# HOUSE BILL No. 1379

DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 27-4-1-4; IC 27-18; IC 34-30-2-119.8; IC 35-43-5-4.6.

**Synopsis:** Viatical settlements. Repeals the current law concerning viatical settlements and replaces current law with a modified version of the model viatical settlements law of the National Association of Insurance Commissioners. Makes conforming amendments.

**Effective:** July 1, 2008.

**Ripley, Fry**

January 16, 2008, read first time and referred to Committee on Insurance.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

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# HOUSE BILL No. 1379

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 27-4-1-4, AS AMENDED BY P.L.131-2007, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. (a) The following are hereby defined as unfair methods of competition and unfair and deceptive acts and practices in the business of insurance:

(1) Making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, or statement:

(A) misrepresenting the terms of any policy issued or to be issued or the benefits or advantages promised thereby or the dividends or share of the surplus to be received thereon;

(B) making any false or misleading statement as to the dividends or share of surplus previously paid on similar policies;

(C) making any misleading representation or any misrepresentation as to the financial condition of any insurer, or as to the legal reserve system upon which any life insurer operates;

(D) using any name or title of any policy or class of policies misrepresenting the true nature thereof; or

(E) making any misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to lapse, forfeit, or surrender the policyholder's insurance.

(2) Making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to any person in the conduct of the person's insurance business, which is untrue, deceptive, or misleading.

(3) Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting, or encouraging the making, publishing, disseminating, or circulating of any oral or written statement or any pamphlet, circular, article, or literature which is false, or maliciously critical of or derogatory to the financial condition of an insurer, and which is calculated to injure any person engaged in the business of insurance.

(4) Entering into any agreement to commit, or individually or by a concerted action committing any act of boycott, coercion, or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.

(5) Filing with any supervisory or other public official, or making, publishing, disseminating, circulating, or delivering to any person, or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false statement of financial condition of an insurer with intent to deceive. Making any false entry in any book, report, or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to which such insurer is required by law to report, or which has authority by law to examine into its condition or into any of its affairs, or, with like intent, willfully omitting to make a true entry of any material fact pertaining to the business of such insurer in any book, report, or statement of such insurer.

(6) Issuing or delivering or permitting agents, officers, or

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employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind promising returns and profits as an inducement to insurance.

(7) Making or permitting any of the following:

(A) Unfair discrimination between individuals of the same class and equal expectation of life in the rates or assessments charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract; however, in determining the class, consideration may be given to the nature of the risk, plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(B) Unfair discrimination between individuals of the same class involving essentially the same hazards in the amount of premium, policy fees, assessments, or rates charged or made for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever; however, in determining the class, consideration may be given to the nature of the risk, the plan of insurance, the actual or expected expense of conducting the business, or any other relevant factor.

(C) Excessive or inadequate charges for premiums, policy fees, assessments, or rates, or making or permitting any unfair discrimination between persons of the same class involving essentially the same hazards, in the amount of premiums, policy fees, assessments, or rates charged or made for:

(i) policies or contracts of reinsurance or joint reinsurance, or abstract and title insurance;

(ii) policies or contracts of insurance against loss or damage to aircraft, or against liability arising out of the ownership, maintenance, or use of any aircraft, or of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance; or

(iii) policies or contracts of any other kind or kinds of insurance whatsoever.

However, nothing contained in clause (C) shall be construed to apply to any of the kinds of insurance referred to in clauses (A)

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and (B) nor to reinsurance in relation to such kinds of insurance. Nothing in clause (A), (B), or (C) shall be construed as making or permitting any excessive, inadequate, or unfairly discriminatory charge or rate or any charge or rate determined by the department or commissioner to meet the requirements of any other insurance rate regulatory law of this state.

(8) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract or policy of insurance of any kind or kinds whatsoever, including but not in limitation, life annuities, or agreement as to such contract or policy other than as plainly expressed in such contract or policy issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance, or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends, savings, or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract or policy; or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, limited liability company, or partnership, or any dividends, savings, or profits accrued thereon, or anything of value whatsoever not specified in the contract. Nothing in this subdivision and subdivision (7) shall be construed as including within the definition of discrimination or rebates any of the following practices:

(A) Paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, so long as any such bonuses or abatement of premiums are fair and equitable to policyholders and for the best interests of the company and its policyholders.

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense.

(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first year or of any subsequent year of insurance thereunder, which may be made retroactive only for such policy year.

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(D) Paying by an insurer or insurance producer thereof duly licensed as such under the laws of this state of money, commission, or brokerage, or giving or allowing by an insurer or such licensed insurance producer thereof anything of value, for or on account of the solicitation or negotiation of policies or other contracts of any kind or kinds, to a broker, an insurance producer, or a solicitor duly licensed under the laws of this state, but such broker, insurance producer, or solicitor receiving such consideration shall not pay, give, or allow credit for such consideration as received in whole or in part, directly or indirectly, to the insured by way of rebate.

(9) Requiring, as a condition precedent to loaning money upon the security of a mortgage upon real property, that the owner of the property to whom the money is to be loaned negotiate any policy of insurance covering such real property through a particular insurance producer or broker or brokers. However, this subdivision shall not prevent the exercise by any lender of the lender's right to approve or disapprove of the insurance company selected by the borrower to underwrite the insurance.

(10) Entering into any contract, combination in the form of a trust or otherwise, or conspiracy in restraint of commerce in the business of insurance.

(11) Monopolizing or attempting to monopolize or combining or conspiring with any other person or persons to monopolize any part of commerce in the business of insurance. However, participation as a member, director, or officer in the activities of any nonprofit organization of insurance producers or other workers in the insurance business shall not be interpreted, in itself, to constitute a combination in restraint of trade or as combining to create a monopoly as provided in this subdivision and subdivision (10). The enumeration in this chapter of specific unfair methods of competition and unfair or deceptive acts and practices in the business of insurance is not exclusive or restrictive or intended to limit the powers of the commissioner or department or of any court of review under section 8 of this chapter.

(12) Requiring as a condition precedent to the sale of real or personal property under any contract of sale, conditional sales contract, or other similar instrument or upon the security of a chattel mortgage, that the buyer of such property negotiate any policy of insurance covering such property through a particular insurance company, insurance producer, or broker or brokers.

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However, this subdivision shall not prevent the exercise by any seller of such property or the one making a loan thereon of the right to approve or disapprove of the insurance company selected by the buyer to underwrite the insurance.

(13) Issuing, offering, or participating in a plan to issue or offer, any policy or certificate of insurance of any kind or character as an inducement to the purchase of any property, real, personal, or mixed, or services of any kind, where a charge to the insured is not made for and on account of such policy or certificate of insurance. However, this subdivision shall not apply to any of the following:

(A) Insurance issued to credit unions or members of credit unions in connection with the purchase of shares in such credit unions.

(B) Insurance employed as a means of guaranteeing the performance of goods and designed to benefit the purchasers or users of such goods.

(C) Title insurance.

(D) Insurance written in connection with an indebtedness and intended as a means of repaying such indebtedness in the event of the death or disability of the insured.

(E) Insurance provided by or through motorists service clubs or associations.

(F) Insurance that is provided to the purchaser or holder of an air transportation ticket and that:

(i) insures against death or nonfatal injury that occurs during the flight to which the ticket relates;

(ii) insures against personal injury or property damage that occurs during travel to or from the airport in a common carrier immediately before or after the flight;

(iii) insures against baggage loss during the flight to which the ticket relates; or

(iv) insures against a flight cancellation to which the ticket relates.

(14) Refusing, because of the for-profit status of a hospital or medical facility, to make payments otherwise required to be made under a contract or policy of insurance for charges incurred by an insured in such a for-profit hospital or other for-profit medical facility licensed by the state department of health.

(15) Refusing to insure an individual, refusing to continue to issue insurance to an individual, limiting the amount, extent, or kind of coverage available to an individual, or charging an individual a

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different rate for the same coverage, solely because of that individual's blindness or partial blindness, except where the refusal, limitation, or rate differential is based on sound actuarial principles or is related to actual or reasonably anticipated experience.

(16) Committing or performing, with such frequency as to indicate a general practice, unfair claim settlement practices (as defined in section 4.5 of this chapter).

(17) Between policy renewal dates, unilaterally canceling an individual's coverage under an individual or group health insurance policy solely because of the individual's medical or physical condition.

(18) Using a policy form or rider that would permit a cancellation of coverage as described in subdivision (17).

(19) Violating IC 27-1-22-25, IC 27-1-22-26, or IC 27-1-22-26.1 concerning motor vehicle insurance rates.

(20) Violating IC 27-8-21-2 concerning advertisements referring to interest rate guarantees.

(21) Violating IC 27-8-24.3 concerning insurance and health plan coverage for victims of abuse.

(22) Violating IC 27-8-26 concerning genetic screening or testing.

(23) Violating IC 27-1-15.6-3(b) concerning licensure of insurance producers.

(24) Violating IC 27-1-38 concerning depository institutions.

(25) Violating IC 27-8-28-17(c) or IC 27-13-10-8(c) concerning the resolution of an appealed grievance decision.

(26) Violating IC 27-8-5-2.5(e) through IC 27-8-5-2.5(j) or IC 27-8-5-19.2.

(27) Violating IC 27-2-21 concerning use of credit information.

(28) Violating IC 27-4-9-3 concerning recommendations to consumers.

(29) Engaging in dishonest or predatory insurance practices in marketing or sales of insurance to members of the United States Armed Forces as:

(A) described in the federal Military Personnel Financial Services Protection Act, P.L.109-290; or

(B) defined in rules adopted under subsection (b).

**(30) Violating IC 27-18 concerning viatical settlements.**

(b) Except with respect to federal insurance programs under Subchapter III of Chapter 19 of Title 38 of the United States Code, the commissioner may, consistent with the federal Military Personnel Financial Services Protection Act (P.L.109-290), adopt rules under

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IC 4-22-2 to:

(1) define; and

(2) while the members are on a United States military installation or elsewhere in Indiana, protect members of the United States Armed Forces from;

dishonest or predatory insurance practices.

