

By: Kirby, Carlton

To: Insurance

SENATE BILL NO. 3000
(As Sent to Governor)

1 AN ACT TO CREATE THE "VIATICAL SETTLEMENTS ACT" FOR THE
2 PURPOSE OF PROTECTING CERTAIN VIATORS OR OWNERS OF LIFE INSURANCE
3 POLICIES WHO ENTER INTO CONTRACTS TO SELL THEIR POLICIES FOR
4 VALUES LESS THAN THE EXPECTED DEATH BENEFITS; TO PROVIDE
5 DEFINITIONS; TO REQUIRE THAT VIATICAL SETTLEMENT PROVIDERS,
6 REPRESENTATIVES AND BROKERS SHALL BE LICENSED BY THE COMMISSIONER
7 OF INSURANCE; TO PROVIDE LICENSING REQUIREMENTS; TO PROVIDE THAT
8 THE COMMISSIONER OF INSURANCE MAY SUSPEND, REVOKE OR REFUSE TO
9 RENEW THE LICENSE OF PERSONS VIOLATING THIS ACT; TO PROVIDE
10 REQUIREMENTS FOR DISCLOSURE OF CERTAIN INFORMATION TO THE VIATOR
11 BEFORE THE CONTRACT IS SIGNED; TO PROVIDE THAT THE COMMISSIONER OF
12 INSURANCE MAY PROMULGATE RULES AND REGULATIONS GOVERNING THE
13 RELATIONSHIP AND RESPONSIBILITIES OF THE INSURED AND THE VIATICAL
14 SETTLEMENT PROVIDES, BROKERS AND REPRESENTATIVES IN ACCORDANCE
15 WITH THIS ACT; TO AMEND SECTION 75-71-105 MISSISSIPPI CODE OF
16 1972, TO PROVIDE THAT VIATICAL SETTLEMENT INVESTMENT CONTRACTS
17 SHALL BE CLASSIFIED AND REGULATED AS SECURITIES TO PROTECT
18 INVESTORS OF THE VIATICAL COMPANIES; AND FOR RELATED PURPOSES.

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

20 SECTION 1. This act shall be known and may be cited as the
21 "Viatical Settlements Act."

22 SECTION 2. The following words and phrases shall have the
23 meanings ascribed herein unless the context clearly requires
24 otherwise:

25 (a) "Person" means a legal entity including, but not
26 limited to, an individual, partnership, limited liability company,
27 association, trust, corporation or other legal entity.

28 (b) "Viatical settlement representative" means a person
29 who is a licensed agent and acts or aids in any manner in the
30 solicitation of a viatical settlement and who is deemed to
31 represent only the viatical settlement provider. Viatical
32 settlement representative shall not include:

33 (i) An attorney, an accountant, a financial
34 planner or any person exercising a power of attorney granted by a

35 viator; or

36 (ii) Any person who is retained to represent a
37 viator and whose compensation is paid by or at the direction of
38 the viator regardless of whether the viatical settlement is
39 consummated.

40 (c) "Viatical settlement broker" means a licensed agent
41 who acts on behalf of a viator and for a fee, commission or other
42 valuable consideration offers or attempts to negotiate viatical
43 settlements between a viator and one or more viatical settlement
44 providers. Irrespective of the manner in which the viatical
45 settlement broker is compensated, a viatical settlement broker is
46 deemed to represent only the viator and owes a fiduciary duty to
47 the viator to act according to the viator's instructions and in
48 the best interest of the viator. The term does not include an
49 attorney, accountant or financial planner retained to represent
50 the viator whose compensation is paid directly by or at the
51 direction of the viator and who is paid regardless of whether or
52 not the viatical settlement is consummated.

53 (d) "Viatical settlement contract" means a written
54 agreement entered into between a viatical settlement provider and
55 a viator that establishes the terms under which the viatical
56 settlement provider shall pay compensation or anything of value,
57 which compensation or value is less than the expected death
58 benefit of the insurance policy or certificate, in return for the
59 viator's assignment, transfer, sale, devise or bequest of the
60 death benefit or ownership of all or a portion of the insurance
61 policy or certificate of insurance to the viatical settlement
62 provider. A viatical settlement contract also includes a contract
63 for a loan or other financial transaction secured primarily by an
64 individual or group life insurance policy, other than a loan by a
65 life insurance company pursuant to the terms of the life insurance
66 contract, or a loan secured by the cash value of a policy.

