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Title 39: Insurance / Chapter 3916: Viatical Settlements Model Act

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§ 3916.01. Definitions

As used in this chapter:

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

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

(C) "**Chronically ill**" means having been certified within the preceding twelve-month period by a licensed health professional as:

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

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

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

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

(E)

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

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

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

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

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

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

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

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

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

(K) "**Related provider trust**" means a titling trust or any other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding ownership or beneficial interest in purchased policies in connection with a financing transaction, provided that the trust has a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the superintendent of insurance as if those records and files were maintained directly by the licensed viatical settlement provider.

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

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

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

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

(N) "**Viatical settlement broker**" means a person that, on behalf of a viator and for a fee, commission, or other valuable consideration, offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers or viatical settlement brokers. "Viatical settlement broker" does not include an attorney, a certified public accountant, or a financial planner accredited by a nationally

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recognized accreditation agency, who is retained to represent the viator, whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.

(O)

(1) "**Viatical settlement contract**" means any of the following:

(a) A written agreement between a viator and a viatical settlement provider that establishes the terms under which compensation or anything of value, that is less than the expected death benefit of the policy is or will be paid in return for the viator's present or future assignment, transfer, sale, release, devise, or bequest of the death benefit or ownership of any portion of the policy or any beneficial interest in the policy or its ownership;

(b) The transfer or acquisition for compensation or anything of value for ownership or beneficial interest in a trust or an interest in another person that owns such a policy if the trust or other person was formed or availed of for the principal purpose of acquiring one or more life insurance policies;

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

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

(ii) The viator or the insured agrees on, before, or after the issuance of the policy to sell the policy or any portion of the policy's death benefit.

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

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

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

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

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

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(d) A premium finance loan made by a lender that does not violate *sections 1321.71 to 1321.83 of the Revised Code*, if the premium finance loan is not described in division (O)(1)(c) of this section;

(e) An agreement where all parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or are persons or trusts established primarily for the benefit of such parties;

(f) Any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee as described in *section 3911.091 [3911.09.1] of the Revised Code*;

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

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

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

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

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

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

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

(P)

(1) "**Viatical settlement provider**" means a person, other than a viator, that enters into or effectuates a viatical settlement contract.

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

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

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(b) A premium finance company exempted under *section 1321.72 of the Revised Code* from the licensure requirements of section 3921.73 of the Revised Code that takes an assignment of a policy solely as collateral for a premium finance loan;

(c) The issuer of a policy;

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

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

(f) A financing entity;

(g) A special purpose entity;

(h) A related provider trust;

(i) A viatical settlement purchaser;

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

(Q) "**Viaticated policy**" means a policy that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

(R) "**Viator**" means the owner of a policy or a certificate holder under a group policy that has not previously been viaticated who, in return for compensation or anything of value that is less than the expected death benefit of the policy or certificate, assigns, transfers, sells, releases, devises, or bequests the death benefit or ownership of any portion of the policy or certificate of insurance. For the purposes of this chapter, a "viator" is not limited to an owner of a policy or a certificate holder under a group policy insuring the life of an individual who is terminally or chronically ill except where specifically addressed.

"Viator" does not include any of the following:

(1) A licensee under this chapter;

(2) A qualified institutional buyer;

(3) A financing entity;

(4) A special purpose entity;

(5) A related provider trust.

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(S) "**Viatical settlement purchaser**" means a person who provides a sum of money as consideration for a policy or an interest in the death benefits of a policy from a viatical settlement provider that is the subject of a viatical settlement contract, or a person who owns, acquires, or is entitled to a beneficial interest in a trust or person that owns a viatical settlement contract or is the beneficiary of a policy that is the subject of a viatical settlement contract, for the purpose of deriving an economic benefit. "Viatical settlement purchaser" does not include any of the following:

- (1) A licensee under this chapter;
- (2) A qualified institutional buyer;
- (3) A financing entity;
- (4) A special purpose entity;
- (5) A related provider trust.

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

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

(V) "**NAIC**" means the national association of insurance commissioners.

