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SENATE BILL NO. 112
INTRODUCED BY VAN VALKENBURG
BY REQUEST OF THE STATE AUDITOR

5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A VIATICAL SETTLEMENT ACT; PROVIDING FOR
6 LICENSURE OF VIATICAL SETTLEMENT PROVIDERS AND BROKERS; PROVIDING FOR REGULATION BY
7 THE INSURANCE COMMISSIONER; PROVIDING AUTHORITY TO PROMULGATE RULES; PROVIDING
8 MINIMAL REQUIREMENTS FOR VIATICAL SETTLEMENT CONTRACTS; PROVIDING FOR EXAMINATION
9 OF LICENSEES AND LICENSE APPLICANTS; PROVIDING FOR DISCLOSURE OF INFORMATION; PROVIDING
10 FOR CONDITIONS PRECEDENT TO VIATICAL SETTLEMENT CONTRACTS; PROVIDING FOR
11 CONFIDENTIALITY; AND PROVIDING REQUIREMENTS FOR PAYMENT PURSUANT TO VIATICAL
12 SETTLEMENT CONTRACTS."

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STATEMENT OF INTENT

15 A statement of intent is required for this bill because [section 16] grants rulemaking authority to
16 the insurance commissioner. The rulemaking authority is consistent with the requirements of Public Law
17 104-191, H.R. 3103, which provides for the adoption of standards promulgated by the national association
18 of insurance commissioners. The commissioner in adopting rules needs to establish trade practice
19 standards for regulating advertising and solicitation of viatical settlement contracts, for evaluating
20 reasonableness of payments under viatical settlement contracts, and for determining the forms necessary
21 to effectively administer the bill. The rules adopted should be consistent with any regulations adopted
22 under Public Law 104-191, H.R. 3103.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

26 NEW SECTION. **Section 1. Short title.** [Sections 1 through 16] may be cited as the "Viatical
27 Settlement Act".

28

29 NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 16], unless the context
30 requires otherwise, the following definitions apply:

1 (1) (a) "Viatical settlement broker" means an individual who, for a fee, commission, or other
2 consideration:

3 (i) offers or advertises the availability of viatical settlement contracts;

4 (ii) introduces holders of life insurance policies or certificates insuring the lives of individuals with
5 a terminal illness or condition to viatical settlement providers; or

6 (iii) offers or attempts to negotiate viatical settlement contracts between the policyholders or
7 certificate holders and one or more viatical settlement providers.

8 (b) Viatical settlement broker does not mean an attorney, accountant, or financial planner retained
9 to represent the policyholder or certificate holder unless compensation paid to the attorney, accountant,
10 or consultant is paid by the viatical settlement provider.

11 (2) "Viatical settlement contract" means a written agreement between a viatical settlement provider
12 and the holder of a group or individual life insurance policy insuring the life of an individual with a terminal
13 illness or condition or between a viatical settlement provider and the certificate holder of a policy in which:

14 (a) the terms establish that the viatical settlement provider pays something of value in return for
15 the policyholder's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit
16 or ownership of the insurance policy or certificate to the viatical settlement provider; and

17 (b) the policyholder or certificate holder holds an irrevocable right under the policy or certificate
18 to name the beneficiary.

19 (3) (a) "Viatical settlement provider" means a person who solicits, enters into, or negotiates viatical
20 settlement contracts or offers to enter into or negotiate viatical settlement contracts.

21 (b) A viatical settlement provider may use the term "life settlement provider" to describe the
22 business transacted under the license and may use the term "life settlement contract" instead of "viatical
23 settlement contract".

24 (c) Viatical settlement provider does not mean:

25 (i) a bank, savings bank, savings and loan association, credit union, or other licensed lending
26 institution that takes an assignment of a life insurance policy only as collateral for a loan;

27 (ii) an insurer issuing a life insurance policy providing accelerated benefits pursuant to 33-20-127
28 or pursuant to the laws of the state to which the policy was subject when issued;

29 (iii) an individual who enters into a single agreement in a calendar year for the transfer of life
30 insurance policies for any value less than the expected death benefit; or

1 (iv) any corporation, partnership, or partner that purchases a life insurance contract of an employee
2 or retiree of the corporation or of a partner. The settlement made on any contract exempt under this
3 section must be reasonable and subject to the standards imposed on licensees under [section 4].
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5 **NEW SECTION. Section 3. License application.** (1) A person may not act as or purport to be a
6 viatical settlement provider or viatical settlement broker unless licensed as a viatical settlement provider or
7 viatical settlement broker under [sections 1 through 16].

8 (2) In order to obtain a license to transact business as a viatical settlement provider or as a viatical
9 settlement broker, an applicant shall apply for the license on forms prescribed by the commissioner and
10 shall pay the fee required for the application.

11 (3) The commissioner may request biographical, organizational, locational, financial, employment,
12 and other information on the application form that the commissioner determines to be relevant to the
13 evaluation of applications and to the granting of the license. The commissioner may require a statement
14 of the business plan or plan of operation of the applicant. The commissioner shall require an applicant for
15 a viatical settlement provider license to file with the application for the commissioner's approval a copy of
16 the viatical settlement contract that the applicant intends to use in business under the license.