67 (e) "Viatical settlement provider" means a person,

68 other than a viator, that enters into a viatical settlement
69 contract. Viatical settlement provider also means a person that
70 obtains financing for the purchase, acquisition, transfer or other
71 assignment of one or more viatical settlement contracts,
72 viaticated policies or interests therein or otherwise sells,
73 assigns, transfers, pledges, hypothecates or otherwise disposes of
74 one or more viatical settlement contracts, viaticated policies or
75 interests therein. Viatical settlement provider does not include:

76 (i) A bank, savings bank, savings and loan
77 association, credit union or other licensed lending institution
78 that takes an assignment of a life insurance policy as collateral
79 for a loan;

80 (ii) The issuer of a life insurance policy
81 providing accelerated benefits under Sections 83-7-101 through
82 83-7-117 and pursuant to the contract; or

83 (iii) A natural person who enters into no more
84 than one (1) agreement in a calendar year for the transfer of life
85 insurance policies for any value less than the expected death
86 benefit.

87 (f) "Viator" means the owner of a life insurance policy
88 or a certificate holder under a group policy insuring the life of
89 an individual who enters or seeks to enter into a viatical
90 settlement contract.

91 (g) "Viaticated policy" means a life insurance policy
92 or certificate that has been acquired by a viatical settlement
93 provider pursuant to a viatical settlement contract.

94 (h) "Commissioner" means the Commissioner of Insurance.

95 SECTION 3. (1) A person shall not operate as a viatical
96 settlement provider, viatical settlement representative or
97 viatical settlement broker without first having obtained a license
98 from the commissioner.

99 (2) Application for a viatical settlement representative or
100 viatical settlement broker license shall be made to the

101 commissioner by the applicant on a form prescribed by the
102 commissioner, and these applications shall be accompanied by a fee
103 of Fifty Dollars (\$50.00).

104 (3) Application for a viatical settlement provider license
105 shall be made to the commissioner by the applicant on a form
106 prescribed by the commissioner. All applications shall be
107 accompanied by a fee of Two Hundred Dollars (\$200.00).

108 (4) Licenses may be renewed from year to year on January 1
109 upon payment of the annual renewal fees which shall be the same as
110 the application fees. Failure to pay the fees by the renewal date
111 results in expiration of the license.

112 (5) If an applicant attempting to obtain a license to become
113 a viatical settlement representative or a viatical settlement
114 broker has not been previously licensed within the last two (2)
115 years to sell life insurance, the commissioner shall, as a test of
116 the applicant's knowledge and other qualifications provided
117 herein, require that the applicant submit to a written examination
118 approved by the commissioner.

119 (6) The applicant shall provide information on forms
120 required by the commissioner. The commissioner shall have
121 authority, at any time, to require the applicant to fully disclose
122 the identity of all stockholders, partners, officers, members and
123 employees, and the commissioner may, in the exercise of the
124 commissioner's discretion, refuse to issue a license in the name
125 of a legal entity if not satisfied that any officer, employee,
126 stockholder, partner or member thereof who may materially
127 influence the applicant's conduct meets the standards of this act.

128 (7) Upon the filing of an application and the payment of the
129 license fee, the commissioner shall issue a license if the
130 commissioner finds that the applicant:

131 (a) Has provided a detailed plan of operation;

132 (b) Is competent and trustworthy and intends to act in
133 good faith in the capacity involved by the license applied for;

134 (c) Has a good business reputation and has had
135 experience, training or education so as to be qualified in the
136 business for which the license is applied for; and

137 (d) If a legal entity, provides a certificate of good
138 standing from the state of its domicile.

139 (8) The commissioner shall not issue a license to a
140 nonresident applicant, unless a written designation of an agent
141 for service of process is filed and maintained with the
142 commissioner or the applicant has filed with the commissioner the
143 applicant's written irrevocable consent that any action against
144 the applicant may be begun against the applicant by service of
145 process on the commissioner.

