider or viatical settlement 1363  
broker, the superintendent shall provide the licensee or applicant 1364  
with notice and an opportunity for hearing as provided in ~~chapter~~ 1365  
Chapter 119. of the Revised Code, except as follows: 1366

(1)(a) Any notice of opportunity for hearing, the hearing 1367  
officer's findings and recommendations, or the superintendent's 1368  
order shall be served by certified mail at the last known address 1369  
of the licensee or applicant. Service shall be evidenced by return 1370  
receipt signed by any person. 1371

For purposes of this section, the "last known address" is the 1372  
address that appears in the licensing records of the department of 1373  
insurance. 1374

(b) If the certified mail envelope is returned with an 1375  
endorsement showing that service was refused, or that the envelope 1376  
was unclaimed, the notice and all subsequent notices required by 1377  
Chapter 119. of the Revised Code may be served by ordinary mail to 1378  
the last known address of the licensee or applicant. The mailing 1379  
shall be evidenced by a certificate of mailing. Service is deemed 1380  
complete as of the date of such certificate provided that the 1381  
ordinary mail envelope is not returned by the postal authorities 1382  
with an endorsement showing failure of delivery. The time period 1383  
in which to request a hearing, as provided in Chapter 119. of the 1384  
Revised Code, begins to run on the date of mailing. 1385

(c) If service by ordinary mail fails, the superintendent ~~may~~ 1386  
shall cause a summary of the substantive provisions of the notice 1387  
to be published once a week for three consecutive weeks in a 1388  
newspaper of general circulation in the county where the last 1389  
known place of residence or business of the licensee or applicant 1390

is located. The notice is considered served on the date of the 1391  
third publication. 1392

(d) Any notice required to be served under Chapter 119. of 1393  
the Revised Code shall also be served upon the attorney of the 1394  
licensee or applicant by ordinary mail if the attorney has entered 1395  
an appearance in the matter. 1396

(e) The superintendent may, at any time, perfect service on a 1397  
licensee or applicant by personal delivery of the notice by an 1398  
employee of the department. 1399

(f) Notices regarding the scheduling of hearings and all 1400  
other matters not described in division (B)(1)(a) of this section 1401  
shall be sent by ordinary mail to the licensee or applicant and to 1402  
the attorney of the licensee or applicant. 1403

(2) Any subpoena for the appearance of a witness or the 1404  
production of documents or other evidence at a hearing, or for the 1405  
purpose of taking testimony for use at a hearing, shall be served 1406  
by certified mail, return receipt requested, by an attorney or by 1407  
an employee of the department designated by the superintendent. 1408  
Such subpoenas shall be enforced in the manner provided in section 1409  
119.09 of the Revised Code. Nothing in this section shall be 1410  
construed as limiting the superintendent's other statutory powers 1411  
to issue subpoenas. 1412

**Sec. 3916.16.** (A)(1) It is a violation of this chapter for 1413  
any person to enter into a viatical settlement contract prior to 1414  
the application for or issuance of a policy that is the subject of 1415  
the viatical settlement contract. 1416

(2) It is a violation of this chapter for any person to 1417  
issue, solicit, market, or otherwise promote the purchase of a 1418  
policy for the purpose of or with an emphasis on selling the 1419  
policy. 1420

(B) It is a violation of this chapter for any person to enter 1421  
into a viatical settlement contract within a ~~two-year~~ five-year 1422  
period commencing with the date of issuance of the ~~insurance~~ 1423  
policy ~~or certificate~~ unless the viator certifies to the viatical 1424  
settlement provider that one or more of the following conditions 1425  
have been met within ~~that two-year period~~ five years after the 1426  
issuance of the policy: 1427

(1) The policy ~~or certificate~~ was issued upon the viator's 1428  
exercise of conversion rights arising out of a group policy ~~or~~ 1429  
~~certificate~~, provided the total of the time covered under the 1430  
conversion policy ~~or certificate~~ plus the time covered under the 1431  
~~group prior~~ policy ~~or certificate~~ is at least ~~twenty-four~~ sixty 1432  
months. The time covered under ~~the~~ a group policy ~~or certificate~~ 1433  
shall be calculated without regard to any change in insurance 1434  
carriers, provided the coverage has been continuous and under the 1435  
same group sponsorship. 1436

(2) The viator is a charitable organization with an insurable 1437  
interest pursuant to division (B) of section 3911.09 the Revised 1438  
Code that has received from the Internal Revenue Service a 1439  
determination letter that is currently in effect, stating that the 1440  
charitable organization is exempt from federal income taxation 1441  
under ~~26 U.S.C.~~ subsection 501(a) and described in section 1442  
501(c)(3) of the "Internal Revenue Code." 1443

~~(3) The viator is not an individual.~~ 1444

~~(4)~~ The viator certifies and submits independent evidence to 1445  
the viatical settlement provider that one or more of the following 1446  
conditions have ~~been met within that two-year period~~ arisen after 1447  
the issuance of the policy: 1448