17 (4) If an applicant is a corporation, the corporation must be:

18 (a) incorporated or organized under the laws of this state; or

19 (b) a foreign corporation authorized to transact business in this state.

20 (5) If the applicant is a partnership, the partnership must be organized under the laws of this state.
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22 **NEW SECTION. Section 4. Issuance of license.** (1) The commissioner may issue a license to the
23 applicant if the commissioner determines that the applicant:

24 (a) has satisfied all of the requirements for the license for which an application is made;

25 (b) has not engaged in conduct that would authorize the commissioner to refuse to issue a license
26 under [sections 1 through 16]; and

27 (c) is financially responsible and has a good business reputation.

28 (2) The commissioner may issue a license to a nonresident applicant only if the nonresident
29 applicant files with the commissioner in writing an appointment of the commissioner to be the agent of the
30 applicant upon whom all legal process in any action or proceeding against the applicant may be served. In

1 the appointment, the applicant shall agree that any lawful process against the applicant that is served upon
2 the commissioner is of the same legal force and validity as if served upon the applicant and that the
3 authority will continue in force as long as any liability remains outstanding in this state. An appointment
4 under this subsection becomes effective on the date that the commissioner issues the license to the
5 applicant.

6 (3) If the commissioner denies an application, the commissioner shall inform the applicant and state
7 the grounds for the denial.

8 (4) An individual may act as a viatical settlement provider or viatical settlement broker under the
9 authority of the license of a firm or of a corporate viatical settlement provider whether or not the individual
10 holds a license as a viatical settlement provider if:

11 (a) the individual is a member or employee of the firm or is an employee, officer, or director of the
12 corporation; and

13 (b) the individual is designated by the firm or corporation on its license application or on a form that
14 amends or supplements the application as being authorized to act as a viatical settlement provider under
15 the authority of the license.

16

17 **NEW SECTION. Section 5. Expiration of license.** (1) A license issued under [sections 1 through
18 16] expires on its expiration date unless it is renewed on or before its expiration date.

19 (2) Unless the commissioner designates another date, a license expires on the last day of the
20 month in which the second anniversary of the initial issuance date of the license occurs and on the last day
21 of the month of the second anniversary following each renewal.

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23 **NEW SECTION. Section 6. Notification by licensee of material change affecting qualification for**
24 **license.** A licensee shall immediately notify the commissioner of any material change in ownership or
25 control or in any other matter affecting the qualification of the licensee for the license in this state, including
26 keeping the commissioner informed about personnel and address changes.

27

28 **NEW SECTION. Section 7. Suspension -- revocation -- refusal to issue or renew license.** (1) The
29 commissioner may suspend, revoke, refuse to issue, or refuse to renew a license if the commissioner
30 determines that the licensee or applicant for a license is untrustworthy or incompetent to act as a licensee

1 or is guilty of one or more of the following:

2 (a) dishonesty, fraud, or gross negligence in the conduct of business as a licensee;

3 (b) a pattern of unreasonable payments to policyholders or certificate holders;

4 (c) falsification of an application for the license or renewal of the license or misrepresentation or
5 engagement in any other dishonest act in relation to the application;

6 (d) conduct resulting in a conviction of a felony under the laws of any state or of the United States;

7 (e) conviction of any crime, an essential element of which is dishonesty or fraud, under the laws
8 of any state or of the United States;

9 (f) refusal to renew or cancellation, revocation, or suspension of authority to transact insurance
10 or business as a viatical settlement provider, viatical settlement broker, or similar entity in another state;

11 (g) failure to pay a civil penalty imposed by final order of the commissioner or to carry out terms
12 of probation set by the commissioner;

13 (h) refusal by a licensee to be examined or to produce accounts, records, or files for examination,
14 refusal by any officers or employees to give information with respect to the affairs of the licensee, or
15 refusal to perform any other legal obligation as to the examination, when required by the commissioner;

16 (i) affiliation with or under the same general management or interlocking directorate or ownership
17 as another viatical settlement provider, viatical settlement broker, or insurer, any of which unlawfully
18 transacts business in this state;

19 (j) failure at any time to meet any qualification for which issuance of the license could have been
20 refused had the failure then existed and been known to the commissioner; or

21 (k) violation of any rule or order of the commissioner or any provision of Montana law.

22 (2) The commissioner may suspend or refuse to renew a license immediately and without hearing
23 if the commissioner determines that one or both of the following circumstances exist:

24 (a) the licensee is insolvent;

25 (b) the financial condition or business practices of the licensee otherwise pose an imminent threat
26 to the public health, safety, or welfare of the residents of this state.

27 (3) The commissioner may refuse to issue a license in the name of any firm, partnership, or
28 corporation if the commissioner believes that any officer, employee, stockholder, or partner who may
29 materially influence the conduct of the applicant does not meet the standards of this section.

30 (4) A viatical settlement provider or viatical settlement broker holding a license that has not been

1 renewed or that has been revoked shall surrender the license to the commissioner at the commissioner's
2 request.

