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Representatives Hottinger, Barrett

Cosponsors: Representatives Koziura, Driehaus, DeBose, Fende, Celeste, Aslanides, Bacon, Batchelder, Beatty, Bolon, Boyd, Brown, Budish, Collier, DeGeeter, Dodd, Domenick, Dyer, Evans, Flowers, Foley, Garrison, Gerberry, Huffman, Hughes, Letson, Luckie, Lundy, Mallory, McGregor, J., Mecklenborg, Patton, Sayre, Schindel, Sears, Setzer, Stewart, D., Szollosi, Williams, S., Wolpert, Yates, Yuko, Zehringer

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A B I L L

To amend sections 3916.01 to 3916.03, 3916.05 to 1
3916.20, and 3916.99 and to enact sections 2
3916.031 and 3916.171 of the Revised Code to make 3
changes to the law governing viatical settlements. 4
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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3916.01, 3916.02, 3916.03, 3916.05, 6
3916.06, 3916.07, 3916.08, 3916.09, 3916.10, 3916.11, 3916.12, 7
3916.13, 3916.14, 3916.15, 3916.16, 3916.17, 3916.18, 3916.19, 8
3916.20, and 3916.99 be amended and sections 3916.031 and 3916.171 9
of the Revised Code be enacted to read as follows: 10

Sec. 3916.01. As used in this chapter: 11

(A) "Advertising" means any written, electronic, or printed 12
communication or any communication by means of recorded telephone 13
messages or transmitted on radio, television, the internet, or 14

similar communications media, including, but not limited to, film 15
strips, motion pictures, and videos, that is ~~directly or~~ 16
~~indirectly~~ published, disseminated, circulated, or placed directly 17
or indirectly before the public for the purpose of creating an 18
interest in or inducing a person to purchase or sell, assign, 19
devise, bequest, or transfer the death benefit or ownership of a 20
life insurance policy pursuant to a viatical settlement contract. 21

(B) "Business of viatical settlements" means an activity 22
involved, but not limited to, in the offering, solicitation, 23
negotiation, procurement, effectuation, purchasing, investing, 24
financing, monitoring, tracking, underwriting, selling, 25
transferring, assigning, pledging, or hypothecating or in any 26
other manner acquiring an interest in a life insurance policy by 27
means of viatical settlement contracts ~~or purchase agreements or~~ 28
~~any similar activity related to viatical settlement contracts or~~ 29
~~purchase agreements.~~ 30

(C) "Chronically ill" means ~~any of the following~~ having been 31
certified within the proceeding twelve-month period by a licensed 32
health professional as: 33

(1) Being unable to perform, without substantial assistance 34
from another individual, at least two activities of daily living, 35
including, but not limited to, eating, toileting, transferring, 36
bathing, dressing, or continence for at least ninety days due to a 37
loss of functional capacity; or 38

(2) Requiring substantial supervision to protect the 39
individual from threats to health and safety due to severe 40
cognitive impairment; or 41

(3) Having a level of disability similar to that described in 42
division (C)(1) of this section, as determined under regulations 43
prescribed by the United States secretary of the treasury in 44
consultation with the United States secretary of health and human 45

services~~+~~. 46

(D) "Escrow agent" means an independent third-party person 47
who, pursuant to a written agreement signed by the viatical 48
settlement provider and viator, provides escrow services related 49
to the acquisition of a life insurance policy pursuant to a 50
viatical settlement contract. "Escrow agent" does not include any 51
person associated, affiliated with, or under the control of a 52
person licensed under this chapter or person described in division 53
(C) of section 3916.02 of the Revised Code. 54

(E)(1) "Financing entity" means an underwriter, placement 55
agent, lender, purchaser of securities, purchaser of a policy or 56
certificate from a viatical settlement provider, credit enhancer, 57
or any other person that has a direct ownership interest in a 58
policy or certificate that is the subject of a viatical settlement 59
contract and to which both of the following apply: 60

(a) Its principal activity related to the transaction is 61
providing funds to effect the viatical settlement or the purchase 62
of one or more viaticated policies. 63

(b) It has an agreement in writing with one or more licensed 64
viatical settlement providers to finance the acquisition of 65
viatical settlement contracts. 66

(2) "Financing entity" does not include a non-accredited 67
investor or viatical settlement purchaser. 68

~~(E) "Fraudulent viatical settlement act" means an act or~~ 69
~~omission committed by any person who, knowingly or with intent to~~ 70
~~defraud and for the purpose of depriving another of property or~~ 71
~~for pecuniary gain, commits, or permits any of its employees or~~ 72
~~agents to commit, any of the following acts:~~ 73

~~(1) Presenting, causing to be presented, or preparing with~~ 74
~~knowledge or belief that it will be presented to or by a viatical~~ 75
~~settlement provider, viatical settlement broker, viatical~~ 76

settlement purchaser, financing entity, insurer, insurance broker,	77
insurance agent, or any other person, any false material	78
information, or concealing any material information, as part of,	79
in support of, or concerning a fact material to, one or more of	80
the following:	81
(a) An application for the issuance of a viatical settlement	82
contract or insurance policy or certificate;	83
(b) The underwriting of a viatical settlement contract or	84
insurance policy or certificate;	85
(c) A claim for payment or benefit pursuant to a viatical	86
settlement contract or insurance policy or certificate;	87
(d) Any premiums paid on an insurance policy or certificate;	88
(e) Any payments changes in ownership or beneficiary made in	89
accordance with the terms in viatical settlement contract or	90
insurance policy or certificate;	91
(f) The reinstatement or conversion of an insurance policy or	92
certificate;	93
(g) The solicitation, offer, effectuation, or sale of a	94
viatical settlement contract or insurance policy or certificate;	95
(h) The issuance of written evidence of a viatical settlement	96
contract or insurance policy or certificate;	97
(i) A financing transaction.	98
(2) In the furtherance of a fraud or to prevent the detection	99
of a fraud, doing any of the following:	100
(a) Removing, concealing, altering, destroying, or	101
sequestering from the superintendent the assets or records of a	102
licensee or another person engaged in the business of viatical	103
settlements;	104
(b) Misrepresenting or concealing the financial condition of	105

a licensee, financing entity, insurer, or any other person;	106
(c) Transacting the business of viatical settlements in	107
violation of any law of this state requiring a license,	108
certificate of authority, or other legal authority for the	109
transaction of the business of viatical settlements;	110
(d) Filing with the superintendent of insurance or the chief	111
insurance regulatory official of another jurisdiction a document	112
containing false information or otherwise concealing from the	113
superintendent any information about a material fact.	114
(3) Presenting, causing to be presented, or preparing with	115
knowledge or reason to believe that it will be presented, to or by	116
a viatical settlement provider, viatical settlement broker,	117
insurer, insurance agent, financing entity, viatical settlement	118
purchaser, or any other person, in connection with a viatical	119
settlement transaction or insurance transaction, an insurance	120
policy or certificate that the actor knows was fraudulently	121
obtained by the insured, the owner, or any agent of the insured or	122
owner;	123
(4) Committing any embezzlement, theft, misappropriation, or	124
conversion of moneys, funds, premiums, credits or other property	125
of a viatical settlement provider, insurer, insured, viator,	126
insurance policyowner, or any other person engaged in the business	127
of viatical settlements or insurance;	128
(5) Attempting to commit, assisting, aiding or abetting in	129
the commission of, or conspiracy to commit any act or omission	130
specified in divisions (E)(1) to (4) of this section.	131
(F) <u>"Recklessly" has the same meaning as in section 2901.22</u>	132
<u>of the Revised Code.</u>	133
(G) <u>"Defraud" has the same meaning as in section 2913.01 of</u>	134
<u>the Revised Code.</u>	135

(H) "Life expectancy" means an opinion or evaluation as to 136
how long a particular person is going to live. 137

(I) "Life expectancy provider" means a person who determines, 138
or claims to have the necessary education, training, and expertise 139
to determine life expectancies or mortality ratings used to 140
determine life expectancies on behalf of or in connection with any 141
of the following: 142

(1) A viatical settlement provider, viatical settlement 143
broker, or person engaged in the business of viatical settlements; 144

(2) A viatical settlement investment as defined by section 145
1707.01 of the Revised Code; 146

(3) A viatical settlement contract or viatical settlement 147
investment. 148

(J) Notwithstanding section 1.59 of the Revised Code, 149
"person" means a natural person or a legal entity, including, but 150
not limited to, an individual, partnership, limited liability 151
company, limited liability partnership, association, trust, 152
business trust, or corporation. 153

~~(G)~~(K) "Policy" means an individual or group policy, group 154
certificate, contract, or arrangement of insurance affecting the 155
rights of a resident of this state or bearing a reasonable 156
relation to this state, regardless of whether delivered or issued 157
for delivery in this state. 158

~~(H)~~(L) "Related provider trust" means a titling trust or any 159
other trust established by a licensed viatical settlement provider 160
or a financing entity for the sole purpose of holding ownership or 161
beneficial interest in purchased policies in connection with a 162
financing transaction, provided that the trust has a written 163
agreement with the licensed viatical settlement provider under 164
which the licensed viatical settlement provider is responsible for 165
ensuring compliance with all statutory and regulatory requirements 166

and under which the trust agrees to make all records and files 167
related to viatical settlement transactions available to the 168
superintendent as if those records and files were maintained 169
directly by the licensed viatical settlement provider. 170

~~(I)~~(M) "Special purpose entity" means a corporation, 171
partnership, trust, limited liability company or other similar 172
entity formed solely to provide access, either directly or 173
indirectly, to institutional capital markets for a financing 174
entity or licensed viatical settlement provider or in connection 175
with a transaction in which the securities in the special purpose 176
entity are acquired by qualified institutional buyers. 177

~~(J)~~(N) "Terminally ill" means certified by a physician as 178
having an illness or ~~sickness~~ physical condition that can 179
reasonably be expected to result in death in twenty-four months or 180
less. 181

~~(K)~~(O) "Viatical settlement broker" means a person that, on 182
behalf of a viator and for a fee, commission, or other valuable 183
consideration, offers or attempts to negotiate viatical 184
settlements between a viator and one or more viatical settlement 185
providers or viatical settlement brokers. "Viatical settlement 186
broker" does not include an attorney, a certified public 187
accountant, or a financial planner accredited by a nationally 188
recognized accreditation agency, who is retained to represent the 189
viator ~~and,~~ whose compensation is not paid directly or indirectly 190
by the viatical settlement provider or purchaser, provided the 191
viatical settlement activities are incidental to the professional 192
practice of the attorney, certified public accountant, or 193
financial planner. 194

~~(L)~~(P)(1) "Viatical settlement contract" means any of the 195
following: 196

~~(1)~~(a) A written agreement establishing between a viator and 197

a viatical settlement provider or any affiliate of the viatical 198
settlement provider that establishes the terms under which 199
compensation or any thing of value, that is less than the expected 200
death benefit of the insurance policy is or ~~certificate~~ will be 201
paid in return for the viator's present or future assignment, 202
transfer, sale, release, devise, or bequest of the death benefit 203
or ownership of any portion of the insurance policy or ~~certificate~~ 204
~~of insurance~~ any beneficial interest in the policy or its 205
ownership; 206

~~(2) A contract for a loan or any other financing transaction~~ 207
~~secured primarily by an individual or group life insurance policy~~ 208
~~or certificate, other than a loan by a life insurance company~~ 209
~~pursuant to the terms of the life insurance contract or a loan~~ 210
~~secured by the cash value of a policy or certificate;~~ 211

~~(3) An agreement to transfer ownership or change the~~ 212
~~beneficiary designation of the policy or certificate at a later~~ 213
~~date, regardless of the date that compensation is paid to the~~ 214
~~viator~~ (b) The transfer or acquisition for compensation or 215
anything of value for ownership or beneficial interest in a trust 216
or other person that owns such a policy if the trust or other 217
person was formed or availed of for the principal purpose of 218
acquiring one or more life insurance policies; 219

(c) A written agreement for a loan or other lending 220
transaction, secured primarily by an individual life insurance 221
policy or an individual certificate of a group life insurance 222
policy; 223

(d) A premium finance loan made for a life insurance policy 224
by a lender to a viator on, before, or after the date of issuance 225
of the policy in either of the following situations: 226

(i) The viator or the insured receives a guarantee of the 227
viatical settlement value of the policy. 228

(ii) The viator or the insured agrees to sell the policy or any portion of the policy's death benefit on any date before or after the issuance of the policy. 229
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(2) "Viatical settlement contracts" include but are not limited to contracts that are commonly termed "life settlement contracts" and "senior settlement contracts." 232
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(3) "Viatical settlement contract" does not include any of the following unless part of a plan, scheme, device, or artifice to avoid the application of this chapter: 235
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(a) A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms whether issued with the original policy or a rider; 238
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(b) Loan proceeds that are used solely to pay premiums for the policy and the costs of the loan including interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third-party collateral provider fees and expenses, including fees payable to letter of credit issuers; 241
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(c) A loan made by a regulated financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, provided that neither the default itself nor the transfer is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter; 247
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(d) A premium finance loan made by a lender that does not violate sections 1321.71 to 1321.83 of the Revised Code, if the premium finance loan is not described in division (P)(3)(b) of this section; 255
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(e) An agreement where all parties are closely related to the 259

insured by blood or law or have a lawful substantial economic 260
interest in the continued life, health, and bodily safety of the 261
person insured, or are persons or trusts established primarily for 262
the benefit of such parties; 263

