

By: Stevens, Montgomery (74th)

To: Insurance

HOUSE BILL NO. 829

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 PROVIDES,  
 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 the  
103 fees specified in Section 27-15-93.

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 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 viatical settlement provider enters  
293 into a viatical settlement contract, the provider shall obtain:

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

297 (b) A witnessed document in which the viator consents  
298 to the viatical settlement contract, represents that the viator  
299 has a full and complete understanding of the viatical settlement  
300 contract, that he or she has a full and complete understanding of  
301 the benefits of the life insurance policy and acknowledges that he  
302 or she has entered into the viatical settlement contract freely  
303 and voluntarily; and

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

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

310 (3) All viatical settlement contracts entered into in this  
311 state shall provide the viator with an unconditional right to  
312 rescind the contract for at least fifteen (15) calendar days from

313 the receipt of the viatical settlement proceeds. If the insured  
314 dies during the rescission period, the viatical settlement  
315 contract shall be deemed to have been rescinded, subject to  
316 repayment to the viatical settlement provider of all viatical  
317 settlement proceeds.

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

329 (5) Failure to tender consideration to the viator for the  
330 viatical settlement contract within the time disclosed under  
331 Section 8 (1)(f) of this act renders the viatical settlement  
332 contract voidable by the viator for lack of consideration until  
333 the time consideration is tendered to and accepted by the viator.

334 (6) Contacts with the insured for the purpose of determining  
335 the health status of the insured by the viatical settlement  
336 provider, viatical settlement broker or viatical settlement  
337 representative after the viatical settlement has occurred shall be  
338 made only by the viatical settlement provider or broker licensed  
339 in this state and shall be limited to once every three (3) months  
340 for insureds with a life expectancy of more than one (1) year, and

341 to no more than one (1) per month for insureds with a life  
342 expectancy of one (1) year or less. The viatical settlement  
343 representative or broker shall explain the procedure for these  
344 contacts at the time the viatical settlement contract is entered  
345 into and shall obtain a statement signed by the viator stating  
346 that the viator understands these procedures. The limitations set  
347 forth in this subsection shall not apply to any contacts with an  
348 insured under a viaticated policy for reasons other than  
349 determining the insured's health status.

350 SECTION 10. The commissioner may:

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

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

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

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

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

368 SECTION 11. A violation of this act shall be considered an

369 unfair trade practice under Section 83-5-29 et seq. and the  
370 violator is subject to the penalties therein.

371 SECTION 12. Section 75-71-105, Mississippi Code of 1972, is  
372 amended as follows:

373 75-71-105. For the purposes of this chapter the following  
374 words shall have the following meanings unless the context shall  
375 prescribe otherwise:

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

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

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

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

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

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

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

425           (g) "Investment adviser" means any person who, for  
426 compensation, engages in the business of advising others, either  
427 directly or through publications or writings, as to the value of  
428 securities or as to the advisability of investing in, purchasing  
429 or selling securities or who, for compensation and as a part of a  
430 regular business, issues or promulgates analyses or reports  
431 concerning securities. "Investment adviser" does not include (1)  
432 an investment adviser representative; (2) a bank, savings  
433 institution or trust company; (3) a lawyer, accountant, engineer  
434 or teacher whose performance of these services is solely  
435 incidental to the practice of his profession; (4) a broker-dealer  
436 or his agent whose performance of these services is solely  
437 incidental to the conduct of his business as a broker-dealer and  
438 who receives no special compensation for them; (5) a publisher of  
439 any bona fide newspaper, news magazine or business or financial  
440 publication of general, regular and paid circulation; (6) a person  
441 whose advice, analyses or reports relate only to securities  
442 exempted by Section 75-71-201(1); (7) a person who is a federal  
443 covered adviser; (8) a person who has no place of business in this  
444 state if (A) his only clients in this state are other investment  
445 advisers, federal covered advisers, broker-dealers, banks, savings  
446 institutions, trust companies, insurance companies, investment  
447 companies as defined in the Investment Company Act of 1940,  
448 employee benefit plans with assets of not less than One Million  
449 Dollars (\$1,000,000.00), governmental agencies or  
450 instrumentalities, whether acting for themselves or as trustees  
451 with investment control, or other financial institutions or  
452 institutional buyers as are designated by rule or order of the



453 Secretary of State, or (B) during the preceding twelve-month  
454 period he has had not more than five (5) clients, other than those  
455 specified in clause (A) of this subsection, who are residents of  
456 this state; or (8) such other persons not within the intent of  
457 this subsection as the Secretary of State may by rule or order  
458 designate.

459 (h) "Investment adviser representative" means any  
460 partner, officer, director of (or a person occupying a similar  
461 status or performing similar functions) or other individual,  
462 except clerical or ministerial personnel, who is employed by or  
463 associated with an investment adviser that is registered or  
464 required to be registered under this chapter, or who has a place  
465 of business located in this state and is employed by or associated  
466 with a federal covered adviser; and who does any of the following:

467 (1) makes any recommendations or otherwise renders advice  
468 regarding securities, (2) manages accounts or portfolios of  
469 clients, (3) determines which recommendation or advice regarding  
470 securities should be given, (4) solicits, offers or negotiates for  
471 the sale of or sells investment advisory services, or (5)  
472 supervises employees who perform any of the foregoing.

473 (i) "Issuer" means any person who issues or proposes to  
474 issue any security, except that (1) with respect to certificates  
475 of deposit, voting-trust certificates, or collateral-trust  
476 certificates, or with respect to certificates of interest or  
477 shares in an unincorporated investment trust not having a board of  
478 directors or persons performing similar functions or of the fixed,  
479 restricted management or unit type, the term "issuer" means the  
480 person or persons performing the acts and assuming the duties of

481 depositor or manager pursuant to the provisions of the trust or  
482 other agreement or instrument under which the security is issued;  
483 and (2) with respect to certificates of interest or participation  
484 in oil, gas or mining titles or leases or in payments out of  
485 production under such titles or leases, there is not considered to  
486 be any "issuer." With respect to a fractional or pooled interest  
487 in a viatical settlement investment contract, "issuer" means the  
488 person who creates, for the purpose of sale, the fractional or  
489 pooled interest. The issuer of a viatical settlement investment  
490 contract that is not fractionalized or pooled means the person  
491 effecting the transactions with the investors in such contracts.

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

494 (k) "Person" means an individual, a corporation, a  
495 partnership, an association, a joint-stock company, a trust where  
496 the interests of the beneficiaries are evidenced by a security, an  
497 unincorporated organization, a government, or a political  
498 subdivision of a government.

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

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

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

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

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

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

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

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

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

557           (p) "Viatical settlement investment contract" means any  
558 agreement, regardless of title or caption, for the purchase, sale,  
559 assignment, transfer, devise or bequest of any portion of the  
560 death benefit or ownership of a life insurance policy or  
561 certificate for consideration that is less than the expected death  
562 benefit of the life insurance policy or certificate. "Viatical  
563 settlement investment contract" does not include:

564           (i) The assignment, transfer, sale, devise or

565 bequest of a death benefit, life insurance policy or certificate  
566 of insurance by the viator to the viatical settlement provider  
567 under the Viatical Settlements Act created in House Bill No. \_\_\_\_\_,  
568 2000 Regular Session;

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

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

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

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