SECTION 2. IC 27-18 IS ADDED TO THE INDIANA CODE AS A **NEW** ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]:

**ARTICLE 18. VIATICAL SETTLEMENTS**

**Chapter 1. Definitions**

**Sec. 1. The definitions in this chapter apply throughout this article.**

**Sec. 2. "Advertisement" or "advertising material" means any:**

**(1) written, electronic, or printed communication; or**

**(2) communication by means of recorded:**

**(A) telephone messages; or**

**(B) messages transmitted on radio, television, the Internet, or similar communications media;**

**including film strips, motion pictures, and videos;**

**that is published, disseminated, circulated, or placed directly before the public in Indiana to induce a person to purchase or sell, assign, devise, bequeath, or otherwise transfer the death benefit or ownership of a policy under a viatical settlement contract, or to create interest in transfers described in this subsection.**

**Sec. 3. "Business of viatical settlements" means an activity related to any of the following in connection with acquiring an interest in a policy by means of a viatical settlement contract:**

**(1) Offering.**

**(2) Soliciting.**

**(3) Negotiating.**

**(4) Procuring.**

**(5) Effectuating.**

**(6) Purchasing.**

**(7) Investing.**

**(8) Financing.**

**(9) Monitoring.**

**(10) Tracking.**

**(11) Underwriting.**

**(12) Selling.**

**(13) Transferring.**

**(14) Assigning.**

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**(15) Pledging.**

**(16) Hypothecating.**

**Sec. 4. "Chronically ill" means any of the following:**

**(1) Being unable to perform at least two (2) of the activities of daily living, including eating, toileting, transferring, bathing, dressing, or maintaining continence.**

**(2) Requiring substantial supervision to be protected from threats to health and safety due to severe cognitive impairment.**

**(3) Having a level of disability similar to the inability described in subdivision (1), as determined by the secretary of the federal Department of Health and Human Services.**

**Sec. 5. "Commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.**

**Sec. 6. "Department" refers to the department of insurance created by IC 27-1-1-1.**

**Sec. 7. "Financing entity" means an underwriter, a placement agent, a lender, a purchaser of securities, a purchaser of a policy from a viatical settlement provider, a credit enhancer, or an entity:**

**(1) that has a direct ownership in a policy that is the subject of a viatical settlement contract;**

**(2) whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of at least one (1) viaticated policy; and**

**(3) that has an agreement in writing with at least one (1) licensed viatical settlement provider to finance the acquisition of viatical settlement contracts.**

**The term does not include a nonaccredited investor or a viatical settlement purchaser.**

**Sec. 8. "Fraudulent viatical settlement act" includes the following:**

**(1) Knowingly or with intent to defraud and for the purpose of depriving another of property or for pecuniary gain, engaging in or permitting one's employees or agents to engage in the following:**

**(A) Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance producer, or another person, any false material information, or concealing material information, as part of, in support of, or concerning a fact material to at least**

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**one (1) of the following:**

**(i) An application for the issuance of a viatical settlement contract or policy.**

**(ii) The underwriting of a viatical settlement contract or policy.**

**(iii) A claim for payment or benefit under a viatical settlement contract or policy.**

**(iv) Premiums paid on a policy.**

**(v) Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or policy.**

**(vi) The reinstatement or conversion of an insurance policy.**

**(vii) The solicitation, offer, effectuation, or sale of a viatical settlement contract or policy.**

**(viii) The issuance of written evidence of a viatical settlement contract or policy.**

**(ix) A financing transaction.**

**(B) Employing a plan, financial structure, device, scheme, or artifice to defraud related to a viaticated policy.**

**(C) Failing to disclose to an insurer that requests the disclosure that a prospective insured has undergone a life expectancy evaluation by a person other than the insurer or an authorized representative of the insurer in connection with the issuance of a policy.**

**(2) In the furtherance of a fraud or to prevent the detection of a fraud, knowingly or intentionally doing or permitting one's employees or agents to do any of the following:**

**(A) Removing, concealing, altering, destroying, or sequestering from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements.**

**(B) Misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or other person.**

**(C) Transacting the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business.**

**(C) Filing with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the commissioner.**

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**(3) Embezzlement, theft, misappropriation, or conversion of money, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner, or another person engaged in the business of viatical settlements or insurance.**

**(4) Recklessly entering into, negotiating, brokering, or otherwise dealing in a viatical settlement contract, the subject of which is a policy that was obtained by knowingly:**

**(A) presenting false information concerning a fact material to the policy; or**

**(B) concealing, for the purpose of misleading another person, information concerning a fact material to the policy;**

**with the intent to defraud the policy's issuer, the viatical settlement provider, or the viator.**

**(5) Knowingly or intentionally facilitating a change of the state of:**

**(A) ownership of a policy; or**

**(B) residency of a viator;**

**to a state or jurisdiction that does not have a law similar to this article for the express purpose of evading or avoiding the requirements of this article.**

**(6) Knowingly or intentionally engaging in any practice or plan that:**

**(A) involves stranger originated life insurance; or**

**(B) violates a state law related to an insurable interest.**

**(7) Attempting to commit, assisting, aiding, or abetting in the commission of, or conspiring to commit an act or omission described in this section.**

**Sec. 9. "Licensee" means a viatical settlement provider or a viatical settlement broker that is licensed under IC 27-18-2.**

**Sec. 10. "Life insurance producer" means a person who is licensed under IC 27-1-15.6 as a resident or nonresident insurance producer and who has received qualification or authority for life insurance coverage or a life line of coverage.**

**Sec. 11. "NAIC" refers to the National Association of Insurance Commissioners.**

**Sec. 12. "Person" means an individual or a legal entity.**

**Sec. 13. "Policy" means an individual or group policy, group certificate, contract, or arrangement of life insurance owned by a resident of Indiana, regardless of whether the policy, certificate, contract, or arrangement is delivered or issued for delivery in**

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**Indiana.**

**Sec. 14. "Premium finance loan" means a loan that is:**

**(1) made primarily for the purpose of making premium payments on a policy; and**

**(2) secured by an interest in the policy.**

**Sec. 15. A person acts "recklessly" in engaging in certain conduct if:**

**(1) the person acts in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of a relevant fact or risk; and**

**(2) to conduct involves a gross deviation from acceptable standards of conduct.**

**Sec. 16. "Related provider trust" means a trust that:**

**(1) is established by a viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction; and**

**(2) is evidenced by a written agreement between the trust and the viatical settlement provider described in subdivision (1) under which:**

**(A) the viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements; and**

**(B) the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner as if the records and files were maintained directly by the viatical settlement provider.**

**Sec. 17. "Special purpose entity" means a corporation, partnership, trust, limited liability company, or another similar entity formed solely to provide direct or indirect access to institutional capital markets:**

**(1) for a financing entity or viatical settlement provider; or**

**(2) in connection with a transaction in which the securities in the corporation, partnership, trust, limited liability company, or other entity:**

**(A) are acquired by the viator or by qualified institutional buyers (as defined under the federal Securities Act of 1933, as amended (17 CFR 144)); or**

**(B) pay a fixed rate of return commensurate with established asset-backed institutional capital markets.**

**Sec. 18. (a) "Stranger originated life insurance" means a practice or plan to initiate a policy for the benefit of a third party**

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**investor who, at the time the policy is originated, has no insurable interest in the insured.**

**(b) The term includes the following:**

**(1) An arrangement under which, at the time of policy inception:**

**(A) a policy is purchased with resources or guarantees from or through a person that is not legally permitted to initiate the policy; and**

**(B) a written or verbal arrangement or agreement is made to transfer the ownership of the policy or policy benefits to a third party.**

**(2) A trust that is:**

**(A) created to give an appearance of the existence of an insurable interest; and**

**(B) used to initiate a policy for an investor.**

**(c) The term does not include an arrangement described in section 20(c) of this chapter.**

**Sec. 19. "Terminally ill" means having an illness that is reasonably expected to result in death in not more than twenty-four (24) months.**

**Sec. 20. (a) "Viatical settlement broker" means a person who, working exclusively on behalf of a viator and for a fee, commission, or other valuable consideration, offers or attempts to negotiate a viatical settlement contract between the viator and at least one (1) viatical settlement provider or viatical settlement broker.**

**(b) The term does not include:**

**(1) an attorney;**

**(2) a certified public accountant; or**

**(3) a financial planner accredited by a nationally recognized accreditation agency;**

**who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or viatical settlement purchaser.**

**Sec. 21. (a) "Viatical settlement contract" means a written agreement that:**

**(1) is entered into between a viator and a viatical settlement provider or an affiliate of a viatical settlement provider; and**

**(2) establishes the terms under which compensation or anything of value, which amounts to less than the amount of the expected death benefit of a policy, is or will be paid to a viator in return for the viator's present or future assignment, transfer, sale, devise, or bequest of the death benefit or**

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**ownership of a part of a policy.**

**(b) The term includes the following:**

**(1) A premium finance loan made for a policy to the policyowner on, before, or after the date of issuance of the policy in a situation in which:**

**(A) the premium finance loan proceeds are not used solely to pay the expenses described in subsection (c)(2);**

**(B) the policyowner or insured receives on the date of the premium finance loan a guarantee of a future viatical settlement value of the policy; or**

**(C) the policyowner or insured agrees on the date of the premium finance loan to sell the policy or a portion of the policy's death benefit on any date following the issuance of the policy.**

**(2) A transfer, for compensation or value, of ownership or beneficial interest in a trust or other entity that:**

**(A) owns a policy; and**

**(B) was formed or availed of for the principal purpose of acquiring at least one (1) policy that insures the life of a resident of Indiana.**

**(c) The term does not include the following:**

**(1) A policy loan or accelerated death benefit made by an insurer under the policy's terms.**

**(2) A loan in which loan proceeds are used solely to pay the following:**

**(A) Premiums for a policy.**

**(B) 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.**

**(3) A loan made by a bank or other licensed financial institution in which the lender takes an interest in a policy solely to secure repayment of the loan, or if there is a default on the loan and the policy is transferred, the transfer of the policy by the lender when the default itself does not occur under an agreement or understanding with another person for the purpose of evading regulation under this article.**

**(4) A loan made by a lender that:**

**(A) does not violate Indiana law related to insurance premium finance loans; and**

**(B) is not described in subsection (b)(1).**

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**(5) An agreement in which all parties:**

**(A) are closely related to the insured by blood or law;**

**(B) have a lawful substantial economic interest in the continued life, heath, and bodily safety of the insured; or**

**(C) are trusts established primarily for the benefit of the parties.**

**(6) A designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or by a trust established by the employer, of life insurance on the life of the employee.**

**(7) A bona fide business succession planning arrangement:**

**(A) between:**

**(i) at least two (2) shareholders in a corporation; or**

**(ii) a corporation and at least one (1) of the corporation's shareholders or at least one (1) trust established by the corporation's shareholders;**

**(B) between:**

**(i) at least two (2) partners in a partnership; or**

**(ii) a partnership and at least one (1) of the partnership's partners or at least one (1) trust established by the partnership's partners; or**

**(C) between:**

**(i) at least two (2) members in a limited liability company; or**

**(ii) a limited liability company and at least one (1) of the limited liability company's members or at least one (1) trust established by the limited liability company's members.**

**(8) An agreement entered into by:**

**(A) a service recipient, or a trust established by a service recipient; and**

**(B) a service provider, or a trust established by a service provider, who performs significant services for the service recipient's trade or business.**

**(9) Another contract, transaction, or arrangement exempted from the definition of viatical settlement contract by the commissioner based on a determination that the contract, transaction, or arrangement is not intended to be regulated under this article.**

**Sec. 22. "Viatical settlement investment agent" means a person who:**

**(1) is an appointed or contracted agent of and acts on behalf**

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**of a licensed viatical settlement provider; and**

**(2) solicits or arranges the funding for the purchase of a viatical settlement by a viatical settlement purchaser.**

**Sec. 23. (a) "Viatical settlement provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract with a viator who is a resident of Indiana.**

**(b) The term does not include the following:**

**(1) A bank, savings bank, savings and loan association, credit union, or another licensed lending institution that takes an assignment of a policy solely as collateral for a loan.**

**(2) A premium finance company that:**

**(A) makes premium finance loans;**

**(B) is not required to be licensed under Indiana law related to premium finance loans; and**

**(C) takes an assignment of a policy solely as collateral for a loan.**

**(3) The issuer of a policy.**

**(4) An authorized or eligible insurer that provides stop loss coverage or financial guaranty insurance to a viatical settlement provider, viatical settlement purchaser, financing entity, special purpose entity, or related provider trust.**

**(5) An individual who enters into or effectuates not more than one (1) agreement during a calendar year for the transfer of a policy for a value less than the expected death benefit.**