(f) Any designation, consent, or agreement by an insured who 264
is an employee of an employer in connection with the purchase by 265
the employer, or trust established by the employer, of life 266
insurance on the life of the employee as described in section 267
3911.091 of the Revised Code; 268

(g) Any of the following business succession planning 269
arrangements if those arrangements are bona fide arrangements: 270

(i) An arrangement between one or more shareholders in a 271
corporation or between a corporation and one or more of its 272
shareholders or one or more persons or trusts established by its 273
shareholders; 274

(ii) An arrangement between one or more partners in a 275
partnership or between a partnership and one or more of its 276
partners or one or more trusts established by its partners; 277

(iii) An arrangement between one or more members in a limited 278
liability company or between a limited liability company and one 279
or more of its members or one or more trusts established by its 280
members. 281

(h) An agreement entered into by a service recipient, a trust 282
established by the service recipient and a service provider, or a 283
trust established by the service provider who performs significant 284
services for the service recipient's trade or business; 285

(i) Any other contract, transaction, or arrangement exempted 286
from the definition of viatical settlement contract by rule 287
adopted by the superintendent of insurance based on the 288
superintendent's determination that the contract, transaction, or 289
arrangement is not of the type regulated by this chapter. 290

(M) <u>(O)</u> (1) "Viatical settlement provider" means a person,	291
other than a viator, that enters into or effectuates a viatical	292
settlement contract.	293
(2) "Viatical settlement provider" does not include any of	294
the following:	295
(a) A bank, savings bank, savings and loan association,	296
credit union, or other <u>regulated</u> financial institution <u>that takes</u>	297
<u>an assignment of a life insurance policy solely as a collateral</u>	298
<u>for a loan;</u>	299
<u>(b) A premium finance company exempted under section 1321.72</u>	300
<u>of the Revised Code from the licensure requirements of section</u>	301
<u>3921.73 of the Revised Code</u> that takes an assignment of a life	302
insurance policy or certificate <u>solely</u> as collateral for a <u>premium</u>	303
<u>finance</u> loan;	304
(b) <u>(c)</u> The issuer of a life insurance policy or certificate	305
providing accelerated benefits as defined in section 3915.21 of	306
the Revised Code and pursuant to the contract;	307
(e) <u>(d)</u> An individual who enters into or effectuates not more	308
than one agreement <u>viatical settlement contract</u> in any calendar	309
year for the transfer of life insurance policies or certificates	310
for any value less than the expected death benefit;	311
(d) <u>(e)</u> An authorized or eligible insurer that provides stop	312
loss coverage <u>or financial guarantee insurance</u> to a viatical	313
settlement provider, purchaser, financing entity, special purpose	314
entity, or related provider trust;	315
(e) <u>(f)</u> A financing entity;	316
(f) <u>(g)</u> A special purpose entity;	317
(g) <u>(h)</u> A related provider trust;	318
(h) <u>(i)</u> A viatical settlement purchaser;	319
<u>(j) Any other person the superintendent determines is not</u>	320

consistent with the definition of viatical settlement provider. 321

~~(N)~~(R) "Viaticated policy" means a life insurance policy ~~or~~ 322
~~certificate~~ that has been acquired by a viatical settlement 323
provider pursuant to a viatical settlement contract. 324

~~(O)~~(S) "Viator" means the owner of a life insurance policy or 325
a certificate holder under a group policy that has not previously 326
been viaticated who, in return for compensation or any thing of 327
value that is less than the expected death benefit of the policy 328
or certificate, assigns, transfers, sells, devises, or bequests 329
the death benefit or ownership of any portion of the insurance 330
policy or certificate of insurance. For the purposes of this 331
chapter, a "viator" is not limited to an owner of a life insurance 332
policy or a certificate holder under a group policy insuring the 333
life of an individual with a terminal or chronic illness or 334
condition except where specifically addressed. "Viator" does not 335
include any of the following: 336

(1) A licensee under this chapter; 337

(2) ~~An accredited investor or~~ A qualified institutional buyer 338
~~as defined respectively in Regulation D, Rule 501 or Rule 144A of~~ 339
~~the Securities Act of 1933, as amended;~~ 340

(3) A financing entity; 341

(4) A special purpose entity; 342

(5) A related provider trust or person. 343

~~(P)~~(T) "Viatical settlement purchaser" means a person who 344
~~gives~~ provides a sum of money as consideration for a life 345
insurance policy or an interest in the death benefits of a life 346
insurance policy that has been or will be the subject of a 347
viatical settlement contract, or a person who owns, acquires, or 348
is entitled to a beneficial interest in a trust that owns a 349
viatical settlement contract or is the beneficiary of a life 350

insurance policy that has been or will be the subject of a 351
viatical settlement contract, for the purpose of deriving an 352
economic benefit. "Viatical settlement purchaser" does not include 353
any of the following: 354

(1) A licensee under this chapter; 355

(2) ~~An accredited investor or~~ A qualified institutional buyer 356
~~as defined respectively in Regulation D, Rule 501 or Rule 144A of~~ 357
~~the Securities Act of 1933, as amended;~~ 358

(3) A financing entity; 359

(4) A special purpose entity; 360

(5) A related provider trust. 361

~~(Q)~~(U) "Qualified institutional buyer" has the same meaning 362
as in 17 C.F.R. 230.144A as that regulation exists on the 363
effective date of this amendment. 364

(V) "Licensee" means a person licensed as a viatical 365
settlement provider, viatical settlement broker, or life 366
expectancy provider under this chapter. 367

~~(R)~~(W) "NAIC" means the national association of insurance 368
commissioners. 369

~~(S)~~ "~~Securities Act of 1933~~" has the same meaning as in 370
~~section 1707.01 of the Revised Code~~ (X) "Regulated financial 371
institution" means a bank, a savings association, or credit union 372
operating under authority granted by the superintendent of 373
financial institutions, the regulatory authority of any other 374
state of the United States, the office of thrift supervision, the 375
national credit union administration, or the office of the 376
comptroller of the currency. 377

(Y)(1) "Stranger-originated life insurance," or "STOLI," 378
means a plan or agreement that provides for both of the following 379
at the time of the origination of a life insurance policy: 380

(a) The purchase of a life insurance policy by an applicant primarily for the benefit of a third party investor that lacks insurable interest in the insured person; 381
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(b) The subsequent accrual, directly or indirectly, to that third party investor of the legal or beneficial ownership of the policy or the benefits of the policy. 384
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(2) "Stranger-originated life insurance" does not include viatical settlement transactions specifically permitted by this chapter. 387
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Sec. 3916.02. ~~No~~ (A) Notwithstanding division (C) of this section, no person shall operate in this state as a viatical settlement provider or, viatical settlement broker, or life expectancy provider without first having obtained a license from the superintendent of insurance and, if different from the owner of the insurance policy to be viaticated is not a resident of this state, from the comparable official of the state of residence of the viator owner. If 390
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(B)(1) If there is more than one viator owner on a single policy or certificate and the viators owners are residents of different states, the viatical settlement shall be governed by the law of the state in which the viator owner having the largest percentage ownership of the policy or certificate resides or, if the viators owners hold equal ownership, the state of residence of one viator owner agreed upon in writing by all viators owners. 398
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(2) If the viator is a resident of this state, all agreements to be signed by the viator shall provide exclusive jurisdiction to courts of this state and the laws of this state shall govern the agreements. Nothing in the agreements shall abrogate the viator's right to a trial by jury. 405
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(C)(1) A person who represents the viator and is not 410

compensated directly or indirectly by the viatical settlement 411
provider, who is licensed as an attorney, certified public 412
accountant, or financial planner accredited by a nationally 413
recognized accreditation agency may negotiate viatical settlement 414
contracts on behalf of a viator without obtaining a license 415
pursuant to division (A) of this section if the viatical 416
settlement activities are incidental to the professional practice 417
of the attorney, certified public accountant, or financial 418
planner. 419

(2) An individual insurance agent, in good standing, who has 420
been licensed as a resident or nonresident insurance agent with a 421
life line of authority in this state for at least five years may 422
operate as a viatical settlement broker without obtaining a 423
license pursuant to division (A) of this section if the viatical 424
settlement broker activities of the insurance agent are incidental 425
to the insurance agent's insurance business activities. 426

Sec. 3916.03. (A) An applicant for a license as a viatical 428
settlement provider ~~or~~, viatical settlement broker, or life 429
expectancy provider shall submit an application for the license in 430
a manner prescribed by the superintendent of insurance. The 431
application shall be accompanied by a fee established by the 432
superintendent by rule adopted in accordance with ~~chapter~~ Chapter 433
119. of the Revised Code. 434

(B) A license issued under this chapter to a person other 435
than an individual authorizes all partners, officers, members, or 436
designated employees of the person to act as viatical settlement 437
providers or viatical settlement brokers, as applicable, and all 438
those partners, officers, members, or designated employees shall 439
be named in the application and any supplements to the 440
application. 441

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

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

(a) A detailed plan of operation;

(b) Evidence of financial responsibility in a format prescribed by the superintendent by possessing a minimum equity of not less than two hundred fifty thousand dollars in cash or cash equivalents reflected in the applicant's audited financial statements. In lieu of the minimum equity requirement, a viatical settlement provider with positive equity shall provide either a surety bond executed and issued by an insurer licensed in this state or an irrevocable line of credit in the amount of two hundred fifty thousand dollars;

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

(2) The superintendent finds all of the following:

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

(b) The applicant has a good business reputation and has had 473
experience, training, or education so as to be qualified to act in 474
the capacity of a viatical settlement provider ~~or~~, viatical 475
settlement broker, or life expectancy provider, as applicable. 476

(3) If the applicant is a person other than an individual, 477
the applicant provides a certificate of good standing from the 478
state of its domicile. 479

(4) The applicant provides an antifraud plan that meets the 480
requirements of division (G) of section 3916.18 of the Revised 481
Code. 482

(D)(1) The superintendent may require an applicant to provide 483
proof of financial responsibility in a format prescribed by the 484
superintendent through either of the following means: 485

(a) A surety bond executed and issued by an insurer 486
authorized to issue surety bonds in this state. The bond shall be 487
in favor of this state and shall authorize recovery by the 488
superintendent on behalf of any person in this state who sustains 489
damages as a result of an erroneous act, failure to act, 490
conviction of fraud or conviction of unfair practices committed by 491
a licensee. 492

(b) A deposit of cash, certificates of deposit, or securities 493
in any combination. 494

(2) If an applicant is licensed as a viatical settlement 495
provider, viatical settlement broker, or life expectancy provider 496
in another state, the superintendent may accept as valid any 497
similar proof of financial responsibility the applicant filed in 498
that state. 499

(3) The superintendent may request proof of financial 500
responsibility at any time the superintendent considers necessary. 501

(E) An applicant shall provide all information requested by 502

the superintendent. The superintendent may, at any time, require 503
an applicant to fully disclose the identity of all stockholders, 504
partners, officers, members, and employees, and may, in the 505
exercise of the superintendent's discretion, refuse to issue a 506
license to an applicant that is not an individual if the 507
superintendent is not satisfied that each officer, employee, 508
stockholder, partner, or member who may materially influence the 509
applicant's conduct meets the standards set forth in this chapter. 510

~~(E)~~(F) Except as otherwise provided in this division, a 511
license as a viatical settlement provider ~~or~~, viatical settlement 512
broker, or life expectancy provider expires on the last day of 513
March next after its issuance or continuance. A license as a 514
viatical settlement provider ~~or~~, viatical settlement broker, or 515
life expectancy provider may, in the discretion of the 516
superintendent and the payment of an annual renewal fee 517
established by the superintendent by rule adopted in accordance 518
with ~~chapter~~ Chapter 119. of the Revised Code, be continued past 519
the last day of March next after its issue and after the last day 520
of March in each succeeding year. Failure to pay the renewal fee 521
by the required date results in the expiration of the license 522
without a hearing under Chapter 119. of the Revised Code. 523

~~(F)~~(G) Any individual licensed as a viatical settlement 524
broker shall complete not less than fifteen hours of continuing 525
education biennially. The superintendent shall approve continuing 526
education courses that shall be related to viatical settlements 527
and viatical settlement transactions. The superintendent shall 528
adopt rules for the enforcement of this division. 529

(H) The superintendent shall not issue a license to a 530
nonresident applicant, unless either of the following applies: 531

(1) The applicant files and maintains a written designation 532
of an agent for service of process with the superintendent. 533

(2) The applicant has filed with the superintendent the 534
applicant's written irrevocable consent that any action against 535
the applicant may be commenced against the applicant by service of 536
process on the superintendent. 537

