

SENATE BILL 439

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C4

2004 Regular Session
(4r1484)

ENROLLED BILL
-- Finance/Health and Government Operations --

Introduced by **Senator Kelley**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Insurance - Viatical Settlement Providers and Viatical Settlement Brokers**

3 FOR the purpose of requiring viatical settlement providers and viatical settlement
4 brokers to register with the Maryland Insurance Commissioner under certain
5 circumstances; providing that this Act applies only to certain contracts between
6 viators and viatical settlement providers; establishing certain registration
7 requirements; requiring viatical settlement providers and viatical settlement
8 brokers to make certain disclosures in a certain manner to viators under certain
9 circumstances; providing for renewal of registrations; authorizing the
10 Commissioner to deny a registration to an applicant or refuse to renew, suspend,
11 or revoke a registration under certain circumstances; authorizing the
12 Commissioner to impose a certain penalty or require restitution under certain
13 circumstances; establishing certain violations of this Act; clarifying who is
14 eligible to negotiate viatical settlement contracts between a viator and one or
15 more settlement providers; requiring viatical settlement contracts and
16 applications for viatical settlement contracts to contain a certain statement;
17 providing that the absence of a certain statement does not constitute a certain

1 defense; providing that it is a fraudulent insurance act for a person knowingly or
 2 willfully to present, or cause to be presented, certain documentation or a certain
 3 statement with knowledge that the documentation or statement contains certain
 4 false or misleading information; requiring certain persons to report suspected
 5 insurance fraud under certain circumstances and in a certain manner; providing
 6 that certain information, documentation, or evidence provided by a viatical
 7 settlement provider or a viatical settlement broker in connection with an
 8 investigation of suspected insurance fraud is not subject to public inspection
 9 under certain circumstances; requiring a viatical settlement provider to have in
 10 place a certain antifraud plan, notify the Commissioner in writing within a
 11 certain timeframe after instituting or modifying the antifraud plan, and file its
 12 antifraud plan with the Commissioner; specifying certain items to be included in
 13 the antifraud plan; providing for the confidentiality of the antifraud plan;
 14 providing for the approval and disapproval of the antifraud plan and for
 15 submission of a new antifraud plan under certain circumstances; allowing
 16 viatical settlement providers and viatical settlement brokers transacting
 17 business in this State on the effective date of this Act to continue to transact
 18 business in this State without being registered until a certain time under
 19 certain circumstances; authorizing certain individuals to act as viatical
 20 settlement brokers notwithstanding certain provisions of this Act, under certain
 21 circumstances; defining certain terms; requiring the Maryland Insurance
 22 Administration to report to certain committees of the General Assembly at a
 23 certain time; and generally relating to viatical settlement providers and viatical
 24 settlement brokers under insurance.

25 BY adding to

26 Article - Insurance
 27 Section 8-601 through ~~8-610~~ 8-611, inclusive, to be under the new subtitle
 28 "Subtitle 6. Viatical Settlement Providers and Viatical Settlement
 29 Brokers"
 30 Annotated Code of Maryland
 31 (2003 Replacement Volume)

32 BY repealing and reenacting, with amendments,

33 Article - Insurance
 34 Section 27-403, 27-802, and 27-804
 35 Annotated Code of Maryland
 36 (2002 Replacement Volume and 2003 Supplement)

37 BY adding to

38 Article - Insurance
 39 Section 27-804
 40 Annotated Code of Maryland
 41 (2002 Replacement Volume and 2003 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Insurance**

4 SUBTITLE 6. VIATICAL SETTLEMENT PROVIDERS AND VIATICAL SETTLEMENT
5 BROKERS.

6 8-601.

7 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
8 INDICATED.

9 (B) "ACTIVITIES OF DAILY LIVING" INCLUDES BATHING, CONTINENCE,
10 DRESSING, EATING, TOILETING, AND TRANSFERRING.

11 (C) "CHRONICALLY ILL" MEANS THAT AN INDIVIDUAL:

12 (1) IS UNABLE TO PERFORM AT LEAST TWO ACTIVITIES OF DAILY
13 LIVING;

14 (2) REQUIRES SUBSTANTIAL SUPERVISION TO PROTECT THE
15 INDIVIDUAL FROM THREATS TO HEALTH AND SAFETY DUE TO SEVERE COGNITIVE
16 IMPAIRMENT; OR

17 (3) HAS A LEVEL OF DISABILITY SIMILAR TO THAT DESCRIBED IN ITEM
18 (1) OF THIS SUBSECTION.

19 (D) "CREDIT ENHANCER" INCLUDES AN AUTHORIZED INSURER THAT
20 PROVIDES TO A VIATICAL SETTLEMENT PROVIDER STOP LOSS COVERAGE, AN
21 ANNUITY POLICY, AN INSURANCE POLICY, OR SIMILAR COVERAGE.

22 (E) "FINANCING ENTITY" MEANS A PERSON:

23 (1) THAT IS AN UNDERWRITER, A PLACEMENT AGENT, A LENDER, A
24 PURCHASER OF SECURITIES, A PURCHASER OF A POLICY OR CERTIFICATE FROM A
25 VIATICAL SETTLEMENT PROVIDER, A CREDIT ENHANCER, OR AN ENTITY THAT HAS A
26 DIRECT OWNERSHIP INTEREST IN A POLICY OR CERTIFICATE THAT IS THE SUBJECT
27 OF A VIATICAL SETTLEMENT CONTRACT; AND

28 (2) (I) WHOSE PRINCIPAL ACTIVITY RELATED TO THE TRANSACTION
29 IS PROVIDING FUNDS TO EFFECT THE VIATICAL SETTLEMENT OR PURCHASE OF ONE
30 OR MORE VIATICATED POLICIES;

31 (II) THAT HAS AN AGREEMENT IN WRITING WITH ONE OR MORE
32 REGISTERED VIATICAL SETTLEMENT PROVIDERS TO FINANCE THE ACQUISITION OF
33 VIATICAL SETTLEMENT CONTRACTS; OR

34 (III) THAT IS A QUALIFIED INSTITUTIONAL BUYER, AS THAT TERM IS
35 DEFINED IN RULE 144A OF THE FEDERAL SECURITIES ACT OF 1933.