**(6) A financing entity.**

**(7) A special purpose entity.**

**(8) A related provider trust.**

**(9) A viatical settlement purchaser.**

**(10) Another person determined by the commissioner not to be a viatical settlement provider.**

**Sec. 24. "Viatical settlement purchase agreement" means a contract or agreement to which the viator is not party that:**

**(1) is entered into by a viatical settlement purchaser;**

**(2) provides for the purchase of a policy or an interest in a policy; and**

**(3) is entered into for the purpose of deriving an economic benefit.**

**Sec. 25. (a) "Viatical settlement purchaser" means a person that, for the purpose of deriving an economic benefit:**

**(1) pays a sum of money as consideration for a policy or an interest in the death benefit of a policy; or**

**(2) owns, acquires, or is entitled to a beneficial interest in a**

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**trust that owns a viatical settlement contract or is the beneficiary of a policy;**

**that is or will be the subject of a viatical settlement contract.**

**(b) The term does not include the following:**

**(1) A person licensed under this article.**

**(2) An accredited investor or qualified institutional buyer (as defined respectively in Regulation D, Rule 501(a) or Rule 144A promulgated under the federal Securities Act of 1933, as amended).**

**(3) A financing entity.**

**(4) A special purpose entity.**

**(5) A related provider trust.**

**Sec. 26. "Viaticated policy" means a policy that has been acquired by a viatical settlement provider under a viatical settlement contract.**

**Sec. 27. (a) "Viator" means a policyowner of a policy, or a certificate holder under a group policy, who is a resident of Indiana and enters into or seeks to enter into a viatical settlement contract of which the policy or certificate is the subject.**

**(b) Unless otherwise specified in this article, the term includes the policyowner of a policy, or a certificate holder under a group policy, that insures the life of an individual who is not chronically ill or terminally ill.**

**(c) The term does not include the following:**

**(1) A person licensed under this article, including a life insurance producer acting as a viatical settlement broker as provided in this article.**

**(2) A qualified institutional buyer (as defined in Regulation D, Rule 144A promulgated under the federal Securities Act of 1933, as amended).**

**(3) A financing entity.**

**(4) A special purpose entity.**

**(5) A related provider trust.**

**Chapter 2. Licensure and Bonding Requirements**

**Sec. 1. (a) A person shall not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the commissioner of the state of residence of the viator.**

**(b) If a policy insures more than one (1) viator and the viators are residents of different states, IC 27-18-9-13 determines which state law governs the viatical settlement.**

**Sec. 2. (a) A person shall not operate as a viatical settlement**

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**investment agent without first obtaining a license from the commissioner of the state of residence of the viatical settlement purchaser.**

**(b) If there is more than one (1) viatical settlement purchaser of a single policy and the viatical settlement purchasers are residents of different states, the viatical settlement purchase agreement is governed by the law of the state in which the viatical settlement purchaser who has the largest percentage of ownership in the policy resides. However, if the viatical settlement purchasers hold equal ownership in the policy, the viatical settlement purchase agreement is governed by the law of the state of residence of one (1) viatical settlement purchaser agreed upon in writing by all viatical settlement purchasers.**

**Sec. 3. (a) A life insurance producer who is licensed as:**

**(1) a resident insurance producer with a life line of authority in:**

**(A) Indiana; or**

**(B) the insurance producer's home state;**

**for at least one (1) year; and**

**(2) if described in subdivision (1)(B), a nonresident producer in Indiana;**

**is considered to meet the licensing requirements of this chapter and may operate as a viatical settlement broker in Indiana.**

**(b) Not later than thirty (30) days after the first day a life insurance producer begins operating as a viatical settlement broker in Indiana, the life insurance producer shall do the following:**

**(1) On a form prescribed by the commissioner, notify the commissioner that the life insurance producer is acting as a viatical settlement broker. The written notice prepared by the insurance producer must include an acknowledgment by the life insurance producer that the life insurance producer will operate as a viatical settlement broker in accordance with this article.**

**(2) Pay an applicable fee in the amount determined by the commissioner.**

**Sec. 4. An insurer that issues a policy that is viaticated is not responsible for an act or omission of a viatical settlement broker or viatical settlement provider arising out of or in connection with the viatical settlement transaction, unless the insurer receives compensation from the viatical settlement provider or viatical settlement broker for the placement of the viatical settlement**

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**contract.**

**Sec. 5. A person who:**

**(1) is licensed as:**

**(A) an attorney;**

**(B) a certified public accountant; or**

**(C) a financial planner accredited by a nationally recognized accreditation agency;**

**(2) is retained to represent a viator; and**

**(3) receives no compensation paid directly or indirectly by a viatical settlement provider;**

**may negotiate a viatical settlement contract on behalf of the viator without being licensed as a viatical settlement broker.**

**Sec. 6. A person must apply to the commissioner for licensure as a viatical settlement provider or viatical settlement broker on a form prescribed by the commissioner. Ann application form must be accompanied by a fee in the amount determined by the commissioner.**

**Sec. 7. A person licensed under this chapter must annually pay a renewal fee in the amount determined by the commissioner before the person's license renewal date. If a licensed person fails to pay the renewal fee before the renewal date, the person's license expires.**

**Sec. 8. (a) A person applying for licensure under this chapter must provide information on forms as required by the commissioner.**

**(b) The commissioner may:**

**(1) at any time, require an applicant to fully disclose the identity of all stockholders, partners, officers, members, and employees of the applicant; and**

**(2) refuse to issue a license in the name of a legal entity if the commissioner is not satisfied that an officer, employee, stockholder, partner, or member of the applicant who may materially influence the applicant's conduct satisfies the requirements of this article.**

**(c) A license issued to a legal entity under this chapter authorizes all partners, officers, members, and designated employees of the licensee who are named in the application and any supplements to the application to act as viatical settlement providers or viatical settlement brokers, as applicable, under the license.**

**Sec. 9. Upon an applicant's filing of an application and the payment of the fee required under section 6 of this chapter, the**

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**commissioner shall make an investigation of the applicant and shall issue a license if the commissioner finds that the applicant meets the following requirements:**

**(1) If the applicant is a viatical settlement provider, the applicant has provided a detailed plan of operation.**

**(2) The applicant is competent and trustworthy and intends to act in good faith in the capacity to which the requested license applies.**

**(3) The applicant has a good business reputation and has had experience, training, or education that qualifies the applicant for the business to which the requested license applies.**

**(4) If the applicant is a legal entity, the applicant provides a certificate of good standing from the applicant's state of domicile.**

**(5) If the applicant is a viatical settlement provider or a viatical settlement broker, the applicant has provided an antifraud plan that meets the requirements of IC 27-18-12-9.**

**(6) The applicant meets the following financial requirements as provided in section 10 of this chapter:**

**(A) If the applicant is a viatical settlement provider, the applicant has demonstrated evidence of financial responsibility in a format prescribed by the commissioner through either:**

**(i) a surety bond executed and issued by an insurer authorized to issue surety bonds in Indiana; or**

**(ii) a deposit of cash, certificates of deposit, or securities, or any combination of cash, certificates of deposit, or securities;**

**equal to two hundred fifty thousand dollars ($250,000).**

**(B) If the applicant is a viatical settlement broker, the applicant has demonstrated evidence of financial responsibility in a format prescribed by the commissioner through either:**

**(i) a surety bond executed and issued by an insurer authorized to issue surety bonds in Indiana; or**

**(ii) a deposit of cash, certificates of deposit, or securities, or any combination of cash, certificates of deposit, or securities;**

**equal to two hundred fifty thousand dollars ($250,000).**

**Sec. 10. (a) Evidence of financial responsibility under section 9(6) of this chapter may be shown by proof that financial instruments described in section 9(6) of this chapter are filed with**

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**another state where the applicant is licensed as a viatical settlement provider or viatical settlement broker.**

**(b) A surety bond issued for purposes of section 9(6) of this chapter:**

**(1) must be executed in favor of the state; and**

**(2) must specifically authorize recovery by the commissioner on behalf of a person in Indiana who sustains damage as the result of:**

**(A) the erroneous act of a viatical settlement provider or viatical settlement broker;**

**(B) the failure of a viatical settlement provider or viatical settlement broker to act;**

**(C) the fraud or unfair act or practice of which a viatical settlement provider or viatical settlement broker is convicted or that the viatical settlement provider or viatical settlement broker is determined to have committed.**

**(c) The commissioner may require evidence of financial responsibility to confirm compliance with section 9 of this chapter at any time the commissioner considers necessary.**

**Sec. 11. The commissioner shall not issue a license to a nonresident applicant unless the applicant:**

**(1) files and maintains a written designation of an agent for service of process with the commissioner; or**

**(2) files with the commissioner the applicant's written and irrevocable consent that an action against the applicant may be commenced by service of process on the commissioner.**

**Sec. 12. A viatical settlement provider, viatical settlement broker, or viatical settlement investment agent shall inform the commissioner of any change of:**

**(1) its officers;**

**(2) stockholders who hold at least ten percent (10%) of its stock; or**

**(3) its partners, directors, members, or designated employees;**

**less than thirty (30) days after the change occurs if information previously provided to the commissioner is no longer accurate due to the change.**

**Sec. 13. (a) This section does not apply to a life insurance producer described in section 3 of this chapter.**

**(b) An individual who is licensed as a viatical settlement broker shall, every two (2) years, complete at least fifteen (15) hours of training related to viatical settlements and viatical settlement**

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**transactions, as required by the commissioner.**

**(c) An individual who fails to meet the requirements of this section is subject to penalties imposed by the commissioner.**

**Chapter 3. License Denial and Revocation**

**Sec. 1. The commissioner may refuse to issue, suspend, revoke, or refuse to renew the license of a viatical settlement provider or viatical settlement broker if the commissioner makes any of the following findings:**

**(1) There was any material misrepresentation in the licensee's license application.**

**(2) The licensee or an officer, partner, member, or key management employee of the licensee:**

**(A) has been convicted of or has been determined to have committed fraudulent or dishonest practices;**

**(B) is subject to a final administrative action for a violation of this article or rules adopted under this article; or**

**(C) is otherwise shown to be untrustworthy or incompetent.**

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

**(4) The licensee or an officer, partner, member, or key management employee of the licensee has been found guilty of or has pleaded guilty or nolo contendere to:**

**(A) a felony; or**

**(B) a misdemeanor involving fraud or moral turpitude;**

**regardless of whether a judgment of conviction has been entered by the court.**

**(5) If the licensee is a viatical settlement provider, the licensee has entered into a viatical settlement contract that is not authorized under this article.**

**(6) If the licensee is a viatical settlement provider, the licensee has failed to honor contractual obligations set out in a viatical settlement contract.**

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

**(8) If the licensee is a viatical settlement provider, the licensee has assigned, transferred, or pledged a viaticated policy to a person other than:**

**(A) a viatical settlement provider licensed in Indiana;**

**(B) a viatical settlement purchaser;**

**(C) an accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501(a) or**

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**Rule 144A promulgated under the federal Securities Act of 1933, as amended;**

**(D) a financing entity;**

**(E) a special purpose entity; or**

**(F) a related provider trust.**

**(9) The licensee or an officer, partner, member, or key management employee of the licensee has violated this article or rules adopted under this article.**

**Sec. 2. The commissioner may suspend, revoke, or refuse to renew the license of a viatical settlement broker or a life insurance producer operating as a viatical settlement broker under this article if the commissioner finds that the viatical settlement broker or life insurance producer has violated this article or rules adopted under this article or has otherwise engaged in bad faith conduct with a viator.**