146 SECTION 4. (1) The commissioner may suspend, revoke or
147 refuse to renew the license of a viatical settlement provider,
148 viatical settlement representative or viatical settlement broker
149 if the commissioner finds that:

150 (a) There was any material misrepresentation in the
151 application for the license;

152 (b) The licensee or any officer, partner or key
153 management personnel has been convicted of fraudulent or dishonest
154 practices, is subject to a final administrative action or is
155 otherwise shown to be untrustworthy or incompetent;

156 (c) The viatical settlement provider demonstrates a
157 pattern of unreasonable payments to viators;

158 (d) The licensee has been found guilty of, or has
159 pleaded guilty or nolo contendere to, any felony or to a
160 misdemeanor involving fraud or moral turpitude, regardless of
161 whether a judgment of conviction has been entered by the court;

162 (e) The viatical settlement provider has failed to
163 honor contractual obligations set out in a viatical settlement
164 contract;

165 (f) The licensee no longer meets the requirements for
166 initial licensure;

167 (g) The viatical settlement provider has assigned,
168 transferred or pledged a viaticated policy to a person other than
169 a viatical settlement provider licensed in this state or a
170 financing entity; or

171 (h) The licensee has violated any provision of this
172 act.

173 (2) Before the commissioner shall deny a license application
174 or suspend, revoke or refuse to renew the license of a viatical
175 settlement provider, viatical settlement broker or viatical
176 settlement representative, the commissioner shall conduct a
177 hearing in accordance with Section 25-43-1 et. seq.

178 SECTION 5. A person shall not provide a viator a viatical
179 settlement application, contract or disclosure statement form in
180 this state unless it has been filed with and approved by the
181 commissioner. The commissioner shall disapprove a viatical
182 settlement application, contract or disclosure statement form if,
183 in the commissioner's opinion, the contract or provisions
184 contained therein are unreasonable, contrary to the interests of
185 the public or otherwise misleading or unfair to the viator.

186 SECTION 6. (1) Each viatical settlement provider issued a
187 license under this act shall file with the commissioner on or
188 before March 1 of each year an annual statement containing such
189 information as the commissioner by rule may prescribe.

190 (2) Except as otherwise allowed or required by law, a
191 viatical settlement provider, viatical settlement representative,
192 viatical settlement broker, insurance company, insurance agent,
193 insurance broker, information bureau, rating agency or company, or
194 any other person with actual knowledge of a viator's identity,
195 shall not disclose that identity as a viator to any other person
196 unless the disclosure:

197 (a) Is necessary to effect a viatical settlement
198 between the viator and a viatical settlement provider and the
199 viator has provided prior written consent to the disclosure;

200 (b) Is provided in response to an investigation by the
201 commissioner or any other governmental officer or agency; or

202 (c) Is a term of or condition to the transfer of a
203 viaticated policy by one viatical settlement provider to another
204 viatical settlement provider.

205 SECTION 7. (1) The commissioner, when the commissioner
206 deems it reasonably necessary to protect the interests of the
207 public, may examine the business and affairs of any licensee or
208 applicant for a license. The commissioner may order any licensee
209 or applicant to produce any records, books, files or other
210 information reasonably necessary to ascertain whether or not the
211 licensee or applicant is acting or has acted in violation of the
212 law or otherwise contrary to the interests of the public. The
213 expenses incurred in conducting any examination shall be paid by
214 the licensee or applicant.

215 (2) Names and individual identification data for all viators
216 shall be considered private and confidential information and shall
217 not be disclosed by the commissioner unless required by law.

218 (3) Records of all transactions of viatical settlement
219 contracts shall be maintained by the viatical settlement provider
220 and shall be available to the commissioner for inspection during
221 reasonable business hours. A viatical settlement provider shall
222 maintain records of each viatical settlement until five (5) years
223 after the death of the insured.

224 SECTION 8. (1) A viatical settlement provider, viatical
225 settlement representative or viatical settlement broker shall
226 disclose the following information to the viator no later than the
227 time of application:

228 (a) That possible alternatives exist to viatical
229 settlement contracts for individuals with catastrophic, life
230 threatening or chronic illnesses including any accelerated death
231 benefits offered under the viator's life insurance policy;

232 (b) That some or all of the proceeds of the viatical

233 settlement may be free from federal income tax and from state
234 franchise and income taxes, and that assistance should be sought
235 from a professional tax advisor;

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

238 (d) That receipt of the proceeds of a viatical
239 settlement may adversely effect the viator's eligibility for
240 Medicaid or other government benefits or entitlements, and that
241 advice should be obtained from the appropriate government
242 agencies;