1 ~~(F)~~ (F) "FRAUDULENT VIATICAL SETTLEMENT ACT" MEANS A FRAUDULENT
 2 INSURANCE ACT AS DESCRIBED IN § 27-403(6) OF THIS ARTICLE.

3 ~~(F)~~ (G) "POLICY" MEANS AN INDIVIDUAL OR GROUP POLICY, GROUP
 4 CERTIFICATE, CONTRACT, OR ARRANGEMENT OF LIFE INSURANCE THAT AFFECTS
 5 THE RIGHTS OF A RESIDENT OF THE STATE OR THAT BEARS A REASONABLE
 6 RELATION TO THE STATE, REGARDLESS OF WHETHER DELIVERED OR ISSUED FOR
 7 DELIVERY IN THE STATE.

8 ~~(G)~~ (H) "RELATED PROVIDER TRUST" MEANS A TITLING TRUST OR OTHER
 9 TRUST THAT:

10 (1) IS ESTABLISHED BY A REGISTERED VIATICAL SETTLEMENT
 11 PROVIDER OR A FINANCING ENTITY FOR THE SOLE PURPOSE OF HOLDING THE
 12 OWNERSHIP OR BENEFICIAL INTEREST IN PURCHASED POLICIES IN CONNECTION
 13 WITH A FINANCING TRANSACTION; AND

14 (2) HAS A WRITTEN AGREEMENT WITH THE REGISTERED VIATICAL
 15 SETTLEMENT PROVIDER UNDER WHICH:

16 (I) THE VIATICAL SETTLEMENT PROVIDER IS RESPONSIBLE FOR
 17 ENSURING COMPLIANCE WITH ALL STATUTORY AND REGULATORY REQUIREMENTS;
 18 AND

19 (II) THE TRUST AGREES TO MAKE ALL RECORDS AND FILES
 20 RELATED TO VIATICAL SETTLEMENT TRANSACTIONS AVAILABLE TO THE
 21 COMMISSIONER AS IF THOSE RECORDS AND FILES WERE MAINTAINED DIRECTLY BY
 22 THE REGISTERED VIATICAL SETTLEMENT PROVIDER.

23 ~~(H)~~ (I) "SPECIAL PURPOSE ENTITY" MEANS A CORPORATION, PARTNERSHIP,
 24 TRUST, LIMITED LIABILITY COMPANY, OR OTHER SIMILAR ENTITY FORMED SOLELY
 25 TO PROVIDE, EITHER DIRECTLY OR INDIRECTLY, ACCESS TO INSTITUTIONAL CAPITAL
 26 MARKETS FOR A FINANCING ENTITY OR A REGISTERED VIATICAL SETTLEMENT
 27 PROVIDER.

28 ~~(I)~~ (J) "TERMINALLY ILL" MEANS THAT AN INDIVIDUAL HAS AN ILLNESS OR
 29 SICKNESS THAT CAN REASONABLY BE EXPECTED TO RESULT IN DEATH IN 24
 30 MONTHS OR LESS.

31 ~~(J)~~ (K) (1) "VIATICAL SETTLEMENT BROKER" MEANS ~~A PERSON THAT~~ AN
 32 INSURANCE PRODUCER WHO:

33 (I) IS LICENSED UNDER TITLE 10, SUBTITLE 1 OF THIS ARTICLE TO
 34 SELL LIFE INSURANCE; AND

35 (II) ON BEHALF OF A VIATOR AND FOR A FEE, COMMISSION, OR
 36 OTHER VALUABLE CONSIDERATION OFFERS OR ATTEMPTS TO NEGOTIATE VIATICAL
 37 SETTLEMENT CONTRACTS BETWEEN A VIATOR AND ONE OR MORE VIATICAL
 38 SETTLEMENT PROVIDERS.

1 (2) "VIATICAL SETTLEMENT BROKER" DOES NOT INCLUDE:

2 ~~(H)~~ (H) AN ATTORNEY, CERTIFIED PUBLIC ACCOUNTANT, OR
3 FINANCIAL PLANNER ACCREDITED BY A NATIONALLY RECOGNIZED ACCREDITATION
4 AGENCY, WHO IS RETAINED TO REPRESENT THE VIATOR AND WHOSE
5 COMPENSATION IS NOT PAID DIRECTLY OR INDIRECTLY BY THE VIATICAL
6 SETTLEMENT PROVIDER; ~~OR~~

7 ~~(H)~~ (H) AN INDIVIDUAL WHO, ON BEHALF OF A VIATOR AND FOR A FEE,
8 COMMISSION, OR OTHER VALUABLE CONSIDERATION, OFFERS OR ATTEMPTS TO
9 NEGOTIATE NO MORE THAN ONE VIATICAL SETTLEMENT CONTRACT BETWEEN A
10 VIATOR AND ONE OR MORE VIATICAL SETTLEMENT PROVIDERS IN A CALENDAR
11 YEAR.

12 ~~(K)~~ (L) (1) "VIATICAL SETTLEMENT CONTRACT" MEANS A WRITTEN
13 AGREEMENT THAT ESTABLISHES THE TERMS UNDER WHICH COMPENSATION OR
14 ANYTHING OF VALUE WILL BE PAID, WHICH COMPENSATION OR VALUE IS LESS
15 THAN THE EXPECTED DEATH BENEFIT OF THE POLICY, IN RETURN FOR THE
16 VIATOR'S ASSIGNMENT, TRANSFER, SALE, DEVISE, OR BEQUEST OF THE DEATH
17 BENEFIT OR OWNERSHIP OF ANY PART OF THE POLICY.

18 (2) "VIATICAL SETTLEMENT CONTRACT" INCLUDES:

19 (I) A CONTRACT FOR A LOAN OR OTHER FINANCING TRANSACTION
20 WITH A VIATOR SECURED PRIMARILY BY A POLICY, OTHER THAN A LOAN BY A LIFE
21 INSURER UNDER THE TERMS OF THE POLICY OR A LOAN SECURED BY THE CASH
22 VALUE OF A POLICY; AND

23 (II) AN AGREEMENT WITH A VIATOR TO TRANSFER OWNERSHIP OR
24 CHANGE THE BENEFICIARY DESIGNATION AT A LATER DATE REGARDLESS OF THE
25 DATE THAT COMPENSATION IS PAID TO THE VIATOR.

