

**As Reported by the Senate Insurance, Commerce and Labor
Committee**

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Sub. H. B. No. 404

Representatives Hottinger, Barrett

**Cosponsors: Representatives Koziura, Driehaus, DeBose, Fende, Celeste,
Aslanides, Bacon, Batchelder, Beatty, Bolon, Boyd, Brown, Budish, Collier,
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Williams, S., Wolpert, Yates, Yuko, Zehringer
Senators Amstutz, Stivers, Miller, D.**

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A B I L L

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 3916.01. As used in this chapter:

(A) "Advertising" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the internet, or similar communications media, including, but not limited to, film strips, motion pictures, and videos, that is ~~directly or indirectly~~ published, disseminated, circulated, or placed directly or indirectly before the public in this state for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest, or transfer the death benefit or ownership of a life insurance policy pursuant to a viatical settlement contract.

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

~~purchase agreements.~~ 102

(C) "~~Chronically ill~~" means ~~any of the following~~ having been 103
certified within the preceding twelve-month period by a licensed 104
health professional as: 105

(1) Being unable to perform, without substantial assistance 106
from another individual, at least two activities of daily living, 107
including, but not limited to, eating, toileting, transferring, 108
bathing, dressing, or continence for at least ninety days due to a 109
loss of functional capacity; or 110

(2) Requiring substantial supervision to protect the 111
individual from threats to health and safety due to severe 112
cognitive impairment; or 113

(3) Having a level of disability similar to that described in 114
division (C)(1) of this section, as determined under regulations 115
prescribed by the United States secretary of the treasury in 116
consultation with the United States secretary of health and human 117
services. 118

(D) "Escrow agent" means an independent third-party person 119
who, pursuant to a written agreement signed by the viatical 120
settlement provider and viator, provides escrow services related 121
to the acquisition of a policy pursuant to a viatical settlement 122
contract. "Escrow agent" does not include any person associated 123
with, affiliated with, or under the control of a person licensed 124
under this chapter or described in division (C) of section 3916.02 125
of the Revised Code. 126

(E)(1) "Financing entity" means an underwriter, placement 127
agent, lender, purchaser of securities, purchaser of a policy ~~or~~ 128
~~certificate~~ from a viatical settlement provider, credit enhancer, 129
or any other person that has a direct ownership interest in a 130
policy ~~or certificate~~ that is the subject of a viatical settlement 131
contract and to which both of the following apply: 132

(a) Its principal activity related to the transaction is 133
providing funds to effect the business of viatical settlement 134
settlements or the purchase of one or more viaticated policies. 135

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

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

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

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

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

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

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

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

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

insurance policy or certificate;	163
(f) The reinstatement or conversion of an insurance policy or certificate;	164
certificate;	165
(g) The solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy or certificate;	166
viatical settlement contract or insurance policy or certificate;	167
(h) The issuance of written evidence of a viatical settlement contract or insurance policy or certificate;	168
contract or insurance policy or certificate;	169
(i) A financing transaction.	170
(2) In the furtherance of a fraud or to prevent the detection of a fraud, doing any of the following:	171
of a fraud, doing any of the following:	172
(a) Removing, concealing, altering, destroying, or sequestering from the superintendent the assets or records of a licensee or another person engaged in the business of viatical settlements;	173
sequestering from the superintendent the assets or records of a licensee or another person engaged in the business of viatical settlements;	174
licensee or another person engaged in the business of viatical settlements;	175
settlements;	176
(b) Misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or any other person;	177
a licensee, financing entity, insurer, or any other person;	178
(c) Transacting the business of viatical settlements in violation of any law of this state requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements;	179
violation of any law of this state requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements;	180
certificate of authority, or other legal authority for the transaction of the business of viatical settlements;	181
transaction of the business of viatical settlements;	182
(d) Filing with the superintendent of insurance or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing from the superintendent any information about a material fact.	183
insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing from the superintendent any information about a material fact.	184
containing false information or otherwise concealing from the superintendent any information about a material fact.	185
superintendent any information about a material fact.	186
(3) Presenting, causing to be presented, or preparing with knowledge or reason to believe that it will be presented, to or by a viatical settlement provider, viatical settlement broker, insurer, insurance agent, financing entity, viatical settlement purchaser, or any other person, in connection with a viatical settlement transaction or insurance transaction, an insurance	187
Presenting, causing to be presented, or preparing with knowledge or reason to believe that it will be presented, to or by a viatical settlement provider, viatical settlement broker, insurer, insurance agent, financing entity, viatical settlement purchaser, or any other person, in connection with a viatical settlement transaction or insurance transaction, an insurance	188
knowledge or reason to believe that it will be presented, to or by a viatical settlement provider, viatical settlement broker, insurer, insurance agent, financing entity, viatical settlement purchaser, or any other person, in connection with a viatical settlement transaction or insurance transaction, an insurance	189
insurer, insurance agent, financing entity, viatical settlement purchaser, or any other person, in connection with a viatical settlement transaction or insurance transaction, an insurance	190
purchaser, or any other person, in connection with a viatical settlement transaction or insurance transaction, an insurance	191
settlement transaction or insurance transaction, an insurance	192