(a) The viator or insured is terminally or chronically ill. 1449

(b) The viator's spouse dies. 1450

(c) The viator divorces the viator's spouse. 1451



- (d) The viator retires from ~~full-time~~ full-time employment. 1452
- (e) The viator becomes physically or mentally disabled, and a 1453  
physician determines that the disability prevents the viator from 1454  
maintaining full-time employment. 1455
- (f) ~~The viator was the insured's employer at the time the~~ 1456  
~~policy or certificate was issued and the employment relationship~~ 1457  
~~terminated.~~ 1458
- ~~(g)~~ A court of competent jurisdiction enters a final order, 1459  
~~judgement~~ judgment, or decree on the application of a creditor of 1460  
the viator and adjudicates the viator bankrupt or insolvent or 1461  
approves a petition seeking reorganization of the viator or 1462  
appointing a receiver, trustee, or liquidator to all or a 1463  
substantial part of the viator's assets. 1464
- ~~(h) The viator experiences a significant decrease in income~~ 1465  
~~that is unexpected and that impairs the viator's reasonable~~ 1466  
~~ability to pay the policy premium.~~ 1467
- ~~(i) The viator or insured disposes of the viator's or~~ 1468  
~~insured's ownership interests in a closely held corporation~~ 1469
- (g) The sole beneficiary of the policy is a family member of 1470  
the viator and the beneficiary dies. 1471
- (4) The viator enters into a viatical settlement contract 1472  
more than two years after the date of issuance of a policy and 1473  
certifies that all of the following are true: 1474
- (a) The viator has funded the policy using personal assets, 1475  
which may include an interest in the life insurance policy being 1476  
viaticated up to the cash surrender value of the policy or any 1477  
financing agreement to fund the policy premiums entered into prior 1478  
to policy issuance or within two years of policy issuance was 1479  
provided to the insurer within thirty days of the date the 1480  
agreement was executed and the financing agreement was secured 1481

with personal assets. 1482

(b) The viator had no agreement or understanding with any other person to viaticate the policy or transfer the benefits of the policy, including through an assumption or forgiveness of a premium finance loan at any time prior to issuance of the policy or during the two years after the date of issuance of the policy. 1483  
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(c) If requested by the insurer, the viator both disclosed to the insurer whether a person other than the insurer obtained a life expectancy evaluation for settlement purposes in connection with the application, underwriting, and issuance of the policy and provided a copy of any such life expectancy evaluation to the insurer at the time of application. 1488  
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(d) The viator disclosed any financial arrangement, trust, or other arrangement, transaction, or device that conceals the ownership or beneficial interest of the policy to the insurer prior to the issuance of the policy. 1494  
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~~(B)~~(C) Copies of the independent evidence described in division ~~(A)~~(4)(B)(3) 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. 1498  
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~~(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)(3) of this section when the viatical settlement provider submits a request to the insurer to effect the transfer of the policy or certificate to 1507  
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the viatical settlement provider, the copy conclusively 1513  
establishes that the viatical settlement contract satisfies the 1514  
requirements of this section, and the insurer shall timely respond 1515  
to the request. 1516

(E) No insurer, as a condition of responding to a request for 1517  
verification of coverage or effecting the transfer of a policy 1518  
pursuant to a viatical settlement contract, may require the 1519  
viator, insured, viatical settlement provider, or viatical 1520  
settlement broker to sign any form, disclosure, consent, or waiver 1521  
form that has not been approved by the superintendent of insurance 1522  
for use in connection with viatical settlement contracts. 1523

(F) Upon receipt of a properly completed request for change 1525  
of ownership or beneficiary of a policy, the insurer shall respond 1526  
in writing within thirty calendar days to confirm that the insurer 1527  
has made the change or specify reasons that the change cannot be 1528  
processed. No insurer shall unreasonably delay effecting change in 1529  
ownership or beneficiary or seek to interfere with any viatical 1530  
settlement contract lawfully entered into in this state. 1531

(G) A viatical settlement provider or viatical settlement 1532  
broker that is party to a plan, transaction, or series of 1533  
transactions to originate, renew, continue, or finance a policy 1534  
with the insurer for the purpose of engaging in the business of 1535  
viatical settlements at any time prior to or during the first five 1536  
years after the insurer issues the policy shall fully disclose the 1537  
plan, transaction, or series of transactions to the superintendent 1538  
of insurance. 1539

**Sec. 3916.17.** (A) The general assembly hereby declares that 1540  
the purpose of this section is to provide prospective viators with 1541  
clear and unambiguous statements in the advertisement of viatical 1542  
settlements and to assure the clear, truthful, and adequate 1543

disclosure of the benefits, risks, limitations, and exclusions of 1544  
any viatical settlement contract. This purpose is intended to be 1545  
accomplished by the establishment of guidelines and standards of 1546  
permissible and impermissible conduct in the advertising of 1547  
viatical settlements to assure that product descriptions are 1548  
presented in a manner that prevents unfair, deceptive, or 1549  
misleading advertising and is conducive to accurate presentation 1550  
and description of viatical settlements through the advertising 1551  
media and material used by ~~viatical settlement~~ licensees. 1552

Divisions (B) to (P) of this section apply to any advertising 1553  
of viatical settlement contracts, or any related products or 1554  
services intended for dissemination in this state, including, but 1555  
not limited to, internet advertising viewed by persons located in 1556  
this state. In cases in which disclosure requirements are 1557  
established pursuant to federal regulation, this section shall be 1558  
interpreted so as to minimize or eliminate conflict with federal 1559  
regulation wherever possible. 1560

(B) Every ~~viatical settlement~~ licensee shall establish and at 1561  
all times shall maintain a system of control over the content, 1562  
form, and method of dissemination of all advertisements of its 1563  
contracts, products, and services. All advertisements, regardless 1564  
of by whom they are written, created, designed, or presented, 1565  
shall be the responsibility of the ~~viatical settlement~~ licensee 1566  
and of the ~~individual who~~ person that created or presented the 1567  
advertisement. A system of control shall include regular routine 1568  
notification, at least once a year, to agents and others 1569  
authorized by the ~~viatical settlement~~ licensee who disseminate 1570  
advertisements of the requirements ~~and procedures~~ for ~~approval~~ 1571  
compliance under this section prior to the use of any 1572  
advertisements not furnished by the ~~viatical settlement~~ licensee. 1573