3 (5) The commissioner may take any other administrative action authorized under Montana law in
4 addition to or in lieu of the actions authorized under [sections 1 through 16].

5
6 **NEW SECTION. Section 8. Maximum fees, commissions, or other valuable consideration.** A
7 viatical settlement provider or viatical settlement broker may not charge or receive a fee, commission, or
8 other valuable consideration in excess of 2% of the amount paid to the policyholder or certificate holder
9 on a policy that is the subject of the viatical settlement provider's or viatical settlement broker's services
10 unless the commissioner approves another rate of compensation as reasonable and appropriate under the
11 circumstances.

12
13 **NEW SECTION. Section 9. Terms of contract.** (1) A viatical settlement contract must be in
14 writing. A viatical settlement provider shall establish in the contract the terms under which the viatical
15 settlement provider will pay compensation or anything of value in return for the policyholder's or certificate
16 holder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance
17 policy or certificate to the viatical settlement provider.

18 (2) A viatical settlement provider may not use a viatical settlement contract in this state unless the
19 viatical settlement provider has filed the contract form with the commissioner and the commissioner has
20 approved the contract form according to the provisions set forth in 33-1-501. The commissioner shall
21 disapprove a viatical settlement contract form if, in the commissioner's judgment, the contract or any
22 provision of the contract is unreasonable, contrary to the interests of the public, or otherwise misleading
23 or unfair to the policyholder or certificate holder.

24 (3) Each viatical settlement contract entered into in this state must contain a provision enabling
25 the policyholder or certificate holder to rescind the contract not later than the 30th day after the date on
26 which the contract is executed by all parties or not later than the 15th day after the policyholder or
27 certificate holder receives the viatical settlement proceeds, whichever is the longer period. In order to
28 rescind a contract, a policyholder or certificate holder who has received the proceeds shall return them to
29 the viatical settlement provider.

30

1 **NEW SECTION. Section 10. Annual report by provider.** Unless the commissioner grants a time
2 extension, a viatical settlement provider shall file a report for the preceding calendar year with the
3 commissioner on or before March 1 of each year. The report must be in the form and must contain the
4 information that the commissioner prescribes. The report must be verified as follows:

5 (1) if the viatical settlement provider is a corporation, by at least two principal officers of the
6 viatical settlement provider;

7 (2) if the viatical settlement provider is a partnership, by two partners; or

8 (3) if the viatical settlement provider is not a corporation or a partnership, by the provider's owner
9 and manager.

10
11 **NEW SECTION. Section 11. Examination of business and practices of licensee or applicant --**
12 **maintenance of business records.** (1) The commissioner may examine the business and practices of any
13 licensee or applicant for a license when the commissioner determines an examination to be necessary. The
14 commissioner may order a licensee or applicant to produce any records, books, files, or other information
15 reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of
16 the law or contrary to the interests of the public. The licensee or applicant shall pay the expenses incurred
17 in conducting any examination.

18 (2) A viatical settlement provider shall maintain records of all transactions of viatical settlement
19 contracts of the viatical settlement provider and shall make the records available to the commissioner for
20 inspection during reasonable business hours. The records must be maintained for a period of not less than
21 5 years from the date of their creation.

22 (3) The commissioner may at any time require a licensee to fully disclose the identity of all
23 stockholders, partners, officers, and employees.

24 (4) The names of and individual identification data for all policyholders and certificate holders who
25 have entered viatical settlement contracts with viatical settlement providers are confidential and may not
26 be disclosed except as considered necessary by the commissioner in administration of [sections 1 through
27 16].

28
29 **NEW SECTION. Section 12. Disclosure of information to policyholder.** A viatical settlement
30 provider shall disclose the information specified in this section to the policyholder or certificate holder

1 entering the viatical settlement contract prior to the date on which the viatical settlement contract is signed
2 by all parties. The disclosure must be in the form prescribed by the commissioner. The information must
3 include the following:

4 (1) possible alternatives to viatical settlement contracts for persons with terminal illnesses or
5 conditions, including but not limited to accelerated benefits offered by the issuer of the life insurance policy;

6 (2) the fact that some or all of the proceeds of the viatical settlement may be taxable and that
7 assistance should be sought from a personal tax adviser. Viatical settlement brokers, viatical settlement
8 providers, or their respective employees or agents may not act as personal tax advisers for purposes of this
9 disclosure requirement.

10 (3) the fact that the viatical settlement could be subject to the claims of creditors;

11 (4) the fact that receipt of a viatical settlement may adversely affect the recipient's eligibility for
12 medicaid or other government benefits or entitlement and that advice should be obtained from the
13 appropriate agencies;

14 (5) the right of a policyholder or certificate holder to rescind a viatical settlement contract as
15 provided in [section 9]. The disclosure must state the deadlines for rescission and the return of proceeds
16 received.

17 (6) the date by which the funds will be available to the policyholder or certificate holder and the
18 source of the funds; and

19 (7) the fact that the viatical settlement contract is void if the viatical settlement provider or viatical
20 settlement broker fails to tender payment of the proceeds as provided in the viatical settlement contract.