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

by the viatical settlement provider or purchaser. 254

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) A premium finance loan made by a lender that does not 309
violate sections 1321.71 to 1321.83 of the Revised Code, if the 310
premium finance loan is not described in division (P)(3)(b) of 311
this section; 312

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) A licensee under this chapter; 394

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

(3) A financing entity; 398

(4) A special purpose entity; 399

(5) A related provider trust. 400

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

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

(1) A licensee under this chapter; 412

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

(3) A financing entity; 416

(4) A special purpose entity; 417

(5) A related provider trust. 418

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) A detailed plan of operation; 514

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) That the viator has a right to rescind the viatical 660
settlement contract for at least fifteen calendar days after the 661
viator receives the viatical settlement proceeds, as provided in 662
section 3916.08 of the Revised Code⁷. If the insured dies during 663
the rescission period, the viatical settlement contract shall be 664
deemed to have been rescinded, subject to repayment of all 665
viatical settlement proceeds to the viatical settlement company. 666

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

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

(h) That following execution of the viatical settlement 678

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

687

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

692

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

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

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

every two years." 711

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

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

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

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

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

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

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

result of the viatical settlement contract. 742

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

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

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

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

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

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

settlement offer and the viatical settlement broker's compensation 773
as a percentage of that total. As used in this division, 774
"compensation" includes anything of value paid or given to a 775
viatical settlement broker related to the settlement of a policy. 776
777

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

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

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

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

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

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

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

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

834

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The superintendent shall maintain as confidential or privileged any document, material, or information received under division (D)(5)(a)(ii) of this section with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(6) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the superintendent under this section or as a result of sharing as authorized in division (D)(5) of this section.

(7) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under division (D) of this section shall be available and enforced in any proceeding in, and in any court of, this state.

(8) Nothing contained in this chapter prevents or prohibits the superintendent from disclosing the content of an examination report, preliminary examination report or results, or any matter relating to those reports or results, to the official of any other state or country that is comparable to the superintendent, or to law enforcement officials of this or any other state or agency of the federal government at any time, or to the NAIC, if the agency or office receiving the report or matters relating to it agrees in writing to hold it confidential and in a manner consistent with this chapter.

(E)(1) The superintendent may not appoint an examiner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of, or owns a pecuniary interest in, any person subject to examination under this chapter. This division does not automatically preclude any of the following from being an examiner:

(a) A viator;	1119
(b) An insured in a viaticated insurance policy or cert ificate ;	1120 1121
(c) A beneficiary in an insurance a policy or certificate that is proposed to be viaticated.	1122 1123
(2) Notwithstanding the requirements of division (E) of this section, the superintendent may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.	1124 1125 1126 1127 1128 1129 1130
(F)(1) As used in division (F) of this section, "expenses" include all of the following:	1131 1132
(a) Compensation of examiners for each day or portion of a day worked;	1133 1134
(b) Travel and living expenses of examiners;	1135
(c) All other incidental expenses incurred by or on behalf of examiners;	1136 1137
(d) An allocated share of all expenses not described in division (F)(1), (2), or (3) of this section that are necessarily incurred in the performance of a market conduct examination, including the expenses of direct overhead and support staff for examiners.	1138 1139 1140 1141 1142
(2) When a market conduct examination is made of an insurer a <u>licensee under this chapter</u> , the insurer <u>licensee</u> shall pay the expenses of the examination. The expenses of an examination include those incurred on or after the date on which the superintendent notifies the insurer <u>licensee</u> of the examination through the issuance of the final examination report.	1143 1144 1145 1146 1147 1148