(X) "**Regulated financial institution**" means a bank, a savings association, or credit union operating under authority granted by the superintendent of financial institutions, the regulatory authority of any other state of the United States, the office of thrift supervision, the national credit union administration, or the office of the comptroller of the currency.

(W)

(1) "**Stranger-originated life insurance,**" or "**STOLI,**" means a practice, arrangement, or agreement initiated at or prior to the issuance of a policy that includes both of the following:

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

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

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

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

§ 3916.02. Viatical settlement provider's or broker's license required; choice of law; exceptions

(A) Notwithstanding division (C) of this section, no person shall operate in this state as a viatical settlement provider or viatical settlement broker without first having obtained a license from the superintendent of insurance and, if the owner of the policy to be viaticated is not a resident of this state, from the comparable official of the state of residence of the owner if that state issues licenses for viatical settlement providers or viatical settlement brokers.

(B)

(1) If there is more than one owner on a single policy and the owners are residents of different states, the viatical settlement contract shall be governed by the law of the state in which the owner having the largest percentage ownership of the policy resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all owners.

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

(C)

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

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

§ 3916.03. Application for license as provider or broker; issuance; renewal; continuing education; new or revised information

(A) An applicant for a license as a viatical settlement provider or viatical settlement broker shall submit an application for the license in a manner prescribed by the superintendent of insurance. The application shall be accompanied by a fee established by the superintendent by rule adopted in accordance with Chapter 119. of the Revised Code.

(B) A license issued under this chapter to a person other than an individual authorizes all partners, officers, members, or designated employees of the person to act as viatical settlement providers or viatical

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settlement brokers, as applicable, and all those partners, officers, members, or designated employees shall be named in the application and any supplements to the application.

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

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

(a) A detailed plan of operation;

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

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

(2) The superintendent finds all of the following:

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

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

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

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

(D)

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

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

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

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

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

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

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

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

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

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

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

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

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

(I) A viatical settlement provider or viatical settlement broker shall provide to the superintendent new or revised information regarding any change in its officers, any shareholder owning ten per cent or more of

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its voting securities, or its partners, directors, members, or designated employees within thirty days of the change.

(J) Any fee collected under this section shall be paid into the state treasury to the credit of the department of insurance operating fund created by *section 3901.021 [3901.02.1] of the Revised Code*.

§ 3916.031. Designated individually licensed broker to be responsible for compliance

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

§ 3916.04. Broker deemed to represent viator; fiduciary duty

Irrespective of the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator.

§ 3916.05. Forms to be approved by superintendent; detection and prevention of stranger-originated life insurance; fees

(A) A person shall not use a viatical settlement contract form or provide a disclosure statement form to a viator in this state unless the viatical settlement contract form or the disclosure statement form is filed with and approved by the superintendent of insurance. The superintendent shall disapprove a viatical settlement contract form or a disclosure statement form if, in the superintendent's opinion, the viatical settlement contract form, the disclosure statement form, or any provision contained therein fails to meet the requirements of *section 3916.06 of the Revised Code*, is unreasonable, is contrary to the interests of the public, or is otherwise misleading or unfair to the viator. At the superintendent's discretion, the superintendent may require the submission of advertising material to which *section 3916.17 of the Revised Code* applies. If not disapproved by the superintendent, a filing made pursuant to this section shall be considered approved forty-five days after the contract form, disclosure form, or advertising material is filed.

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

(C) The superintendent may adopt rules in accordance with Chapter 119. of the Revised Code to establish reasonable fees for any service or transaction performed by the department of insurance pursuant to division (A) of this section. Any fee collected pursuant to those rules shall be paid into the state treasury to the credit of the department of insurance operating fund created by *section 3901.021 [3901.02.1] of the Revised Code*.