1574

(C) All advertisements that are subject to this section shall 1575  
be truthful and not misleading in fact or by implication. The form 1576  
and content of an advertisement of a viatical settlement contract 1577  
shall be sufficiently complete and clear so as to avoid deception 1578  
and shall not have the capacity or tendency to mislead or deceive. 1579  
The determination of whether an advertisement has the capacity or 1580  
tendency to mislead or deceive shall be made by the superintendent 1581  
~~of insurance~~, from the overall impression that the advertisement 1582  
may be reasonably expected to create upon a person of average 1583  
education or intelligence within the segment of the public to 1584  
which it is directed. 1585

(D) Viatical settlement advertisements containing any 1586  
representation set forth in this division are deemed false and 1587  
misleading on their face and are prohibited. False and misleading 1588  
viatical settlement advertisements include, but are not limited 1589  
to, those including any of the following representations: 1590

(1) "Guaranteed," "fully secured," "100 percent secured," 1591  
"fully insured," "secure," "safe," "backed by rated insurance 1592  
companies," "backed by federal law," "backed by state law," or 1593  
"state guaranty funds," or similar representations; 1594

(2) "No risk," "minimal risk," "low risk," "no speculation," 1595  
"no fluctuation," or similar representations; 1596

(3) "Qualified or approved for individual retirement accounts 1597  
(IRAs), Roth IRAs, 401(k) plans, simplified employee pensions 1598  
(SEPs), 403(b), Keogh plans, TSA, or other retirement account 1599  
rollovers," "tax deferred," or similar representations; 1600

(4) Utilization of the word "guaranteed" to describe the 1601  
fixed return, annual return, principal, earnings, profits, 1602  
investment, or similar representations; 1603

(5) "No sales charges or fees" or similar representations; 1604

(6) "High yield," "superior return," "excellent return," 1605

"high return," "quick profit," or similar representations; 1606

(7) Purported favorable representations or testimonials about 1607  
the benefits of viatical settlement contracts or viatical 1608  
settlement purchase agreements as an investment, taken out of 1609  
context from any newspaper, trade paper, journal, radio or 1610  
television program, or any other form of print and electronic 1611  
media. 1612

(E)(1) The information required to be disclosed under this 1613  
section shall not be minimized, rendered obscure, or presented in 1614  
an ambiguous fashion or intermingled with the text of the 1615  
advertisement so as to be confusing or misleading. 1616

An advertisement shall not omit material information or use 1617  
any words, phrases, statements, references, or illustrations if 1618  
the omission or use has the capacity, tendency, or effect of 1619  
misleading or deceiving viators, as to the nature or extent of any 1620  
benefit, loss covered, premium payable, or state or federal tax 1621  
consequence. The fact that the viatical settlement contract 1622  
offered is made available for inspection prior to consummation of 1623  
the sale, that an offer is made to refund the payment if the 1624  
viator is not satisfied, or that the viatical settlement contract 1625  
includes a "free look" period that satisfies or exceeds legal 1626  
requirements, does not remedy any misleading statements. 1627

(2) An advertisement shall not use the name or title of a 1628  
life insurance company or a ~~life insurance~~ policy unless the 1629  
advertisement has been approved by ~~the insurer~~ that company. 1630

(3) An advertisement shall not represent that any premium 1631  
payments will not be required to be paid on the ~~life insurance~~ 1632  
policy that is the subject of a viatical settlement contract ~~or~~ 1633  
~~viatical settlement purchase agreement~~ in order to maintain that 1634  
policy, unless that is the fact. 1635

(4) An advertisement shall not state or imply that interest 1636

charged on an accelerated death benefit or a policy loan is 1637  
unfair, inequitable, or in any manner an incorrect or improper 1638  
practice. 1639

(5) The words "free," "no cost," "without cost," "no 1640  
additional cost," "at no extra cost," or words of similar import 1641  
shall not be used with respect to any policy or to any benefit or 1642  
service unless true. An advertisement may specify the charge for a 1643  
benefit or a service or may state that a charge is included in the 1644  
payment or use other appropriate language. 1645

(6)(a) ~~Testimonials~~ Testimonials, appraisals, analyses, or 1646  
endorsements used in advertisements must satisfy all of the 1647  
following: 1648

(i) They must be genuine. 1649

(ii) They must represent the current opinion of the author. 1650

(iii) They must be applicable to the viatical settlement 1651  
~~contract~~ contract product or service advertised, if any. 1652

(iv) They must be accurately reproduced with sufficient 1653  
completeness to avoid misleading or deceiving prospective viators 1654  
as to the nature or scope of the testimonials, appraisals, 1655  
analyses, or endorsements. 1656

(b) In using testimonials, appraisals, analyses, or 1657  
endorsements, the ~~viatical settlement~~ licensee makes as its own 1658  
all the statements contained in the testimonials, appraisals, 1659  
analyses, or endorsements, and the statements are subject to all 1660  
the provisions of this section. 1661