21

22 **NEW SECTION. Section 13. Conditions precedent to entering into viatical settlement contract.**

23 (1) Before a viatical settlement provider enters into a viatical settlement contract with a policyholder or
24 certificate holder who has a terminal illness or condition, the viatical settlement provider shall first obtain
25 the following:

26 (a) a written statement from an attending physician that the policyholder or certificate holder is of
27 sound mind and not under constraint or undue influence; and

28 (b) a witnessed document in which the policyholder or certificate holder:

29 (i) consents to the viatical settlement contract;

30 (ii) acknowledges that the illness or condition is terminal;

1 (iii) represents that the policyholder or certificate holder has a full and complete understanding of
2 the viatical settlement contract;

3 (iv) confirms that the policyholder or certificate holder has a full and complete understanding of the
4 benefits of the life insurance policy;

5 (v) releases the medical records of the policyholder or certificate holder relating to the terminal
6 illness or condition; and

7 (vi) acknowledges that the policyholder or certificate holder has entered into the viatical settlement
8 contract freely and voluntarily.

9 (2) A viatical settlement provider may enter a viatical settlement contract only after the individual
10 whose life would be the subject of the viatical settlement contract is determined to have a terminal illness
11 or condition, as follows:

12 (a) if the individual is the policyholder or certificate holder, an attending physician of the
13 policyholder or certificate holder shall make the determination; or

14 (b) if the individual is a person other than the policyholder or certificate holder, an attending
15 physician of the individual or of the policyholder or certificate holder shall make the determination.

16 (3) For purposes of this section, "attending physician" means a medical doctor, a doctor of
17 osteopathy, or a naturopathic physician licensed in this state, who is primarily responsible for the treatment
18 or a portion of treatment of the individual whose life would be the subject of the viatical settlement
19 contract.

20
21 **NEW SECTION. Section 14. Prohibitions on finder's fee -- solicitations -- discrimination -- false or**
22 **misleading advertising or solicitation -- misuse of confidential information.** (1) A licensee may not pay or
23 offer to pay a finder's fee, commission, or other compensation to a person described in this subsection (1)
24 in connection with a policy insuring the life of an individual with a terminal illness or condition. The
25 prohibition under this subsection (1) applies with respect to payments or offers of payment to:

26 (a) the physician, attorney, or accountant of the policyholder, the certificate holder, or the insured
27 individual;

28 (b) any person other than a physician, attorney, or accountant described in subsection (1)(a) who
29 provides medical, legal, or financial planning services to the policyholder, to the certificate holder, or to the
30 insured individual when the individual is other than the policyholder or certificate holder; or

1 (c) any person other than one described in subsection (1)(a) or (1)(b) who acts as an agent of the
2 policyholder, certificate holder, or insured individual.

3 (2) A licensee may not solicit an investor who could influence the treatment of the illness or
4 condition of the individual whose life would be the subject of a viatical settlement contract.

5 (3) All information solicited or obtained from a policyholder or certificate holder by a licensee is
6 subject to the confidentiality requirements set forth in Title 33, chapter 19. For purposes of this subsection,
7 a licensee must be considered an insurance-support organization as defined in 33-19-104.

8 (4) A licensee may not discriminate in the making of a viatical settlement contract on the basis of
9 race, age, sex, national origin, creed, religion, occupation, marital or family status, or sexual orientation and
10 may not discriminate between persons who have dependents and persons who do not have dependents.

11 (5) A person licensed pursuant to [section 4] may not engage in any false or misleading advertising,
12 solicitation, or practice as described in 33-18-203.

13 (6) A person licensed pursuant to [section 4] may not sell another product of insurance to the
14 contract holder unless approval is obtained from the commissioner.

15
16 **NEW SECTION. Section 15. Payment to escrow or trust account -- lump- sum payment.** (1)
17 Immediately upon receipt of documents from the policyholder or certificate holder effecting the transfer of
18 the insurance policy or certificate, the viatical settlement provider shall pay the proceeds of the settlement
19 to an escrow or trust account managed by a trustee or escrow agent in a bank approved by the
20 commissioner, pending acknowledgment of the transfer by the issuer of the life insurance policy. The
21 trustee or escrow agent shall transfer the proceeds due to the policyholder or certificate holder immediately
22 upon receipt of acknowledgment of the transfer from the insurer.

23 (2) A viatical settlement provider shall make payment of the proceeds of a viatical settlement
24 contract in a lump sum except as provided in this subsection. A viatical settlement provider may not retain
25 any portion of the proceeds. A viatical settlement provider may make installment payments only if the
26 viatical settlement provider has purchased an annuity issued by an authorized insurer or a similar financial
27 instrument issued by a financial institution authorized to engage in the business of a financial institution in
28 this state.

29 (3) Failure by the viatical settlement provider to tender the viatical settlement by the date disclosed
30 to the policyholder or certificate holder renders the contract void.