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§ 3916.06. Disclosures to accompany application for viatical settlement and to precede signing of contract; change in ownership or beneficiary

(A)

(1) With each application for a viatical settlement, a viatical settlement provider or viatical settlement broker shall disclose at least the following to a viator no later than the time all parties sign the application for the viatical settlement contract:

(a) That there are possible alternatives to viatical settlement contracts, including any accelerated death benefits offered under the viator's policy;

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

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

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

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

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

(g) That 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 that assistance should be sought from a financial advisor;

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

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

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

(4) The disclosure document under division (A)(1) of this section shall contain 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 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."

(B)

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

(a) The affiliation, if any, between the viatical settlement provider and the issuer of the policy to be viaticated;

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

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

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

(e) If a policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the possible loss of coverage on the other lives under the policy and that advice should be sought from the viator's insurance agent or the company issuing the policy;

(f) The dollar amount of the current death benefit payable to the viatical settlement provider under the policy, and, if known, the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy, and the extent to which the viator's interest in those benefits will be transferred as a result of the viatical settlement contract.

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(g) That an escrow agent shall provide escrow services to the parties pursuant to a written agreement, signed by the viatical settlement provider, the viatical settlement broker, and the viator. At the close of escrow, the escrow agent will distribute the proceeds of the sale to the viator, minus any compensation to be paid to any other persons who provided services and to whom the viator has agreed to compensate out of the gross amount offered by the viatical settlement purchaser. All persons receiving any form of compensation under the escrow agreement shall be clearly identified, including name, business address, telephone number, and tax identification number.

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

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

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

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

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

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

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

§ 3916.07. Duties of provider generally; confidentiality of medical information

(A) A viatical settlement provider entering into a viatical settlement contract shall first obtain all of the following:

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

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

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

(C) The viatical settlement provider shall deliver a copy of the medical release required under division (A)(2) of this section, a copy of the viator's application for the viatical settlement contract, the notice required under division (B) of this section, and a request for verification of coverage to the insurer that issued the policy that is the subject of the viatical transaction. The viatical settlement provider shall use the NAIC's form for verification of coverage unless another form is developed or approved by the superintendent of insurance.

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

(E) Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract and a full and complete understanding of the benefits of the policy, and acknowledges that the viator is entering into the viatical settlement contract freely and voluntarily and, for persons who are terminally or chronically ill, acknowledges that the insured is terminally or chronically ill and that the terminal or chronic illness was diagnosed after the policy was issued.

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

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

§ 3916.08. Viator's right to rescind contract

Each viatical settlement contract entered into in this state shall provide the viator with an unconditional right to rescind the contract for at least fifteen calendar days after the receipt of the viatical settlement proceeds. If the insured dies during the rescission period, the viatical settlement contract is deemed to have been rescinded, subject to repayment of all viatical settlement proceeds to the viatical settlement

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provider. If a viatical settlement contract is rescinded by the viator pursuant to this section, ownership of the insurance policy or certificate reverts to the viator or to the viator's estate if the viator is deceased, irrespective of any transfer of ownership of the policy or certificate by the viator, viatical settlement provider, or any other person.

§ 3916.09. Escrow agents; failure to timely transfer proceeds to viator

(A) The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment, or change in beneficiary directly to the escrow agent. Within three business days after the date the escrow agent receives the documents, or from the date 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 gross amount to be paid by the viatical settlement provider to the escrow agent for deposit in a trust or escrow account set up for that purpose by the escrow agent in a regulated financial institution. Upon payment of the settlement proceeds into the escrow or trust account, the escrow agent or trustee shall deliver the original change in ownership, assignment, or change in beneficiary forms to the viatical settlement provider, a representative of the viatical settlement provider, or related provider trust. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator and any other person pursuant to the viatical settlement contract and the escrow agreement. The escrow agent shall make payment within three business days of the date the escrow agent received the acknowledged forms from the insurance company. Funds are considered sent to a viator as of the date that the escrow agent either releases the funds for wire transfer to the viator or places a check for delivery to the viator via United States postal service or other nationally recognized delivery service.

(B) Failure to transfer the proceeds to the viator within the period of time disclosed pursuant to division (A)(1)(f) of *section 3916.06 of the Revised Code* renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator. If a viatical settlement contract is voided by the viator pursuant to this division, ownership of the policy reverts to the viator or to the viator's estate if the viator is deceased, irrespective of any transfer of ownership of the policy by the viator, viatical settlement provider, or any other person.