26 (3) "VIATICAL SETTLEMENT CONTRACT" DOES NOT INCLUDE A
27 CONTRACT ENTERED INTO OR EFFECTUATED BETWEEN A VIATICAL SETTLEMENT
28 PROVIDER AND A FINANCING ENTITY, A RELATED PROVIDER TRUST, OR A SPECIAL
29 PURPOSE ENTITY.

30 ~~(L)~~ (M) (1) "VIATICAL SETTLEMENT PROVIDER" MEANS A PERSON, OTHER
31 THAN A VIATOR, THAT ENTERS INTO OR EFFECTUATES A VIATICAL SETTLEMENT
32 CONTRACT.

33 (2) "VIATICAL SETTLEMENT PROVIDER" DOES NOT INCLUDE AN
34 INDIVIDUAL WHO ENTERS INTO OR EFFECTUATES NO MORE THAN ONE AGREEMENT
35 IN A CALENDAR YEAR FOR THE TRANSFER OF POLICIES FOR ANY VALUE LESS THAN
36 THE EXPECTED DEATH BENEFIT.

37 ~~(M)~~ (N) "VIATICATED POLICY" MEANS A POLICY THAT HAS BEEN ACQUIRED
38 BY A VIATICAL SETTLEMENT PROVIDER UNDER A VIATICAL SETTLEMENT CONTRACT.

1 ~~(N)~~ (O) (1) "VIATOR" MEANS THE OWNER OR CERTIFICATE HOLDER OF A
2 POLICY WHO ENTERS OR SEEKS TO ENTER INTO A VIATICAL SETTLEMENT
3 CONTRACT.

4 (2) "VIATOR" DOES NOT INCLUDE AN ACCREDITED INVESTOR OR
5 QUALIFIED INSTITUTIONAL BUYER, AS DEFINED IN REGULATION D, RULE 501, OR
6 RULE 144A OF THE FEDERAL SECURITIES ACT OF 1933.

7 8-602.

8 THIS SUBTITLE APPLIES ONLY TO A VIATICAL SETTLEMENT CONTRACT
9 BETWEEN A VIATOR AND A VIATICAL SETTLEMENT PROVIDER.

10 8-603.

11 (A) A PERSON MUST REGISTER WITH THE COMMISSIONER BEFORE THE
12 PERSON ACTS AS OR REPRESENTS ITSELF AS A VIATICAL SETTLEMENT PROVIDER ~~OR~~
13 ~~VIATICAL SETTLEMENT BROKER~~ IN THE STATE.

14 (B) (1) EXCEPT FOR AN INDIVIDUAL LISTED IN § 8-601(K)(2) OF THIS
15 SUBTITLE, ONLY AN INDIVIDUAL WHO IS A VIATICAL SETTLEMENT BROKER MAY
16 NEGOTIATE VIATICAL SETTLEMENT CONTRACTS BETWEEN A VIATOR AND ONE OR
17 MORE SETTLEMENT PROVIDERS.

18 (2) NOT LATER THAN 30 DAYS AFTER NEGOTIATING A VIATICAL
19 SETTLEMENT CONTRACT ON BEHALF OF A VIATOR, A VIATICAL SETTLEMENT
20 BROKER SHALL REGISTER WITH THE COMMISSIONER IN ACCORDANCE WITH § 8-604
21 OF THIS SUBTITLE.

22 ~~(B)~~ (C) EMPLOYEES AND AGENTS OF A REGISTERED VIATICAL SETTLEMENT
23 PROVIDER OR A REGISTERED VIATICAL SETTLEMENT BROKER MAY NOT BE
24 REQUIRED TO BE SEPARATELY REGISTERED EXCEPT IN ACCORDANCE WITH
25 REGULATIONS ADOPTED BY THE COMMISSIONER.

26 8-604.

27 AN APPLICANT FOR REGISTRATION SHALL:

28 (1) FILE WITH THE COMMISSIONER AN APPLICATION ON THE FORM
29 THAT THE COMMISSIONER REQUIRES; AND

30 (2) PAY TO THE COMMISSIONER A REGISTRATION FEE SET BY THE
31 COMMISSIONER.

32 8-605.

33 (A) NOTWITHSTANDING THE MANNER IN WHICH THE VIATICAL SETTLEMENT
34 BROKER IS COMPENSATED, A VIATICAL SETTLEMENT BROKER IS DEEMED TO
35 REPRESENT ONLY THE VIATOR AND OWES A FIDUCIARY DUTY TO THE VIATOR TO

1 ACT ACCORDING TO THE VIATOR'S INSTRUCTIONS AND IN THE BEST INTEREST OF
2 THE VIATOR.

3 (B) FOR PURPOSES OF THIS SUBTITLE, A VIATOR MAY NOT BE LIMITED TO AN
4 OWNER OR CERTIFICATE HOLDER OF A POLICY THAT INSURES THE LIFE OF AN
5 INDIVIDUAL ~~WITH A TERMINAL OR CHRONIC ILLNESS OR CONDITION WHO IS~~
6 TERMINALLY ILL OR CHRONICALLY ILL.

7 8-606.

8 (A) BEFORE AN OFFER TO PURCHASE A POLICY CAN BE MADE TO A VIATOR, A
9 VIATICAL SETTLEMENT PROVIDER SHALL:

10 (1) PROVIDE THE VIATOR WITH A DISCLOSURE STATEMENT THAT:

11 (I) CONTAINS THE DISCLOSURES REQUIRED IN SUBSECTIONS (B)
12 AND (C) OF THIS SECTION; AND

13 (II) HAS BEEN SIGNED BY THE VIATICAL SETTLEMENT PROVIDER;
14 AND

15 (2) RECEIVE FROM THE VIATOR THE DISCLOSURE STATEMENT SIGNED
16 BY THE VIATOR.