**Sec. 3. If the commissioner:**

**(1) denies a license application;**

**(2) suspends, revokes, or refuses to renew the license of a viatical settlement provider or viatical settlement broker; or**

**(3) suspends, revokes, or refuses to renew the license of a life insurance producer operating as a viatical settlement broker;**

**under this article, the commissioner shall conduct a hearing under IC 4-21.5.**

**Sec. 4. Regardless of the manner in which a viatical settlement broker is compensated, a viatical settlement broker, with respect to activities concerning a viatical settlement contract:**

**(1) represents only the viator, and not the insurer or the viatical settlement provider; and**

**(2) owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator.**

**Sec. 5. A viatical settlement investment agent:**

**(1) shall not have direct or indirect contact with a viator or insured;**

**(2) shall not have knowledge of the identity of a viator or insured; and**

**(3) is considered to represent only the viatical settlement provider for whom the viatical settlement investment agent is an appointed or a contracted agent.**

**Chapter 4. Approval of Viatical Settlement Contract and Disclosure Statement Forms**

**Sec. 1. A person shall not:**

**(1) use a viatical settlement contract form; or**

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**(2) provide to a viator a disclosure statement form;**

**in Indiana unless the form has been filed with and approved by the commissioner.**

**Sec. 2. The commissioner shall disapprove a viatical settlement contract form or disclosure statement form if the commissioner determines that the form or a provision contained in the form:**

**(1) fails to meet the requirements of IC 27-18-7, IC 27-18-9, IC 27-18-11, and IC 27-18-12-4; or**

**(2) is unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator.**

**Chapter 5. Reporting Requirements and Privacy**

**Sec. 1. (a) Before March 1 of each year, a licensed viatical settlement provider shall file with the commissioner an annual statement containing information concerning the immediately preceding calendar year as required by the commissioner in rules adopted under IC 4-22-2. A statement filed under this subsection must include the following:**

**(1) The total number of viatical settlement contracts entered into by the viatical settlement provider.**

**(2) The aggregate face amount of policies that were the subject of viatical settlement contracts.**

**(3) The aggregate amount of proceeds of viatical settlement contracts.**

**(4) Aggregate information described in subdivisions (1) through (3) for each policy issue year of policies that were the subject of viatical settlement contracts.**

**(b) The information required under subsection (a) is limited only to transactions in which the viator is a resident of Indiana. Individual transaction data regarding the business of viatical settlements or data that could compromise the privacy of personal, financial, and health information of a viator or insured are confidential.**

**Sec. 2. Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, insurer, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity shall not disclose the identity or the insured's financial or medical information to another person unless:**

**(1) the disclosure is necessary to effect a viatical settlement between the viator and a viatical settlement provider, and the viator and insured have provided prior written consent to the disclosure;**

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**(2) the disclosure is necessary to effect a viatical settlement purchase agreement between the viatical settlement purchaser and a viatical settlement provider, and the viator and insured have provided prior written consent to the disclosure;**

**(3) the information is provided in response to an investigation or examination by the commissioner or another governmental officer or agency or under the requirements of IC 27-18-12-5;**

**(4) the disclosure is required under a term of or condition to the transfer of a policy from one (1) viatical settlement provider to another viatical settlement provider;**

**(5) the disclosure is necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies by a viatical settlement provider, and the viator and the insured have provided prior written consent to the disclosure;**

**(6) the disclosure is necessary to allow the viatical settlement provider or viatical settlement broker or an authorized representative of the viatical settlement provider or viatical settlement broker to make contacts for the purpose of determining health status; or**

**(7) the disclosure is required for the purchase of stop loss coverage or financial guaranty insurance.**

**Chapter 6. Examinations and Investigations**

**Sec. 1. (a) The commissioner may conduct an examination of a licensee under this article as often as the commissioner considers appropriate.**

**(b) In scheduling and determining the nature, scope, and frequency of examinations under this section, the commissioner shall consider consumer complaints, results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other relevant criteria determined by the commissioner.**

**(c) The cost of an examination under this article shall be borne by the licensee that is the subject of the examination.**

**Sec. 2. In completing an examination of a licensee, the commissioner may examine or investigate any person, or the business of any person, that the commissioner considers necessary or material to the examination of the licensee.**

**Sec. 3. Instead of conducting an examination of a foreign or alien licensee under this article, the commissioner may accept an examination report concerning the licensee from the insurance**

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**regulatory official of the licensee's state of domicile or port-of-entry state.**

**Sec. 4. To the greatest extent practical, the examination of a foreign or alien licensee must be conducted in cooperation with the insurance regulatory official of any other state in which the licensee transacts business.**

**Sec. 5. (a) A person required to be licensed under this article shall retain copies of:**

**(1) all proposed, offered, or executed viatical settlement contracts, viatical settlement purchase agreements, underwriting documents, policy forms, and applications for five (5) years after the date of the proposal, offer, or execution of the viatical settlement contract or viatical settlement purchase agreement, whichever is later;**

**(2) all checks, drafts, or other evidence and documentation related to the payment, transfer, deposit, or release of funds for five (5) years after the date of the transaction; and**

**(3) all other records and documents related to the requirements of this article for five (5) years after the person comes into possession of the records and documents.**

**(b) Records required to be retained under this section must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media form or by a process that accurately reproduces or forms a durable medium for the reproduction of the record.**

**(c) This section does not relieve a person of the obligation to produce documents described in subsection (a) for the commissioner upon request after the retention period set forth in subsection (a) has expired if the person still possesses the documents.**

**Sec. 6. (a) Upon determining that an examination must be conducted under this chapter, the commissioner shall issue an examination warrant:**

**(1) appointing at least one (1) examiner to perform the examination; and**

**(2) providing the examiner with instruction as to the scope of the examination.**

**(b) In conducting the examination, the examiner shall observe the guidelines and procedures set forth in the Examiners Handbook adopted by the NAIC. The commissioner may also use other guidelines or procedures that the commissioner considers appropriate.**

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**(c) A licensee or person from whom information is sought and the licensee's or person's officers, directors, and agents shall provide to the examiner, at all reasonable hours at the licensee's or person's offices, timely, convenient, and free access to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs of the licensee being examined.**

**(d) The officers, directors, employees, and agents of a licensee or person described in subsection (c) shall facilitate and aid in the examination to the greatest extent possible. The refusal of a licensee, by the licensee's officers, directors, employees, or agents, to submit to examination or to comply with a reasonable written request of the commissioner is grounds for suspension, denial, or nonrenewal under IC 27-1-3 of any license or authority held by the licensee to engage in the business of viatical settlements or other business subject to the commissioner's jurisdiction.**

**(e) The commissioner may issue subpoenas, administer oaths, and examine under oath any person concerning a matter pertinent to an examination. If a person fails to obey a subpoena, the commissioner may petition a court to compel compliance.**

**(f) When making an examination under this chapter, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners. The reasonable cost of retaining professionals and specialists under this subsection shall be borne by the licensee that is the subject of the examination.**

**Sec. 7. (a) This chapter does not limit the commissioner's authority to terminate or suspend an examination and pursue other legal or regulatory action under this title. Findings of fact and conclusions made under an examination conducted under this chapter are prima facie evidence in a legal or regulatory action.**

**(b) This chapter does not limit the commissioner's authority to use and, if appropriate, to make public:**

**(1) a preliminary or final examination report;**

**(2) examiner or licensee workpapers or other documents; or**

**(3) other information discovered or developed during the course of an examination;**

**in the furtherance of a legal or regulatory action that the commissioner considers appropriate.**

**Sec. 8. (a) Examination reports prepared under this chapter must include only:**

**(1) facts:**

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**(A) that appear on the books, records, or other documents of a licensee, the licensee's agents, or other persons examined; or**

**(B) that are ascertained from the testimony of a licensee's officers or agents or other persons examined concerning the licensee's affairs; and**

**(2) conclusions and recommendations found by the examiner to be reasonably warranted based on the facts described in subdivision (1).**

**(b) Not later than sixty (60) days after completion of an examination under this chapter, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee, together with a notice that provides the licensee a period of not more than thirty (30) days to make a written submission or rebuttal with respect to the examination report.**

**(c) If the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate proceedings or actions as provided by law.**

**Sec. 9. (a) A viator's name and other individual identification data are confidential.**

**(b) Except as otherwise provided in this article, all examination reports, working papers, recorded information, documents, and copies of examination reports, working papers, recorded information, and documents produced by, obtained by, or disclosed to the commissioner or another person in the course of an examination under this chapter, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee, are:**

**(1) privileged and confidential;**

**(2) not subject to subpoena; and**

**(3) not subject to discovery or admissible in evidence in a private civil action.**

**(c) The commissioner may use the documents, materials, or other information described in subsection (b) in the furtherance of a regulatory or legal action brought as part of the commissioner's official duties.**

**(d) Documents, materials, and other information, including working papers and copies of working papers, that are in the possession or control of the NAIC and affiliates and subsidiaries of the NAIC are privileged and confidential, not subject to subpoena,**

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**and not subject to discovery or admissible in evidence in a private civil action if they:**

**(1) were created, produced, or obtained by, or disclosed to, the NAIC and affiliates and subsidiaries of the NAIC in the course of:**

**(A) assisting in an examination conducted under this chapter; or**

**(B) assisting an insurance commissioner in the analysis or investigation of the financial condition or market conduct of a licensee; or**

**(2) were disclosed by an insurance commissioner to the NAIC and affiliates and subsidiaries of the NAIC under subsection (e).**

**(e) Subject to subsection (a), the commissioner or another person that receives documents, materials, or other information while acting under the authority of the commissioner, including the NAIC and affiliates and subsidiaries of the NAIC, shall not testify in a private civil action concerning confidential documents, materials, or information.**

**(f) The commissioner, in the performance of the commissioner's duties, may:**

**(1) share documents, materials, or other information, including the confidential and privileged documents, materials, or information described in subsections (a) and (b), with:**

**(A) other state, federal, and international regulatory agencies;**

**(B) the NAIC and affiliates and subsidiaries of the NAIC; and**

**(C) state, federal, and international law enforcement authorities;**

**if the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, or information;**

**(2) receive documents, materials, or information, including otherwise confidential and privileged documents, materials, or information, from:**

**(A) the NAIC and affiliates and subsidiaries of the NAIC; and**

**(B) regulatory and law enforcement officials of other foreign or domestic jurisdictions;**

**and shall maintain as confidential or privileged any documents, materials, or information received with notice or**

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**the understanding that the documents, materials, or information are confidential or privileged under the laws of the jurisdiction that is the source of the documents, materials, or information; and**

**(3) enter into agreements consistent with this subsection governing sharing and use of information.**

**(g) The disclosure to the commissioner or sharing as authorized under this section of documents, materials, or information does not waive any privilege or claim of confidentiality in the documents, materials, or information.**

**(h) A privilege established under the law of a state or jurisdiction that is substantially similar to the privilege established under this section is available and must be enforced in an administrative or judicial proceeding in Indiana.**

**(i) This chapter does not prevent or prohibit the commissioner from disclosing the content of a preliminary examination report or preliminary examination results, an examination report or examination results, or a matter relating to a report or results, to:**

**(1) the insurance commissioner of another state or country;**

**(2) law enforcement officials of any state;**

**(3) an agency of the federal government; or**

**(4) the NAIC;**

**if the person to whom the content is disclosed agrees in writing to keep the information confidential and in a manner consistent with this chapter.**