§ 3916.10. Contact with insured after settlement has occurred

After a viatical settlement has occurred, contact with the insured for the purpose of determining the health status of the insured shall be made only by the viatical settlement provider, or the authorized representative of the viatical settlement provider. The viatical settlement provider, or authorized representative shall not contact the insured for the purpose of determining the insured's health status more than once every three months if the insured has a life expectancy of more than one year, or more than once per month if the insured has a life expectancy of one year or less. The viatical settlement provider shall explain the procedure for making these contacts at the time the viatical settlement contract is entered into.

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

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Viatical settlement providers are responsible for the actions of their authorized representatives, for the purposes of this section except viatical settlement providers are not responsible for the actions of subsequent purchasers of a policy.

§ 3916.11. Licensee's duty to retain documents; examinations; investigations

(A)

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

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

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

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

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

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

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

(B)

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

(2) Every licensee or person from whom information is sought, and all officers, directors, employees, and agents of any licensee or person from whom information is sought, shall provide to the examiners timely, convenient, and free access at all reasonable hours at the licensee's or person's offices 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. The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so.

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The refusal of a licensee, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the superintendent shall be grounds for suspension, revocation, denial of issuance, or nonrenewal of any license held by the licensee to engage in the business of viatical settlements or other business subject to the superintendent's jurisdiction. Any proceedings for suspension, revocation, denial, or refusal to renew of any license or authority are subject to Chapter 119. of the Revised Code.

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

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

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

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

(C)

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

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

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

(D)

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

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

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

(a) They are created, produced, or obtained by or disclosed to the NAIC and its affiliates and subsidiaries in the course of assisting an examination made under this chapter or assisting the superintendent or the comparable official in another state in the analysis or investigation of the financial condition or market conduct of a licensee.

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

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

(5)

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

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

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

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

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

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

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

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

(E)

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

(a) A viator;

(b) An insured in a viaticated policy;

(c) A beneficiary in a policy that is proposed to be viaticated.

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

(F)

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

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

(b) Travel and living expenses of examiners;

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

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

(2) When a market conduct examination is made of a licensee under this chapter, the licensee shall pay the expenses of the examination. The expenses of an examination include those incurred on or after the date on which the superintendent notifies the licensee of the examination through the issuance of the final examination report.

(3) The superintendent may request the attorney general to initiate a civil action in the court of common pleas of Franklin county to obtain and enforce a judgment for expenses incurred in the performance of a market conduct examination.

(G)

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

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

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

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not substantially justified in bringing the action. For purposes of this division, an action is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

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

§ 3916.12. Licensee to file annual statements and interim financial statements

(A) Each licensee under this chapter shall file with the superintendent of insurance, on or before the first day of March of each year, an annual statement verified under oath by two officers in the form prescribed by the superintendent. The annual statement for a viatical settlement provider shall include the following information about the viatical settlement provider's transactions:

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

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

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

(4) Any other information required by the superintendent.

(B) On or before the first day of May of each year, a viatical settlement provider licensed in this state shall file with the superintendent its financial statement, audited by an independent certified public accountant along with a letter stating whether any significant deficiencies or material weaknesses were detected during the audit pursuant to statement on auditing standards number 112 or as amended or superseded.

(C)

(1) Each viatical settlement provider shall file with the superintendent interim unaudited financial statements, including comparative results and footnotes to the financial statements, on a quarterly basis within forty-five days after the end of each quarter. The interim financial statements shall meet all of the following requirements:

(a) Be certified by the chief executive officer and chief financial officer as to the accuracy and fair presentation;

(b) Include disclosures either on the face of the financial statements or in accompanying footnotes sufficient so as to make the interim information not misleading.