(c) If the individual making a testimonial, ~~appraisal~~ 1662  
appraisal, analysis, or endorsement has a ~~financial~~ financial 1663  
interest in the ~~viatical settlement provider or related entity~~ 1664  
subject of that testimonial, appraisal, analysis, or endorsement 1665  
directly or indirectly as a ~~stockholder~~ shareholder, director, 1666

officer, employee, or otherwise, or receives any benefit directly 1667  
or indirectly other than required union scale wages, that fact 1668  
shall be prominently disclosed in the advertisement. 1669

(d) An advertisement shall not state or ~~imply~~ imply that a 1670  
viatical settlement contract benefit or service has been approved 1671  
or endorsed by a group of individuals, society, association, or 1672  
other organization unless that is the fact and unless any 1673  
relationship between the ~~individual~~ group of individuals, society, 1674  
association, or organization and the viatical settlement provider 1675  
is disclosed. If the entity making the endorsement or testimonial 1676  
is owned, controlled, or managed by the viatical settlement 1677  
provider, or receives any payment or other consideration from the 1678  
viatical settlement provider for making an endorsement or 1679  
testimonial, that fact shall be disclosed in the advertisement. 1680

(e) When an endorsement refers to benefits received under a 1681  
viatical settlement contract, all pertinent information shall be 1682  
retained for a period of at least five years after its use. 1683

(F) An advertisement shall not contain statistical 1684  
information unless the information accurately reflects recent and 1685  
relevant facts. The source of all statistics used in an 1686  
advertisement shall be identified. 1687

(G) An advertisement shall not disparage any insurer, 1688  
viatical settlement provider, viatical settlement broker, ~~viatical~~ 1689  
~~settlement investment agent~~, insurance producer, policy, service, 1690  
or method of marketing. 1691

(H) All advertisements about a viatical settlement provider 1692  
or its viatical settlement contract, products, or services shall 1693  
clearly identify the viatical settlement provider's name. If any 1694  
specific viatical settlement contract is advertised, the viatical 1695  
settlement contract shall be identified either by form number or 1696  
some other appropriate description. If an application is part of 1697



the advertisement, the name of the viatical settlement provider 1698  
shall be shown on the application. 1699

(I) An advertisement shall not use a trade name, group 1700  
designation, name of the parent company of a ~~viatical settlement~~ 1701  
licensee, name of a particular division of the ~~viatical settlement~~ 1702  
licensee, service mark, slogan, symbol, or other device or 1703  
reference without disclosing the name of the ~~viatical settlement~~ 1704  
licensee, if either of the following applies regarding the 1705  
advertisement: 1706

(1) It would have the capacity or tendency to mislead or 1707  
deceive as to the true identity of the ~~viatical settlement~~ 1708  
licensee. 1709

(2) It would have the capacity or tendency to create the 1710  
impression that a company other than the ~~viatical settlement~~ 1711  
licensee would have any responsibility for the financial 1712  
obligation under a ~~viatical settlement~~ contract. 1713

(J) An advertisement shall not use any combination of words, 1714  
symbols, or physical materials that, by their content, 1715  
phraseology, shape, color, or other characteristics, are so 1716  
similar to a combination of words, symbols, or physical materials 1717  
used by a government program or agency or otherwise appear to be 1718  
of such a nature that they tend to mislead prospective viators 1719  
into believing that the solicitation is in some manner connected 1720  
with a government program or agency. 1721

(K) An advertisement may state that a ~~viatical settlement~~ 1722  
~~provider~~ licensee is licensed in the state in which the 1723  
advertisement appears, provided it does not exaggerate that fact 1724  
or suggest or imply that ~~competing viatical settlement providers~~ 1725  
competitors may not be so licensed. The advertisement may ask the 1726  
audience to consult the licensee's web site or contact the 1727  
department of insurance to find out if the state in which the 1728

advertisement appears requires licensing and, if it does, whether 1729  
the ~~viatical settlement provider or viatical settlement broker~~ 1730  
person is licensed. 1731

(L) An advertisement shall not create the impression that the 1732  
viatical settlement provider, its financial condition or status, 1733  
the payment of its claims, or the merits, desirability, or 1734  
advisability of its viatical settlement contracts are recommended 1735  
or endorsed by any government entity. 1736

(M) All advertisements of an actual licensee shall state the 1737  
name of the actual licensee. An advertisement shall not use a 1738  
trade name, any group designation, name of any affiliate or 1739  
controlling entity of the licensee, service mark, slogan, symbol, 1740  
or other device in a manner that would have the capacity or 1741  
tendency to mislead or deceive as to the true identity of the 1742  
actual licensee or create the false impression that an affiliate 1743  
or controlling entity would have any responsibility for the 1744  
financial obligation of the licensee. 1745

(N) An advertisement shall not directly or indirectly create 1746  
the impression that any division or agency of this state, any 1747  
other state, or the United States government endorses, approves, 1748  
or favors any of the following: 1749

(1) Any ~~viatical settlement~~ licensee or its business 1750  
practices or methods of operation; 1751

(2) The merits, desirability, or advisability of any viatical 1752  
settlement contract, ~~or viatical settlement program;~~ 1753

(3) Any viatical settlement contract, ~~or viatical settlement~~ 1754  
~~program;~~ 1755

(4) Any ~~life insurance policy or certificate~~ or life 1756  
insurance company. 1757

(O) If the advertiser emphasizes the speed with which the 1758

viatication will occur, the advertising must disclose the average 1759  
time frame, from completed application to the date of offer and 1760  
from acceptance of the offer to receipt of the funds by the 1761  
viator. 1762