17 (B) BEFORE AN OFFER TO PURCHASE A POLICY CAN BE MADE TO THE VIATOR,
18 A VIATICAL SETTLEMENT PROVIDER SHALL PROVIDE TO THE VIATOR A DISCLOSURE
19 STATEMENT THAT CONTAINS THE FOLLOWING DISCLOSURES:

20 (1) THERE ARE POSSIBLE ALTERNATIVES TO VIATICAL SETTLEMENT
21 CONTRACTS, INCLUDING ANY ACCELERATED DEATH BENEFITS OR POLICY LOANS
22 OFFERED UNDER THE VIATOR'S POLICY;

23 (2) SOME OR ALL OF THE PROCEEDS OF THE VIATICAL SETTLEMENT
24 MAY BE TAXABLE UNDER FEDERAL OR STATE INCOME TAX LAW, AND ASSISTANCE
25 SHOULD BE SOUGHT FROM A PROFESSIONAL TAX ADVISER;

26 (3) PROCEEDS OF THE VIATICAL SETTLEMENT COULD BE SUBJECT TO
27 THE CLAIMS OF CREDITORS;

28 (4) RECEIPT OF THE PROCEEDS OF A VIATICAL SETTLEMENT MAY
29 ADVERSELY AFFECT THE VIATOR'S ELIGIBILITY FOR MEDICAID OR OTHER
30 GOVERNMENT BENEFITS OR ENTITLEMENTS, AND ADVICE SHOULD BE OBTAINED
31 FROM THE APPROPRIATE GOVERNMENT AGENCIES;

32 (5) (I) THE VIATOR HAS THE RIGHT TO RESCIND A VIATICAL
33 SETTLEMENT CONTRACT FOR 15 CALENDAR DAYS AFTER RECEIPT OF THE VIATICAL
34 SETTLEMENT PROCEEDS BY THE VIATOR, SUBJECT TO REPAYMENT OF ALL VIATICAL
35 SETTLEMENT PROCEEDS AND ANY PREMIUMS AND LOAN INTEREST PAID BY THE
36 VIATICAL SETTLEMENT PROVIDER; AND

1 (II) IF THE INSURED DIES DURING THE RESCISSION PERIOD, THE
2 VIATICAL SETTLEMENT CONTRACT SHALL BE DEEMED TO HAVE BEEN RESCINDED,
3 SUBJECT TO REPAYMENT OF ALL VIATICAL SETTLEMENT PROCEEDS AND ANY
4 PREMIUMS, LOANS, AND LOAN INTEREST TO THE VIATICAL SETTLEMENT PROVIDER;

5 (6) FUNDS WILL BE SENT TO THE VIATOR WITHIN 3 BUSINESS DAYS
6 AFTER THE VIATICAL SETTLEMENT PROVIDER HAS RECEIVED THE INSURER'S OR
7 GROUP ADMINISTRATOR'S ACKNOWLEDGMENT THAT OWNERSHIP OF OR INTEREST
8 IN THE POLICY HAS BEEN TRANSFERRED AND THE BENEFICIARY HAS BEEN
9 DESIGNATED;

10 (7) ENTERING INTO A VIATICAL SETTLEMENT CONTRACT MAY CAUSE
11 OTHER RIGHTS OR BENEFITS, INCLUDING CONVERSION RIGHTS AND WAIVER OF
12 PREMIUM BENEFITS THAT MAY EXIST UNDER THE POLICY, TO BE FORFEITED BY THE
13 VIATOR, AND ASSISTANCE SHOULD BE SOUGHT FROM A FINANCIAL ADVISER; AND

14 (8) (I) THE INSURED MAY BE CONTACTED BY EITHER THE VIATICAL
15 SETTLEMENT PROVIDER OR THE VIATICAL SETTLEMENT BROKER OR ITS
16 AUTHORIZED REPRESENTATIVE FOR THE PURPOSE OF DETERMINING THE
17 INSURED'S HEALTH STATUS; AND

18 (II) THIS CONTACT IS LIMITED TO:

19 1. ONCE EVERY 3 MONTHS IF THE INSURED HAS A LIFE
20 EXPECTANCY OF MORE THAN 1 YEAR; AND

21 2. NOT MORE THAN ONCE PER MONTH IF THE INSURED HAS
22 A LIFE EXPECTANCY OF 1 YEAR OR LESS.

23 (C) (1) DISCLOSURE TO A VIATOR ALSO SHALL INCLUDE DISTRIBUTION OF A
24 BROCHURE THAT DESCRIBES THE PROCESS OF VIATICAL SETTLEMENTS.

25 (2) THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
26 FORM FOR THE BROCHURE SHALL BE USED UNLESS A BROCHURE IS ~~DEVELOPED BY:~~

27 (I) DEVELOPED BY THE COMMISSIONER; OR

28 (II) DEVELOPED BY A VIATICAL SETTLEMENT BROKER OR VIATICAL
29 SETTLEMENT PROVIDER THAT IS AND APPROVED BY THE COMMISSIONER.

30 (D) THE DISCLOSURE ~~DOCUMENT STATEMENT~~ SHALL CONTAIN THE
31 FOLLOWING LANGUAGE: "ALL MEDICAL, FINANCIAL, OR PERSONAL INFORMATION
32 SOLICITED OR OBTAINED BY A VIATICAL SETTLEMENT PROVIDER OR VIATICAL
33 SETTLEMENT BROKER ABOUT AN INSURED, INCLUDING THE INSURED'S IDENTITY OR
34 THE IDENTITY OF FAMILY MEMBERS, A SPOUSE, OR A SIGNIFICANT OTHER MAY BE
35 DISCLOSED AS NECESSARY TO EFFECT THE VIATICAL SETTLEMENT BETWEEN THE
36 VIATOR AND THE VIATICAL SETTLEMENT PROVIDER. IF YOU ARE ASKED TO PROVIDE
37 THIS INFORMATION, YOU WILL BE ASKED TO CONSENT TO THE DISCLOSURE. THE
38 INFORMATION MAY BE PROVIDED TO SOMEONE WHO BUYS THE POLICY OR

1 PROVIDES FUNDS FOR THE PURCHASE. YOU MAY BE ASKED TO RENEW YOUR
2 PERMISSION TO SHARE INFORMATION EVERY 2 YEARS."

3 (E) A VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT BROKER
4 SHALL PROVIDE THE VIATOR WITH A COPY OF THE DISCLOSURE STATEMENT SIGNED
5 BY THE VIATOR AND THE VIATICAL SETTLEMENT PROVIDER OR VIATICAL
6 SETTLEMENT BROKER, AT THE TIME THAT AN APPLICATION FOR A VIATICAL
7 SETTLEMENT CONTRACT IS PROVIDED TO THE VIATOR.