**Sec. 10. (a) Except as provided in subsection (c), the commissioner may not appoint a person to serve as an examiner under this chapter if the person:**

**(1) has a direct or indirect conflict of interest; or**

**(2) is affiliated with the management of or owns a pecuniary interest in a person subject to examination under this chapter.**

**(b) This section does not automatically preclude an examiner from being:**

**(1) a viator;**

**(2) an insured under a viaticated policy; or**

**(3) a beneficiary of a policy that is proposed to be viaticated.**

**(c) For the purposes of this chapter, the commissioner may retain, on an individual basis, a qualified actuary, certified public accountant, or another similar independent professional regardless of whether the professional is similarly employed or retained by a person that is subject to examination under this chapter.**

**Sec. 11. (a) The commissioner, a representative of the**

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**commissioner, or an examiner appointed by the commissioner is immune from liability for a statement made or an action taken in good faith under this chapter.**

**(b) A person who communicates or delivers information or data to the commissioner, the commissioner's representative, or an examiner conducting an examination under this chapter is immune from liability if the information or data is communicated or delivered in good faith and without fraudulent intent or the intent to deceive. This subsection does not abrogate or modify a common law or statutory privilege or immunity that applies to a person described in subsection (a).**

**(c) A person described in subsection (a) or (b) is entitled to an award of attorney's fees and costs if:**

**(1) the person is the prevailing party in a civil action for libel, slander, or another relevant tort arising out of activities performed under this chapter; and**

**(2) the party bringing the action does not have a reasonable basis in law or fact for bringing the action.**

**Sec. 12. The commissioner may investigate:**

**(1) suspected fraudulent viatical settlement acts; and**

**(2) a person that is engaged in the business of viatical settlements.**

**Chapter 7. Disclosures**

**Sec. 1. (a) Not later than at the time an application for a viatical settlement contract is signed by all parties, the viatical settlement provider or viatical settlement broker shall provide to the viator, in a separate document signed by the viator and the viatical settlement provider or viatical settlement broker, all of the following disclosures:**

**(1) That possible alternatives to a viatical settlement contract exist, including accelerated death benefits or policy loans offered under the viator's policy.**

**(2) That a viatical settlement broker represents exclusively the viator and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator, including the duty to act according to the viator's instructions and in the best interest of the viator.**

**(3) That the proceeds of a viatical settlement may be taxable under federal income tax and state franchise and income tax laws, and assistance should be sought from a professional tax advisor.**

**(4) That the proceeds of a viatical settlement may be subject**

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**to the claims of creditors.**

**(5) That receiving the proceeds of a viatical settlement may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from appropriate government agencies.**

**(6) That:**

**(A) the viator has the right to rescind a viatical settlement contract before the earlier of:**

**(i) sixty (60) calendar days after the date on which the viatical settlement contract is executed by all parties; or**

**(ii) thirty (30) calendar days after the receipt of the viatical settlement proceeds are paid to the viator;**

**(B) rescission, if exercised by the viator, is effective only if:**

**(i) notice of the rescission is given; and**

**(ii) the viator repays all proceeds and premiums, loans, and loan interest paid on account of the viatical settlement;**

**within the rescission period; and**

**(C) if the insured dies during the rescission period, the viatical settlement contract is considered to have been rescinded, subject to repayment by the viator or the viator's estate of all proceeds and premiums, loans, and loan interest not more than sixty (60) days after the insured's death.**

**(7) That funds will be sent to the viator within three (3) business days after the viatical settlement provider has received the insurer's or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.**

**(8) That:**

**(A) entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy, to be forfeited by the viator; and**

**(B) assistance should be sought from a financial adviser.**

**(9) A statement containing the following language:**

**"All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the**

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**viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.".**

**(10) That:**

**(A) following execution of the viatical settlement contract, the insured may be contacted to determine the insured's health status and to confirm the insured's residential or business street address and telephone number;**

**(B) the contact may not occur more often than:**

**(i) once every three (3) months if the insured has a life expectancy of more than one (1) year; or**

**(ii) once per month if the insured has a life expectancy of one (1) year or less; and**

**(C) each contact will be made only by:**

**(i) a viatical settlement provider licensed in the state in which the viator resided at the time of the viatical settlement; or**

**(ii) the authorized representative of a licensed viatical settlement provider.**

**(b) The disclosures made under subsection (a) must be accompanied by a brochure in:**

**(1) the form established by the NAIC; or**

**(2) a form developed and approved by the commissioner;**

**that describes the process of viatical settlements.**

**Sec. 2. Not later than at the time the viatical settlement contract is signed by all parties, the viatical settlement provider shall provide to the viator all of the following disclosures, which must be conspicuously displayed in the viatical settlement contract or a separate document signed by the viator:**

**(1) The affiliation, if any, between the viatical settlement provider and the issuer of the policy to be viaticated.**

**(2) The name, business address, and telephone number of the viatical settlement provider.**

**(3) Any affiliation or contractual arrangement between the viatical settlement provider and the viatical settlement purchaser.**

**(4) If the policy to be viaticated was issued as a joint policy or involves family riders or coverage of a life other than that of**

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**the insured, notice of the possible loss of coverage on the other lives under the policy. The disclosure under this subdivision must include the advice that the viator should consult with the viator's insurance producer or with the insurer that issued the policy for advice on the proposed viatical settlement.**

**(5) The dollar amount of the current death benefit payable to the viatical settlement provider under the policy and, if known, the:**

**(A) availability of any additional guaranteed insurance benefits;**

**(B) dollar amount of any accidental death and dismemberment benefits under the policy; and**

**(C) extent to which the viator's interest in the benefits described in this subdivision will be transferred as a result of the viatical settlement contract.**

**(6) Whether the funds will be escrowed with an independent third party during the transfer process, and if so:**

**(A) the name, business address, and telephone number of the independent third party escrow agent; and**

**(B) the fact that the viator may inspect or receive copies of the relevant escrow or trust agreements or documents.**

**(7) The amount and method of calculating the compensation to each individual viatical settlement broker or other person acting for the viator in connection with the viatical settlement contract, including anything of value paid or given to the viatical settlement broker or other person. The disclosure under this subdivision must be made in a document separate from the viatical settlement contract.**

**Sec. 3. Not later than the time a viatical settlement contract is signed by all parties, the viatical settlement broker shall provide to the viator and the viatical settlement provider all of the following disclosures, which must be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator:**

**(1) The name, business address, and telephone number of the viatical settlement broker.**

**(2) A full, complete, and accurate description of all offers, counter offers, acceptances, and rejections related to the proposed viatical settlement contract.**

**(3) A written disclosure of any affiliations or contractual arrangements between the viatical settlement broker and a person making an offer in connection with the proposed viatical settlement contract.**

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**(4) The amount and method of calculating each individually named viatical settlement broker's compensation, including anything of value paid or given to the viatical settlement broker in relation to the policy to be viaticated.**

**(5) If a part of a viatical settlement broker's compensation described in subdivision (4) is taken from a proposed viatical settlement offer, the total amount of the viatical settlement offer and the percentage of the viatical settlement offer comprised by the viatical settlement broker's compensation.**

**(6) A complete reconciliation of the gross amount offered by the viatical settlement provider in relation to the viatical settlement contract, including the total amount offered by the viatical settlement provider for the purchase of any policies plus commissions and fees, to the net amount to be received by the viator under the viatical settlement contract.**

**Sec. 4. If a viatical settlement provider transfers ownership or changes the beneficiary of a policy, the viatical settlement provider shall communicate the change in ownership or of the beneficiary in writing to the insured less than twenty (20) days after the change occurs.**

**Sec. 5. (a) Before the date on which a viatical settlement purchase agreement is signed by all parties, the viatical settlement provider or viatical settlement investment agent shall provide to the viatical settlement purchaser all of the following disclosures, which must be conspicuously displayed in the viatical settlement purchase agreement or in a separate document signed by the viatical settlement purchaser and viatical settlement provider or viatical settlement investment agent:**

**(1) That the viatical settlement purchaser will receive no returns on the viatical settlement contract until the insured dies and a death claim payment is made.**

**(2) That:**

**(A) the actual annual rate of return on a viatical settlement contract is dependent on an accurate projection of the insured's life expectancy and the actual date of the insured's death; and**

**(B) an annual guaranteed rate of return is not determinable.**

**(3) That:**

**(A) the viaticated policy should not be considered a liquid purchase because:**

**(i) prediction of the exact timing of the viaticated policy's**

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**maturity is impossible; and**

**(ii) the funds probably are not available until the death of the insured; and**

**(B) there is no established secondary market for resale of a viaticated policy by the viatical settlement purchaser.**

**(4) That the viatical settlement purchaser may lose all benefits or may receive substantially reduced benefits if the insurer goes out of business during the term of the viaticated policy.**

**(5) That:**

**(A) the viatical settlement purchaser or another person (if it is another person, the other person's name and address must be included) is responsible for payment of the insurance premium or other costs related to the viaticated policy, as specified in the terms of the viatical settlement purchase agreement; and**

**(B) the insurance premium payments or other costs described in clause (A) may reduce the viatical settlement purchaser's return.**

**(6) That the viatical settlement purchaser is responsible for payment of the insurance premiums or other costs related to the policy if the insured returns to health. The disclosure under this subdivision must include the amount of the premiums.**

**(7) The name, business address, and telephone number of the independent third party providing escrow services and the relationship of the independent third party escrow agent to the viatical settlement broker.**

**(8) The amount of trust fees or other expenses to be charged to the viatical settlement purchaser.**

**(9) Whether the viatical settlement purchaser is entitled to a refund of the viatical settlement purchaser's investment under the viatical settlement contract if the policy is later determined to be void.**

**(10) That:**

**(A) a group policy may contain limitations in conversion rights;**

**(B) additional premiums may be required from a specified person if a group policy is converted; and**

**(C) if a group policy is terminated and replaced by another group policy, there may be no right to convert the original policy.**

**(11) The risks associated with policy contestability, including**

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**the risk that the viatical settlement purchaser will have no claim or only a partial claim to death benefits if the insurer rescinds the policy within the contestability period.**

**(12) Whether the viatical settlement purchaser will be the policyowner in addition to being the beneficiary and, if the viatical settlement purchaser will be only the beneficiary, the special risks associated with that status, including the risk that the beneficiary may be changed or the premium may not be paid.**

**(13) A description of the experience and qualifications of the person who determines the life expectancy of the insured, the information on which the determination is based, and the relationship of the person to the viatical settlement provider.**

**(b) The disclosures made under subsection (a) must be accompanied by a brochure in:**

**(1) the form established by the NAIC; or**

**(2) a form developed and approved by the commissioner;**

**that describes the process of investment in viatical settlements.**

**Sec. 6. Not later than at the time of the assignment, transfer, or sale of a policy, the viatical settlement provider or the viatical settlement investment agent shall provide to the viatical settlement purchaser all of the following disclosures, which must be contained in a document signed by the viatical settlement purchaser and viatical settlement provider or viatical settlement investment agent:**

**(1) All life expectancy certifications obtained by the viatical settlement provider in the process of determining the amount paid to the viator.**

**(2) Whether premium payments or other costs related to the policy have been escrowed and, if so:**

**(A) the date on which the escrowed funds will be depleted;**

**(B) whether the viatical settlement purchaser will then be responsible for payment of premiums; and**

**(C) if so, the amount of the premiums.**

**(3) Whether premium payments or other costs related to the policy have been waived and, if so:**

**(A) whether the viatical settlement purchaser will be responsible for payment of the premiums if the insurer that issued the policy terminates the waiver after purchase; and**