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

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

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

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

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

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

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

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

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

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

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

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

stating whether any significant deficiencies or material weaknesses were detected during the audit pursuant to statement on auditing standards number 112 or as amended or superseded. 1211
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(C)(1) Each viatical settlement provider shall file with the superintendent interim unaudited financial statements, including comparative results and footnotes to the financial statements, on a quarterly basis within forty-five days after the end of each quarter. The interim financial statements shall meet all of the following requirements: 1214
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(a) Be certified by the chief executive officer and chief financial officer as to the accuracy and fair presentation; 1220
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(b) Include disclosures either on the face of the financial statements or in accompanying footnotes sufficient so as to make the interim information not misleading. 1222
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(2) Viatical settlement providers may assume that the users of the interim financial statements have access to the prior fiscal year-end audited financial statements and that the adequacy of additional disclosure needed for a fair presentation, except in regard to material contingencies, may be determined in that context. A footnote disclosure that would substantially duplicate the disclosure contained in the audited financial statements for the preceding fiscal year may be omitted. A footnote disclosure shall be provided if events subsequent to the fiscal year end have a material impact on the viatical settlement provider. 1225
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(D) A viatical settlement provider that willfully fails to file the annual statements required by this section, or willfully fails to reply within thirty calendar days to a written inquiry from the superintendent or the superintendent's designee, shall, in addition to other penalties provided by this chapter, be subject to a penalty of up to two hundred fifty dollars per day, not to exceed twenty-five thousand dollars in the aggregate for 1235
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each such failure. 1242

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

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

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

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

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

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

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

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

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

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

(a) Consumer complaints; 1287

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

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

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

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

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

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

superintendent, at the superintendent's discretion, may accept an
examination report on the licensee as prepared by the official of
the licensee's state of domicile or port-of-entry state who is
comparable to the superintendent. As far as is practical, the
superintendent shall cooperate with that official for any
examination of a foreign or alien licensee.

(B) The licensee or applicant shall pay to the superintendent
all costs, assessments, forfeitures, or fines incurred in
conducting an examination under this section. The superintendent
shall deposit the money into the state treasury to the credit of
the department of insurance operating fund created by section
3901.021 of the Revised Code.

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

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

(2) The applicant or licensee or any officer, partner,
member, key management personnel, or designee of the applicant or
licensee has been convicted of fraudulent or dishonest practices,
is subject to a final administrative action in another state, has
been the subject of an administrative or civil action brought by
the department of commerce, division of securities, or is
otherwise shown to be untrustworthy or incompetent.

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

(4) The licensee or any officer, partner, member, key
management personnel, or designee of the licensee has been
convicted of or has pleaded guilty or no contest to a felony or to

a misdemeanor involving fraud, moral turpitude, dishonesty, or 1331
breach of trust, regardless of whether a judgment of conviction 1332
has been entered by the court. 1333

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

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

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

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

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

(b) A viatical settlement purchaser; 1347

(c) A qualified institutional buyer; 1348

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

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

(f) A related provider trust. 1351

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

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

transaction. 1360

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The viator's spouse dies. 1450

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

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

with personal assets. 1482

(b) The viator had no agreement or understanding with any other person to viaticate the policy or transfer the benefits of the policy, including through an assumption or forgiveness of a premium finance loan at any time prior to issuance of the policy or during the two years after the date of issuance of the policy. 1483
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(c) If requested by the insurer, the viator both disclosed to the insurer whether a person other than the insurer obtained a life expectancy evaluation for settlement purposes in connection with the application, underwriting, and issuance of the policy and provided a copy of any such life expectancy evaluation to the insurer at the time of application. 1488
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(d) The viator disclosed any financial arrangement, trust, or other arrangement, transaction, or device that conceals the ownership or beneficial interest of the policy to the insurer prior to the issuance of the policy. 1494
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~~(B)~~(C) Copies of the independent evidence described in division ~~(A)~~(4)~~(B)~~(2) of this section and documents required by section 3916.07 of the Revised Code shall be submitted to the insurer when the viatical settlement provider or any other party entering into a viatical settlement contract with a viator submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider. 1498
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~~(C)~~(D) If the viatical settlement provider submits to the insurer a copy of the owner or insured's certification and independent evidence described in division ~~(A)~~(4)~~(B)~~(2) of this section when the viatical settlement provider submits a request to the insurer to effect the transfer of the policy or certificate to 1508
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the viatical settlement provider, the copy conclusively 1513
establishes that the viatical settlement contract satisfies the 1514
requirements of this section, and the insurer shall timely respond 1515
to the request. 1516