8 (F) (1) A VIATICAL SETTLEMENT PROVIDER SHALL PROVIDE THE VIATOR
9 WITH AT LEAST THE DISCLOSURES REQUIRED BY THIS SUBSECTION NO LATER THAN
10 THE DATE THAT THE VIATICAL SETTLEMENT CONTRACT IS SIGNED BY ALL PARTIES.

11 (2) THE DISCLOSURES SHALL BE CONSPICUOUSLY DISPLAYED IN THE
12 VIATICAL SETTLEMENT CONTRACT OR IN A SEPARATE DOCUMENT SIGNED BY THE
13 VIATOR AND THE VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT
14 BROKER.

15 (3) THE DISCLOSURES REQUIRED UNDER THIS SUBSECTION SHALL
16 PROVIDE THE FOLLOWING INFORMATION:

17 (I) A STATEMENT OF THE AFFILIATION, IF ANY, BETWEEN THE
18 VIATICAL SETTLEMENT BROKER, VIATICAL SETTLEMENT PROVIDER, AND THE
19 INSURER THAT ISSUED THE POLICY TO BE VIATICATED;

20 (II) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE
21 VIATICAL SETTLEMENT PROVIDER;

22 (III) A DISCLOSURE BY THE VIATICAL SETTLEMENT BROKER OF THE
23 AMOUNT AND METHOD OF CALCULATING THE VIATICAL SETTLEMENT BROKER'S
24 COMPENSATION, INCLUDING ANYTHING OF VALUE PAID OR GIVEN TO A VIATICAL
25 SETTLEMENT BROKER FOR THE PLACEMENT OF A POLICY;

26 (IV) IF THE POLICY TO BE VIATICATED HAS BEEN ISSUED AS A
27 JOINT POLICY OR INVOLVES FAMILY RIDERS OR ANY COVERAGE OF A LIFE OTHER
28 THAN THE INSURED UNDER THE POLICY TO BE VIATICATED, THE VIATOR SHALL BE
29 INFORMED OF THE POSSIBLE LOSS OF COVERAGE ON THE OTHER LIVES UNDER THE
30 POLICY AND SHALL BE ADVISED TO CONSULT WITH AN INSURANCE PRODUCER OR
31 THE INSURER ISSUING THE POLICY FOR ADVICE ON THE PROPOSED VIATICAL
32 SETTLEMENT;

33 (V) 1. THE DOLLAR AMOUNT OF THE CURRENT DEATH BENEFIT
34 PAYABLE TO THE VIATICAL SETTLEMENT PROVIDER UNDER THE POLICY; AND

35 2. IF KNOWN, THE AVAILABILITY OF ANY ADDITIONAL
36 GUARANTEED INSURANCE BENEFITS, THE DOLLAR AMOUNT OF ANY ACCIDENTAL
37 DEATH AND DISMEMBERMENT BENEFITS UNDER THE POLICY, AND THE VIATICAL
38 SETTLEMENT PROVIDER'S INTEREST IN THOSE BENEFITS; AND

1 (VI) 1. THE NAME, BUSINESS ADDRESS, AND TELEPHONE
2 NUMBER OF THE INDEPENDENT THIRD PARTY ESCROW AGENT; AND

3 2. THE FACT THAT THE VIATOR OR OWNER MAY INSPECT OR
4 RECEIVE COPIES OF THE RELEVANT ESCROW OR TRUST AGREEMENTS OR
5 DOCUMENTS.

6 (G) IF THE VIATICAL SETTLEMENT PROVIDER TRANSFERS OWNERSHIP OR
7 CHANGES THE BENEFICIARY OF THE POLICY, THE VIATICAL SETTLEMENT PROVIDER
8 SHALL COMMUNICATE THE CHANGE IN OWNERSHIP OR BENEFICIARY TO THE
9 INSURED WITHIN 20 DAYS AFTER THE CHANGE.

10 8-607.

11 (A) A REGISTRATION EXPIRES AT THE END OF EVERY OTHER YEAR ON THE
12 ANNIVERSARY OF THE REGISTRATION UNLESS IT IS RENEWED AS PROVIDED IN THIS
13 SECTION.

14 (B) BEFORE A REGISTRATION EXPIRES, THE REGISTRANT MAY RENEW IT FOR
15 AN ADDITIONAL 2-YEAR TERM, IF THE REGISTRANT:

16 (1) OTHERWISE IS ENTITLED TO BE REGISTERED;

17 (2) FILES WITH THE COMMISSIONER A RENEWAL APPLICATION ON THE
18 FORM THAT THE COMMISSIONER REQUIRES; AND

19 (3) PAYS TO THE COMMISSIONER A RENEWAL FEE OF \$50.

20 (C) AN APPLICATION FOR RENEWAL OF A REGISTRATION SHALL BE
21 CONSIDERED MADE IN A TIMELY MANNER IF IT IS POSTMARKED ON OR BEFORE THE
22 ANNIVERSARY DATE OF THE REGISTRATION OF THE YEAR OF RENEWAL.

23 8-608.