243 (e) That the viator has the right to rescind a viatical
244 settlement contract fifteen (15) calendar days after the receipt
245 of the viatical settlement proceeds by the viator, as provided in
246 Section 9(3) of this act;

247 (f) That funds shall be sent to the viator within two
248 (2) business days after the viatical settlement provider has
249 received the insurer or group administrator's acknowledgment that
250 ownership of the policy or interest in the certificate has been
251 transferred and that the beneficiary has been designated pursuant
252 to the viatical settlement contract; and

253 (g) That entering into a viatical settlement contract
254 may cause other rights or benefits, including conversion rights
255 and waiver of premium benefits that may exist under the policy or
256 certificate, to be forfeited by the viator and that assistance
257 should be sought from a financial adviser.

258 (2) A viatical settlement provider shall disclose the
259 following information to the viator before the date the viatical
260 settlement contract is signed by all parties:

261 (a) The affiliation, if any, that exist between the
262 viatical settlement provider and the issuer of an insurance policy
263 to be viaticated;

264 (b) If an insurance policy to be viaticated has been
265 issued as a joint policy or involves family riders or any coverage

266 of a life other than the insured under the policy to be
267 viaticated, the viator shall be informed of the possible loss of
268 coverage on the other lives and shall be advised to consult with
269 his or her insurance producer or the company issuing the policy
270 for advice on the proposed viatication; and

271 (c) The dollar amount of the current death benefit that
272 is payable to the viatical settlement provider under the policy or
273 certificate. The viatical settlement provider shall also disclose
274 the availability of any additional guaranteed insurance benefits,
275 the dollar amount of any accidental death and dismemberment
276 benefits under the policy or certificate and the viatical
277 settlement provider's interest in those benefits.

278 (3) A viatical settlement provider shall maintain at its
279 home or principal office a copy of every printed, published or
280 prepared advertisement or "invitation to inquire" including any
281 electronic advertising it has used in this state for at least
282 three (3) years. Providers shall also maintain all advertising
283 for any affiliate, associated person, controlling person, broker
284 or agent including independent contracts and escrow agents. Each
285 advertisement or "invitation to inquire" shall contain a notation
286 clearly stating the name of the individual authorizing the
287 advertisement, the dates the advertisements were printed or
288 published and the manner and extent of distribution of each
289 advertisement. A file containing the information set forth in
290 this section shall be available for inspection by the
291 commissioner.

292 SECTION 9. (1) Before the viatical settlement provider
293 enters into a viatical settlement contract, the provider shall
294 obtain:

295 (a) If the viator is the insured, a written statement
296 from a licensed attending physician that the viator is of sound
297 mind;

298 (b) A witnessed document in which the viator consents

299 to the viatical settlement contract, represents that the viator
300 has a full and complete understanding of the viatical settlement
301 contract, that he or she has a full and complete understanding of
302 the benefits of the life insurance policy and acknowledges that he
303 or she has entered into the viatical settlement contract freely
304 and voluntarily; and

305 (c) A document in which the insured consents to the
306 release of his or her medical records to a viatical settlement
307 provider or viatical settlement broker.

308 (2) All medical information solicited or obtained by any
309 licensee shall be subject to the applicable provision of state law
310 relating to confidentiality of medical information.

311 (3) All viatical settlement contracts entered into in this
312 state shall provide the viator with an unconditional right to
313 rescind the contract for at least fifteen (15) calendar days from
314 the receipt of the viatical settlement proceeds. If the insured
315 dies during the rescission period, the viatical settlement
316 contract shall be deemed to have been rescinded, subject to
317 repayment to the viatical settlement provider of all viatical
318 settlement proceeds.

319 (4) Immediately upon the viatical settlement provider's
320 receipt of documents to effect the transfer of the insurance
321 policy, the viatical settlement provider shall pay the proceeds of
322 the viatical settlement to an escrow or trust account in a state
323 or federally chartered financial institution whose deposits are
324 insured by the Federal Deposit Insurance Corporation (FDIC). The
325 account shall be managed by a trustee or escrow agent independent
326 of the parties to the contract. The trustee or escrow agent shall
327 transfer the proceeds to the viator immediately upon the viatical
328 settlement provider's receipt of acknowledgment of the transfer of
329 the insurance policy.