**(B) the amount of the premiums.**

**(4) The type of policy offered or sold, any additional benefits**

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**contained in the policy, and the current status of the policy.**

**(5) If the policy is a term policy, the special risks associated with term insurance, including the viatical settlement purchaser's responsibility for additional premiums if the viator continues the term policy at the end of the current term.**

**(6) Whether the policy is contestable.**

**(7) Whether the insurer that issued the policy has additional rights that could negatively affect or extinguish the viatical settlement purchaser's rights under the viatical settlement contract, what those rights are, and under what conditions the rights are activated.**

**(8) The:**

**(A) name and address of the person responsible for monitoring the insured's condition;**

**(B) frequency of monitoring;**

**(C) manner in which the date of death will be determined; and**

**(D) manner in which the date of death will be communicated to the viatical settlement purchaser, and when the communication will be made.**

**Sec. 7. A viatical settlement purchaser may void a viatical settlement purchase agreement within three (3) days after the disclosures required under sections 5 and 6 of this chapter are made to the viatical settlement purchaser.**

**Chapter 8. Insurer Disclosures**

**Sec. 1. For purposes of a transaction described in IC 27-18-1-21(b)(1) or IC 27-18-1-21(c)(2), the insurer that issues the policy may do the following before the issuance of the policy:**

**(1) Make disclosures to the policy applicant and the insured on the application form or an amendment to the application, not later than the date on which the policy is delivered, as follows:**

**"If you have entered into a loan arrangement in which the policy is used as collateral and the policy changes ownership in the future in satisfaction of the loan, the following may be true:**

**(i) The change of ownership could result in a stranger owning an interest in the insured's life.**

**(ii) The change of ownership could limit your ability to purchase future insurance covering the insured's life because there is a limit to the amount of coverage**

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**insurers will issue on one (1) life.**

**(iii) The change of ownership could result in difficulty in purchasing insurance covering the insured's life or higher premiums for insurance covering the insured's life in the future due to the insured's greater issue age, different health status, or other factors at the time of the future purchase.**

**You should consult a professional advisor because a change in ownership in satisfaction of the loan may, depending on the structure of the loan, result in tax consequences to the policyowner.".**

**(2) Require certifications from the policy applicant and the insured, including the following:**

**(A) "I have not entered into an agreement or arrangement that provides for the future sale of this life insurance policy.".**

**(B) "My loan arrangement for this life insurance policy provides funds sufficient to pay for some or all of the premiums, costs, and expenses associated with obtaining and maintaining this life insurance policy, but I have not entered into any agreement by which I am to receive consideration in exchange for procuring this life insurance policy.".**

**(C) "I have an insurable interest in the insured.".**

**Sec. 2. If there arises, before or during the first five (5) years after the issuance of a policy, any activity directed toward viaticating the policy, the viatical settlement broker or viatical settlement provider that is involved in the activity shall fully disclose to the insurer that issued the policy the plan or transaction to which the viatical settlement broker or viatical settlement provider is a party to originate, renew, continue, or finance the policy with the insurer for the purpose of engaging in the business of viatical settlements.**

**Chapter 9. Viatical Settlement Contracts**

**Sec. 1. A viatical settlement provider that enters into a viatical settlement contract shall first obtain the following:**

**(1) If the viator is the insured, a written statement from a licensed attending physician attesting that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract.**

**(2) A document in which the insured consents to the release of the insured's medical records to a licensed viatical settlement**

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**provider, a viatical settlement broker, and the insurer that issued the policy covering the life of the insured.**

**Sec. 2. Not more than twenty (20) days after a viator:**

**(1) executes documents necessary to transfer rights under a policy; or**

**(2) enters into an agreement, an option, a promise, or another form of understanding, expressed or implied, to viaticate a policy;**

**the viatical settlement provider shall give written notice, accompanied by the documents required under section 3 of this chapter, to the insurer that issued the policy that the policy has or will become a viaticated policy.**

**Sec. 3. (a) Withing the time allowed by section 2 of this chapter, a viatical settlement provider shall deliver:**

**(1) a copy of the medical release obtained under section 1(2) of this chapter;**

**(2) a copy of the viator's application for the viatical settlement contract;**

**(3) the written notice required under section 2 of this chapter; and**

**(4) a request for verification of coverage on the NAIC form or a form approved by the commissioner;**

**to the insurer that issued the policy that is the subject of a viatical settlement contract.**

**(b) An insurer must provide verification of coverage in response to a request delivered under subsection (a)(4) on the NAIC form or a form approved by the commissioner.**

**Sec. 4. (a) An insurer shall:**

**(1) respond to a request for verification of coverage submitted under section 3(a)(4) of this chapter not more than thirty (30) calendar days after the date on which the request is received; and**

**(2) indicate in the response whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation regarding the validity of the policy or possible fraud.**

**(b) The insurer shall accept an original or a facsimile or electronic copy of:**

**(1) a request submitted under section 3(a)(4) of this chapter; and**

**(2) any accompanying authorization signed by the viator.**

**Sec. 5. Before or at the time of execution of a viatical settlement**

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**contract, the viatical settlement provider must obtain a witnessed document in which the viator:**

**(1) consents to the viatical settlement contract;**

**(2) represents that the viator:**

**(A) has a full and complete understanding of the viatical settlement contract;**

**(B) has a full and complete understanding of the benefits of the policy;**

**(C) acknowledges that the viator enters into the viatical settlement contract freely and voluntarily; and**

**(D) if the insured is chronically ill or terminally ill, acknowledges that the insured is chronically ill or terminally ill and that the illness was diagnosed after the policy was issued.**

**Sec. 6. If a viatical settlement broker takes an action required of a viatical settlement provider under this chapter, the viatical settlement broker's action satisfies the requirement of this chapter applying to the viatical settlement provider.**

**Sec. 7. Medical information solicited or obtained by a person licensed under this article is subject to state laws relating to confidentiality of medical information.**

**Sec. 8. (a) A viatical settlement contract entered into in Indiana must provide to the viator an absolute right to rescind the viatical settlement contract before the expiration of the earlier of:**

**(1) sixty (60) calendar days after the date on which the viatical settlement contract is executed by all parties; or**

**(2) thirty (30) calendar days after the viatical settlement proceeds are sent to the viator.**

**(b) Rescission by a viator is conditioned on the viator providing notice and repaying to the viatical settlement provider, within the rescission period, all proceeds of the viatical settlement and any premiums, loans, and loan interest paid by or on behalf of the viatical settlement provider in connection with the viatical settlement.**

**(c) If an insured dies during the rescission period, the viatical settlement contract is considered to have been rescinded, subject to repayment not more than sixty (60) days after the date of the insured's death to the viatical settlement provider or viatical settlement purchaser of:**

**(1) all viatical settlement proceeds; and**

**(2) any premiums, loans, and loan interest that have been paid by the viatical settlement provider or viatical settlement**

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**purchaser.**

**(d) If a viatical settlement contract is rescinded, and if the viatical settlement provider has paid commissions or other compensation to a viatical settlement broker in connection with the rescinded viatical settlement contract, the viatical settlement broker shall refund the commissions and compensation to the viatical settlement provider not more than five (5) business days after the viatical settlement broker receives a written demand for a refund from the viatical settlement provider. However, to be effective under this subsection, a viatical settlement provider's written demand must be accompanied by the viator's notice of rescission or a notice of the death of the insured within the applicable rescission period.**

**Sec. 9. A viatical settlement purchaser may rescind a viatical settlement contract not more than three (3) days after the disclosures mandated by IC 27-18-7-5 and IC 27-18-7-6 are received by the viatical settlement purchaser.**

**Sec. 10. (a) A viatical settlement provider shall instruct a viator to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary resulting from a viatical settlement contract directly to the independent third party escrow agent.**

**(b) Not more than three (3) business days after the date on which the independent third party escrow agent receives the documents (or after the date on which the viatical settlement provider receives the documents if the viator erroneously provides the documents directly to the viatical settlement provider), the viatical settlement provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a state or federally chartered financial institution in which deposits are insured by the federal Deposit Insurance Corporation.**

**(c) Upon payment of the viatical settlement proceeds into the escrow account or trust account under subsection (b), the independent third party escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the viatical settlement provider, related provider trust, or other designated representative of the viatical settlement provider.**

**(d) Upon the independent third party escrow agent's receipt from the insurer of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary, the independent third party escrow agent shall pay the viatical settlement proceeds to the viator.**

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**Sec. 11. (a) Failure to tender consideration to the viator for a viatical settlement contract within the time specified in the disclosure required under IC 27-18-7-1(a)(7) renders the viatical settlement contract voidable by the viator for lack of consideration until the consideration is tendered to and accepted by the viator.**

**(b) For purposes of this section, funds are considered to have been sent by a viatical settlement provider to a viator on the date that the independent third party escrow agent:**

**(1) releases funds for wire transfer to the viator; or**

**(2) places a check for delivery to the viator via United States Postal Service or other nationally recognized delivery service.**

**Sec. 12. (a) Contacts by a viatical settlement provider or viatical settlement broker with an insured to determine the health status of the insured after a viatical settlement has occurred:**

**(1) may be made only by the viatical settlement provider or viatical settlement broker that is licensed in Indiana or the viatical settlement provider's or viatical settlement broker's representative; and**

**(2) may not occur more often than:**

**(A) once every three (3) months for an insured with a life expectancy of more than one (1) year; or**

**(B) once per month for an insured with a life expectancy of one (1) year or less.**

**(b) A viatical settlement provider or viatical settlement broker shall explain the procedure for contacts described in subsection (a) to the viator at the time the viatical settlement contract is entered into.**

**(c) The limitations set forth in subsection (a) do not apply to a contact with an insured for a reason other than determining the insured's health status.**

**(d) A viatical settlement provider or viatical settlement broker is responsible for the actions of an authorized representative of the viatical settlement provider or viatical settlement broker.**

**Sec. 13. If:**

**(1) a policy insures more than one (1) viator; and**

**(2) the viators are residents of different states;**

**the viatical settlement affecting the policy is governed by the law of the state in which the viator having the largest percentage ownership in the policy resides. However, if the viators hold equal ownership in the policy, the viatical settlement is governed by the law of the state of residence of the one (1) viator agreed upon in writing by all the viators.**

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**Chapter 10. Prohibited Practices and Conflicts of Interest**

**Sec. 1. Except as provided in section 2 of this chapter, a person shall not enter into a viatical settlement contract:**

**(1) before the application for or issuance of a policy that is the subject of the viatical settlement contract; or**

**(2) less than five (5) years after the date of issuance of the policy.**

**Sec. 2. A person may enter into a viatical settlement contract before the expiration of five (5) years after the date of issuance of the policy that is the subject of the viatical settlement contract if the viator certifies to the viatical settlement provider that at least one (1) of the following conditions has been met during the five (5) year period:**

**(1) The policy was issued upon the viator's exercise of conversion rights arising out of a policy, and the total amount of time covered under the conversion policy plus the time covered under the prior policy is at least sixty (60) months. For purposes of this subdivision, the time covered under a group policy must be calculated without regard to a change in insurers if the coverage has been continuous and under the same group sponsorship.**

**(2) The viator submits independent evidence to the viatical settlement provider that at least one (1) of the following has occurred during the five (5) year period:**