24 SUBJECT TO THE HEARING PROVISIONS OF TITLE 2 OF THIS ARTICLE, THE
25 COMMISSIONER MAY DENY A REGISTRATION TO AN APPLICANT OR REFUSE TO
26 RENEW, SUSPEND, OR REVOKE THE REGISTRATION OF A REGISTRANT IF THE
27 APPLICANT OR REGISTRANT:

28 (1) KNOWINGLY MAKES A MATERIAL MISSTATEMENT IN AN
29 APPLICATION FOR REGISTRATION;

30 (2) FRAUDULENTLY OR DECEPTIVELY OBTAINS OR ATTEMPTS TO
31 OBTAIN A REGISTRATION FOR THE APPLICANT OR REGISTRANT OR FOR ANOTHER;

32 (3) HAS BEEN CONVICTED OF A FELONY OR OF A MISDEMEANOR
33 INVOLVING MORAL TURPITUDE;

34 (4) IN CONNECTION WITH THE VIATICAL SETTLEMENT CONTRACT AND
35 RELATED INSURANCE APPLICATION, COMMITS FRAUD OR ENGAGES IN ILLEGAL OR
36 DISHONEST ACTIVITIES;

1 (5) OTHERWISE HAS SHOWN A LACK OF TRUSTWORTHINESS OR
2 COMPETENCE TO ACT AS A VIATICAL SETTLEMENT BROKER OR VIATICAL
3 SETTLEMENT PROVIDER; OR

4 (6) VIOLATES ANY PROVISION OF THIS SUBTITLE OR A REGULATION
5 ADOPTED UNDER IT.

6 8-609.

7 INSTEAD OF OR IN ADDITION TO SUSPENDING OR REVOKING A REGISTRATION,
8 THE COMMISSIONER MAY:

9 (1) IMPOSE ON THE HOLDER A PENALTY NOT EXCEEDING \$125,000 FOR
10 EACH VIOLATION OF THIS SUBTITLE; AND

11 (2) REQUIRE THE HOLDER TO MAKE RESTITUTION TO ANY PERSON
12 THAT HAS SUFFERED FINANCIAL INJURY BECAUSE OF THE VIOLATION OF THIS
13 SUBTITLE.

14 8-610.

15 (A) IT IS A VIOLATION OF THIS SUBTITLE FOR A VIATICAL SETTLEMENT
16 BROKER OR VIATICAL SETTLEMENT PROVIDER TO:

17 (1) VIOLATE ANY PROVISION OF THIS SUBTITLE OR ANY REGULATION
18 ADOPTED UNDER THIS SUBTITLE;

19 (2) FAIL TO REGISTER WITH THE COMMISSIONER IN ACCORDANCE WITH
20 THIS SUBTITLE BEFORE ACTING OR REPRESENTING ITSELF AS A VIATICAL
21 SETTLEMENT BROKER OR VIATICAL SETTLEMENT PROVIDER;

22 (3) FAIL TO PROVIDE A VIATOR WITH A DISCLOSURE STATEMENT IN
23 ACCORDANCE WITH THIS SUBTITLE;

24 (4) FAIL TO ALLOW A VIATOR TO RESCIND A VIATICAL SETTLEMENT
25 CONTRACT UP TO AT LEAST 15 CALENDAR DAYS AFTER THE RECEIPT OF THE
26 VIATICAL SETTLEMENT PROCEEDS BY THE VIATOR; AND

27 (5) FAIL TO DELIVER TO A VIATOR THE VIATICAL SETTLEMENT
28 PROCEEDS IN ACCORDANCE WITH THIS SUBTITLE.

29 (B) IT IS A VIOLATION OF THIS SUBTITLE FOR A PERSON TO ENTER INTO A
30 VIATICAL SETTLEMENT CONTRACT WITHIN A 2-YEAR PERIOD COMMENCING WITH
31 THE DATE OF ISSUANCE OF THE INSURANCE POLICY TO BE ACQUIRED UNDER THE
32 VIATICAL SETTLEMENT CONTRACT UNLESS:

33 (1) THE VIATOR CERTIFIES TO THE VIATICAL SETTLEMENT PROVIDER
34 THAT WITHIN THE 2-YEAR PERIOD:

35 (I) THE POLICY WAS ISSUED ON THE VIATOR'S EXERCISE OF
36 CONVERSION RIGHTS ARISING OUT OF A GROUP OR INDIVIDUAL POLICY;

1 (II) THE TOTAL TIME COVERED UNDER THE CONVERSION POLICY
2 AND THE PRIOR POLICY IS AT LEAST 24 MONTHS;

3 (III) THE TIME COVERED UNDER THE GROUP POLICY IS
4 CALCULATED WITHOUT REGARD TO ANY CHANGE IN INSURANCE CARRIERS; AND

5 (IV) THE COVERAGE UNDER THE GROUP POLICY HAS BEEN
6 CONTINUOUS AND UNDER THE SAME GROUP SPONSORSHIP; ~~OR~~

7 (2) THE VIATOR SUBMITS INDEPENDENT EVIDENCE TO THE VIATICAL
8 SETTLEMENT PROVIDER THAT WITHIN THE 2-YEAR PERIOD THE INSURED BECAME
9 TERMINALLY ILL OR CHRONICALLY ILL; OR

10 (3) THE VIATOR SUBMITS INDEPENDENT EVIDENCE TO THE VIATICAL
11 SETTLEMENT PROVIDER THAT WITHIN THE 2-YEAR PERIOD THE VIATOR OR INSURED
12 DISPOSED OF OWNERSHIP INTERESTS IN A CLOSELY HELD CORPORATION.

13 (C) ANY COPIES OF CERTIFICATION OR INDEPENDENT EVIDENCE REQUIRED
14 UNDER SUBSECTION (B) OF THIS SECTION SHALL BE:

15 (1) SUBMITTED TO THE INSURER WHEN THE VIATICAL SETTLEMENT
16 PROVIDER SUBMITS A REQUEST TO THE INSURER FOR VERIFICATION OF COVERAGE;
17 AND

18 (2) ACCOMPANIED BY A LETTER OF ATTESTATION FROM THE VIATICAL
19 SETTLEMENT PROVIDER THAT THE COPIES OF CERTIFICATION OR INDEPENDENT
20 EVIDENCE REQUIRED UNDER SUBSECTION (B) OF THIS SECTION ARE TRUE AND
21 CORRECT COPIES OF THE DOCUMENTS RECEIVED BY THE VIATICAL SETTLEMENT
22 PROVIDER.

23 8-611.