330 (5) Failure to tender consideration to the viator for the
331 viatical settlement contract within the time disclosed under

332 Section 8 (1)(f) of this act renders the viatical settlement
333 contract voidable by the viator for lack of consideration until
334 the time consideration is tendered to and accepted by the viator.

335 (6) Contacts with the insured for the purpose of determining
336 the health status of the insured by the viatical settlement
337 provider, viatical settlement broker or viatical settlement
338 representative after the viatical settlement has occurred shall be
339 made only by the viatical settlement provider or broker licensed
340 in this state and shall be limited to once every three (3) months
341 for insureds with a life expectancy of more than one (1) year, and
342 to no more than one (1) per month for insureds with a life
343 expectancy of one (1) year or less. The viatical settlement
344 representative or broker shall explain the procedure for these
345 contacts at the time the viatical settlement contract is entered
346 into and shall obtain a statement signed by the viator stating
347 that the viator understands these procedures. The limitations set
348 forth in this subsection shall not apply to any contacts with an
349 insured under a viaticated policy for reasons other than
350 determining the insured's health status.

351 SECTION 10. The commissioner may:

352 (a) Promulgate rules and regulations implementing this
353 act;

354 (b) Establish standards for evaluating reasonableness
355 of payments under viatical settlement contracts. This authority
356 includes, but is not limited to, regulation of discount rates used
357 to determine the amount paid in exchange for assignment, transfer,
358 sale, devise or bequest of a benefit under a life insurance
359 policy;

360 (c) Establish appropriate licensing requirements, fees
361 and standards for continued licensure for viatical settlement
362 providers, representatives and brokers;

363 (d) Require a bond or other mechanism for financial
364 accountability for viatical settlement providers; and

365 (e) Adopt rules governing the relationship and
366 responsibilities of both insurers and viatical settlement
367 providers, brokers and representatives during the viatication of a
368 life insurance policy or certificate.

369 SECTION 11. A violation of this act shall be considered an
370 unfair trade practice under Section 83-5-29 et seq. and the
371 violator is subject to the penalties therein.

372 SECTION 12. Section 75-71-105, Mississippi Code of 1972, is
373 amended as follows:[MS1]

374 75-71-105. For the purposes of this chapter the following
375 words shall have the following meanings unless the context shall
376 prescribe otherwise:

377 (a) "Agent" means any individual other than a
378 broker-dealer who represents a broker-dealer or issuer in
379 effecting or attempting to effect purchases or sales of
380 securities. "Agent" does not include an individual who represents
381 (1) an issuer in: (A) effecting transactions in a security
382 exempted by clause (1), (2), (3), (10) or (11) of Section
383 75-71-201; (B) effecting transactions exempted by Section
384 75-71-203; (C) effecting transactions in a covered security as
385 described in Sections 18(b)(3) and 18(b)(4)(D) of the Securities
386 Act of 1933; or (D) effecting transactions with existing
387 employees, partners or directors of the issuer if no commission or
388 other remuneration is paid or given directly or indirectly for
389 soliciting any person in this state; or (2) a broker-dealer in
390 effecting transactions in this state limited to those transactions
391 described in Section 15(h)(2) of the Securities Exchange Act of
392 1934. A partner, officer or director of a broker-dealer or
393 issuer, or a person occupying a similar status or performing
394 similar functions, is an agent only if he otherwise comes within
395 this definition.

396 (b) "Broker-dealer" means any person engaged in the
397 business of effecting transactions in securities for the account

398 of others or for his own account. "Broker-dealer" does not
399 include (1) an agent, (2) an issuer, (3) a bank, savings
400 institution, or trust company, or (4) a person who has no place of
401 business in this state if (A) he effects transactions in this
402 state exclusively with or through (i) the issuers of the
403 securities involved in the transactions, (ii) other
404 broker-dealers, or (iii) banks, savings institutions, trust
405 companies, insurance companies, investment companies as defined in
406 the Investment Company Act of 1940, pension or profit-sharing
407 trusts, or other financial institutions or institutional buyers,
408 whether acting for themselves or as trustees, or (B) during any
409 period of twelve (12) consecutive months he does not direct more
410 than fifteen (15) offers to sell or buy into the State of
411 Mississippi in any manner to persons other than those specified in
412 clause (A) of this subsection, whether or not the offeror or any
413 of the offerees is then present in this state.