~~(G)~~(I) A viatical settlement provider ~~or~~, viatical settlement 538
broker, or life expectancy provider shall provide to the 539
superintendent new or revised information regarding any change in 540
its officers, any stockholder owning ten per cent or more of its 541
~~stockholders~~ stock, or its partners, directors, members, or 542
designated employees within thirty days of the change. 543

~~(H)~~(J) Any fee collected under this section shall be paid 544
into the state treasury to the credit of the department of 545
insurance operating fund created by section 3901.021 of the 546
Revised Code. 547

Sec. 3916.031. Any corporation, partnership, or other 548
business that is licensed as a viatical settlement broker shall 549
maintain at least one designated individual who is individually 550
licensed as a viatical settlement broker to be responsible for the 551
business's compliance with this chapter. 552

Sec. 3916.05. (A) A person shall not use a viatical 553
settlement contract form or provide a disclosure statement form to 554
a viator in this state unless the viatical settlement contract 555
form or the disclosure statement form is filed with and approved 556
by the superintendent of insurance. The superintendent shall 557
disapprove a viatical settlement contract form or a disclosure 558
statement form if, in the superintendent's opinion, the viatical 559
settlement contract form, the disclosure statement form, or any 560
provision contained therein fails to meet the requirements of 561
section 3916.06 of the Revised Code, is unreasonable, is contrary 562
to the interests of the public, or is otherwise misleading or 563

unfair to the viator. ~~At the superintendent's discretion, the~~ 564
~~superintendent may require the submission of advertising material~~ 565
~~to which section 3916.17 of the Revised Code applies.~~ 566

(B) The superintendent may adopt rules in accordance with 567
Chapter 119. of the Revised Code to establish reasonable fees for 568
any service or transaction performed by the department of 569
insurance pursuant to division (A) of this section. Any fee 570
collected pursuant to those rules shall be paid into the state 571
treasury to the credit of the department of insurance operating 572
fund created by section 3901.021 of the Revised Code. 573

Sec. 3916.06. (A)(1) With each application for a viatical 574
settlement, a viatical settlement provider or viatical settlement 575
broker shall disclose at least the following to a viator no later 576
than the time all parties sign the application for the viatical 577
settlement contract: 578

(a) That there are possible alternatives to viatical 579
settlement contracts, including any accelerated death benefits 580
offered under the viator's life insurance policy or certificate; 581

(b) That some or all of the proceeds of the viatical 582
settlement may be subject to federal income taxation and state 583
franchise and income taxation, and that assistance should be 584
sought from a professional tax advisor; 585

(c) That the proceeds of the viatical settlement could be 586
subject to the claims of creditors; 587

(d) That receipt of the proceeds of the viatical settlement 588
may adversely affect the viator's eligibility for medical 589
assistance under Chapter 5111. of the Revised Code or other 590
government benefits or entitlements, and that advice should be 591
obtained from the appropriate government agencies; 592

(e) That the viator has a right to rescind the viatical 593

settlement contract ~~for at least fifteen~~ by providing notice of 594
rescission and repaying all viatical settlement proceeds paid to 595
the viator pursuant to the escrow agreement within sixty calendar 596
days after all parties sign the viatical settlement contract or 597
thirty calendar days after the viator receives the viatical 598
settlement proceeds, as provided in section 3916.08 of the Revised 599
Code, whichever is sooner. If the insured dies during the 600
rescission period, the viatical settlement contract shall be 601
deemed to have been rescinded, subject to repayment by the viator 602
or the viator's estate of all viatical settlement proceeds to the 603
viatical settlement ~~company~~ provider within sixty days of the 604
death of the insured. 605

(f) That funds will be sent to the viator within three 606
business days after the viatical settlement provider has received 607
written acknowledgment from the insurer or group administrator 608
that ownership of the policy or interest in the certificate has 609
been transferred and that the beneficiary has been designated 610
pursuant to the viatical settlement contract; 611

(g) That entering into a viatical settlement contract may 612
cause other rights or benefits, including conversion rights and 613
waiver of premium benefits that may exist under the policy or 614
certificate, to be forfeited by the viator and that assistance 615
should be sought from a financial advisor. 616

(h) That following execution of the viatical settlement 617
contract, the viatical settlement provider, the viatical 618
settlement broker, or the authorized representative of the 619
viatical settlement provider or viatical settlement broker may 620
contact the insured for the purpose of determining the insured's 621
health status and to confirm the insured's residential or business 622
address and telephone number or for other purposes permitted by 623
law. Any such contact shall be limited to once in any three-month 624
period if the insured has a life expectancy of more than one year 625

or to once per month if the insured has a life expectancy of one 626
year or less. 627

(2) The viatical settlement provider or viatical settlement 628
broker shall provide the disclosures under division (A)(1) of this 629
section in a separate document that is signed by the viator and 630
the viatical settlement provider or viatical settlement broker. 631
632

(3) Disclosure to a viator under division (A)(1) of this 633
section shall include distribution of a brochure describing the 634
process of viatical settlements. The viatical settlement provider 635
or viatical settlement broker shall use the NAIC's form for the 636
brochure unless another one is developed or approved by the 637
superintendent. 638

(4) The disclosure document under division (A)(1) of this 639
section shall contain the following language: 640

"All medical, financial, or personal information solicited or 641
obtained by a viatical settlement provider or viatical settlement 642
broker about an insured, including the insured's identity or the 643
identity of family members, a spouse, or a significant other may 644
be disclosed as necessary to effect the viatical settlement 645
between the viator and the viatical settlement provider. If you 646
are asked to provide this information, you will be asked to 647
consent to the disclosure. The information may be provided to 648
someone who buys the policy or provides funds for the purchase. 649
You may be asked to renew your permission to share information 650
every two years." 651

(B)(1) A viatical settlement provider shall disclose at least 652
the following to a viator prior to the date the viatical 653
settlement contract is signed by all the necessary parties: 654

(a) The affiliation, if any, between the viatical settlement 655
provider and the issuer of the insurance policy ~~or certificate~~ to 656

be viaticated; 657

(b) The name, business address, and telephone number of the 658
viatical settlement provider; 659

(c) ~~Regarding a viatical settlement broker, the amount and~~ 660
~~method of calculating the broker's compensation. As used in this~~ 661
~~division, "compensation" includes anything of value paid or given~~ 662
~~to a viatical settlement broker for the placement of a policy or~~ 663
~~certificate. Any affiliations or contractual arrangements between~~ 664
~~the viatical settlement provider and the viatical settlement~~ 665
~~purchaser;~~ 666

(d) If an insurance policy ~~or certificate~~ to be viaticated 667
has been issued as a joint policy ~~or certificate~~ or involves 668
family riders or any coverage of a life other than the insured 669
under the policy ~~or certificate~~ to be viaticated, the possible 670
loss of coverage on the other lives under the policy ~~or~~ 671
~~certificate~~ and that advice should be sought from the viator's 672
insurance ~~producer~~ agent or the company issuing the policy ~~or~~ 673
~~certificate;~~ 674

(e) The dollar amount of the current death benefit payable to 675
the viatical settlement provider under the policy ~~or certificate~~, 676
and, if known, the availability of any additional guaranteed 677
insurance benefits, the dollar amount of any accidental death and 678
dismemberment benefits under the policy ~~or certificate~~, and the 679
~~viatical settlement provider's~~ extent to which the viator's 680
interest in those benefits will be transferred as a result of the 681
viatical settlement contract. 682

(f) ~~The name, business address, and telephone number of the~~ 683
~~independent third party escrow agent, and the fact that the viator~~ 684
~~or owner may inspect or receive copies of the relevant escrow or~~ 685
~~trust agreements or documents That an escrow agent shall provide~~ 686
~~escrow services to the parties pursuant to a written agreement,~~ 687

signed by the viatical settlement provider, the viatical 688
settlement broker, and the viator. At the close of escrow, the 689
escrow agent will distribute the proceeds of the sale to the 690
viator, minus any compensation to be paid to any other persons who 691
provided services and to whom the viator has agreed to compensate 692
out of the gross amount offered by the viatical settlement 693
purchaser. All persons receiving any form of compensation under 694
the escrow agreement shall be clearly identified, including name, 695
business address, telephone number, and tax identification number. 696
697

(2) The viatical settlement broker shall disclose at least 698
the following to a viator prior to the date the viatical 699
settlement contract is signed by all the necessary parties: 700

(a) The name, business address, and telephone number of the 701
viatical settlement broker; 702

(b) A full, complete, and accurate description of all offers, 703
counteroffers, acceptances, and rejections relating to the 704
proposed viatical settlement contract; 705

(c) Any affiliations or contractual agreements between the 706
viatical settlement broker and any person making an offer in 707
connection with the proposed viatical settlement contract; 708

(d) The amount and method of calculating the viatical 709
settlement broker's compensation and, if any portion of the 710
viatical settlement broker's compensation is taken from the 711
viatical settlement offer, the total amount of the viatical 712
settlement offer and the viatical settlement broker's compensation 713
as a percentage of that total. As used in this division, 714
"compensation" includes anything of value paid or given to a 715
viatical settlement broker related to the settlement of a policy. 716
717

(3) The viatical settlement provider or viatical settlement 718

broker shall conspicuously display the disclosures required under 719
~~division~~ divisions (B)(1) and (2) of this section in the viatical 720
settlement contract or in a separate document signed by the viator 721
and the viatical settlement provider or viatical settlement 722
broker, as appropriate. 723

(C) If the viatical settlement provider transfers ownership 724
or changes the beneficiary of the insurance policy or certificate, 725
the viatical settlement provider shall communicate in writing the 726
change in ownership or beneficiary to the insured within twenty 727
days after the change. 728

(D) If, for the purpose of engaging in the business of 729
viatical settlements, a viatical settlement broker or viatical 730
settlement provider is party to a plan, transaction, or series of 731
transactions to originate, renew, continue, or finance a life 732
insurance policy with the insurer that issued the policy within 733
the first five years of the issuance of that policy, the viatical 734
settlement broker or viatical settlement provider shall fully 735
disclose the plan, transaction, or series of transactions to that 736
insurer prior to the initiation of the plan, transaction, or 737
series of transactions. 738

Sec. 3916.07. (A) A viatical settlement provider entering 739
into a viatical settlement contract shall first obtain all of the 740
following: 741

(1) If the viator is the insured, a written statement from an 742
attending physician that the viator is of sound mind and under no 743
constraint or undue influence to enter into a viatical settlement 744
contract. As used in this division, "physician" means a person 745
authorized under Chapter 4731. of the Revised Code to practice 746
medicine and surgery or osteopathic medicine and surgery. 747

(2) A document in which the insured consents in writing, as 748
required by division (E) of section 3916.13 of the Revised Code, 749

to the release of the insured's medical records to a viatical 750
settlement provider or viatical settlement broker and to the 751
insurance company that issued the life insurance policy ~~or~~ 752
~~certificate~~ covering the life of the insured. 753

(B) Within twenty days after a viator executes documents 754
necessary to transfer any rights under an insurance policy ~~or~~ 755
~~certificate~~ or within twenty days of entering any expressed or 756
implied agreement, option, promise, or other form of understanding 757
to viaticate the policy, the viatical settlement provider shall 758
give written notice to the insurer that issued that insurance 759
policy ~~or certificate~~ that the policy ~~or certificate~~ has or will 760
become a viaticated policy ~~or certificate~~. The notice shall be 761
accompanied by the documents required by division (C) of this 762
section. 763

(C) The viatical settlement provider shall deliver a copy of 764
the medical release required under division (A)(2) of this 765
section, a copy of the viator's application for the viatical 766
settlement contract, the notice required under division (B) of 767
this section, and a request for verification of coverage to the 768
insurer that issued the life insurance policy ~~or certificate~~ that 769
is the subject of the viatical transaction. The viatical 770
settlement provider shall use the NAIC's form for verification of 771
coverage unless ~~standards for verification are~~ another form is 772
developed or approved by the superintendent of insurance. 773

(D) The insurer shall respond to a request for verification 774
of coverage submitted on an approved form by a viatical settlement 775
provider or viatical settlement broker within thirty calendar days 776
after the date the request is received and shall indicate whether, 777
based on the medical evidence and documents provided, the insurer 778
intends to pursue an investigation at that time regarding possible 779
fraud or the validity of the life insurance contract ~~or~~ 780
~~certificate~~ that is the subject of the request. The insurer shall 781

accept an original or facsimile or electronic copy of such request 782
and any accompanying authorization signed by the viator. 783

784

(E) Prior to or at the time of execution of the viatical 785
settlement contract, the viatical settlement provider shall obtain 786
a witnessed document in which the viator consents to the viatical 787
settlement contract, represents that the viator has a full and 788
complete understanding of the viatical settlement contract and a 789
full and complete understanding of the benefits of the life 790
insurance policy ~~or certificate~~, and acknowledges that the viator 791
is entering into the viatical settlement contract freely and 792
voluntarily and, for persons with a terminal or chronic illness or 793
condition, acknowledges that the insured has a terminal or chronic 794
illness and that the terminal or chronic illness or condition was 795
diagnosed after the life insurance policy ~~or certificate~~ was 796
issued. 797