(P) If the advertising emphasizes the dollar amounts 1763  
available to viators, the advertising shall disclose the average 1764  
purchase price as a per cent of face value obtained by viators 1765  
contracting with the licensee during the past six months. 1766

Sec. 3916.171. (A) No person shall commit a fraudulent 1767  
viatical settlement act. 1768

(B) All of the following acts are fraudulent viatical 1769  
settlement acts when committed by any person who, knowingly and 1770  
with intent to defraud and for the purpose of depriving another of 1771  
property or for pecuniary gain, commits, or permits any of its 1772  
employees or its agents to commit them: 1773

(1) Presenting, causing to be presented, or preparing with 1774  
knowledge or belief that it will be presented to or by a viatical 1775  
settlement provider, viatical settlement broker, life expectancy 1776  
provider, viatical settlement purchaser, financing entity, 1777  
insurer, insurance broker, insurance agent, or any other person, 1778  
any false material information, or concealing any material 1779  
information, as part of, in support of, or concerning a fact 1780  
material to, one or more of the following: 1781

(a) An application for the issuance of a viatical settlement 1782  
contract or a policy; 1783

(b) The underwriting of a viatical settlement contract or a 1784  
policy; 1785

(c) A claim for payment or benefit pursuant to a viatical 1786  
settlement contract or a policy; 1787

(d) Any premiums paid on a policy; 1788

<u>(e) Any payments and changes in ownership or beneficiary made</u>	1789
<u>in accordance with the terms of a viatical settlement contract or</u>	1790
<u>a policy;</u>	1791
<u>(f) The reinstatement or conversion of a policy;</u>	1792
<u>(g) The solicitation, offer, effectuation, or sale of a</u>	1793
<u>viatical settlement contract or a policy;</u>	1794
<u>(h) The issuance of written evidence of a viatical settlement</u>	1795
<u>contract or a policy;</u>	1796
<u>(i) A financing transaction;</u>	1797
<u>(j) Any application for or the existence of or any payments</u>	1798
<u>related to a loan secured directly or indirectly by any interest</u>	1799
<u>in a policy.</u>	1800
<u>(2) Failing to disclose to the insurer, where the insurer has</u>	1801
<u>requested such disclosure, that the prospective insured has</u>	1802
<u>undergone a life expectancy evaluation by any person or entity</u>	1803
<u>other than the insurer or its authorized representatives in</u>	1804
<u>connection with the application, underwriting, and issuance of the</u>	1805
<u>policy.</u>	1806
<u>(3) In the furtherance of a fraud or to prevent the detection</u>	1807
<u>of a fraud, doing any of the following:</u>	1808
<u>(a) Removing, concealing, altering, destroying, or</u>	1809
<u>sequestering from the superintendent of insurance the assets or</u>	1810
<u>records of a licensee or another person engaged in the business of</u>	1811
<u>viatical settlements;</u>	1812
<u>(b) Misrepresenting or concealing the financial condition of</u>	1813
<u>a licensee, financing entity, insurer, or any other person;</u>	1814
<u>(c) Transacting the business of viatical settlements in</u>	1815
<u>violation of any law of this state requiring a license,</u>	1816
<u>certificate of authority, or other legal authority for the</u>	1817
<u>transaction of the business of viatical settlements;</u>	1818

(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. 1819  
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(4) Recklessly entering into, negotiating, brokering, or otherwise dealing in a viatical settlement contract involving a 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; 1823  
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(5) Committing any embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, policyowner, or any other person engaged in the business of viatical settlements or insurance; 1831  
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(6) Employing any plan, financial structure, device, scheme, or artifice to defraud in the business of viatical settlements; 1836  
1837

(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; 1838  
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(8) In the solicitation, application, or issuance of a policy, employing any device, scheme, or artifice in violation of sections 3911.09 or 3911.091 of the Revised Code; 1843  
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(9) Engaging in any conduct related to a viatical settlement contract if the person knows or 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; 1846  
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(10) Entering into a premium finance agreement with any 1850  
person pursuant to which the person will receive, directly or 1851  
indirectly, any proceeds, fees, or other considerations from the 1852  
policy, the owner of the policy, the issuer of the policy, or from 1853  
any other person with respect to the premium finance agreement or 1854  
any viatical settlement contract, or from any transaction related 1855  
to the policy, that are in addition to the amount required to pay 1856  
the principal, interest, costs, and expenses related to the policy 1857  
premiums pursuant to the premium finance agreement or subsequent 1858  
sale of the agreement. Any payments, charges, fees, or other 1859  
amounts in addition to the amounts required to pay the principal, 1860  
interest, costs, and expenses related to policy premiums paid 1861  
under the premium finance agreement shall be remitted to the 1862  
original owner of the policy or, if the owner is not living at the 1863  
time of the determination of the overpayment, to the estate of the 1864  
owner. 1865

(11) With respect to any viatical settlement contract or a 1866  
policy, for a viatical settlement broker or an agent registered 1867  
under this chapter as operating as a viatical settlement broker to 1868  
knowingly solicit an offer from, effectuate a viatical settlement 1869  
with, or make a sale to any viatical settlement provider, viatical 1870  
settlement purchaser, financing entity, or related provider trust 1871  
that is controlling, controlled by, or under common control with 1872  
such viatical settlement broker or registered agent unless both of 1873  
the following are true: 1874

(a) The viatical settlement broker or agent disclosed that 1875  
affiliation to the viator. 1876