1 **NEW SECTION.** **Section 16. Rules -- standards -- bond.** The commissioner may, in accordance
2 with the provisions of 33-1-313, adopt rules for the purpose of carrying out [sections 1 through 16]. In
3 addition, the commissioner:

4 (1) may establish standards for evaluating reasonableness of payments under viatical settlement
5 contracts. The authority includes but is not limited to regulation of discount rates used to determine the
6 amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life
7 insurance policy. For the purpose of the standards, the commissioner shall consider payments made in
8 regional and national viatical settlement markets to the extent that this information is available, as well as
9 model standards developed by the national association of insurance commissioners.

10 (2) shall require a bond and an errors and omissions insurance policy of both kinds of licensees;
11 and

12 (3) shall adopt rules to establish trade practice standards for the purpose of regulating advertising
13 and solicitation of viatical settlement contracts.

14

15 **NEW SECTION.** **Section 17. Codification instruction.** [Sections 1 through 16] are intended to be
16 codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 16].

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-END-

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9 OF LICENSEES AND LICENSE APPLICANTS; PROVIDING FOR DISCLOSURE OF INFORMATION; PROVIDING
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10 or consultant is paid by the viatical settlement provider.

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16 or ownership of the insurance policy or certificate to the viatical settlement provider; and

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18 to name the beneficiary.

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20 settlement contracts or offers to enter into or negotiate viatical settlement contracts.

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22 business transacted under the license and may use the term "life settlement contract" instead of "viatical
23 settlement contract".

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26 institution that takes an assignment of a life insurance policy only as collateral for a loan;

27 (ii) an insurer issuing a life insurance policy providing accelerated benefits pursuant to 33-20-127
28 or pursuant to the laws of the state to which the policy was subject when issued;

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2 or retiree of the corporation or of a partner. The settlement made on any contract exempt under this
3 section must be reasonable and subject to the standards imposed on licensees under [section 4].
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5 **NEW SECTION. Section 3. License application.** (1) A person may not act as or purport to be a
6 viatical settlement provider or viatical settlement broker unless licensed as a viatical settlement provider or
7 viatical settlement broker under [sections 1 through 16].

8 (2) In order to obtain a license to transact business as a viatical settlement provider or as a viatical
9 settlement broker, an applicant shall apply for the license on forms prescribed by the commissioner and
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14 of the business plan or plan of operation of the applicant. The commissioner shall require an applicant for
15 a viatical settlement provider license to file with the application for the commissioner's approval a copy of
16 the viatical settlement contract that the applicant intends to use in business under the license.

17 (4) If an applicant is a corporation, the corporation must be:

18 (a) incorporated or organized under the laws of this state; or

19 (b) a foreign corporation authorized to transact business in this state.

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23 applicant if the commissioner determines that the applicant:

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25 (b) has not engaged in conduct that would authorize the commissioner to refuse to issue a license
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27 (c) is financially responsible and has a good business reputation.

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29 applicant files with the commissioner in writing an appointment of the commissioner to be the agent of the
30 applicant upon whom all legal process in any action or proceeding against the applicant may be served. In

1 the appointment, the applicant shall agree that any lawful process against the applicant that is served upon
2 the commissioner is of the same legal force and validity as if served upon the applicant and that the
3 authority will continue in force as long as any liability remains outstanding in this state. An appointment
4 under this subsection becomes effective on the date that the commissioner issues the license to the
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7 the grounds for the denial.

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9 authority of the license of a firm or of a corporate viatical settlement provider whether or not the individual
10 holds a license as a viatical settlement provider if:

11 (a) the individual is a member or employee of the firm or is an employee, officer, or director of the
12 corporation; and

13 (b) the individual is designated by the firm or corporation on its license application or on a form that
14 amends or supplements the application as being authorized to act as a viatical settlement provider under
15 the authority of the license.

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20 month in which the second anniversary of the initial issuance date of the license occurs and on the last day
21 of the month of the second anniversary following each renewal.

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25 control or in any other matter affecting the qualification of the licensee for the license in this state, including
26 keeping the commissioner informed about personnel and address changes.

27

28 **NEW SECTION. Section 7. Suspension -- revocation -- refusal to issue or renew license.** (1) The
29 commissioner may suspend, revoke, refuse to issue, or refuse to renew a license if the commissioner
30 determines that the licensee or applicant for a license is untrustworthy or incompetent to act as a licensee

1 or is guilty of one or more of the following:

2 (a) dishonesty, fraud, or gross negligence in the conduct of business as a licensee;

3 (b) a pattern of unreasonable payments to policyholders or certificate holders;

4 (c) falsification of an application for the license or renewal of the license or misrepresentation or
5 engagement in any other dishonest act in relation to the application;

6 (d) conduct resulting in a conviction of a felony under the laws of any state or of the United States;

7 (e) conviction of any crime, an essential element of which is dishonesty or fraud, under the laws
8 of any state or of the United States;

9 (f) refusal to renew or cancellation, revocation, or suspension of authority to transact insurance
10 or business as a viatical settlement provider, viatical settlement broker, or similar entity in another state;

11 (g) failure to pay a civil penalty imposed by final order of the commissioner or to carry out terms
12 of probation set by the commissioner;

13 (h) refusal by a licensee to be examined or to produce accounts, records, or files for examination,
14 refusal by any officers or employees to give information with respect to the affairs of the licensee, or
15 refusal to perform any other legal obligation as to the examination, when required by the commissioner;

16 (i) affiliation with or under the same general management or interlocking directorate or ownership
17 as another viatical settlement provider, viatical settlement broker, or insurer, any of which unlawfully
18 transacts business in this state;

19 (j) failure at any time to meet any qualification for which issuance of the license could have been
20 refused had the failure then existed and been known to the commissioner; or

21 (k) violation of any rule or order of the commissioner or any provision of Montana law.