(F) If a viatical settlement broker performs any of the 798
activities specified in this section on behalf of the viatical 799
settlement provider, the viatical settlement provider is deemed to 800
have fulfilled the requirements of this section. 801

(G) All medical information solicited or obtained by any 802
licensee shall be subject to the applicable provisions of state 803
law relating to confidentiality of medical information. 804

Sec. 3916.08. (A) Each viatical settlement contract entered 805
into in this state shall provide the viator with an ~~unconditional~~ 806
absolute right to rescind the contract for at least fifteen by 807
providing notice of rescission and repaying all viatical 808
settlement proceeds paid to the viator pursuant to the escrow 809
agreement within sixty calendar days after all parties sign the 810
viatical settlement contract or thirty calendar days after the 811
receipt of the viatical settlement proceeds pursuant to division 812

(A) of section 3916.09 of the Revised Code, whichever is sooner. 813
If the insured dies during the rescission period, the viatical 814
settlement contract is deemed to have been rescinded, subject to 815
repayment of all viatical settlement proceeds to the viatical 816
settlement provider within sixty days of the death of the insured. 817
~~if~~ 818

(B) If the viator rescinds the viatical settlement contract 819
and any compensation has been paid to any person under the terms 820
of the escrow agreement, including the viatical settlement 821
provider, the viatical settlement broker, or any insurance agent, 822
the person that received the compensation shall refund the full 823
amount received to the viatical settlement provider within five 824
business days following receipt of written notice from the 825
viatical settlement provider. The notice shall include a copy of 826
the viator's notice of rescission or the notice of the death of 827
the viator. 828

(C) If a viatical settlement contract is rescinded by the 829
viator pursuant to this section, ownership of the insurance policy 830
or certificate reverts to the viator or to the viator's estate if 831
the viator is deceased, irrespective of any transfer of ownership 832
of the policy or certificate by the viator, viatical settlement 833
provider, or any other person. 834

Sec. 3916.09. (A) The viatical settlement provider shall 835
instruct the viator to send the executed documents required to 836
effect the change in ownership, assignment, or change in 837
beneficiary directly to the ~~independent~~ escrow agent. Within three 838
business days after the date the escrow agent receives the 839
documents, or from the date the viatical settlement provider 840
receives the documents if the viator erroneously provides the 841
documents directly to the viatical settlement provider, the 842
viatical settlement provider shall pay or transfer the ~~proceeds of~~ 843

gross amount paid by the viatical settlement purchaser to an the 844
escrow or agent for deposit in a trust account set up for that 845
purpose by the escrow agent in a state or federally chartered 846
regulated financial institution whose deposits are insured by the 847
federal deposit insurance corporation. Upon payment of the 848
settlement proceeds into the escrow or trust account, the escrow 849
agent or trustee shall deliver the original change in ownership, 850
assignment, or change in beneficiary forms to the viatical 851
settlement provider, a representative of the viatical settlement 852
provider, or related provider trust. Upon the ~~licensed provider's~~ 853
escrow agent's receipt of the acknowledgment of the properly 854
completed transfer of ownership, assignment, or designation of 855
beneficiary from the insurance company, the ~~licensed provider~~ 856
escrow agent shall ~~instruct the escrow agent to~~ pay the settlement 857
proceeds to the viator and any other person pursuant to the 858
viatical settlement contract and the escrow agreement. ~~The escrow~~ 859
~~agent shall make payment within three business days of the date~~ 860
~~the provider received the acknowledged forms from the insurance~~ 861
~~company~~ Funds are considered sent by a viatical settlement 862
provider to a viator as of the date that the escrow agent either 863
releases the funds for wire transfer to the viator or places a 864
check for delivery to the viator via United States postal service 865
or other nationally recognized delivery service. 866
867

(B) Failure to transfer the proceeds to the viator within the 868
period of time disclosed pursuant to division (A)(1)(f) of section 869
3916.06 of the Revised Code renders the viatical settlement 870
contract voidable by the viator for lack of consideration until 871
the time consideration is tendered to and accepted by the viator. 872
If a viatical settlement contract is voided by the viator pursuant 873
to this division, ownership of the insurance policy ~~or certificate~~ 874
reverts to the viator or to the viator's estate if the viator is 875

deceased, irrespective of any transfer of ownership of the policy 876
~~or certificate~~ by the viator, viatical settlement provider, or any 877
other person. 878

Sec. 3916.10. After a viatical settlement has occurred, 879
contact with the insured for the purpose of determining the health 880
status of the insured by the viatical settlement provider or 881
viatical settlement broker shall be made only by the viatical 882
settlement provider ~~or, viatical settlement broker licensed in~~ 883
~~this state, or the authorized representative of the viatical~~ 884
~~settlement provider or viatical settlement broker.~~ The viatical 885
settlement provider ~~or, viatical settlement broker, or authorized~~ 886
~~representative~~ shall not contact the insured for the purpose of 887
determining the insured's health status more than once every three 888
months if the insured has a life expectancy of more than one year, 889
or more than once per month if the insured has a life expectancy 890
of one year or less. The viatical settlement provider or viatical 891
settlement broker shall explain the procedure for making these 892
contacts at the time the viatical settlement contract is entered 893
into. 894

The limitations set forth in this section do not apply to 895
contacts made with an insured under a viaticated policy for 896
purposes other than to determine the insured's health status. 897

Viatical settlement providers and viatical settlement brokers 898
are responsible for the actions of their authorized 899
representatives, for the purposes of this section. 900

Sec. 3916.11. (A)(1) A licensee under this chapter shall, for 901
five years, retain copies of all of the following: 902

(a) All proposed, offered, or executed contracts, purchase 903
agreements, underwriting documents, policy forms, and applications 904
from the date of the proposal, offer, or execution of the contract 905

or purchase agreement, whichever is later; 906

(b) All checks, drafts, or other evidence and documentation 907
related to the payment, transfer, deposit, or release of funds 908
from the date of the transaction; 909

(c) All other records and documents related to the 910
requirements of this chapter. 911

(2) This section does not relieve a person of the obligation 912
to produce the documents described in division (A)(1) of this 913
section to the superintendent of insurance after the retention 914
period specified in that division has expired if the person has 915
retained the documents. 916

(3) Records required to be retained by this section must be 917
legible and complete and may be retained in paper, photograph, 918
microprocess, magnetic, mechanical, or electronic media, or by any 919
process that accurately reproduces or forms a durable medium for 920
the reproduction of a record. 921

(4) If a licensee fails to comply with division (A) of this 922
section, the superintendent may initiate proceedings in accordance 923
with Chapter 119. of the Revised Code to revoke, suspend, or 924
refuse to renew the license of the licensee. 925

(B)(1) Upon determining that an examination should be 926
conducted, subject to division (E) of this section, the 927
superintendent shall appoint one or more examiners to perform the 928
examination and instruct them as to the scope of the examination. 929
The superintendent may employ any guidelines or procedures for 930
purposes of this division that the superintendent considers 931
appropriate. 932

(2) Every licensee, or person from whom information is 933
sought, and all officers, directors, employees, and agents of any 934
licensee, or person from whom information is sought, shall provide 935
to the examiners timely, convenient, and free access at all 936

reasonable hours at the licensee's or person's offices to all 937
books, records, accounts, papers, documents, assets, and computer 938
or other recordings relating to the property, assets, business, 939
and affairs of the licensee being examined. The officers, 940
directors, employees, and agents of the licensee or person shall 941
facilitate the examination and aid in the examination so far as it 942
is in their power to do so. 943

The refusal of a licensee, by its officers, directors, 944
employees, or agents, to submit to examination or to comply with 945
any reasonable written request of the superintendent shall be 946
grounds for suspension, revocation, denial of issuance, or 947
nonrenewal of any license ~~or authority~~ held by the licensee to 948
engage in the viatical settlement business or other business 949
subject to the superintendent's jurisdiction. Any proceedings for 950
suspension, revocation, or denial, ~~or nonrenewal~~ of any license or 951
authority is subject to ~~chapter~~ Chapter 119. of the Revised Code. 952

(3) The superintendent has the power to issue subpoenas, to 953
administer oaths, and to examine under oath any person as to any 954
matter pertinent to the examination. Upon the failure or refusal 955
of a person to obey a subpoena, the superintendent may petition a 956
court of competent jurisdiction, and, upon proper showing, the 957
court may enter an order compelling the witness to appear and 958
testify or produce documentary evidence. Failure to obey the court 959
order shall be punishable as contempt of court. 960

(4) When making an examination under this chapter, the 961
superintendent may retain attorneys, appraisers, independent 962
actuaries, independent certified public accountants, or other 963
professionals and specialists as examiners, and the licensee that 964
is the subject of the examination shall bear the cost of those 965
examiners pursuant to division (F) of this section. Examiners who 966
are appointed by the superintendent, but who are not employees of 967
the department of insurance, shall be compensated for their work, 968

travel, and living expenses at reasonable and customary rates. 969

(5) Nothing contained in this chapter limits the 970
superintendent's authority to terminate or suspend an examination 971
in order to pursue other legal or regulatory action pursuant to 972
the insurance laws of this state. Findings of fact and conclusions 973
made pursuant to any examination shall be prima-facie evidence in 974
any legal or regulatory action. 975

(6) Nothing contained in this chapter limits the 976
superintendent's authority to use and, if appropriate, to make 977
public any final or preliminary examination report, any examiner 978
or licensee working papers or other documents, or any other 979
information discovered or developed during the course of any 980
examination in the furtherance of any legal or regulatory action 981
that the superintendent, in the superintendent's sole discretion, 982
considers appropriate. 983

(C)(1) Examination reports shall be comprised of only facts 984
appearing upon the books, records, or other documents of the 985
licensee, its agents, or other persons examined, or as ascertained 986
from the testimony of its officers, agents, or other persons 987
examined concerning its affairs, and the conclusions and 988
recommendations that the examiners find reasonably warranted from 989
the facts. 990

(2) Upon completion of the examination, the examiner in 991
charge shall file with the superintendent a verified written 992
report of examination. Upon receipt of the verified report, the 993
superintendent shall transmit the report to the licensee examined, 994
together with a notice that shall afford the licensee examined a 995
reasonable opportunity of not more than thirty days from receipt 996
of the report to make a written submission or rebuttal with 997
respect to any matters contained in the examination report. 998

(3) If the superintendent determines that regulatory action 999

is appropriate as a result of an examination, the superintendent 1000
may initiate any proceedings or actions provided by law. 1001

(D)(1) Names and individual identification data for all 1002
viators shall be considered private and confidential information 1003
and shall not be disclosed by the superintendent, unless required 1004
by law. 1005

(2) Except as otherwise provided in this chapter or in the 1006
law of another state or jurisdiction that is substantially similar 1007
to this chapter, all examination reports, working papers, recorded 1008
information, documents, and copies of those reports, papers, 1009
information, documents, and copies produced by, obtained by, or 1010
disclosed to the superintendent or to any other person in the 1011
course of an examination made under this chapter or under the law 1012
of another state or jurisdiction that is substantially similar to 1013
this chapter, or in the course of the superintendent's analysis or 1014
investigation of the financial condition or market conduct of a 1015
licensee are confidential by law and privileged, are not a public 1016
record open for inspection under section 149.43 of the Revised 1017
Code, are not subject to subpoena, and are not subject to 1018
discovery or admissible in evidence in any private civil action. 1019
The superintendent may use the documents, materials, or other 1020
information in the furtherance of any regulatory or legal action 1021
brought as part of the superintendent's official duties. 1022

(3) Documents, materials, or other information, including, 1023
but not limited to, all working papers, and copies of working 1024
papers, in the possession or control of the NAIC and its 1025
affiliates and subsidiaries are confidential by law and 1026
privileged, are not subject to subpoena, and are not subject to 1027
discovery or admissible in evidence in any private civil action, 1028
if either of the following applies: 1029

(a) They are created, produced, or obtained by or disclosed 1030
to the NAIC and its affiliates and subsidiaries in the course of 1031

assisting an examination made under this chapter or assisting the 1032
superintendent or the comparable official in another state in the 1033
analysis or investigation of the financial condition or market 1034
conduct of a licensee. 1035

(b) The superintendent or the comparable official in another 1036
state discloses them to the NAIC and its affiliates and 1037
subsidiaries under division (D)(5) of this section or under a 1038
comparable provision in the law of the other state. 1039

(4) Neither the superintendent nor any person that received 1040
the documents, material, or other information while acting under 1041
the authority of the superintendent, including the NAIC and its 1042
affiliates and subsidiaries, shall be permitted to testify in any 1043
private civil action concerning any confidential documents, 1044
materials, or information subject to division (D)(1) of this 1045
section. 1046

(5)(a) In order to assist in the performance of the 1047
superintendent's duties, the superintendent may do any of the 1048
following: 1049