(b) The viatical settlement broker or agent is controlled by 1877  
or under common control with a person that is regulated under the 1878  
"Securities Act of 1933" or the "Securities Act of 1934," 15 1879  
U.S.C. 77a et seq., as amended. 1880

(12) With respect to any viatical settlement contract or a 1881

policy, for a viatical settlement provider to knowingly enter into 1882  
a viatical settlement contract with a viator if, in connection 1883  
with such viatical settlement contract, anything of value will be 1884  
paid to a viatical settlement broker or an agent registered under 1885  
this chapter as operating as a viatical settlement broker that is 1886  
controlling, controlled by, or under common control with such 1887  
viatical settlement provider or the viatical settlement purchaser, 1888  
financing entity, or related provider trust that is involved in 1889  
such viatical settlement contract unless both of the following are 1890  
true: 1891

(a) The viatical settlement broker or agent disclosed that 1892  
affiliation to the viator. 1893

(b) The viatical settlement broker or agent is controlled by 1894  
or under common control with a person that is regulated under the 1895  
"Securities Act of 1933" or the "Securities Act of 1934," 15 1896  
U.S.C. 77a et seq., as amended. 1897

(13) Issuing, soliciting, marketing, or otherwise promoting 1898  
the purchase of a policy for the purpose of or with emphasis on 1899  
settling the policy; 1900

(14) Issuing or using a pattern of false, misleading, or 1901  
deceptive life expectancies; 1902

(15) Issuing, soliciting, marketing, or otherwise promoting 1903  
stranger-originated life insurance; 1904

(16) Attempting to commit, assisting, aiding or abetting in 1905  
the commission of, or conspiracy to commit any act or omission 1906  
specified in divisions (B)(1) to (15) of this section. 1907

**Sec. 3916.172.** Any contract, agreement, arrangement, or 1908  
transaction including, but not limited to, any financing agreement 1909  
or arrangement identified in section 1321.72 of the Revised Code 1910  
entered into for the furtherance or aid of a stranger-originated 1911

life insurance act, practice, arrangement, or agreement is void 1912  
and unenforceable. 1913

Sec. 3916.173. Trusts or other persons that are created to 1914  
give the appearance of insurable interest and are used to initiate 1915  
one or more policies for investors violate insurable interest laws 1916  
and the prohibition against wagering on life. 1917

**Sec. 3916.18.** (A)(1) ~~No person shall commit a fraudulent~~ 1918  
~~viatical settlement act.~~ 1919

~~(2)~~ No person shall knowingly or intentionally interfere with 1920  
the enforcement of the provisions of this chapter or 1921  
investigations of suspected or actual violations of this chapter. 1922

~~(3)~~(2) No person in the business of viatical settlements 1923  
shall knowingly or intentionally permit any person convicted of a 1924  
felony involving dishonesty or breach of trust to participate in 1925  
the business of viatical settlements. 1926

(B)(1) Each viatical settlement contract and each application 1927  
for a viatical settlement, regardless of the form of transmission, 1928  
shall contain the following statement or a substantially similar 1929  
statement: 1930

"Any person who knowingly presents false information in an 1931  
application for insurance or viatical settlement contract is 1932  
guilty of a crime and may be subject to fines and imprisonment." 1933

(2) The lack of a statement as required in division (B)(1) of 1934  
this section does not constitute a defense in any prosecution for 1935  
a fraudulent viatical settlement act. 1936

(C)(1) Every person engaged in the business of viatical 1937  
settlements having knowledge or a reasonable belief that a 1938  
fraudulent viatical settlement act is being, will be, or has been 1939  
committed shall provide to the superintendent of insurance the 1940



information required by the superintendent. The person shall 1941  
provide the information in a manner prescribed by the 1942  
superintendent. 1943

(2) Every person having knowledge or a ~~reasonable belief~~ 1944  
reason to believe that a fraudulent viatical settlement act is 1945  
being, will be, or has been committed may provide to the 1946  
superintendent the information required by the superintendent. The 1947  
person shall provide the information under this division in a 1948  
manner prescribed by the superintendent. 1949

(3) Any life insurer that has a good faith belief that a 1950  
person is participating or has participated in a 1951  
stranger-originated life insurance transaction shall report the 1952  
person to the superintendent in a form and manner prescribed by 1953  
the superintendent. Upon receipt of the insurer's report, the 1954  
superintendent shall conduct an investigation to determine whether 1955  
there is probable cause, based on the totality of the facts and 1956  
circumstances that the person has or had engaged in a 1957  
stranger-originated life insurance transaction. If the 1958  
superintendent finds probable cause, the superintendent shall do 1959  
one of the following: 1960

(a) If the person is licensed or regulated by the department 1961  
of insurance, the superintendent shall provide the person an 1962  
opportunity for notice and hearing pursuant to Chapter 119. of the 1963  
Revised Code. If the person waives or does not request a hearing 1964  
pursuant to Chapter 119. of the Revised Code, or a hearing is held 1965  
and the person is found to have participated in one or more 1966  
stranger-originated life insurance transactions, the 1967  
superintendent shall publish the order on the department's web 1968  
site, and shall notify each insurance company licensed in this 1969  
state that the person has been adjudicated as having participated 1970  
in one or more stranger-originated life insurance transactions. 1971

(b) If the person is not licensed or regulated by the 1972

department the superintendent shall provide the superintendent's 1973  
findings to the appropriate licensing or regulatory authority. 1974