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) They must be genuine. 1649

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) Any premiums paid on a policy; 1788

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

(d) Filing with the superintendent of insurance or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing from the superintendent any information about a material fact. 1819
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(4) Recklessly entering into, negotiating, brokering, or otherwise dealing in a viatical settlement contract involving a policy that was obtained by presenting false, deceptive, or misleading information of any fact material to the policy, or by concealing information concerning any fact material to the policy, for the purpose of misleading and with the intent to defraud the issuer of the policy, the viatical settlement provider, or the viator; 1823
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(5) Committing any embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, policyowner, or any other person engaged in the business of viatical settlements or insurance; 1831
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(6) Employing any plan, financial structure, device, scheme, or artifice to defraud in the business of viatical settlements; 1836
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(7) Misrepresenting the state of residence or facilitating the change of the state in which a person owns a policy or the state of residency of a viator to a state or jurisdiction that does not have laws similar to this chapter for the express purposes of evading or avoiding the provisions of this chapter; 1838
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(8) In the solicitation, application, or issuance of a policy, employing any device, scheme, or artifice in violation of sections 3911.09 or 3911.091 of the Revised Code; 1843
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(9) Engaging in any conduct related to a viatical settlement contract if the person knows or should have known that the intent of the transaction was to avoid the disclosure and notice requirements of section 3916.06 of the Revised Code; 1846
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(10) Entering into a premium finance agreement with any person pursuant to which the person will receive, directly or indirectly, any proceeds, fees, or other considerations from the policy, the owner of the policy, the issuer of the policy, or from any other person with respect to the premium finance agreement or any viatical settlement contract, or from any transaction related to the policy, that are in addition to the amount required to pay the principal, interest, costs, and expenses related to the policy premiums pursuant to the premium finance agreement or subsequent sale of the agreement. Any payments, charges, fees, or other amounts in addition to the amounts required to pay the principal, interest, costs, and expenses related to policy premiums paid under the premium finance agreement shall be remitted to the original owner of the policy or, if the owner is not living at the time of the determination of the overpayment, to the estate of the owner. 1850
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(11) With respect to any viatical settlement contract or a policy, for a viatical settlement broker or an agent registered under this chapter as operating as a viatical settlement broker to knowingly solicit an offer from, effectuate a viatical settlement with, or make a sale to any viatical settlement provider, viatical settlement purchaser, financing entity, or related provider trust that is controlling, controlled by, or under common control with such viatical settlement broker or registered agent unless both of the following are true: 1866
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(a) The viatical settlement broker or agent disclosed that affiliation to the viator. 1875
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(b) The viatical settlement broker or agent is controlled by or under common control with a person that is regulated under the "Securities Act of 1933" or the "Securities Act of 1934," 15 U.S.C. 77a et seq., as amended. 1877
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(12) With respect to any viatical settlement contract or a 1881

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) In any administrative or judicial proceeding to enforce any laws administer <u>administered</u> by the superintendent;	2036 2037
(b) To any law enforcement or regulatory agency of this state, another state, the united states <u>United States</u> , or a politeal <u>political</u> subdivision of this state or another state, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement act <u>acts</u> , or to the NAIC <u>NAIC</u> ;	2038 2039 2040 2041 2042 2043
(c) At the discretion of the superintendent, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act.	2044 2045 2046
(3) Release of documents and evidence under division (E)(2) of this section does not abrogate or modify the privilege granted in division (E)(1) of this section.	2047 2048 2049
(F) The provisions of this chapter do not do any of the following:	2050 2051
(1) Preempt the authority or relieve the duty of any other law enforcement or regulatory agencies to investigate, examine, or prosecute suspected violations of law;	2052 2053 2054
(2) Prevent or prohibit a person from disclosing voluntarily any information concerning <u>fraudulent</u> viatical settlement fraud <u>acts</u> to a law enforcement or regulatory agency other than the department of insurance;	2055 2056 2057 2058
(3) Limit any power granted elsewhere by the law of this state to the superintendent or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.	2059 2060 2061 2062
(G)(1) Viatical settlement providers and viatical settlement brokers shall adopt and have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent	2063 2064 2065

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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