414 (c) "Federal covered adviser" means a person who is (1)
415 registered under Section 203 of the Investment Advisers Act of
416 1940; or (2) is excluded from the definition of "investment
417 adviser" under Section 202(a)(11) of the Investment Advisers Act
418 of 1940.

419 (d) "Federal covered security" means any security that
420 is a covered security under Section 18(b) of the Securities Act of
421 1933 or rules or regulations promulgated thereunder.

422 (e) "Fraud," "deceit" and "defraud" are not limited to
423 common-law deceit.

424 (f) "Guaranteed" means guaranteed as to payment of
425 principal, interest or dividends.

426 (g) "Investment adviser" means any person who, for
427 compensation, engages in the business of advising others, either
428 directly or through publications or writings, as to the value of
429 securities or as to the advisability of investing in, purchasing
430 or selling securities or who, for compensation and as a part of a

431 regular business, issues or promulgates analyses or reports
432 concerning securities. "Investment adviser" does not include (1)
433 an investment adviser representative; (2) a bank, savings
434 institution or trust company; (3) a lawyer, accountant, engineer
435 or teacher whose performance of these services is solely
436 incidental to the practice of his profession; (4) a broker-dealer
437 or his agent whose performance of these services is solely
438 incidental to the conduct of his business as a broker-dealer and
439 who receives no special compensation for them; (5) a publisher of
440 any bona fide newspaper, news magazine or business or financial
441 publication of general, regular and paid circulation; (6) a person
442 whose advice, analyses or reports relate only to securities
443 exempted by Section 75-71-201(1); (7) a person who is a federal
444 covered adviser; (8) a person who has no place of business in this
445 state if (A) his only clients in this state are other investment
446 advisers, federal covered advisers, broker-dealers, banks, savings
447 institutions, trust companies, insurance companies, investment
448 companies as defined in the Investment Company Act of 1940,
449 employee benefit plans with assets of not less than One Million
450 Dollars (\$1,000,000.00), governmental agencies or
451 instrumentalities, whether acting for themselves or as trustees
452 with investment control, or other financial institutions or
453 institutional buyers as are designated by rule or order of the
454 Secretary of State, or (B) during the preceding twelve-month
455 period he has had not more than five (5) clients, other than those
456 specified in clause (A) of this subsection, who are residents of
457 this state; or (8) such other persons not within the intent of
458 this subsection as the Secretary of State may by rule or order
459 designate.

460 (h) "Investment adviser representative" means any
461 partner, officer, director of (or a person occupying a similar
462 status or performing similar functions) or other individual,
463 except clerical or ministerial personnel, who is employed by or

464 associated with an investment adviser that is registered or
465 required to be registered under this chapter, or who has a place
466 of business located in this state and is employed by or associated
467 with a federal covered adviser; and who does any of the following:
468 (1) makes any recommendations or otherwise renders advice
469 regarding securities, (2) manages accounts or portfolios of
470 clients, (3) determines which recommendation or advice regarding
471 securities should be given, (4) solicits, offers or negotiates for
472 the sale of or sells investment advisory services, or (5)
473 supervises employees who perform any of the foregoing.

474 (i) "Issuer" means any person who issues or proposes to
475 issue any security, except that (1) with respect to certificates
476 of deposit, voting-trust certificates, or collateral-trust
477 certificates, or with respect to certificates of interest or
478 shares in an unincorporated investment trust not having a board of
479 directors or persons performing similar functions or of the fixed,
480 restricted management or unit type, the term "issuer" means the
481 person or persons performing the acts and assuming the duties of
482 depositor or manager pursuant to the provisions of the trust or
483 other agreement or instrument under which the security is issued;
484 and (2) with respect to certificates of interest or participation
485 in oil, gas or mining titles or leases or in payments out of
486 production under such titles or leases, there is not considered to
487 be any "issuer." With respect to a fractional or pooled interest
488 in a viatical settlement investment contract, "issuer" means the
489 person who creates, for the purpose of sale, the fractional or
490 pooled interest. The issuer of a viatical settlement investment
491 contract that is not fractionalized or pooled means the person
492 effecting the transactions with the investors in such contracts.

493 (j) "Nonissuer" means not directly or indirectly for
494 the benefit of the issuer.

495 (k) "Person" means an individual, a corporation, a
496 partnership, an association, a joint-stock company, a trust where

497 the interests of the beneficiaries are evidenced by a security, an
498 unincorporated organization, a government, or a political
499 subdivision of a government.