(2) Viatical settlement providers may assume that the users of the interim financial statements have access to the prior fiscal year-end audited financial statements and that the adequacy of additional disclosure needed for a fair presentation, except in regard to material contingencies, may be determined in that

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context. A footnote disclosure that would substantially duplicate the disclosure contained in the audited financial statements for the preceding fiscal year may be omitted. A footnote disclosure shall be provided if events subsequent to the fiscal year end have a material impact on the viatical settlement provider.

(D) A viatical settlement provider that willfully fails to file the annual statements required by this section, or willfully fails to reply within thirty calendar days to a written inquiry from the superintendent or the superintendent's designee, shall, in addition to other penalties provided by this chapter, be subject to a penalty of up to two hundred fifty dollars per day, not to exceed twenty-five thousand dollars in the aggregate for each such failure.

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

§ 3916.13. Disclosure of insured's identity or financial or medical information

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

(A) The disclosure is necessary to effect a viatical settlement, and the viator and insured have provided prior written consent to the disclosure.

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

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

(D) 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 insured have provided prior written consent to the disclosure.

(E) The disclosure is necessary to allow the viatical settlement provider or its authorized representatives to make contacts for the purpose of determining health status.

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

§ 3916.14. Examinations

(A)

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

- (a) Consumer complaints;
- (b) The results of financial statement analyses and ratios;
- (c) Any changes in ownership, officers, or directors;
- (d) Any report of independent certified public accountants;
- (e) Any other criteria the superintendent determines to be appropriate.

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

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

(B) The licensee or applicant shall pay to the superintendent all costs, assessments, forfeitures, or fines incurred in conducting an examination under this section. The superintendent shall deposit the money into the state treasury to the credit of the department of insurance operating fund created by *section 3901.021 [3901.02.1] of the Revised Code*.

§ 3916.15. Disciplinary actions

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

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

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- (3) The licensee is a viatical settlement provider that demonstrates a pattern of unreasonable payments to viators.
- (4) The licensee or any officer, partner, member, key management personnel, or designee of the licensee has been convicted of or has pleaded guilty or no contest to a felony or to a misdemeanor involving fraud, moral turpitude, dishonesty, or breach of trust, regardless of whether a judgment of conviction has been entered by the court.
- (5) The licensee is a viatical settlement provider that has used a viatical settlement contract form that has not been approved under this chapter.
- (6) The licensee is a viatical settlement provider that 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) The licensee is a viatical settlement provider that has assigned, transferred, or pledged a viaticated policy to a person that the licensee knew or should have known was not one of the following:
- (a) A viatical settlement provider licensed in this state;
 - (b) A viatical settlement purchaser;
 - (c) A qualified institutional buyer;
 - (d) A financing entity;
 - (e) A special purpose entity;
 - (f) A related provider trust.
- (9) The licensee or any officer, partner, member, key management personnel, or designee of the licensee has violated any provision of this chapter or any rule adopted under this chapter.
- (10) The licensee or any officer, partner, member, key management personnel, or designee of the licensee has committed any coercive, fraudulent, or dishonest act, or made any untrue, deceptive, or misleading statement, in connection with a viatical settlement transaction or a proposed viatical settlement transaction.
- (B) Before the superintendent refuses to issue a license under this chapter, or suspends, revokes, or refuses to renew the license of a viatical settlement provider or viatical settlement broker, the superintendent shall provide the licensee or applicant with notice and an opportunity for hearing as provided in Chapter 119. of the Revised Code, except as follows:

(1)

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

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

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

(c) If service by ordinary mail fails, the superintendent shall cause a summary of the substantive provisions of the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known place of residence or business of the licensee or applicant is located. The notice is considered served on the date of the third publication.

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

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

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

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

§ 3916.16. Time between entering into insurance policy and viaticating policy; promoting purchasing policy for purpose of selling it

(A)

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

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

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

(1) The policy was issued upon the viator's exercise of conversion rights arising out of a group policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least sixty months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship.

(2) The viator is a charitable organization with an insurable interest pursuant to division (B) of *section 3911.09 the Revised Code* that has received from the Internal Revenue Service a determination letter that is currently in effect, stating that the charitable organization is exempt from federal income taxation under subsection 501(a) and described in section 501(c)(3) of the "Internal Revenue Code."