(i) Share documents, materials, or other information, 1050
including the confidential and privileged documents, materials, or 1051
information subject to division (D)(1) of this section, with other 1052
state, federal, and international regulatory agencies, with the 1053
NAIC and its affiliates and subsidiaries, and with state, federal, 1054
and international law enforcement authorities, if the recipient 1055
agrees to maintain the confidentiality and privileged status of 1056
the document, material, communication, or other information; 1057

(ii) Receive documents, materials, communications, or 1058
information, including otherwise confidential and privileged 1059
documents, materials, or information, from the NAIC and its 1060
affiliates and subsidiaries, and from regulatory and law 1061
enforcement officials of other foreign or domestic jurisdictions; 1062

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

(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 1094
this chapter. This division does not automatically preclude any of 1095
the following from being an examiner: 1096

(a) A viator; 1097

(b) An insured in a viaticated insurance policy ~~or~~ 1098
~~certificate~~; 1099

(c) A beneficiary in an insurance policy or certificate that 1100
is proposed to be viaticated. 1101

(2) Notwithstanding the requirements of division (E) of this 1102
section, the superintendent may retain from time to time, on an 1103
individual basis, qualified actuaries, certified public 1104
accountants, or other similar individuals who are independently 1105
practicing their professions, even though these persons may from 1106
time to time be similarly employed or retained by persons subject 1107
to examination under this chapter. 1108

(F)(1) As used in division (F) of this section, "expenses" 1109
include all of the following: 1110

(a) Compensation of examiners for each day or portion of a 1111
day worked; 1112

(b) Travel and living expenses of examiners; 1113

(c) All other incidental expenses incurred by or on behalf of 1114
examiners; 1115

(d) An allocated share of all expenses not described in 1116
division (F)(1), (2), or (3) of this section that are necessarily 1117
incurred in the performance of a market conduct examination, 1118
including the expenses of direct overhead and support staff for 1119
examiners. 1120

(2) When a market conduct examination is made of ~~an insurer a~~ 1121
licensee under this chapter, the ~~insurer licensee~~ shall pay the 1122
expenses of the examination. The expenses of an examination 1123

include those incurred on or after the date on which the 1124
superintendent notifies the ~~insurer~~ licensee of the examination 1125
through the issuance of the final examination report. 1126

~~(3) Upon an insurer's failure to comply with division (A) of~~ 1127
~~this section, the superintendent may initiate proceedings in~~ 1128
~~accordance with Chapter 119. of the Revised Code to revoke,~~ 1129
~~suspend, or refuse to renew the certificate of authority or~~ 1130
~~license of the insurer. Additionally, the~~ The superintendent may 1131
request the attorney general to initiate a civil action in the 1132
court of common pleas of Franklin county to obtain and enforce a 1133
judgment for expenses incurred in the performance of a market 1134
conduct examination. 1135

(G)(1) No cause of action shall arise nor shall any liability 1136
be imposed against the superintendent, any authorized 1137
representative of the superintendent, or any examiner appointed by 1138
the superintendent for any statements made or conduct performed in 1139
good faith while carrying out the provisions of this chapter. 1140

(2) No cause of action shall arise nor shall any liability be 1141
imposed against any person for the act of communicating or 1142
delivering information or data to the superintendent, any 1143
authorized representative of the superintendent, or any examiner 1144
appointed by the superintendent pursuant to an examination made 1145
under this chapter, if the act of communication or delivery was 1146
performed in good faith and without fraudulent intent or the 1147
intent to deceive. ~~Division (G)(2) of this section~~ This division 1148
does not abrogate or modify in any way any common law or statutory 1149
privilege or immunity previously enjoyed by any person identified 1150
in division (G)(1) of this section. 1151

(3) A person identified in division (G)(1) or (2) of this 1152
section shall be entitled to an award of attorney's fees and costs 1153
if the person is the prevailing party in a civil action for libel, 1154
slander, or any other relevant tort arising out of activities in 1155

carrying out the provisions of this chapter and the party bringing 1156
the action was not substantially justified in bringing the action. 1157
For purposes of this division ~~(C)(3) of this section~~, a proceeding 1158
is "substantially justified" if it had a reasonable basis in law 1159
or fact at the time that it was initiated. 1160

(H) The superintendent may investigate suspected fraudulent 1161
viatical settlement acts and persons engaged in the business of 1162
viatical settlements. 1163

Sec. 3916.12. ~~(A) Each viatical settlement provider and~~ 1164
~~viatical settlement broker licensed licensee~~ under this chapter 1165
shall file with the superintendent of insurance, on or before the 1166
first day of March of each year, an annual statement ~~containing~~ 1167
~~the information required by the superintendent by rule adopted in~~ 1168
~~accordance with chapter 119. of the Revised Code~~ verified under 1169
oath by two officers in the form prescribed by the superintendent. 1170
The annual statement for a viatical settlement provider shall 1171
include the following information about the viatical settlement 1172
provider's transactions during the previous calendar year, unless 1173
newly licensed, in which case the superintendent may require 1174
additional years: 1175

(1) A list of each life insurance policy, including policy 1176
number, date of issue, viator, insured, insurance company issuing 1177
policy, date viatical settlement contract signed by viator; 1178
viatical settlement broker, agent of record on the policy, any 1179
life insurance agents receiving compensation, regardless of the 1180
form, and any premium finance companies; 1181

(2) Addresses and contact information for those persons 1182
listed in division (A)(1) of this section; 1183

(3) A list of all life expectancy providers who have directly 1184
or indirectly provided life expectancies to the viatical 1185
settlement provider for use in connection with a viatical 1186

<u>settlement contract;</u>	1187
<u>(4) Any other information required by the superintendent.</u>	1188
<u>(B) On or before the first day of May of each year, a</u>	1189
<u>viatical settlement provider licensed in this state shall file</u>	1190
<u>with the superintendent its financial statement, audited by an</u>	1191
<u>independent certified public accountant along with a letter</u>	1192
<u>stating whether any significant deficiencies or material</u>	1193
<u>weaknesses were detected during the audit pursuant to statement on</u>	1194
<u>auditing standards number 112 or as amended or superseded.</u>	1195
<u>(C)(1) Each viatical settlement provider shall file with the</u>	1196
<u>superintendent interim unaudited financial statements, including</u>	1197
<u>comparative results and footnotes to the financial statements, on</u>	1198
<u>a quarterly basis within forty-five days after the end of each</u>	1199
<u>quarter. The interim financial statements shall meet all of the</u>	1200
<u>following requirements:</u>	1201
<u>(a) Be certified by the chief executive officer and chief</u>	1202
<u>financial officer as to the accuracy and fair presentation;</u>	1203
<u>(b) Include disclosures either on the face of the financial</u>	1204
<u>statements or in accompanying footnotes sufficient so as to make</u>	1205
<u>the interim information not misleading.</u>	1206
<u>(2) Viatical settlement providers may assume that the users</u>	1207
<u>of the interim financial statements have access to the prior</u>	1208
<u>fiscal year-end audited financial statements and that the adequacy</u>	1209
<u>of additional disclosure needed for a fair presentation, except in</u>	1210
<u>regard to material contingencies, may be determined in that</u>	1211
<u>context. A footnote disclosure that would substantially duplicate</u>	1212
<u>the disclosure contained in the audited financial statements for</u>	1213
<u>the preceding fiscal year may be omitted. A footnote disclosure</u>	1214
<u>shall be provided if events subsequent to the fiscal year end have</u>	1215
<u>a material impact on the viatical settlement provider.</u>	1216
<u>(D) A viatical settlement provider that willfully fails to</u>	1217

file the annual statements required by this section, or willfully 1218
fails to reply within thirty calendar days to a written inquiry 1219
from the superintendent or the superintendent's designee, shall, 1220
in addition to other penalties provided by this chapter, be 1221
subject to a penalty of up to two hundred fifty dollars per day, 1222
not to exceed twenty-five thousand dollars in the aggregate for 1223
each such failure. 1224

(E) The superintendent shall keep confidential and not a 1225
matter of public record all individual transaction data regarding 1226
the business of viatical settlements and data that could 1227
compromise the privacy of personal, financial, and health 1228
information of the viator or insured. 1229

Sec. 3916.13. Except as otherwise permitted or required by 1230
law, a viatical settlement provider, viatical settlement broker, 1231
insurance company, insurance agent, insurance broker, information 1232
bureau, rating agency or company, or any other person with actual 1233
knowledge of an insured's identity, shall not disclose that 1234
identity as an insured, including the insured's name and 1235
individual identification data, or the insured's financial or 1236
medical information, unless any of the following apply: 1237

(A) The disclosure is necessary to effect a viatical 1238
settlement between the viator and a viatical settlement provider, 1239
and the viator and insured have provided prior written consent to 1240
the disclosure. 1241

(B) The disclosure is provided in response to an 1242
investigation or examination by the superintendent of insurance or 1243
by any other governmental officer or agency or pursuant to the 1244
requirements of division (C) of section 3916.18 of the Revised 1245
Code. 1246

(C) The disclosure is a term of, or condition to, the 1247
transfer of a viaticated policy by one viatical settlement 1248

provider to another viatical settlement provider. 1249

(D) The disclosure is necessary to permit a financing entity, 1250
related provider trust, or special purpose entity to finance the 1251
purchase of policies ~~or certificates~~ by a viatical settlement 1252
provider, and the viator and insured have provided prior written 1253
consent to the disclosure. 1254

(E) The disclosure is necessary to allow the viatical 1255
settlement provider or viatical settlement broker or their 1256
authorized representatives to make contacts for the purpose of 1257
determining health status. 1258

(F) The disclosure is required to purchase stop-loss coverage 1259
or financial guaranty insurance. 1260

Sec. 3916.14. (A)(1) The superintendent of insurance may 1261
conduct an examination under this chapter of a licensee as often 1262
as the superintendent in the superintendent's sole discretion 1263
considers appropriate. The superintendent shall consider all of 1264
the following to determine the nature, scope, and frequency of 1265
examinations: 1266

(a) Consumer complaints; 1267

(b) The results of financial statement analyses and ratios; 1268

(c) Any changes in ownership, officers, or directors; 1269

(d) Actuarial opinions; 1270

(e) Any report of independent certified public accountants; 1271

(f) Any other criteria the superintendent determines to be 1272
appropriate. 1273

(2) For the purposes of completing an examination of a 1274
licensee under this chapter, the superintendent may examine or 1275
investigate any person, or the business of any person, insofar as 1276
the examination or investigation, in the sole discretion of the 1277

superintendent, is necessary or material to the examination of the 1278
licensee. 1279

(3) In lieu of an examination under this chapter of any 1280
foreign or alien licensee licensed under this chapter, the 1281
superintendent, at the superintendent's discretion, may accept an 1282
examination report on the licensee as prepared by the official of 1283
the licensee's state of domicile or port-of-entry state who is 1284
comparable to the superintendent. As far as is practical, the 1285
superintendent shall cooperate with that official for any 1286
examination of a foreign or alien licensee. 1287

(B) The licensee or applicant shall pay to the superintendent 1288
all costs, assessments, forfeitures, or fines incurred in 1289
conducting an examination under this section. The superintendent 1290
shall deposit the money into the state treasury to the credit of 1291
the department of insurance operating fund created by section 1292
3901.021 of the Revised Code. 1293

Sec. 3916.15. (A) The superintendent of insurance may refuse 1294
to issue or may suspend, revoke, or refuse to renew the license of 1295
a viatical settlement provider ~~or~~, viatical settlement broker, or 1296
life expectancy provider, if the superintendent finds that any of 1297
the following apply: 1298

(1) There was a material misrepresentation in the application 1299
for the license. 1300

(2) The applicant or licensee or any officer, partner, 1301
member, key management personnel, or designee of the applicant or 1302
licensee has been convicted of fraudulent or dishonest practices, 1303
is subject to a final administrative action in another state, has 1304
been the subject of an administrative or civil action brought by 1305
the department of commerce, division of securities, or is 1306
otherwise shown to be untrustworthy or incompetent. 1307

(3) The licensee is a viatical settlement provider that demonstrates a pattern of unreasonable payments to viators.	1308 1309
(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 breach of trust, regardless of whether a judgment of conviction has been entered by the court.	1310 1311 1312 1313 1314 1315
(5) The licensee is a viatical settlement provider that has used a viatical settlement contract form that has not been approved under this chapter.	1316 1317 1318
(6) The licensee is a viatical settlement provider that has failed to honor contractual obligations set out in a viatical settlement contract.	1319 1320 1321
(7) The licensee no longer meets the requirements for initial licensure.	1322 1323
(8) The licensee is a viatical settlement provider that has assigned, transferred, or pledged a viaticated policy to a person that is not a <u>one of the following</u> :	1324 1325 1326
<u>(a) A viatical settlement provider licensed in this state,</u> a;	1327
<u>(b) A viatical settlement purchaser;</u>	1328
<u>(c) A qualified institutional buyer;</u>	1329
<u>(d) A financing entity,</u> a;	1330
<u>(e) A special purpose entity,</u> or a;	1331
<u>(f) A related provider trust.</u>	1332
(9) The licensee or any officer, partner, member, key management personnel, or designee of the licensee has violated any provision of this chapter or any rule adopted under this chapter.	1333 1334 1335
(10) The licensee or any officer, partner, member, key	1336

management personnel, or designee of the licensee has committed 1337
any coercive, fraudulent, or dishonest act, or made any untrue, 1338
deceptive, or misleading statement, in connection with a viatical 1339
transaction or a proposed viatical transaction. 1340