**(A) The viator or insured has become chronically ill or terminally ill.**

**(B) The viator's spouse has died.**

**(C) The marriage between the viator and the viator's spouse has ended in divorce.**

**(D) The viator has retired from full time employment.**

**(E) The viator has become physically or mentally disabled and a physician has determined that the disability prevents the viator from maintaining full time employment.**

**(F) A final order, judgment, or decree has been entered by a court with jurisdiction, on the application of a creditor of the viator:**

**(i) adjudicating the viator bankrupt or insolvent;**

**(ii) approving a petition seeking reorganization of the viator; or**

**(iii) appointing a receiver, trustee, or liquidator to all or a substantial part of the viator's assets.**

**(3) The viator would enter into the viatical settlement contract**

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**more than two (2) years after the date of issuance of the policy and, with respect to the policy, at all times during the two (2) year period all of the following were true:**

**(A) Policy premiums were funded exclusively with unencumbered assets, which includes a situation in which an interest in the policy is being financed only to the extent of the policy's net cash surrender value, provided by, or fully recourse liability incurred by, the insured or a person described in IC 27-18-1-21(c)(4).**

**(B) There was no agreement or understanding with any other person to guarantee liability described in clause (A) or to purchase or stand ready to purchase the policy, which includes an agreement or understanding to guarantee liability or to purchase or stand ready to purchase through an assumption or forgiveness of the loan.**

**(C) Neither the insured nor the policy was evaluated for a viatical settlement.**

**Sec. 3. (a) Copies of independent evidence submitted under section 2(2) of this chapter and of the documents required under IC 27-18-9-1 through IC 27-18-9-5 must be submitted to the insurer when the viatical settlement provider or other party entering into a viatical settlement contract with a viator submits a request to the insurer for verification of coverage.**

**(b) Copies submitted under subsection (a) must 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.**

**Sec. 4. If a viatical settlement provider submits to an insurer a copy of a viator's or insured's certification described in section 2 of this chapter and of the independent evidence required by section 2(2) of this chapter when the viatical settlement provider submits a request to the insurer to effect the transfer of a policy to the viatical settlement provider, the copy is considered to conclusively establish that the viatical settlement contract satisfies the requirements of this section and the insurer shall timely respond to the request.**

**Sec. 5. An insurer shall not, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy under a viatical settlement contract, require that the viator, insured, viatical settlement provider, or viatical settlement broker sign a form, disclosure, consent, or waiver form that has not been expressly approved by the commissioner for use in connection with**

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**a viatical settlement contract in Indiana.**

**Sec. 6. (a) Not more than thirty (30) calendar days after receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing confirming that the change has been effected or specifying the reasons why the requested change has not been effected.**

**(b) An insurer shall not:**

**(1) unreasonably delay effecting change of ownership or beneficiary; or**

**(2) otherwise seek to interfere with a viatical settlement contract lawfully entered into in Indiana.**

**Sec. 7. (a) With respect to a viatical settlement contract or policy, a viatical settlement broker shall not knowingly solicit an offer from, effectuate a viatical settlement with, or make a sale to a viatical settlement provider, viatical settlement purchaser, financing entity, or related provider trust that is:**

**(1) controlling;**

**(2) controlled by; or**

**(3) under common control with;**

**the viatical settlement broker.**

**(b) With respect to a viatical settlement contract or policy, a viatical settlement provider shall not knowingly enter into a viatical settlement contract with a viator, if, in connection with the viatical settlement contract, anything of value will be paid to a viatical settlement broker that is:**

**(1) controlling;**

**(2) controlled by; or**

**(3) under common control with;**

**the viatical settlement provider or a viatical settlement purchaser, financing entity, or related provider trust that is involved in the viatical settlement contract.**

**(c) A violation of subsection (a) or (b) is a fraudulent viatical settlement act.**

**Sec. 8. A life insurance producer, an insurer, a viatical settlement broker, a viatical settlement provider, or a viatical settlement investment agent shall not make a statement or representation to an applicant or a policyowner in connection with the sale or financing of a policy to the effect that the insurance is without cost to the policyowner unless the policy provides for no cost insurance.**

**Sec. 9. An insurance producer that:**

**(1) is licensed under IC 27-1-15.6; and**

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**(2) sells a policy that, less than two (2) years after the insurance producer sells the policy, is the subject of a viatical settlement contract;**

**shall not accept a commission or other remuneration in connection with the viatical settlement contract.**

**Sec. 10. A person shall not issue a policy or negotiate, solicit, advertise, or otherwise promote the purchase of a policy for the purpose of making the policy the subject of a viatical settlement contract.**

**Sec. 11. (a) A person that provides the premium finance loan in a transaction described in IC 27-18-1-21(b)(1) or IC 27-18-1-21(c)(2) shall not receive any proceeds, fees, or other consideration from the policy, policyowner, or another person in relation to the premium finance loan, a viatical settlement contract, or any other transaction related to the policy other than the amount required to pay the principal, interest, and service charges related to the policy premiums under the premium finance loan agreement or subsequent sale of the premium finance loan agreement.**

**(b) Any overpayment of the principal, interest, and service charges under a premium finance loan agreement received by the person that provides the premium finance loan must be remitted to the:**

**(1) original policyowner; or**

**(2) estate of the original policyowner if the original policyowner is not alive at the time of the determination of the overpayment.**

**Chapter 11. Viatical Settlement Advertisement**

**Sec. 1. (a) This chapter applies to advertisement of viatical settlement contracts or related products or services intended for dissemination in Indiana, including Internet advertisements viewed by individuals in Indiana.**

**(b) If disclosure requirements are established under federal law, this chapter must be interpreted so as to minimize or eliminate conflict with federal law wherever possible.**

**Sec. 2. (a) The commissioner may require that all advertising materials subject to section 1(a) of this chapter be filed with the commissioner before they are used. If the commissioner imposes a filing requirement under this subsection, a viatical settlement provider shall not enter into a viatical settlement contract unless the viatical settlement provider's advertising materials have been filed with the commissioner.**

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**(b) An advertisement must not expressly reference that insurance is provided without cost to the policyowner.**

**(c) The inclusion in an advertisement of a statement or reference that would cause a viator to reasonably believe that insurance is free is a violation of this article.**

**Sec. 3. (a) A licensee shall establish and maintain a system of control over the content, form, and method of dissemination of all advertisements of the licensee's contracts, products, and services.**

**(b) The system of control must include regular, at least annual, notice to agents and other persons that:**

**(1) are authorized by the licensee; and**

**(2) disseminate advertisements;**

**concerning the requirements and procedures for approval before the use of an advertisement that is not furnished by the licensee. An advertisement, regardless of the source, is the responsibility of the licensee and the individual who created, wrote, designed, or presented the advertisement.**

**(c) An advertisement must:**

**(1) be truthful and not misleading in fact or by implication;**

**(2) be in a form and have content that is sufficiently complete and clear so as to avoid deception; and**

**(3) not have the capacity or tendency to mislead or deceive.**

**Whether an advertisement has the capacity or tendency to mislead or deceive, for purposes of this subsection, shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create on a person of average education or intelligence within the segment of the public to which the advertisement is directed.**

**Sec. 4. The following provisions contained in viatical settlement advertisements are prohibited as false and misleading:**

**(1) "Guaranteed", "fully secured", "100 percent secured", "fully insured", "secure", "safe", "backed by rated insurance companies", "backed by federal law", "backed by state law", "state guaranty funds", or similar representations.**

**(2) "No risk", "minimal risk", "low risk", "no speculation", "no fluctuation", or similar representations.**

**(3) "Qualified or approved for":**

**(A) individual retirement accounts;**

**(B) Roth IRAs;**

**(C) 401(k) plans;**

**(D) simplified employee pensions;**

**(E) 403(b) plans;**

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**(F) Keogh plans;**
**(G) TSA; or**
**(H) other retirement account rollovers;**
**or similar representations.**
**(4) "Tax deferred", or similar representations.**
**(5) Use of the term "guaranteed" to describe a fixed return, an annual return, principal, earnings, profits, or investments, or similar representations.**
**(6) "No sales charges or fees" or similar representations.**
**(7) "High yield", "superior return", "excellent return", "high return", "quick profit", or similar representations.**
**(8) Purported favorable representations or testimonials about the benefit of a viatical settlement contract or viatical settlement purchase agreement as an investment, taken out of context from a newspaper, trade paper, journal, radio or television program, or any other form of print or electronic media.**

**Sec. 5. The information required to be disclosed under this chapter must not, in an advertisement, be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of an advertisement so as to be confusing or misleading.**

**Sec. 6. (a) An advertisement must not do any of the following:**
**(1) Omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving viators concerning the nature or extent of a benefit, loss covered, premium payable, or state or federal tax consequence.**
**(2) Use the name or title of a particular insurer or a policy issued by a particular insurer unless the advertisement using the name or title has been approved by the insurer.**
**(3) Represent that premium payments need not be paid to maintain a policy that is the subject of a viatical settlement contract or viatical settlement purchase agreement unless that is the fact.**
**(4) State or imply that interest charged on an accelerated death benefit or a policy loan is unfair or inequitable, or that the charging of interest on an accelerated death benefit or policy loan is in any manner an incorrect or improper practice.**
**(5) Contain statistical information unless the statistical**

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**information accurately reflects recent and relevant facts and the source of the statistical information is identified.**

**(6) Disparage insurers, viatical settlement providers, viatical settlement brokers, viatical settlement investment agents, insurance producers, policies, services, or methods of marketing.**

**(7) Use a trade name, group designation, name of a licensee's parent company, name of a particular division of a licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the licensee, if the advertisement would have the capacity or tendency to:**

**(A) mislead or deceive as to the true identity of the licensee; or**

**(B) create the impression that a person other than the licensee would have any responsibility for the financial obligation under a viatical settlement contract.**

**(8) Use a combination of words, symbols, or physical materials that makes the content, phraseology, shape, color, or other characteristics of the combination:**

**(A) so similar to a combination of words, symbols, or physical materials used by a government program or agency; or**

**(B) otherwise appear to be of a nature;**

**such that the combination tends to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.**

**(9) Create the impression that**

**(A) a viatical settlement provider;**

**(B) a viatical settlement provider's financial condition or status;**

**(C) the payment of a viatical settlement provider's claims; or**

**(D) the merits, desirability, or advisability of a viatical settlement provider's viatical settlement contracts;**

**is recommended or endorsed by a government entity.**

**(10) Directly or indirectly create the impression that a division or an agency of the state or of the federal government endorses, approves, or favors:**

**(A) a licensee or a licensee's business practices or methods of operation;**

**(B) the merits, desirability, or advisability of a viatical settlement contract;**

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**(C) a viatical settlement contract; or**

**(D) a policy or life insurer.**

**(b) The fact that:**

**(1) a viatical settlement contract that is offered is made available for inspection before consummation of the sale;**

**(2) an offer is made to refund the payment if the viator is not satisfied; or**

**(3) the viatical settlement contract includes a "free look" period that satisfies or exceeds legal requirements;**

**does not remedy misleading statements for the purposes of this chapter.**

**(c) The words "free", "no cost", "without cost", "no additional cost", "at no extra cost", or words of similar import must not be used with respect to a benefit or service unless the words are true. However, an advertisement may specify the charge for a benefit or service, state that a charge is included in the payment, or use other appropriate language.**