(3) The viator certifies and submits independent evidence to the viatical settlement provider that one or more of the following conditions have arisen after the issuance of the policy :

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

(b) The viator's spouse dies.

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

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

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

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

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

(4) The viator enters into a viatical settlement contract more than two years after the date of issuance of a policy and certifies that all of the following are true:

(a) The viator has funded the policy using personal assets, which may include an interest in the life insurance policy being viaticated up to the cash surrender value of the policy or any financing agreement

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to fund the policy premiums entered into prior to policy issuance or within two years of policy issuance was provided to the insurer within thirty days of the date the agreement was executed and the financing agreement was secured with personal assets.

(b) The viator had no agreement or understanding with any other person to viaticate the policy or transfer the benefits of the policy, including through an assumption or forgiveness of a premium finance loan at any time prior to issuance of the policy or during the two years after the date of issuance of the policy.

(c) If requested by the insurer, the viator both disclosed to the insurer whether a person other than the insurer obtained a life expectancy evaluation for settlement purposes in connection with the application, underwriting, and issuance of the policy and provided a copy of any such life expectancy evaluation to the insurer at the time of application.

(d) The viator disclosed any financial arrangement, trust, or other arrangement, transaction, or device that conceals the ownership or beneficial interest of the policy to the insurer prior to the issuance of the policy.

(C) Copies of the independent evidence described in division (B)(3) of this section and documents required by *section 3916.07 of the Revised Code* shall be submitted to the insurer when the viatical settlement provider or any other party entering into a viatical settlement contract with a viator submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

(D) If the viatical settlement provider submits to the insurer a copy of the owner or insured's certification and independent evidence described in division (B)(3) of this section when the viatical settlement provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy conclusively establishes that the viatical settlement contract satisfies the requirements of this section, and the insurer shall timely respond to the request.

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

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

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

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§ 3916.17. Advertisements

(A) The general assembly hereby declares that the purpose of this section is to provide prospective viators with clear and unambiguous statements in the advertisement of viatical settlements and to assure the clear, truthful, and adequate disclosure of the benefits, risks, limitations, and exclusions of any viatical settlement contract. This purpose is intended to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of viatical settlements to assure that product descriptions are presented in a manner that prevents unfair, deceptive, or misleading advertising and is conducive to accurate presentation and description of viatical settlements through the advertising media and material used by licensees.

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

(B) Every licensee shall establish and at all times shall maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products, and services. All advertisements, regardless of by whom they are written, created, designed, or presented, shall be the responsibility of the licensee and of the person that created or presented the advertisement. A system of control shall include regular routine notification, at least once a year, to agents and others authorized by the licensee who disseminate advertisements of the requirements for compliance under this section prior to the use of any advertisements not furnished by the licensee.

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

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

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

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

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

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

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

(6) "High yield," "superior return," "excellent return," "high return," "quick profit," or similar representations;

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

(E)

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

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

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

(3) An advertisement shall not represent that any premium payments will not be required to be paid on the policy that is the subject of a viatical settlement contract in order to maintain that policy, unless that is the fact.

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

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

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(a) Testimonials, appraisals, analyses, or endorsements used in advertisements must satisfy all of the following:

(i) They must be genuine.

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

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

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

(b) In using testimonials, appraisals, analyses, or endorsements, the licensee makes as its own all the statements contained in the testimonials, appraisals, analyses, or endorsements, and the statements are subject to all the provisions of this section.

(c) If the individual making a testimonial, appraisal, analysis, or endorsement has a financial interest in the subject of that testimonial, appraisal, analysis, or endorsement directly or indirectly as a shareholder, director, officer, employee, or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

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

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

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

(G) An advertisement shall not disparage any insurer, viatical settlement provider, viatical settlement broker, insurance producer, policy, service, or method of marketing.