(D)(1) No civil liability shall be imposed on, and no cause 1975  
of action shall arise from, a person's furnishing information 1976  
concerning suspected, anticipated, or completed fraudulent 1977  
viatical settlement acts or suspected or completed fraudulent 1978  
insurance acts, if the information is provided to or received from 1979  
any of the following: 1980

(a) The superintendent, or the superintendent's employees, 1981  
agents, or representatives; 1982

(b) Law enforcement or regulatory officials of this state, 1983  
another state, the ~~united states~~ United States, or a political 1984  
subdivision of this state or another state, or any employee, 1985  
agent, or representative of any of those officials+; 1986

(c) A person involved in the prevention and detection of 1987  
fraudulent viatical settlement acts or any agent, employee, or 1988  
representative of any person so involved; 1989

(d) The NAIC, ~~national association of securities dealers~~ 1990  
(~~NASD~~) financial industry regulatory authority (FINRA), the north 1991  
~~american~~ American securities ~~and administrators~~ administrators 1992  
association (NASAA), any employee, agent, or representative of any 1993  
of those associations-, or other regulatory body overseeing life 1994  
insurance, viatical settlements, securities, or investment fraud; 1995  
1996

(e) The life insurer that issued the ~~life insurance~~ policy ~~or~~ 1997  
~~certificate~~ covering the life of the insured. 1998

(2) The immunity provided in division (D)(1) of this section 1999  
shall not apply to any statement made with actual malice. In an 2000  
action brought against a person for filing a report or furnishing 2001  
other information concerning a fraudulent viatical settlement act 2002  
~~or a fraudulent insurance act~~, the party bringing the action shall 2003

plead specifically any allegation that the immunity provided in 2004  
division (D)(1) of this section does not apply because the person 2005  
filing the report or furnishing the information did so with actual 2006  
malice. 2007

(3) If a person is the prevailing party in a civil action for 2008  
libel, slander, or any other relevant tort arising out of 2009  
activities in carrying out the provisions of this chapter, if the 2010  
prevailing party is a person identified in division (D)(1) of this 2011  
section and the immunity described in that division applies to the 2012  
person, and if the party who brought the action was not 2013  
substantially justified in doing so, the person who is the 2014  
prevailing party is entitled to an award of attorney's fees and 2015  
costs arising out of the action. However, the person is not 2016  
entitled to an award of attorney's fees if the person provided 2017  
information about the person's own fraudulent viatical settlement 2018  
acts. For purposes of this division, an action is "substantially 2019  
justified" if it had a reasonable basis in law or fact at the time 2020  
that it was initiated. 2021

(4) This section does not abrogate or modify any common law 2022  
or statutory privilege or immunity enjoyed by a person described 2023  
in division (D)(1) of this section. 2024

(E)(1) The documents and evidence provided pursuant to 2025  
division (D) of this section or obtained by the superintendent in 2026  
an investigation of any suspected or actual fraudulent viatical 2027  
settlement act is privileged and confidential, is not a public 2028  
record open for inspection under section 149.43 of the Revised 2029  
Code, and is not subject to discovery or subpoena in a civil or 2030  
criminal action. 2031

(2) Division (E)(1) of this section does not prohibit release 2032  
by the superintendent of any document or evidence obtained in an 2033  
investigation of suspected or actual fraudulent viatical 2034  
settlement acts, in any of the following manners or circumstances: 2035

(a) In any administrative or judicial proceeding to enforce any laws ~~administer~~ administered by the superintendent; 2036  
2037

(b) To any law enforcement or regulatory agency of this state, another state, the ~~united states~~ United States, or a ~~political~~ political subdivision of this state or another state, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement ~~act~~ acts, or to the ~~NAIC~~ NAIC; 2038  
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(c) At the discretion of the superintendent, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act. 2044  
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(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. 2047  
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2049

(F) The provisions of this chapter do not do any of the following: 2050  
2051

(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; 2052  
2053  
2054

(2) Prevent or prohibit a person from disclosing voluntarily any information concerning fraudulent viatical settlement ~~fraud~~ acts to a law enforcement or regulatory agency other than the department of insurance; 2055  
2056  
2057  
2058

(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. 2059  
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2061  
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(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 2063  
2064  
2065

viatical settlement acts. At the discretion of the superintendent, 2066  
the superintendent may order, or a licensee viatical settlement 2067  
provider or viatical settlement broker may request and the 2068  
superintendent may grant, any modifications of the following 2069  
required initiatives described in divisions (G)(1)(a) and (b) of 2070  
this section that are necessary to ensure an effective antifraud 2071  
program. The modifications may be more or less restrictive than 2072  
the required initiatives so long as the modifications may 2073  
reasonably be expected to accomplish the purpose of this section. 2074  
Antifraud initiatives under this division shall include all of the 2075  
following: 2076

(a) Fraud investigators, who may be licensed viatical 2077  
settlement provider or licensed viatical settlement broker 2078  
employees or independent contractors; 2079

(b) An antifraud plan that includes, but ~~not~~ is not limited 2080  
to, all of the following: 2081

(i) A description of the procedures for detecting and 2082  
investigating possible fraudulent viatical settlement acts and 2083  
procedures for resolving material inconsistencies between medical 2084  
records and insurance applications; 2085

(ii) A description of the procedures for reporting possible 2086  
fraudulent viatical settlement acts to the superintendent; 2087

(iii) A description of the plan for ~~atifraud~~ antifraud 2088  
education and training of underwriters and other personnel; 2089