22 (2) The commissioner may suspend or refuse to renew a license immediately and without hearing
23 if the commissioner determines that one or both of the following circumstances exist:

24 (a) the licensee is insolvent;

25 (b) the financial condition or business practices of the licensee otherwise pose an imminent threat
26 to the public health, safety, or welfare of the residents of this state.

27 (3) The commissioner may refuse to issue a license in the name of any firm, partnership, or
28 corporation if the commissioner believes that any officer, employee, stockholder, or partner who may
29 materially influence the conduct of the applicant does not meet the standards of this section.

30 (4) A viatical settlement provider or viatical settlement broker holding a license that has not been

1 renewed or that has been revoked shall surrender the license to the commissioner at the commissioner's
2 request.

3 (5) The commissioner may take any other administrative action authorized under Montana law in
4 addition to or in lieu of the actions authorized under [sections 1 through 16].

5

6 **NEW SECTION. Section 8. Maximum fees, commissions, or other valuable consideration.** A
7 viatical settlement provider or viatical settlement broker may not charge or receive a fee, commission, or
8 other valuable consideration in excess of 2% of the amount paid to the policyholder or certificate holder
9 on a policy that is the subject of the viatical settlement provider's or viatical settlement broker's services
10 unless the commissioner approves another rate of compensation as reasonable and appropriate under the
11 circumstances.

12

13 **NEW SECTION. Section 9. Terms of contract.** (1) A viatical settlement contract must be in
14 writing. A viatical settlement provider shall establish in the contract the terms under which the viatical
15 settlement provider will pay compensation or anything of value in return for the policyholder's or certificate
16 holder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance
17 policy or certificate to the viatical settlement provider.

18 (2) A viatical settlement provider may not use a viatical settlement contract in this state unless the
19 viatical settlement provider has filed the contract form with the commissioner and the commissioner has
20 approved the contract form according to the provisions set forth in 33-1-501. The commissioner shall
21 disapprove a viatical settlement contract form if, in the commissioner's judgment, the contract or any
22 provision of the contract is unreasonable, contrary to the interests of the public, or otherwise misleading
23 or unfair to the policyholder or certificate holder.

24 (3) Each viatical settlement contract entered into in this state must contain a provision enabling
25 the policyholder or certificate holder to rescind the contract not later than the 30th day after the date on
26 which the contract is executed by all parties or not later than the 15th day after the policyholder or
27 certificate holder receives the viatical settlement proceeds, whichever is the longer period. In order to
28 rescind a contract, a policyholder or certificate holder who has received the proceeds shall return them to
29 the viatical settlement provider.

30

1 **NEW SECTION. Section 10. Annual report by provider.** Unless the commissioner grants a time
2 extension, a viatical settlement provider shall file a report for the preceding calendar year with the
3 commissioner on or before March 1 of each year. The report must be in the form and must contain the
4 information that the commissioner prescribes. The report must be verified as follows:

5 (1) if the viatical settlement provider is a corporation, by at least two principal officers of the
6 viatical settlement provider;

7 (2) if the viatical settlement provider is a partnership, by two partners; or

8 (3) if the viatical settlement provider is not a corporation or a partnership, by the provider's owner
9 and manager.

10
11 **NEW SECTION. Section 11. Examination of business and practices of licensee or applicant --**
12 **maintenance of business records.** (1) The commissioner may examine the business and practices of any
13 licensee or applicant for a license when the commissioner determines an examination to be necessary. The
14 commissioner may order a licensee or applicant to produce any records, books, files, or other information
15 reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of
16 the law or contrary to the interests of the public. The licensee or applicant shall pay the expenses incurred
17 in conducting any examination.

18 (2) A viatical settlement provider shall maintain records of all transactions of viatical settlement
19 contracts of the viatical settlement provider and shall make the records available to the commissioner for
20 inspection during reasonable business hours. The records must be maintained for a period of not less than
21 5 years from the date of their creation.

22 (3) The commissioner may at any time require a licensee to fully disclose the identity of all
23 stockholders, partners, officers, and employees.

24 (4) The names of and individual identification data for all policyholders and certificate holders who
25 have entered viatical settlement contracts with viatical settlement providers are confidential and may not
26 be disclosed except as considered necessary by the commissioner in administration of [sections 1 through
27 16].