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

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(I) An advertisement shall not use a trade name, group designation, name of the parent company of a licensee, name of a particular division of the licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the licensee, if either of the following applies regarding the advertisement:

(1) It would have the capacity or tendency to mislead or deceive as to the true identity of the licensee.

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

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

(K) An advertisement may state that a licensee is licensed in the state in which the advertisement appears, provided it does not exaggerate that fact or suggest or imply that competitors may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the department of insurance to find out if the state in which the advertisement appears requires licensing and, if it does, whether the person is licensed.

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

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

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

(1) Any licensee or its business practices or methods of operation;

(2) The merits, desirability, or advisability of any viatical settlement contract;

(3) Any viatical settlement contract;

(4) Any policy or life insurance company.

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(O) If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame, from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

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

§ 3916.171. Fraudulent viatical settlement acts prohibited

(A) No person shall commit a fraudulent viatical settlement act.

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

(1) 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, life expectancy provider, viatical settlement purchaser, financing entity, insurer, insurance broker, insurance agent, or any other person, any false material information, or concealing any material information, as part of, in support of, or concerning a fact material to, one or more of the following:

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

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

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

(d) Any premiums paid on a policy;

(e) Any payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or a policy;

(f) The reinstatement or conversion of a policy;

(g) The solicitation, offer, effectuation, or sale of a viatical settlement contract or a policy;

(h) The issuance of written evidence of a viatical settlement contract or a policy;

(i) A financing transaction;

(j) Any application for or the existence of or any payments related to a loan secured directly or indirectly by any interest in a policy.

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- (2) Failing to disclose to the insurer, where the insurer has requested such disclosure, that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insurer or its authorized representatives in connection with the application, underwriting, and issuance of the policy.
- (3) In the furtherance of a fraud or to prevent the detection of a fraud, doing any of the following:
- (a) Removing, concealing, altering, destroying, or sequestering from the superintendent of insurance the assets or records of a licensee or another person engaged in the business of viatical settlements;
 - (b) Misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or any other person;
 - (c) Transacting the business of viatical settlements in violation of any law of this state requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements;
 - (d) Filing with the superintendent of insurance or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing from the superintendent any information about a material fact.
- (4) Recklessly entering into, negotiating, brokering, or otherwise dealing in a viatical settlement contract involving a policy that was obtained by presenting false, deceptive, or misleading information of any fact material to the policy, or by concealing information concerning any fact material to the policy, for the purpose of misleading and with the intent to defraud the issuer of the policy, the viatical settlement provider, or the viator;
- (5) Committing any embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, policy owner, or any other person engaged in the business of viatical settlements or insurance;
- (6) Employing any plan, financial structure, device, scheme, or artifice to defraud in the business of viatical settlements;
- (7) Misrepresenting the state of residence or facilitating the change of the state in which a person owns a policy or the state of residency of a viator to a state or jurisdiction that does not have laws similar to this chapter for the express purposes of evading or avoiding the provisions of this chapter;
- (8) In the solicitation, application, or issuance of a policy, employing any device, scheme, or artifice in violation of *sections 3911.09 or 3911.091 [3911.09.1] of the Revised Code*;
- (9) Engaging in any conduct related to a viatical settlement contract if the person knows or should have known that the intent of the transaction was to avoid the disclosure and notice requirements of *section 3916.06 of the Revised Code*;
- (10) Entering into a premium finance agreement with any person pursuant to which the person will receive, directly or indirectly, any proceeds, fees, or other considerations from the policy, the owner of the policy,

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the issuer of the policy, or from any other person with respect to the premium finance agreement or any viatical settlement contract, or from any transaction related to the policy, that are in addition to the amount required to pay the principal, interest, costs, and expenses related to the policy premiums pursuant to the premium finance agreement or subsequent sale of the agreement. Any payments, charges, fees, or other amounts in addition to the amounts required to pay the principal, interest, costs, and expenses related to policy premiums paid under the premium finance agreement shall be remitted to the original owner of the policy or, if the owner is not living at the time of the determination of the overpayment, to the estate of the owner.