(B) Before the superintendent refuses to issue a license 1341
under this chapter, or suspends, or ~~revokes, or refuses to renew~~ 1342
the license of a viatical settlement provider ~~or~~, viatical 1343
settlement broker, or life expectancy provider, the superintendent 1344
shall provide the licensee or applicant with notice and an 1345
opportunity for hearing as provided in ~~chapter~~ Chapter 119. of the 1346
Revised Code, except as follows: 1347

(1)(a) Any notice of opportunity for hearing, the hearing 1348
officer's findings and recommendations, or the superintendent's 1349
order shall be served by certified mail at the last known address 1350
of the licensee or applicant. Service shall be evidenced by return 1351
receipt signed by any person. 1352

For purposes of this section, the "last known address" is the 1353
address that appears in the licensing records of the department of 1354
insurance. 1355

(b) If the certified mail envelope is returned with an 1356
endorsement showing that service was refused, or that the envelope 1357
was unclaimed, the notice and all subsequent notices required by 1358
Chapter 119. of the Revised Code may be served by ordinary mail to 1359
the last known address of the licensee or applicant. The mailing 1360
shall be evidenced by a certificate of mailing. Service is deemed 1361
complete as of the date of such certificate provided that the 1362
ordinary mail envelope is not returned by the postal authorities 1363
with an endorsement showing failure of delivery. The time period 1364
in which to request a hearing, as provided in Chapter 119. of the 1365
Revised Code, begins to run on the date of mailing. 1366

(c) If service by ordinary mail fails, the superintendent may 1367

cause a summary of the substantive provisions of the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known place of residence or business of the licensee or applicant is located. The notice is considered served on the date of the third publication.

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

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

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

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

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

(2) It is a violation of this chapter for any person to

issue, solicit, market, or otherwise promote the purchase of a 1398
life insurance policy for the purpose of or with an emphasis on 1399
selling the policy. 1400

(B) It is a violation of this chapter for any person to enter 1401
into a viatical settlement contract within a ~~two-year~~ five-year 1402
period commencing with the date of issuance of the insurance 1403
policy ~~or certificate~~ unless the viator certifies to the viatical 1404
settlement provider that one or more of the following conditions 1405
have been met within ~~that two-year period~~ five years after the 1406
issuance of the policy: 1407

(1) The policy ~~or certificate~~ was issued upon the viator's 1408
exercise of conversion rights arising out of a group policy ~~or~~ 1409
~~certificate~~, provided the total of the time covered under the 1410
conversion policy ~~or certificate~~ plus the time covered under the 1411
~~group prior~~ policy or certificate is at least ~~twenty-four~~ sixty 1412
months. The time covered under ~~the a~~ group policy ~~or certificate~~ 1413
shall be calculated without regard to any change in insurance 1414
carriers, provided the coverage has been continuous and under the 1415
same group sponsorship. 1416

~~(2) The viator is a charitable organization exempt from~~ 1417
~~taxation under 26 U.S.C. section 501(c)(3).~~ 1418

~~(3) The viator is not an individual.~~ 1419

~~(4)~~ The viator certifies and submits independent evidence to 1420
the viatical settlement provider that one or more of the following 1421
conditions have been met within that ~~two-year~~ five-year period: 1422

1423

(a) The viator or insured is terminally or chronically ill. 1424

(b) The viator's spouse dies. 1425

(c) The viator divorces the viator's spouse. 1426

(d) The viator retires from ~~full-time~~ full-time employment. 1427

(e) The viator becomes physically or mentally disabled, and a 1428
physician determines that the disability prevents the viator from 1429
maintaining full-time employment. 1430

~~(f) The viator was the insured's employer at the time the 1431
policy or certificate was issued and the employment relationship 1432
terminated. 1433~~

~~(g) A court of competent jurisdiction enters a final order, 1434
judgement judgment, or decree on the application of a creditor of 1435
the viator and adjudicates the viator bankrupt or insolvent or 1436
approves a petition seeking reorganization of the viator or 1437
appointing a receiver, trustee, or liquidator to all or a 1438
substantial part of the viator's assets. 1439~~

~~(h) The viator experiences a significant decrease in income 1440
that is unexpected and that impairs the viator's reasonable 1441
ability to pay the policy premium. 1442~~

~~(i) The viator or insured disposes of the viator's or 1443
insured's ownership interests in a closely held corporation 1444~~

(g) The sole beneficiary of the policy is a family member of 1445
the viator and the beneficiary dies. 1446

(3) The viator enters into a viatical settlement contract 1447
more than two years after the date of issuance of a policy, and 1448
all of the following have been true with respect to that policy at 1449
all times during those two years: 1450

(a) The viator has funded policy premiums using one or more 1451
of the following methods: 1452

(i) Unencumbered assets provided by the insured which may 1453
include an interest in the life insurance policy being viaticated 1454
up to the amount of the policy's net cash surrender value; 1455

(ii) Full recourse liability financing incurred by the 1456
insured; 1457

(iii) An agreement described in division (P)(3)(e) of section 3916.01 of the Revised Code. 1458
1459

(b) The viator does not have an agreement or understanding with any other person to guarantee any such liability, to purchase, or to stand ready to purchase the policy, including through an assumption or forgiveness of the loan; 1460
1461
1462
1463

(c) Neither the insured nor the policy has been evaluated for settlement in connection with the issuance of the policy. 1464
1465

~~(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. 1466
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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 the viatical settlement provider, the copy conclusively establishes that the viatical settlement contract satisfies the requirements of this section, and the insurer shall timely respond to the request. 1476
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(E) No insurer, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a viatical settlement contract, may require the viator, insured, viatical settlement provider, or viatical 1485
1486
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1488

settlement broker to sign any form, disclosure, consent, or waiver 1489
form that has not been approved by the superintendent of insurance 1490
for use in connection with viatical settlement contracts. 1491

1492

(F) Upon receipt of a properly completed request for change 1493
of ownership or beneficiary of a policy, the insurer shall respond 1494
in writing within thirty calendar days to confirm that the insurer 1495
has made the change or specify reasons that the change cannot be 1496
processed. No insurer shall unreasonably delay effecting change in 1497
ownership or beneficiary or seek to interfere with any viatical 1498
settlement contract lawfully entered into in this state. 1499

(G) A viatical settlement provider or viatical settlement 1500
broker that is party to a plan, transaction, or series of 1501
transactions to originate, renew, continue, or finance a life 1502
insurance policy with the insurer for the purpose of engaging in 1503
the business of viatical settlements at any time prior to or 1504
during the first five years after the insurer issues the policy 1505
shall fully disclose the plan, transaction, or series of 1506
transactions to the insurer that issued that policy. 1507

Sec. 3916.17. (A) The general assembly hereby declares that 1508
the purpose of this section is to provide prospective viators with 1509
clear and unambiguous statements in the advertisement of viatical 1510
settlements and to assure the clear, truthful, and adequate 1511
disclosure of the benefits, risks, limitations, and exclusions of 1512
any viatical settlement contract. This purpose is intended to be 1513
accomplished by the establishment of guidelines and standards of 1514
permissible and impermissible conduct in the advertising of 1515
viatical settlements to assure that product descriptions are 1516
presented in a manner that prevents unfair, deceptive, or 1517
misleading advertising and is conducive to accurate presentation 1518
and description of viatical settlements through the advertising 1519

media and material used by viatical settlement licensees. 1520

Divisions (B) to ~~(P)~~(Q) of this section apply to any 1521
advertising of viatical settlement contracts, or any related 1522
products or services intended for dissemination in this state, 1523
including, but not limited to, internet advertising viewed by 1524
persons located in this state. In cases in which disclosure 1525
requirements are established pursuant to federal regulation, this 1526
section shall be interpreted so as to minimize or eliminate 1527
conflict with federal regulation wherever possible. 1528

(B)(1) Every person licensed under this chapter shall file 1529
with the superintendent of insurance all advertisements of its 1530
contract, products, and services. 1531

(2) No person licensed under this chapter shall enter into a 1532
viatical settlement contract unless the materials promoting, 1533
advertising, and marketing the viatical settlement contract have 1534
been filed with the superintendent. 1535

(3) All materials filed with the superintendent pursuant to 1536
division (B)(1) of this section shall be filed in a format 1537
prescribed by the superintendent. Any filings not disapproved by 1538
the superintendent within sixty days of the superintendent's 1539
receipt of the materials shall be considered approved unless the 1540
superintendent requests additional time, in writing, from the 1541
person that filed the materials. The superintendent may assess 1542
fees for the review of the materials under this division. 1543

(C) Every viatical settlement licensee shall establish and at 1544
all times shall maintain a system of control over the content, 1545
form, and method of dissemination of all advertisements of its 1546
contracts, products, and services. All advertisements, regardless 1547
of by whom they are written, created, designed, or presented, 1548
shall be the responsibility of the viatical settlement licensee 1549
and of the individual who created or presented the advertisement. 1550

A system of control shall include regular routine notification, at 1551
least once a year, to agents and others authorized by the viatical 1552
settlement licensee who disseminate advertisements of the 1553
requirements and procedures for approval prior to the use of any 1554
advertisements not furnished by the viatical settlement licensee. 1555
1556

~~(C)~~(D) All advertisements that are subject to this section 1557
shall be truthful and not misleading in fact or by implication. 1558
The form and content of an advertisement of a viatical settlement 1559
contract shall be sufficiently complete and clear so as to avoid 1560
deception and shall not have the capacity or tendency to mislead 1561
or deceive. The determination of whether an advertisement has the 1562
capacity or tendency to mislead or deceive shall be made by the 1563
superintendent ~~of insurance~~, from the overall impression that the 1564
advertisement may be reasonably expected to create upon a person 1565
of average education or intelligence within the segment of the 1566
public to which it is directed. 1567

~~(D)~~(E) Viatical settlement advertisements containing any 1568
representation set forth in this division are deemed false and 1569
misleading on their face and are prohibited. False and misleading 1570
viatical settlement advertisements include, but are not limited 1571
to, those including any of the following representations: 1572

(1) "Guaranteed," "fully secured," "100 percent secured," 1573
"fully insured," "secure," "safe," "backed by rated insurance 1574
companies," "backed by federal law," "backed by state law," or 1575
"state guaranty funds," or similar representations; 1576

(2) "No risk," "minimal risk," "low risk," "no speculation," 1577
"no fluctuation," or similar representations; 1578

(3) "Qualified or approved for individual retirement accounts 1579
(IRAs), Roth IRAs, 401(k) plans, simplified employee pensions 1580
(SEPs), 403(b), Keogh plans, TSA, or other retirement account 1581

rollovers," "tax deferred," or similar representations;	1582
(4) Utilization of the word "guaranteed" to describe the fixed return, annual return, principal, earnings, profits, investment, or similar representations;	1583 1584 1585
(5) "No sales charges or fees" or similar representations;	1586
(6) "High yield," "superior return," "excellent return," "high return," "quick profit," or similar representations;	1587 1588
(7) Purported favorable representations or testimonials about the benefits of viatical settlement contracts or viatical settlement purchase agreements as an investment, taken out of context from any newspaper, trade paper, journal, radio or television program, or any other form of print and electronic media.	1589 1590 1591 1592 1593 1594
(E) (F)(1) The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.	1595 1596 1597 1598
An advertisement shall not omit material information or use any words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving viators, as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the viatical settlement contract offered is made available for inspection prior to consummation of the sale, that an offer is made to refund the payment if the viator is not satisfied, or that the viatical settlement contract includes a "free look" period that satisfies or exceeds legal requirements, does not remedy any misleading statements.	1599 1600 1601 1602 1603 1604 1605 1606 1607 1608 1609
(2) An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer <u>that company</u> .	1610 1611 1612

(3) An advertisement shall not represent that any premium 1613
payments will not be required to be paid on the life insurance 1614
policy that is the subject of a viatical settlement contract or 1615
viatical settlement purchase agreement in order to maintain that 1616
policy, unless that is the fact. 1617

(4) An advertisement shall not state or imply that interest 1618
charged on an accelerated death benefit or a policy loan is 1619
unfair, inequitable, or in any manner an incorrect or improper 1620
practice. 1621

(5) The words "free," "no cost," "without cost," "no 1622
additional cost," "at no extra cost," or words of similar import 1623
shall not be used with respect to any life insurance policy or to 1624
any benefit or service unless true. An advertisement may specify 1625
the charge for a benefit or a service or may state that a charge 1626
is included in the payment or use other appropriate language. 1627

(6)(a) ~~Testimonials~~ Testimonials, appraisals, analyses, or 1628
endorsements used in advertisements must satisfy all of the 1629
following: 1630