500 (1) (1) "Sale" or "sell" includes every contract of
501 sale of, contract to sell, or disposition of, a security or
502 interest in a security for value.

503 (2) "Offer" or "offer to sell" includes every
504 attempt or offer to dispose of, or solicitation of an offer to
505 buy, a security or interest in a security for value.

506 (3) Any security given or delivered with, or as a
507 bonus on account of, any purchase of, securities or any other
508 thing is considered to constitute part of the subject of the
509 purchase and to have been offered and sold for value.

510 (4) A purported gift of assessable stock is
511 considered to involve an offer and sale.

512 (5) Every sale or offer of a warrant or right to
513 purchase or subscribe to another security of the same or another
514 issuer, as well as every sale or offer of a security which gives
515 the holder a present or future right or privilege to convert into
516 another security of the same or another issuer, is considered to
517 include an offer of the other security.

518 (6) The terms defined in this subsection do not
519 include (A) any bona fide pledge or loan; (B) any stock dividend,
520 whether the corporation distributing the dividend is the issuer of
521 the stock or not, if nothing of value is given by stockholders for
522 the dividend other than the surrender of a right to a cash or
523 property dividend when each stockholder may elect to take the
524 dividend in cash or property or in stock; (C) any act incident to
525 a class vote by stockholders, pursuant to the certificate of
526 incorporation or the applicable corporation statute, on a merger,
527 consolidation, reclassification of securities, or sale of
528 corporate assets in consideration of the issuance of securities of
529 another corporation; or (D) any act incident to a judicially

530 approved reorganization in which a security is issued in exchange
531 for one or more outstanding securities, claims or property
532 interests, or partly in such exchange and partly for cash.

533 (m) "Securities Act of 1933," "Securities Exchange Act
534 of 1934," "Public Utility Holding Company Act of 1935," and
535 "Investment Company Act of 1940" mean the federal statutes of
536 those names as amended before or after the effective date of this
537 chapter.

538 (n) "Security" means any note; stock; treasury stock;
539 bond; debenture; evidence of indebtedness; certificate of interest
540 or participation in any profit-sharing agreement; collateral-trust
541 certificate; preorganization certificate or subscription;
542 transferable share; investment contract; voting-trust certificate;
543 certificate of deposit for a security; certificate of interest or
544 participation in an oil, gas or mining title or lease or in
545 payments out of production under such a title or lease; interest
546 in a limited partnership; viatical settlement investment contract
547 or a fractionalized or pooled interest therein; or, in general,
548 any interest or instrument commonly known as a "security," or any
549 certificate of interest or participation in, temporary or interim
550 certificate for, receipt for, guarantee of, or warrant or right to
551 subscribe to or purchase, any of the foregoing. "Security" does
552 not include any insurance or endowment policy or annuity contract
553 under which an insurance company promises to pay a fixed or
554 variable sum of money, or both, either in a lump sum or
555 periodically for life or some other specified period.

556 (o) "State" means any state, territory or possession of
557 the United States, the District of Columbia and Puerto Rico.

558 (p) "Viatical settlement investment contract" means any
559 agreement, regardless of title or caption, for the purchase, sale,
560 assignment, transfer, devise or bequest of any portion of the
561 death benefit or ownership of a life insurance policy or
562 certificate for consideration that is less than the expected death

563 benefit of the life insurance policy or certificate. "Viatical
564 settlement investment contract" does not include:

565 (i) The assignment, transfer, sale, devise or
566 bequest of a death benefit, life insurance policy or certificate
567 of insurance by the viator to the viatical settlement provider
568 under the Viatical Settlements Act created in Senate Bill No.
569 3000, 2000 Regular Session;

570 (ii) The assignment of a life insurance policy to
571 a bank, savings bank, savings and loan association, credit union
572 or other licensed lending institution as collateral for a loan; or

573 (iii) The exercise of accelerated benefits under
574 the terms of a life insurance policy issued in accordance with the
575 insurance laws of this state.

576 SECTION 13. A viatical settlement provider, viatical
577 settlement representative or viatical settlement broker
578 transacting business in this state may continue to do so pending
579 approval or disapproval of the provider's, representative's or
580 broker's application for a license if the application is filed
581 with the commissioner by July 1, 2000.

582 SECTION 14. This act shall take effect and be in force from
583 and after July 1, 2000.