(11) With respect to any viatical settlement contract or a policy, for a viatical settlement broker or an agent registered under this chapter as operating as a viatical settlement broker to knowingly solicit an offer from, effectuate a viatical settlement with, or make a sale to any viatical settlement provider, viatical settlement purchaser, financing entity, or related provider trust that is controlling, controlled by, or under common control with such viatical settlement broker or registered agent unless both of the following are true:

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

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

(12) With respect to any viatical settlement contract or a policy, for a viatical settlement provider to knowingly enter into a viatical settlement contract with a viator if, in connection with such viatical settlement contract, anything of value will be paid to a viatical settlement broker or an agent registered under this chapter as operating as a viatical settlement broker that is controlling, controlled by, or under common control with such viatical settlement provider or the viatical settlement purchaser, financing entity, or related provider trust that is involved in such viatical settlement contract unless both of the following are true:

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

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

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

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

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

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

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§ 3916.172. Stranger-originated life insurance

Any contract, agreement, arrangement, or transaction including, but not limited to, any financing agreement or arrangement identified in *section 1321.72 of the Revised Code* entered into for the furtherance or aid of a stranger-originated life insurance act, practice, arrangement, or agreement is void and unenforceable.

§ 3916.173. Trusts or persons created to give appearance of insurable interest

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

§ 3916.18. Antifraud initiatives

(A)

(1) No person shall knowingly or intentionally interfere with the enforcement of the provisions of this chapter or investigations of suspected or actual violations of this chapter.

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

(B)

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

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

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

(C)

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

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

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

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

(b) If the person is not licensed or regulated by the department the superintendent shall provide the superintendent's findings to the appropriate licensing or regulatory authority.

(D)

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

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

(b) Law enforcement or regulatory officials of this state, another state, the United States, or a political subdivision of this state or another state, or any employee, agent, or representative of any of those officials;

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

(d) The NAIC, financial industry regulatory authority (FINRA), the North American Securities Administrators Association (NASAA), any employee, agent, or representative of any of those associations, or other regulatory body overseeing life insurance, viatical settlements, securities, or investment fraud;

(e) The life insurer that issued the policy covering the life of the insured.

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

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

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

(E)

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

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

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

(b) To any law enforcement or regulatory agency of this state, another state, the United States, or a political subdivision of this state or another state, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts, or to the NAIC;

(c) At the discretion of the superintendent, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act.

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

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

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

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

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

(G)

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

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

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

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

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

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

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

(v) A description of the procedures used to perform initial and continuing review of the accuracy of life expectancies used in connection with a viatical settlement contract.

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

(H) No insurer that issued a policy being viaticated shall be responsible, under this chapter, for any 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 for the placement of a viatical

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settlement contract from the viatical settlement provider or viatical settlement broker in connection with the viatical settlement contract.

§ 3916.19. Injunction against violation; civil action by injured party; civil penalties

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

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

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

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

§ 3916.20. Rules

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

(A) Govern the relationship and responsibilities of insurers, viatical settlement providers, and viatical settlement brokers during the viatication of a policy.

(B) Establish standards for evaluating the reasonableness of payments under viatical settlement contracts for persons who are terminally or chronically ill. This authority includes, but is not limited to, the regulation of discount rates used to determine the amount paid in exchange for the assignment, release, transfer, sale, devise, or bequest of a benefit under a policy insuring persons who are terminally or chronically ill.

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

Ohio Revised Code

Title 39: Insurance / Chapter 3916: Viatical Settlements Model Act

§ 3916.21. Unfair or deceptive insurance practices

(A) No person shall fail to comply with this chapter.

(B) Whoever violates division (A) of this section is deemed to have engaged in an unfair and deceptive act or practice in the business of insurance under *sections 3901.19 to 3901.26 of the Revised Code*.

§ 3916.99. Penalties

(A) Whoever violates *section 3916.02 of the Revised Code* is guilty of a felony of the third degree.

(B) Whoever violates division (A) of *section 3916.171 [3916.17.1] of the Revised Code* is guilty of a violation of *section 2913.02 of the Revised Code*.