(iv) A description or ~~chart~~ chart outlining the 2090  
organizational arrangement of the antifraud personnel who are 2091  
responsible for the investigation and reporting of possible 2092  
fraudulent viatical settlement acts and investigating unresolved 2093  
material inconsistencies between medical records and insurance 2094  
applications; 2095

(v) A description of the procedures used to perform initial 2096

and continuing review of the accuracy of life expectancies used in 2097  
connection with a viatical settlement contract. 2098

(2) The superintendent, by rule adopted in accordance with 2099  
Chapter 119. of the Revised Code, may require that antifraud plans 2100  
required under division (G)(1) of this section be submitted to the 2101  
superintendent. If the superintendent requires that antifraud 2102  
plans be submitted to the superintendent, the plans so submitted 2103  
are privileged and confidential, are not a public record open for 2104  
inspection under section 149.43 of the ~~revised code~~ Revised Code, 2105  
and are not subject to discovery or subpoena in a civil or 2106  
criminal action. 2107

(H) No insurer that issued a policy being viaticated shall be 2108  
responsible, under this chapter, for any act or omission of a 2109  
viatical settlement broker or viatical settlement provider arising 2110  
out of or in connection with the viatical settlement transaction 2111  
unless the insurer receives compensation for the placement of a 2112  
viatical settlement contract from the viatical settlement provider 2113  
or viatical settlement broker in connection with the viatical 2114  
settlement contract. 2115

**Sec. 3916.19.** (A) In addition to the penalties and other 2116  
enforcement provisions contained in this chapter, if any person 2117  
violates any provision of this chapter or any rule or regulation 2118  
implementing any provision of this chapter, the superintendent of 2119  
insurance may seek an injunction in a court of competent 2120  
jurisdiction and may apply for any temporary or permanent order 2121  
that the superintendent determines is necessary to restrain the 2122  
person from committing the violation. 2123

(B) Any person damaged by any act of a person in violation of 2124  
any provision of this chapter may bring a civil action against the 2125  
person committing the violation in a court of competent 2126  
jurisdiction. A civil action brought under this division does not 2127

preclude the superintendent from exercising any regulatory, 2128  
enforcement, or other authority available to the superintendent 2129  
under this chapter. 2130

(C) In addition to the penalties and other enforcement 2131  
provisions contained in this chapter, any person who violates any 2132  
provision of this chapter is subject to a civil penalty of up to 2133  
ten thousand dollars per violation. Imposition of civil penalties 2134  
described in this division shall be pursuant to an order of the 2135  
superintendent issued under Chapter 119. of the Revised Code. The 2136  
superintendent's order may require a person found to be in 2137  
violation of this chapter to make restitution to persons aggrieved 2138  
by violations of this chapter. 2139

(D) Any transaction related to the sale or financing of an 2140  
interest or investment in a viatical settlement is subject to 2141  
Chapter 1707. of the Revised Code and the rules adopted 2142  
thereunder. Nothing in this chapter shall preempt, supersede, or 2143  
limit the application of Chapter 1707. of the Revised Code and the 2144  
rules adopted thereunder. 2145

**Sec. 3916.20.** The superintendent of insurance may adopt rules 2146  
in accordance with Chapter 119. of the Revised Code for purposes 2147  
of implementing this chapter, including, but not limited to, rules 2148  
that do the following: 2149

(A) Govern the relationship and responsibilities of ~~both~~ 2150  
insurers ~~and~~ viatical settlement providers, and viatical 2151  
settlement brokers during the viatication of a ~~life insurance~~ 2152  
policy ~~or certificate~~. 2153

(B) Establish standards for evaluating the reasonableness of 2154  
payments under viatical settlement contracts for persons ~~with a~~ 2155  
~~terminal or chronic illness or condition~~ who are terminally or 2156  
chronically ill. This authority includes, but is not limited to, 2157  
the regulation of discount rates used to determine the amount paid 2158

in exchange for the assignment, release, transfer, sale, devise, 2159  
or bequest of a benefit under a ~~life insurance~~ policy ~~or~~ 2160  
~~certificate~~ insuring persons who are terminally or chronically 2161  
ill. 2162

(C) Establish appropriate licensing requirements, fees, and 2163  
standards for continued licensure for viatical settlement 2164  
providers and viatical settlement brokers. 2165

~~(D) Require a bond or other mechanism for ensuring the~~ 2166  
~~financial accountability of viatical settlement providers and~~ 2167  
~~viatical settlement brokers.~~ 2168

**Sec. 3916.99.** (A) Whoever violates section 3916.02 of the 2169  
Revised Code is guilty of a felony of the third degree. 2170

(B) Whoever violates division (A)~~(1)~~ of section ~~3916.18~~ 2171  
3916.171 of the Revised Code is guilty of a violation of section 2172  
2913.02 of the Revised Code. 2173

**Section 2.** That existing sections 1321.72, 1321.78, 3916.01, 2174  
3916.02, 3916.03, 3916.05, 3916.06, 3916.07, 3916.09, 3916.10, 2175  
3916.11, 3916.12, 3916.13, 3916.14, 3916.15, 3916.16, 3916.17, 2176  
3916.18, 3916.19, 3916.20, and 3916.99 of the Revised Code are 2177  
hereby repealed. 2178

**Section 3.** Division (A) of section 3916.02 as amended by this 2179  
act shall take effect 90 days after the effective date of this 2180  
act. 2181

**Section 4.** Nothing in Chapter 3916. of the Revised Code as 2182  
amended by this act shall be construed as affecting the 2183  
incontestability period provided in division (C) of section 2184  
3915.05 of the Revised Code. 2185