28
29 **NEW SECTION. Section 12. Disclosure of information to policyholder.** A viatical settlement
30 provider shall disclose the information specified in this section to the policyholder or certificate holder

1 entering the viatical settlement contract prior to the date on which the viatical settlement contract is signed
2 by all parties. The disclosure must be in the form prescribed by the commissioner. The information must
3 include the following:

4 (1) possible alternatives to viatical settlement contracts for persons with terminal illnesses or
5 conditions, including but not limited to accelerated benefits offered by the issuer of the life insurance policy;

6 (2) the fact that some or all of the proceeds of the viatical settlement may be taxable and that
7 assistance should be sought from a personal tax adviser. Viatical settlement brokers, viatical settlement
8 providers, or their respective employees or agents may not act as personal tax advisers for purposes of this
9 disclosure requirement.

10 (3) the fact that the viatical settlement could be subject to the claims of creditors;

11 (4) the fact that receipt of a viatical settlement may adversely affect the recipient's eligibility for
12 medicaid or other government benefits or entitlement and that advice should be obtained from the
13 appropriate agencies;

14 (5) the right of a policyholder or certificate holder to rescind a viatical settlement contract as
15 provided in [section 9]. The disclosure must state the deadlines for rescission and the return of proceeds
16 received.

17 (6) the date by which the funds will be available to the policyholder or certificate holder and the
18 source of the funds; and

19 (7) the fact that the viatical settlement contract is void if the viatical settlement provider or viatical
20 settlement broker fails to tender payment of the proceeds as provided in the viatical settlement contract.

21

22 **NEW SECTION. Section 13. Conditions precedent to entering into viatical settlement contract.**

23 (1) Before a viatical settlement provider enters into a viatical settlement contract with a policyholder or
24 certificate holder who has a terminal illness or condition, the viatical settlement provider shall first obtain
25 the following:

26 (a) a written statement from an attending physician that the policyholder or certificate holder is of
27 sound mind and not under constraint or undue influence; and

28 (b) a witnessed document in which the policyholder or certificate holder:

29 (i) consents to the viatical settlement contract;

30 (ii) acknowledges that the illness or condition is terminal;

1 (iii) represents that the policyholder or certificate holder has a full and complete understanding of
2 the viatical settlement contract;

3 (iv) confirms that the policyholder or certificate holder has a full and complete understanding of the
4 benefits of the life insurance policy;

5 (v) releases the medical records of the policyholder or certificate holder relating to the terminal
6 illness or condition; and

7 (vi) acknowledges that the policyholder or certificate holder has entered into the viatical settlement
8 contract freely and voluntarily.

9 (2) A viatical settlement provider may enter a viatical settlement contract only after the individual
10 whose life would be the subject of the viatical settlement contract is determined to have a terminal illness
11 or condition, as follows:

12 (a) if the individual is the policyholder or certificate holder, an attending physician of the
13 policyholder or certificate holder shall make the determination; or

14 (b) if the individual is a person other than the policyholder or certificate holder, an attending
15 physician of the individual or of the policyholder or certificate holder shall make the determination.

16 (3) For purposes of this section, "attending physician" means a medical doctor, a doctor of
17 osteopathy, or a naturopathic physician licensed in this state, who is primarily responsible for the treatment
18 or a portion of treatment of the individual whose life would be the subject of the viatical settlement
19 contract.

20

21 **NEW SECTION. Section 14. Prohibitions on finder's fee -- solicitations -- discrimination -- false or**
22 **misleading advertising or solicitation -- misuse of confidential information.** (1) A licensee may not pay or
23 offer to pay a finder's fee, commission, or other compensation to a person described in this subsection (1)
24 in connection with a policy insuring the life of an individual with a terminal illness or condition. The
25 prohibition under this subsection (1) applies with respect to payments or offers of payment to:

26 (a) the physician, attorney, or accountant of the policyholder, the certificate holder, or the insured
27 individual;

28 (b) any person other than a physician, attorney, or accountant described in subsection (1)(a) who
29 provides medical, legal, or financial planning services to the policyholder, to the certificate holder, or to the
30 insured individual when the individual is other than the policyholder or certificate holder; or

1 (c) any person other than one described in subsection (1)(a) or (1)(b) who acts as an agent of the
2 policyholder, certificate holder, or insured individual.

3 (2) A licensee may not solicit an investor who could influence the treatment of the illness or
4 condition of the individual whose life would be the subject of a viatical settlement contract.

5 (3) All information solicited or obtained from a policyholder or certificate holder by a licensee is
6 subject to the confidentiality requirements set forth in Title 33, chapter 19. For purposes of this subsection,
7 a licensee must be considered an insurance-support organization as defined in 33-19-104.

8 (4) A licensee may not discriminate in the making of a viatical settlement contract on the basis of
9 race, age, sex, national origin, creed, religion, occupation, marital or family status, or sexual orientation and
10 may not discriminate between persons who have dependents and persons who do not have dependents.

11 (5) A person licensed pursuant to [section 4] may not engage in any false or misleading advertising,
12 solicitation, or practice as described in 33-18-203.

13 (6) A person licensed pursuant to [section 4] may not sell another product of insurance to the
14 contract holder unless approval is obtained from the commissioner.