(i) They must be genuine. 1631

(ii) They must represent the current opinion of the author. 1632

(iii) They must be applicable to the viatical settlement 1633
~~contract~~ contract product or service advertised, if any. 1634

(iv) They must be accurately reproduced with sufficient 1635
completeness to avoid misleading or deceiving prospective viators 1636
as to the nature or scope of the testimonials, appraisals, 1637
analyses, or endorsements. 1638

(b) In using testimonials, appraisals, analyses, or 1639
endorsements, the viatical settlement licensee makes as its own 1640
all the statements contained in the testimonials, appraisals, 1641
analyses, or endorsements, and the statements are subject to all 1642

the provisions of this section. 1643

(c) If the individual making a testimonial, ~~appaisal~~ 1644
appraisal, analysis, or endorsement has a ~~funancial~~ financial 1645
interest in the ~~viatical settlement provider or related entity~~ 1646
subject of that testimonial, appraisal, analysis, or endorsement 1647
directly or indirectly as a stockholder, director, officer, 1648
employee, or otherwise, or receives any benefit directly or 1649
indirectly other than required union scale wages, that fact shall 1650
be prominently disclosed in the advertisement. 1651

(d) An advertisement shall not state or ~~im-ply~~ imply that a 1652
viatical settlement contract benefit or service has been approved 1653
or endorsed by a group of individuals, society, association, or 1654
other organization unless that is the fact and unless any 1655
relationship between the ~~individual~~ group of individuals, society, 1656
association, or organization and the viatical settlement provider 1657
is disclosed. If the entity making the endorsement or testimonial 1658
is owned, controlled, or managed by the viatical settlement 1659
provider, or receives any payment or other consideration from the 1660
viatical settlement provider for making an endorsement or 1661
testimonial, that fact shall be disclosed in the advertisement. 1662

(e) When an endorsement refers to benefits received under a 1663
viatical settlement contract, all pertinent information shall be 1664
retained for a period of at least five years after its use. 1665

~~(F)~~(G) An advertisement shall not contain statistical 1666
information unless the information accurately reflects recent and 1667
relevant facts. The source of all statistics used in an 1668
advertisement shall be identified. 1669

~~(G)~~(H) An advertisement shall not disparage any insurer, 1670
viatical settlement provider, viatical settlement broker, ~~viatical~~ 1671
~~settlement investment agent~~, insurance producer, policy, service, 1672
or method of marketing. 1673

~~(H)~~(I) All advertisements about a viatical settlement 1674
provider or its viatical settlement contract, products, or 1675
services shall clearly identify the viatical settlement provider's 1676
name. If any specific viatical settlement contract is advertised, 1677
the viatical settlement contract shall be identified either by 1678
form number or some other appropriate description. If an 1679
application is part of the advertisement, the name of the viatical 1680
settlement provider shall be shown on the application. 1681

~~(I)~~(J) An advertisement shall not use a trade name, group 1682
designation, name of the parent company of a viatical settlement 1683
licensee, name of a particular division of the viatical settlement 1684
licensee, service mark, slogan, symbol, or other device or 1685
reference without disclosing the name of the viatical settlement 1686
licensee, if either of the following applies regarding the 1687
advertisement: 1688

(1) It would have the capacity or tendency to mislead or 1689
deceive as to the true identity of the viatical settlement 1690
licensee. 1691

(2) It would have the capacity or tendency to create the 1692
impression that a company other than the viatical settlement 1693
licensee would have any responsibility for the financial 1694
obligation under a viatical settlement contract. 1695

~~(J)~~(K) An advertisement shall not use any combination of 1696
words, symbols, or physical materials that, by their content, 1697
phraseology, shape, color, or other characteristics, are so 1698
similar to a combination of words, symbols, or physical materials 1699
used by a government program or agency or otherwise appear to be 1700
of such a nature that they tend to mislead prospective viators 1701
into believing that the solicitation is in some manner connected 1702
with a government program or agency. 1703

~~(K)~~(L) An advertisement may state that a viatical settlement 1704

provider is licensed in the state in which the advertisement 1705
appears, provided it does not exaggerate that fact or suggest or 1706
imply that competing viatical settlement providers may not be so 1707
licensed. The advertisement may ask the audience to consult the 1708
~~licensee's~~ viatical settlement provider's web site or contact the 1709
department of insurance to find out if the state in which the 1710
advertisement appears requires licensing and, if it does, whether 1711
the viatical settlement provider or viatical settlement broker is 1712
licensed. 1713

~~(L)~~(M) An advertisement shall not create the impression that 1714
the viatical settlement provider, its financial condition or 1715
status, the payment of its claims, or the merits, desirability, or 1716
advisability of its viatical settlement contracts are recommended 1717
or endorsed by any government entity. 1718

~~(M)~~(N) All advertisements of an actual licensee shall state 1719
the name of the actual licensee. An advertisement shall not use a 1720
trade name, any group designation, name of any affiliate or 1721
controlling entity of the licensee, service mark, slogan, symbol, 1722
or other device in a manner that would have the capacity or 1723
tendency to mislead or deceive as to the true identity of the 1724
actual licensee or create the false impression that an affiliate 1725
or controlling entity would have any responsibility for the 1726
financial obligation of the licensee. 1727

~~(N)~~(O) An advertisement shall not directly or indirectly 1728
create the impression that any division or agency of this state, 1729
any other state, or the United States government endorses, 1730
approves, or favors any of the following: 1731

(1) Any viatical settlement licensee or its business 1732
practices or methods of operation; 1733

(2) The merits, desirability, or advisability of any viatical 1734
settlement contract, ~~or viatical settlement program;~~ 1735

(3) Any viatical settlement contract, or viatical settlement	1736
program;	1737
(4) Any life insurance policy or certificate or life	1738
insurance company.	1739
(O) (P) If the advertiser emphasizes the speed with which the	1740
viatication will occur, the advertising must disclose the average	1741
time frame, from completed application to the date of offer and	1742
from acceptance of the offer to receipt of the funds by the	1743
viator.	1744
(P) (Q) If the advertising emphasizes the dollar amounts	1745
available to viators, the advertising shall disclose the average	1746
purchase price as a per cent of face value obtained by viators	1747
contracting with the licensee during the past six months.	1748
<u>Sec. 3916.171. (A) No person shall commit a fraudulent</u>	1749
<u>viatical settlement act.</u>	1750
<u>(B) All of the following acts are fraudulent viatical</u>	1751
<u>settlement acts when committed by any person who, knowingly or</u>	1752
<u>with intent to defraud and for the purpose of depriving another of</u>	1753
<u>property or for pecuniary gain, commits, or permits any of its</u>	1754
<u>employees or its agents to commit them:</u>	1755
<u>(1) Presenting, causing to be presented, or preparing with</u>	1756
<u>knowledge or belief that it will be presented to or by a viatical</u>	1757
<u>settlement provider, viatical settlement broker, life expectancy</u>	1758
<u>provider, viatical settlement purchaser, financing entity,</u>	1759
<u>insurer, insurance broker, insurance agent, or any other person,</u>	1760
<u>any false material information, or concealing any material</u>	1761
<u>information, as part of, in support of, or concerning a fact</u>	1762
<u>material to, one or more of the following:</u>	1763
<u>(a) An application for the issuance of a viatical settlement</u>	1764
<u>contract or insurance policy;</u>	1765

<u>(b) The underwriting of a viatical settlement contract or insurance policy;</u>	1766
	1767
<u>(c) A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy;</u>	1768
	1769
<u>(d) Any premiums paid on an insurance policy;</u>	1770
<u>(e) Any payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy;</u>	1771
	1772
	1773
<u>(f) The reinstatement or conversion of an insurance policy;</u>	1774
<u>(g) The solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy;</u>	1775
	1776
<u>(h) The issuance of written evidence of a viatical settlement contract or insurance policy;</u>	1777
	1778
<u>(i) A financing transaction;</u>	1779
<u>(j) Any application for or the existence of or any payments related to a loan secured directly or indirectly by any interest in a life insurance policy.</u>	1780
	1781
	1782
<u>(2) Failing to disclose to the insurer, where the insurer has requested such disclosure, that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insurer or its authorized representatives in connection with the application, underwriting, and issuance of the policy.</u>	1783
	1784
	1785
	1786
	1787
	1788
<u>(3) In the furtherance of a fraud or to prevent the detection of a fraud, doing any of the following:</u>	1789
	1790
<u>(a) Removing, concealing, altering, destroying, or sequestering from the superintendent of insurance the assets or records of a licensee or another person engaged in the business of viatical settlements;</u>	1791
	1792
	1793
	1794

<u>(b) Misrepresenting or concealing the financial condition of</u>	1795
<u>a licensee, financing entity, insurer, or any other person;</u>	1796
<u>(c) Transacting the business of viatical settlements in</u>	1797
<u>violation of any law of this state requiring a license,</u>	1798
<u>certificate of authority, or other legal authority for the</u>	1799
<u>transaction of the business of viatical settlements;</u>	1800
<u>(d) Filing with the superintendent of insurance or the chief</u>	1801
<u>insurance regulatory official of another jurisdiction a document</u>	1802
<u>containing false information or otherwise concealing from the</u>	1803
<u>superintendent any information about a material fact.</u>	1804
<u>(4) Recklessly entering into, negotiating, brokering, or</u>	1805
<u>otherwise dealing in a viatical settlement contract involving a</u>	1806
<u>life insurance policy that was obtained by presenting false,</u>	1807
<u>deceptive, or misleading information of any fact material to the</u>	1808
<u>policy, or by concealing information concerning any fact material</u>	1809
<u>to the policy, for the purpose of misleading and with the intent</u>	1810
<u>to defraud the issuer of the policy, the viatical settlement</u>	1811
<u>provider, or the viator;</u>	1812
<u>(5) Committing any embezzlement, theft, misappropriation, or</u>	1813
<u>conversion of moneys, funds, premiums, credits, or other property</u>	1814
<u>of a viatical settlement provider, insurer, insured, viator,</u>	1815
<u>insurance policyowner, or any other person engaged in the business</u>	1816
<u>of viatical settlements or insurance;</u>	1817
<u>(6) Employing any plan, financial structure, device, scheme,</u>	1818
<u>or artifice to defraud in the business of viatical settlements;</u>	1819
<u>(7) Misrepresenting the state of residence or facilitating</u>	1820
<u>the change of the state in which a person owns a policy or the</u>	1821
<u>state of residency of a viator to a state or jurisdiction that</u>	1822
<u>does not have laws similar to this chapter for the express</u>	1823
<u>purposes of evading or avoiding the provisions of this chapter;</u>	1824
<u>(8) In the solicitation, application, or issuance of a life</u>	1825

insurance policy, employing any device, scheme, or artifice in 1826
violation of sections 3911.09 or 3911.091 of the Revised Code; 1827

(9) Engaging in any conduct related to a viatical settlement 1828
contract if the person knows or reasonably should have known that 1829
the intent of the transaction was to avoid the disclosure and 1830
notice requirements of section 3916.06 of the Revised Code; 1831

(10) Entering into a premium finance agreement with any 1832
person pursuant to which the person will receive, directly or 1833
indirectly, any proceeds, fees, or other considerations from the 1834
insurance policy, the owner of the insurance policy, or from any 1835
other person with respect to the premium finance agreement or any 1836
viatical settlement contract, or from any transaction related to 1837
the insurance policy, that are in addition to the amount required 1838
to pay the principal, interest, and service charges related to the 1839
policy premiums pursuant to the premium finance agreement or 1840
subsequent sale of the agreement. Any payments, charges, fees, or 1841
other amounts in addition to the amounts required to pay the 1842
principal, interest, and service charges related to policy 1843
premiums paid under the premium finance agreement shall be 1844
remitted to the original owner of the policy or, if the owner is 1845
not living at the time of the determination of the overpayment, to 1846
the estate of the owner. 1847

(11) With respect to any viatical settlement contract or 1848
insurance policy, for a viatical settlement broker or an agent 1849
registered under this chapter as operating as a viatical 1850
settlement broker to knowingly solicit an offer from, effectuate a 1851
viatical settlement with, or make a sale to any viatical 1852
settlement provider, viatical settlement purchaser, financing 1853
entity, or related provider trust that is controlling, controlled 1854
by, or under common control with such viatical settlement broker 1855
or registered agent; 1856

(12) With respect to any viatical settlement contract or 1857

insurance policy, for a viatical settlement provider to knowingly 1858
enter into a viatical settlement contract with a viator if, in 1859
connection with such viatical settlement contract, anything of 1860
value will be paid to a viatical settlement broker or an agent 1861
registered under this chapter as operating as a viatical 1862
settlement broker that is controlling, controlled by, or under 1863
common control with such viatical settlement provider or the 1864
viatical settlement purchaser, financing entity, or related 1865
provider trust that is involved in such viatical settlement 1866
contract; 1867

(13) Issuing, soliciting, marketing, or otherwise promoting 1868
the purchase of an insurance policy for the purpose of or with 1869
emphasis on settling the policy; 1870