24 (A) VIATICAL SETTLEMENT CONTRACTS AND APPLICATIONS FOR VIATICAL
25 SETTLEMENT CONTRACTS SHALL CONTAIN THE FOLLOWING STATEMENT OR A
26 SUBSTANTIALLY SIMILAR STATEMENT:

27 "ANY PERSON WHO KNOWINGLY PRESENTS FALSE INFORMATION IN AN
28 APPLICATION FOR INSURANCE OR AN APPLICATION FOR A VIATICAL SETTLEMENT
29 CONTRACT HAS COMMITTED A FRAUDULENT VIATICAL SETTLEMENT ACT AND ON
30 CONVICTION IS SUBJECT TO FINES, IMPRISONMENT, OR BOTH, UNDER § 27-408 OF
31 THE INSURANCE ARTICLE OF THE ANNOTATED CODE OF MARYLAND."

32 (B) THE ABSENCE OF A STATEMENT AS REQUIRED IN SUBSECTION (A) OF
33 THIS SECTION DOES NOT CONSTITUTE A DEFENSE IN ANY PROSECUTION FOR A
34 FRAUDULENT VIATICAL SETTLEMENT ACT.

1 27-403.

2 It is a fraudulent insurance act for a person:

3 (1) knowingly to fail to return any moneys or premiums paid for a policy
 4 to an insured, designee of the insured, or another person entitled to the moneys or
 5 premiums if the insurance contracted for is not ultimately provided;

6 (2) to present or cause to be presented to an insurer documentation or an
 7 oral or written statement made in support of a claim, including a claim that alleges
 8 the theft of a motor vehicle, with knowledge that the documentation or statement
 9 contains false or misleading information about a matter material to the claim;

10 (3) except for the prepayment of periodic payments or excess contributions
 11 allowed under the terms of the policy, willfully to collect as a premium a sum in excess
 12 of the premium applicable to the insurance under approved classifications and rates
 13 or, for cases in which classifications and rates are not subject to approval, the
 14 premiums and charges applicable to the insurance as specified in the policy and set by
 15 the insurer;

16 (4) to misappropriate or withhold unreasonably funds received or held if
 17 the funds represent premiums or return premiums; [and]

18 (5) to misappropriate benefits under a policy; AND

19 (6) KNOWINGLY OR WILLFULLY TO PRESENT, OR CAUSE TO BE
 20 PRESENTED, DOCUMENTATION OR AN ORAL OR WRITTEN STATEMENT MADE IN,
 21 WITH REFERENCE TO, OR IN SUPPORT OF AN APPLICATION FOR A VIATICAL
 22 SETTLEMENT CONTRACT, THE FINANCING OF A VIATICAL SETTLEMENT CONTRACT,
 23 THE TRANSFER OF A VIATICAL SETTLEMENT CONTRACT, OR THE SETTLEMENT IN
 24 SUPPORT OF A CLAIM MADE UNDER A VIATICAL SETTLEMENT CONTRACT WITH
 25 KNOWLEDGE THAT THE DOCUMENTATION OR STATEMENT CONTAINS FALSE OR
 26 MISLEADING INFORMATION ABOUT MATTERS MATERIAL TO THE APPLICATION,
 27 FINANCING, TRANSFER, SETTLEMENT, OR CLAIM.

28 27-802.

29 (a) (1) An authorized insurer, its employees, fund producers, or insurance
 30 producers, A VIATICAL SETTLEMENT PROVIDER, OR A VIATICAL SETTLEMENT
 31 BROKER who in good faith [have] HAS cause to believe that insurance fraud has been
 32 or is being committed shall report the suspected insurance fraud in writing to the
 33 Commissioner, the Fraud Division, or the appropriate federal, State, or local law
 34 enforcement authorities.

35 (2) An independent insurance producer shall meet the reporting
 36 requirement of this subsection by reporting the suspected insurance fraud in writing to
 37 the Fraud Division.

38 (b) In addition to any protection provided under § 10-618 of the State
 39 Government Article, any information, documentation, or other evidence provided

1 under this section by an insurer, its employees, fund producers, or insurance producers,
2 A VIATICAL SETTLEMENT PROVIDER, OR A VIATICAL SETTLEMENT BROKER to the
3 Commissioner, the Fraud Division, or a federal, State, or local law enforcement
4 authority in connection with an investigation of suspected insurance fraud is not
5 subject to public inspection for as long as the Commissioner, Fraud Division, or law
6 enforcement authority considers the withholding to be necessary to complete an
7 investigation of the suspected fraud or to protect the person investigated from
8 unwarranted injury.

9 (c) A person is not subject to civil liability for a cause of action by virtue of
10 reporting suspected insurance fraud if:

11 (1) the report was made to the Commissioner, Fraud Division, or an
12 appropriate federal, State, or local law enforcement authority; and

13 (2) the person that reported the suspected insurance fraud acted in good
14 faith when making the report.

15 27-804.

16 (A) EACH VIATICAL SETTLEMENT PROVIDER SHALL HAVE IN PLACE AN
17 ANTIFRAUD PLAN REASONABLY CALCULATED TO DETECT, PROSECUTE, AND
18 PREVENT FRAUDULENT VIATICAL SETTLEMENT ACTS.

19 (B) WITHIN 30 DAYS AFTER INSTITUTING OR MODIFYING AN ANTIFRAUD
20 PLAN, THE VIATICAL SETTLEMENT PROVIDER SHALL NOTIFY THE COMMISSIONER IN
21 WRITING.