**Sec. 7. (a) A testimonial, appraisal, analysis, or endorsement used in an advertisement must:**

**(1) be genuine;**

**(2) represent the current opinion of the author;**

**(3) be applicable to the viatical settlement contract, product, or service advertised; and**

**(4) be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonial, appraisal, analysis, or endorsement.**

**(b) In using a testimonial, appraisal, analysis, or endorsement in an advertisement, a licensee makes the statements contained in the testimonial, appraisal, analysis, or endorsement the licensee's own, and the statements are subject to this chapter.**

**(c) If the individual making a testimonial, appraisal, analysis, or endorsement in an advertisement:**

**(1) has a financial interest in the person making use of the testimonial, appraisal, analysis, or endorsement, directly or through a related entity as a stockholder, director, officer, employee, or otherwise; or**

**(2) receives a direct or indirect benefit other than required union scale wages;**

**that fact must be prominently disclosed in the advertisement.**

**(d) An advertisement must not state or imply that a viatical settlement contract, product, or service is approved or endorsed by**

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**a group of individuals, a society, an association, or another organization unless:**

**(1) the approval or endorsement is a fact; and**

**(2) any relationship between the group of individuals, society, association, or organization and the licensee is disclosed.**

**If the person that makes the approval or endorsement is owned, controlled, or managed by the licensee or receives a payment or other consideration from the licensee for making the approval or endorsement, that fact must be disclosed in the advertisement.**

**Sec. 8. If an endorsement that appears in an advertisement subject to this chapter refers to benefits received under a viatical settlement contract, all pertinent information related to the endorsement must be retained by the licensee presenting the advertisement for five (5) years after use of the information.**

**Sec. 9. (a) The name of a licensee must be clearly set forth in all advertisements about the licensee or the licensee's viatical settlement contract, products, or services.**

**(b) If a specific viatical settlement contract is advertised, the viatical settlement contract must be identified either by form number or another appropriate description.**

**(c) If an application is part of an advertisement described in this section, the name of the viatical settlement provider must be shown on the application.**

**Sec. 10. (a) An advertisement may state that a licensee is licensed in the state where the advertisement appears if the advertisement does not exaggerate that fact or suggest or imply that a competing licensee is not licensed.**

**(b) An advertisement may invite the audience to consult a licensee's Internet web site or contact the department to determine:**

**(1) whether the state requires licensing; and**

**(2) if so, whether the viatical settlement provider or viatical settlement broker is licensed.**

**Sec. 11. (a) The name of the actual licensee must be stated in all of a licensee's advertisements.**

**(b) An advertisement must not use a trade name, group designation, name of an affiliate or a controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to:**

**(1) mislead or deceive as to the true identity of the actual licensee; or**

**(2) create the false impression that an affiliate or a controlling**

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**entity has responsibility for a financial obligation of the licensee.**

**Sec. 12. (a) If an advertisement emphasizes the speed with which a viatication will occur, the advertisement must disclose the average time frame:**

**(1) from completed application to a date of offer; and**

**(2) from acceptance of an offer to receipt of the funds by a viator.**

**(b) If an advertisement emphasizes the dollar amount available to a viator, the advertisement must disclose the average purchase price as a percentage of face value obtained by viators contracting with the licensee during the previous six (6) months.**

**Chapter 12. Fraud Prevention and Control**

**Sec. 1. A person shall not commit a fraudulent viatical settlement act.**

**Sec. 2. A person shall not knowingly or intentionally interfere with the enforcement of this article or an investigation of a suspected or an actual violation of this article.**

**Sec. 3. A person in the business of viatical settlements shall not knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.**

**Sec. 4. (a) A viatical settlement contract and an application for a viatical settlement, regardless of the form of transmission, must contain the following statement or a substantially similar statement:**

**"A person who knowingly presents false information in an application for insurance or a viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison.".**

**(b) The lack of a statement required under subsection (a) does not constitute a defense in a prosecution for committing a fraudulent viatical settlement act.**

**Sec. 5. (a) If a person engaged in the business of viatical settlements has knowledge or a reasonable suspicion that a fraudulent viatical settlement act is being, will be, or has been committed, the person shall provide to the commissioner information:**

**(1) required; and**

**(2) in a manner prescribed;**

**by the commissioner.**

**(b) If a person not engaged in the business of viatical settlements**

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**has knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed, the person may provide to the commissioner information:**

**(1) required; and**

**(2) in a manner prescribed;**

**by the commissioner.**

**Sec. 6. (a) Civil liability may not be imposed on a person for furnishing, and no cause of action may arise from a person's furnishing of, information concerning a suspected, anticipated, or completed fraudulent viatical settlement act or a suspected or completed fraudulent insurance act under IC 27-1-3-22 related to a viatical settlement contract if the information is provided to or received from any of the following:**

**(1)The commissioner or the commissioner's employee, agent, or representative.**

**(2) A federal, state, or local law enforcement or regulatory official or the official's employee, agent, or representative.**

**(3) A person involved in the prevention and detection of fraudulent viatical settlement acts or the person's agent, employee, or representative.**

**(4) An employee, an agent, or a representative of the NAIC, National Association of Securities Dealers, North American Securities Administrators Association, or another regulatory body overseeing life insurance, viatical settlements, securities, or investment fraud.**

**(5) An insurer that issues a policy covering the life of an insured.**

**(b) Subsection (a) does not apply to a statement made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act, the party bringing the action must plead specifically an allegation that subsection (a) does not apply to the filing of a report or a furnishing of information because the person filing the report or furnishing the information did so with actual malice.**

**(c) A person furnishing information as described in subsection (a) is entitled to an award of attorney's fees and costs if:**

**(1) the person is the prevailing party in a civil action for libel, slander, or another relevant tort arising out of activities performed in carrying out the requirements of this article; and**

**(2) the party bringing the action did not have a reasonable**

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**basis in law or fact for bringing the action.**

**(d) Subsection (c) does not apply to an person that furnishes information concerning the person's own fraudulent viatical settlement act.**

**(e) This section does not abrogate or modify common law or statutory privileges or immunities that apply to a person described in subsection (a).**

**Sec. 7. (a) A document or other evidence:**

**(1) provided to a person described in section 6(a) of this chapter; or**

**(2) obtained by the commissioner in an investigation of a suspected or actual fraudulent viatical settlement act;**

**is privileged and confidential and is not subject to discovery or subpoena in a civil or criminal action.**

**(b) Subsection (a) does not prohibit the release by the commissioner of a document or other evidence obtained in an investigation of a suspected or actual fraudulent viatical settlement act:**

**(1) in an administrative or a judicial proceeding to enforce laws administered by the commissioner;**

**(2) to a federal, state, or local law enforcement or regulatory agency, an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts, or the NAIC; or**

**(3) at the discretion of the commissioner, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act.**

**(c) A release of documents or evidence under subsection (b) does not abrogate or modify the privilege granted under subsection (a).**

**Sec. 8. This chapter does not do any of the following:**

**(1) Preempt the authority or relieve the duty of a law enforcement agency or regulatory agency to investigate, examine, and prosecute suspected violations of law.**

**(2) Prevent or prohibit a person from voluntarily disclosing information concerning viatical settlement fraud to a law enforcement agency or regulatory agency other than the department.**

**(3) Limit a power granted elsewhere by the law of Indiana to the commissioner or to an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.**

**Sec. 9. (a) Subject to subsection (b), each viatical settlement**

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**provider and each viatical settlement broker shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent viatical settlement acts, including the following antifraud initiatives:**

**(1) The use of fraud investigators, who may be employees or independent contractors of the viatical settlement provider or viatical settlement broker.**

**(2) An antifraud plan, which must be submitted to the commissioner and must include:**

**(A) a description of the procedures for:**

**(i) detecting and investigating possible fraudulent viatical settlement acts;**

**(ii) resolving material inconsistencies between medical records and insurance applications; and**

**(iii) reporting possible fraudulent viatical settlement acts to the commissioner;**

**(B) a description of the plan for antifraud education and training of underwriters and other personnel; and**

**(C) a description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for:**

**(i) the investigation and reporting of possible fraudulent viatical settlement acts; and**

**(ii) investigating unresolved material inconsistencies between medical records and insurance applications.**

**(b) The commissioner may order or, at the request of a licensee, may authorize that one (1) or more of the antifraud initiatives set forth in subsection (a) be modified as implemented by a viatical settlement provider or a viatical settlement broker to ensure the establishment of an effective antifraud program.**

**(c) An antifraud plan that is submitted to the commissioner is privileged and confidential and is not subject to discovery or subpoena in a civil or criminal action.**

**Chapter 13. Violations**

**Sec. 1. The commissioner may seek a temporary or permanent injunction to restrain a person violating this article from continued violation.**

**Sec. 2. A person that is damaged by an act of another person in violation of this article may bring a civil action against the person committing the violation.**

**Sec. 3. A violation of this article, including a fraudulent viatical settlement act, is an unfair and deceptive act or practice in the**

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**business of insurance under IC 27-4-1-4.**

**Chapter 14. Rules**

**Sec. 1. The commissioner shall adopt rules under IC 4-22-2 to implement this article, including rules to do the following:**

**(1) Establish standards for use in evaluating the reasonableness of payments under a viatical settlement contract for a person who is chronically ill or terminally ill, including regulation of the discount rates used to determine the amount paid in exchange for an assignment, transfer, sale, devise, or bequest of a benefit under a policy insuring the life of the person.**

**(2) Establish appropriate licensing requirements, fees, and standards for continued licensure of viatical settlement providers and viatical settlement brokers.**

**(3) Require a bond or other mechanism to ensure the financial accountability of viatical settlement providers and viatical settlement brokers.**

**(4) Govern the relationships and responsibilities of insurers, viatical settlement providers, and viatical settlement brokers during the viatication of a policy.**

**(5) Establish standards of permissible and impermissible conduct with respect to advertising materials consistent with this article.**

SECTION 3. IC 34-30-2-119.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 119.8. The following:**

**(1) IC 27-18-6-11 (Concerning examinations related to viatical settlements).**

**(2) IC 27-18-12-6 (Concerning reporting related to viatical settlements).**

SECTION 4. IC 35-43-5-4.6 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2008]: **Sec. 4.6. (a) The definitions in IC 27-18-1 apply throughout this section.**

**(b) A person who knowingly or intentionally commits a fraudulent viatical settlement act commits viatical settlement fraud. Except as provided in subsection (c), viatical settlement fraud is a Class D felony.**

**(c) An offense described in subsection (b) is a Class C felony if:**

**(1) the person who commits the offense has a prior unrelated conviction under this section; or**

**(2) the:**

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**(A) value of property, services, or other benefits obtained or attempted to be obtained by the person as a result of the offense; or**

**(B) economic loss suffered by another person as a result of the offense;**

**is at least two thousand five hundred dollars ($2,500).**

SECTION 5. IC 27-8-19.8 IS REPEALED [EFFECTIVE JULY 1, 2008].

SECTION 6. [EFFECTIVE JULY 1, 2008] **(a) A viatical settlement provider or viatical settlement broker that is authorized under IC 27-8-19.8 to do business in Indiana on June 30, 2007, may continue to do business in Indiana pending approval or disapproval of the viatical settlement provider's or viatical settlement broker's application for a license under IC 27-18, as added by this act, if the application is filed with the commissioner not later than September 1, 2008.**

**(b) This SECTION expires January 1, 2013.**

SECTION 7. [EFFECTIVE JULY 1, 2008] **IC 35-43-5-4.6, as added by this act, applies to an offense committed after June 30, 2008.**

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