(14) Issuing or using a pattern of false, misleading, or 1871
deceptive life expectancies; 1872

(15) Issuing, soliciting, marketing, or otherwise promoting 1873
stranger-originated life insurance; 1874

(16) Attempting to commit, assisting, aiding or abetting in 1875
the commission of, or conspiracy to commit any act or omission 1876
specified in divisions (B)(1) to (15) of this section. 1877

Sec. 3916.18. ~~(A)(1) No person shall commit a fraudulent~~ 1878
~~viatical settlement act.~~ 1879

~~(2)~~ No person shall knowingly or intentionally interfere with 1880
the enforcement of the provisions of this chapter or 1881
investigations of suspected or actual violations of this chapter. 1882

~~(3)~~(2) No person in the business of viatical settlements 1883
shall knowingly or intentionally permit any person convicted of a 1884
felony involving dishonesty or breach of trust to participate in 1885
the business of viatical settlements. 1886

(B)(1) Each viatical settlement contract and each application 1887

for a viatical settlement, regardless of the form of transmission, 1888
shall contain the following statement or a substantially similar 1889
statement: 1890

"Any person who knowingly presents false information in an 1891
application for insurance or viatical settlement contract is 1892
guilty of a crime and may be subject to fines and imprisonment." 1893

(2) The lack of a statement as required in division (B)(1) of 1894
this section does not constitute a defense in any prosecution for 1895
a fraudulent viatical settlement act. 1896

(C)(1) Every person engaged in the business of viatical 1897
settlements having knowledge or a reasonable belief that a 1898
fraudulent viatical settlement act is being, will be, or has been 1899
committed shall provide to the superintendent of insurance the 1900
information required by the superintendent. The person shall 1901
provide the information in a manner prescribed by the 1902
superintendent. 1903

(2) Every person having knowledge or a reasonable ~~belief~~ 1904
suspicion that a fraudulent viatical settlement act is being, will 1905
be, or has been committed may provide to the superintendent the 1906
information required by the superintendent. The person shall 1907
provide the information under this division in a manner prescribed 1908
by the superintendent. 1909

(D)(1) No civil liability shall be imposed on, and no cause 1910
of action shall arise from, a person's furnishing information 1911
concerning suspected, anticipated, or completed fraudulent 1912
viatical settlement acts or suspected or completed fraudulent 1913
insurance acts, if the information is provided to or received from 1914
any of the following: 1915

(a) The superintendent, or the superintendent's employees, 1916
agents, or representatives; 1917

(b) Law enforcement or regulatory officials of this state, 1918

another state, the ~~united states~~ United States, or a political 1919
subdivision of this state or another state, or any employee, 1920
agent, or representative of any of those officials+; 1921

(c) A person involved in the prevention and detection of 1922
fraudulent viatical settlement acts or any agent, employee, or 1923
representative of any person so involved; 1924

(d) The NAIC, ~~national association of securities dealers~~ 1925
~~(NASD)~~ financial industry regulatory authority (FINRA), the north 1926
~~american~~ American securities ~~and administrators~~ administrators 1927
association (NASAA), any employee, agent, or representative of any 1928
of those associations, or other regulatory body overseeing life 1929
insurance, viatical settlements, securities, or investment fraud; 1930
1931

(e) The life insurer that issued the life insurance policy ~~or~~ 1932
~~certificate~~ covering the life of the insured. 1933

(2) The immunity provided in division (D)(1) of this section 1934
shall not apply to any statement made with actual malice. In an 1935
action brought against a person for filing a report or furnishing 1936
other information concerning a fraudulent viatical settlement act 1937
~~or a fraudulent insurance act~~, the party bringing the action shall 1938
plead specifically any allegation that the immunity provided in 1939
division (D)(1) of this section does not apply because the person 1940
filing the report or furnishing the information did so with actual 1941
malice. 1942

(3) If a person is the prevailing party in a civil action for 1943
libel, slander, or any other relevant tort arising out of 1944
activities in carrying out the provisions of this chapter, if the 1945
prevailing party is a person identified in division (D)(1) of this 1946
section and the immunity described in that division applies to the 1947
person, and if the party who brought the action was not 1948
substantially justified in doing so, the person who is the 1949

prevailing party is entitled to an award of attorney's fees and 1950
costs arising out of the action. However, the person is not 1951
entitled to an award of attorney's fees if the person provided 1952
information about the person's own fraudulent viatical settlement 1953
acts. For purposes of this division, an action is "substantially 1954
justified" if it had a reasonable basis in law or fact at the time 1955
that it was initiated. 1956

(4) This section does not abrogate or modify any common law 1957
or statutory privilege or immunity enjoyed by a person described 1958
in division (D)(1) of this section. 1959

(E)(1) The documents and evidence provided pursuant to 1960
division (D) of this section or obtained by the superintendent in 1961
an investigation of any suspected or actual fraudulent viatical 1962
settlement act is privileged and confidential, is not a public 1963
record open for inspection under section 149.43 of the Revised 1964
Code, and is not subject to discovery or subpoena in a civil or 1965
criminal action. 1966

(2) Division (E)(1) of this section does not prohibit release 1967
by the superintendent of any document or evidence obtained in an 1968
investigation of suspected or actual fraudulent viatical 1969
settlement acts, in any of the following manners or circumstances: 1970

(a) In any administrative or judicial proceeding to enforce 1971
any laws ~~administer~~ administered by the superintendent; 1972

(b) To any law enforcement or regulatory agency of this 1973
state, another state, the ~~united states~~ United States, or a 1974
~~politeal~~ political subdivision of this state or another state, to 1975
an organization established for the purpose of detecting and 1976
preventing fraudulent viatical settlement ~~act~~ acts, or to the ~~NAIC~~ 1977
NAIC; 1978

(c) At the discretion of the superintendent, to a person in 1979
the business of viatical settlements that is aggrieved by a 1980

fraudulent viatical settlement act. 1981

(3) Release of documents and evidence under division (E)(2) 1982
of this section does not abrogate or modify the privilege granted 1983
in division (E)(1) of this section. 1984

(F) The provisions of this chapter do not do any of the 1985
following: 1986

(1) Preempt the authority or relieve the duty of any other 1987
law enforcement or regulatory agencies to investigate, examine, or 1988
prosecute suspected violations of law; 1989

(2) Prevent or prohibit a person from disclosing voluntarily 1990
any information concerning viatical settlement fraud to a law 1991
enforcement or regulatory agency other than the department of 1992
insurance; 1993

(3) Limit any power granted elsewhere by the law of this 1994
state to the superintendent or an insurance fraud unit to 1995
investigate and examine possible violations of law and to take 1996
appropriate action against wrongdoers. 1997

(G)(1) Viatical settlement providers and viatical settlement 1998
brokers shall adopt and have in place antifraud initiatives 1999
reasonably calculated to detect, prosecute, and prevent fraudulent 2000
viatical settlement acts. At the discretion of the superintendent, 2001
the superintendent may order, or a licensee viatical settlement 2002
provider or viatical settlement broker may request and the 2003
superintendent may grant, any modifications of the following 2004
required initiatives described in divisions (G)(1)(a) and (b) of 2005
this section that are necessary to ensure an effective antifraud 2006
program. The modifications may be more or less restrictive than 2007
the required initiatives so long as the modifications may 2008
reasonably be expected to accomplish the purpose of this section. 2009
Antifraud initiatives under this division shall include all of the 2010
following: 2011

(a) Fraud investigators, who may be <u>licensed</u> viatical settlement provider or <u>licensed</u> viatical settlement broker employees or independent contractors;	2012 2013 2014
(b) An antifraud plan that includes, but not is not limited to, all of the following:	2015 2016
(i) A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;	2017 2018 2019 2020
(ii) A description of the procedures for reporting possible fraudulent viatical settlement acts to the superintendent;	2021 2022
(iii) A description of the plan for atifraud <u>antifraud</u> education and training of underwriters and other personnel;	2023 2024
(iv) A description or chart <u>chart</u> outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications;	2025 2026 2027 2028 2029 2030
<u>(v) A description of the procedures used to perform initial and continuing review of the accuracy of life expectancies used in connection with a viatical settlement contract.</u>	2031 2032 2033
(2) The superintendent, by rule adopted in accordance with Chapter 119. of the Revised Code, may require that antifraud plans required under division (G)(1) of this section be submitted to the superintendent. If the superintendent requires that antifraud plans be submitted to the superintendent, the plans so submitted are privileged and confidential, are not a public record open for inspection under section 149.43 of the revised code <u>Revised Code</u> , and are not subject to discovery or subpoena in a civil or criminal action.	2034 2035 2036 2037 2038 2039 2040 2041 2042

(H) No insurer that issued a policy being viaticated shall be 2043
responsible, under this chapter, for any act or omission of a 2044
viatical settlement broker or viatical settlement provider arising 2045
out of or in connection with the viatical settlement transaction 2046
unless the insurer receives compensation for the placement of a 2047
viatical settlement contract from the viatical settlement provider 2048
or viatical settlement broker in connection with the viatical 2049
settlement contract. 2050

Sec. 3916.19. (A) In addition to the penalties and other 2051
enforcement provisions contained in this chapter, if any person 2052
violates any provision of this chapter or any rule or regulation 2053
implementing any provision of this chapter that constitutes a 2054
fraudulent viatical settlement act, the superintendent of 2055
insurance may seek an injunction in a court of competent 2056
jurisdiction and may apply for any temporary or permanent order 2057
that the superintendent determines is necessary to restrain the 2058
person from committing the violation. 2059

(B) Any person damaged by any act of a person in violation of 2060
any provision of this chapter may bring a civil action against the 2061
person committing the violation in a court of competent 2062
jurisdiction. A civil action brought under this division does not 2063
preclude the superintendent from exercising any regulatory, 2064
enforcement, or other authority available to the superintendent 2065
under this chapter. 2066

(C) In addition to the penalties and other enforcement 2067
provisions contained in this chapter, any person who violates any 2068
provision of this chapter that constitutes a fraudulent viatical 2069
settlement act is subject to a civil penalty of up to ten thousand 2070
dollars per violation. Imposition of civil penalties described in 2071
this division shall be pursuant to an order of the superintendent 2072
issued under Chapter 119. of the Revised Code. The 2073

superintendent's order may require a person found to be in 2074
violation of this chapter to make restitution to persons aggrieved 2075
by violations of this chapter. 2076

(D) Any transaction related to the sale or financing of an 2077
interest or investment in a viatical settlement is subject to 2078
Chapter 1707. of the Revised Code and the rules adopted 2079
thereunder. Nothing in this chapter shall preempt, supersede, or 2080
limit the application of Chapter 1707. of the Revised Code and the 2081
rules adopted thereunder. 2082

Sec. 3916.20. The superintendent of insurance may adopt rules 2083
in accordance with Chapter 119. of the Revised Code for purposes 2084
of implementing this chapter, including, but not limited to, rules 2085
that do the following: 2086

(A) Govern the relationship and responsibilities of ~~both~~ 2087
insurers ~~and~~, viatical settlement providers, and viatical 2088
settlement brokers during the viatication of a life insurance 2089
policy ~~or certificate~~. 2090

(B) Establish standards for evaluating the reasonableness of 2091
payments under viatical settlement contracts for persons with a 2092
terminal or chronic illness or condition. This authority includes, 2093
but is not limited to, the regulation of discount rates used to 2094
determine the amount paid in exchange for the assignment, 2095
transfer, sale, devise, or bequest of a benefit under a life 2096
insurance policy ~~or certificate~~ insuring persons with a terminal 2097
or chronic illness or condition. 2098

(C) Establish appropriate licensing requirements, fees, and 2099
standards for continued licensure for viatical settlement 2100
providers ~~and~~, viatical settlement brokers, and life expectancy 2101
providers; 2102

~~(D) Require a bond or other mechanism for ensuring the 2103~~

~~financial accountability of viatical settlement providers and~~ 2104
~~viatical settlement brokers.~~ 2105

Sec. 3916.99. (A) Whoever violates section 3916.02 of the 2106
Revised Code is guilty of a felony of the third degree. 2107

(B) Whoever violates division (A)~~(1)~~ of section ~~3916.18~~ 2108
3916.171 of the Revised Code is guilty of a violation of section 2109
2913.02 of the Revised Code. 2110

Section 2. That existing sections 3916.01, 3916.02, 3916.03, 2111
3916.05, 3916.06, 3916.07, 3916.08, 3916.09, 3916.10, 3916.11, 2112
3916.12, 3916.13, 3916.14, 3916.15, 3916.16, 3916.17, 3916.18, 2113
3916.19, 3916.20, and 3916.99 of the Revised Code are hereby 2114
repealed. 2115

Section 3. Division (A) of section 3916.02 as amended by this 2116
act shall take effect 90 days after the effective date of this 2117
act. 2118

Section 4. Nothing in Chapter 3916. of the Revised Code as 2119
amended by this act shall be construed as affecting the 2120
incontestability period provided in division (C) of section 2121
3915.05 of the Revised Code. 2122