22 (C) EACH ANTIFRAUD PLAN SHALL INCLUDE:

23 (1) THE USE OF FRAUD INVESTIGATORS;

24 (2) A DESCRIPTION OF THE PROCEDURES FOR DETECTING AND
25 INVESTIGATING POSSIBLE FRAUDULENT VIATICAL SETTLEMENT ACTS AND
26 PROCEDURES FOR RESOLVING MATERIAL INCONSISTENCIES BETWEEN MEDICAL
27 RECORDS AND INSURANCE APPLICATIONS;

28 (3) A DESCRIPTION OF THE PROCEDURES FOR REPORTING POSSIBLE
29 FRAUDULENT VIATICAL SETTLEMENT ACTS TO THE COMMISSIONER;

30 (4) A DESCRIPTION OF THE PLAN FOR ANTIFRAUD EDUCATION AND
31 TRAINING OF UNDERWRITERS, AND OTHER PERSONNEL; AND

32 (5) A DESCRIPTION OR CHART OUTLINING THE ORGANIZATIONAL
33 ARRANGEMENT OF THE ANTIFRAUD PERSONNEL WHO ARE RESPONSIBLE FOR THE
34 INVESTIGATION AND REPORTING OF POSSIBLE FRAUDULENT VIATICAL
35 SETTLEMENT ACTS AND INVESTIGATING UNRESOLVED MATERIAL
36 INCONSISTENCIES BETWEEN MEDICAL RECORDS AND INSURANCE APPLICATIONS.

1 (D) AN ANTIFRAUD PLAN SUBMITTED TO THE COMMISSIONER SHALL BE
2 PRIVILEGED AND CONFIDENTIAL AND SHALL NOT BE A PUBLIC RECORD AND SHALL
3 NOT BE SUBJECT TO DISCOVERY OR SUBPOENA IN A CIVIL OR CRIMINAL ACTION.

4 (E) (1) EACH VIATICAL SETTLEMENT PROVIDER SHALL FILE ITS
5 ANTIFRAUD PLAN WITH THE COMMISSIONER.

6 (2) THE COMMISSIONER MAY REVIEW EACH ANTIFRAUD PLAN TO
7 DETERMINE WHETHER IT COMPLIES WITH THE REQUIREMENTS OF THIS SECTION.

8 (3) AN ANTIFRAUD PLAN IS DEEMED APPROVED UNLESS DISAPPROVED
9 BY THE COMMISSIONER WITHIN 30 DAYS AFTER THE DATE OF FILING.

10 (F) (1) IF THE COMMISSIONER FINDS THAT AN ANTIFRAUD PLAN DOES NOT
11 COMPLY WITH THE REQUIREMENTS OF THIS SECTION, THE COMMISSIONER SHALL
12 DISAPPROVE THE ANTIFRAUD PLAN AND SEND A NOTICE OF DISAPPROVAL,
13 INCLUDING THE REASONS FOR DISAPPROVAL, TO THE VIATICAL SETTLEMENT
14 PROVIDER.

15 (2) IF THE COMMISSIONER DISAPPROVES AN ANTIFRAUD PLAN, THE
16 VIATICAL SETTLEMENT PROVIDER SHALL SUBMIT A NEW ANTIFRAUD PLAN TO THE
17 COMMISSIONER WITHIN 60 DAYS AFTER THE DATE OF DISAPPROVAL.

18 (G) IT IS A VIOLATION OF THIS SUBTITLE IF THE COMMISSIONER FINDS THAT
19 A VIATICAL SETTLEMENT PROVIDER HAS FAILED TO:

20 (1) FILE AN ANTIFRAUD PLAN;

21 (2) FILE A REVISED ANTIFRAUD PLAN AFTER DISAPPROVAL BY THE
22 COMMISSIONER OF THE INITIAL ANTIFRAUD PLAN; OR

23 (3) COMPLY WITH THE ANTIFRAUD PLAN FILED BY THE VIATICAL
24 SETTLEMENT PROVIDER.

25 [27-804.] 27-805.

26 The penalty for a violation of this subtitle is as provided in §§ 4-113 and 4-114
27 of this article.

28 SECTION 2. AND BE IT FURTHER ENACTED, That nothing in this Act shall
29 affect the jurisdiction of the Securities Commissioner of the Office of the Attorney
30 General of Maryland.

31 SECTION 3. AND BE IT FURTHER ENACTED, That, in the absence of an
32 order by the Maryland Insurance Commissioner to the contrary, a viatical settlement
33 provider or a viatical settlement broker transacting business in this State on the
34 effective date of this Act may continue to transact business in this State without being
35 registered, as required under Section 1 of this Act, until the Commissioner approves
36 or disapproves the viatical settlement provider's or viatical settlement broker's
37 application for registration if:

1 (a) the viatical settlement provider or viatical settlement broker applies for
2 registration no later than 30 days after the date the Commissioner makes available
3 viatical settlement provider registration applications or viatical settlement broker
4 registration applications; and

5 (b) the viatical settlement provider or viatical settlement broker complies with
6 all other provisions of this Act.

7 SECTION 4. AND BE IT FURTHER ENACTED, That, notwithstanding §
8 8-601(k)(1) of the Insurance Article, as enacted by Section 1 of this Act, an individual
9 who is not licensed under Title 10, Subtitle 1 of the Insurance Article to sell life
10 insurance may act as a viatical settlement broker if the individual:

11 (1) prior to October 1, 2004, has negotiated viatical settlement contracts
12 between a viator and one or more viatical settlement providers for at least 1 year;

13 (2) on or before November 1, 2004, registers with the Commissioner as a
14 viatical settlement broker in accordance with § 8-604 of the Insurance Article, as
15 enacted by Section 1 of this Act; and

16 (3) on or before October 1, 2005, becomes an insurance producer licensed
17 under Title 10, Subtitle 1 of the Insurance Article to sell life insurance.

18 ~~SECTION 4. 5.~~ AND BE IT FURTHER ENACTED, That the Maryland
19 Insurance Administration shall report, in accordance with § 2-1246 of the State
20 Government Article, to the Senate Finance Committee and the House ~~Economic~~
21 ~~Matters~~ Health and Government Operations Committee 1 year after the date the
22 Maryland Insurance Commissioner makes available viatical settlement provider
23 registration applications and viatical settlement broker registration applications on
24 whether:

25 (a) the registration fee under § 8-604 of the Insurance Article, as enacted by
26 Section 1 of this Act, is adequate to cover the cost incurred by the Administration for
27 the regulation of viatical settlement brokers and viatical settlement providers; and

28 (b) any change to the registration fee is appropriate.

29 ~~SECTION 5. 6.~~ AND BE IT FURTHER ENACTED, That this Act shall take
30 effect October 1, 2004.