

By: Kirby, Carlton

To: Insurance

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 3000

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,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Has provided a detailed plan of operation;
- (b) Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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

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

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

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

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

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

(b) A witnessed document in which the viator consents

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

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

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

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

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

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

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

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

SECTION 10. The commissioner may:

(a) Promulgate rules and regulations implementing this act;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(g) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing 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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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