15
16 **NEW SECTION. Section 15. Payment to escrow or trust account -- lump- sum payment.** (1)
17 Immediately upon receipt of documents from the policyholder or certificate holder effecting the transfer of
18 the insurance policy or certificate, the viatical settlement provider shall pay the proceeds of the settlement
19 to an escrow or trust account managed by a trustee or escrow agent in a bank approved by the
20 commissioner, pending acknowledgment of the transfer by the issuer of the life insurance policy. The
21 trustee or escrow agent shall transfer the proceeds due to the policyholder or certificate holder immediately
22 upon receipt of acknowledgment of the transfer from the insurer.

23 (2) A viatical settlement provider shall make payment of the proceeds of a viatical settlement
24 contract in a lump sum except as provided in this subsection. A viatical settlement provider may not retain
25 any portion of the proceeds. A viatical settlement provider may make installment payments only if the
26 viatical settlement provider has purchased an annuity issued by an authorized insurer or a similar financial
27 instrument issued by a financial institution authorized to engage in the business of a financial institution in
28 this state.

29 (3) Failure by the viatical settlement provider to tender the viatical settlement by the date disclosed
30 to the policyholder or certificate holder renders the contract void.

1 **NEW SECTION. Section 16. Rules -- standards -- bond.** The commissioner may, in accordance
2 with the provisions of 33-1-313, adopt rules for the purpose of carrying out [sections 1 through 16]. In
3 addition, the commissioner:

4 (1) may establish standards for evaluating reasonableness of payments under viatical settlement
5 contracts. The authority includes but is not limited to regulation of discount rates used to determine the
6 amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life
7 insurance policy. For the purpose of the standards, the commissioner shall consider payments made in
8 regional and national viatical settlement markets to the extent that this information is available, as well as
9 model standards developed by the national association of insurance commissioners.

10 (2) shall require a bond and an errors and omissions insurance policy of both kinds of licensees;
11 and

12 (3) shall adopt rules to establish trade practice standards for the purpose of regulating advertising
13 and solicitation of viatical settlement contracts.

14

15 **NEW SECTION. Section 17. Codification instruction.** [Sections 1 through 16] are intended to be
16 codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 16].

17

-END-

1 SENATE BILL NO. 112

2 INTRODUCED BY VAN VALKENBURG

3 BY REQUEST OF THE STATE AUDITOR

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A VIATICAL SETTLEMENT ACT; PROVIDING FOR
6 LICENSURE OF VIATICAL SETTLEMENT PROVIDERS AND BROKERS; PROVIDING FOR REGULATION BY
7 THE INSURANCE COMMISSIONER; PROVIDING AUTHORITY TO PROMULGATE RULES; PROVIDING
8 MINIMAL REQUIREMENTS FOR VIATICAL SETTLEMENT CONTRACTS; PROVIDING FOR EXAMINATION
9 OF LICENSEES AND LICENSE APPLICANTS; PROVIDING FOR DISCLOSURE OF INFORMATION; PROVIDING
10 FOR CONDITIONS PRECEDENT TO VIATICAL SETTLEMENT CONTRACTS; PROVIDING FOR
11 CONFIDENTIALITY; AND PROVIDING REQUIREMENTS FOR PAYMENT PURSUANT TO VIATICAL
12 SETTLEMENT CONTRACTS."

13

14

STATEMENT OF INTENT

15 A statement of intent is required for this bill because [section 16] grants rulemaking authority to
16 the insurance commissioner. The rulemaking authority is consistent with the requirements of Public Law
17 104-191, H.R. 3103, which provides for the adoption of standards promulgated by the national association
18 of insurance commissioners. The commissioner in adopting rules needs to establish trade practice
19 standards for regulating advertising and solicitation of viatical settlement contracts, for evaluating
20 reasonableness of payments under viatical settlement contracts, and for determining the forms necessary
21 to effectively administer the bill. The rules adopted should be consistent with any regulations adopted
22 under Public Law 104-191, H.R. 3103.

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0112, third reading

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating a viatical settlement act; providing for licensure of viatical settlement providers and brokers; providing for regulation by the insurance commissioner; providing authority to promulgate rules; providing minimal requirements for viatical settlement contracts; providing for examination of licensees and license applicants; providing for disclosure of information; providing for conditions precedent to viatical settlement contracts; providing for confidentiality; and providing requirements for payment pursuant to viatical settlement contracts.

ASSUMPTIONS:

1. The bill requires a license for those who sell viatical settlements. Approximately 200 people will receive licenses and pay a \$15 initial license fee, and a \$10 appointment fee, or new revenue of \$5,000 to the general fund (\$3,700 in fiscal year 1998, and \$1,300 in fiscal year 1999)
2. Forms will be filed by 25 companies offering viatical settlements, at \$25 per form, or \$625 in general fund revenue in fiscal year 1998.
3. Annual reports, at a yearly fee of \$600, are required to be filed by companies offering settlements. This will result in new general fund revenue of \$15,000 (25 x \$600) per year.
4. The State Auditor's Office (SAO) will adopt 10 pages of rules regarding filing of annual reports and 10 pages of rules regarding disclosure forms at \$35 per page, for a total cost of \$700 (20 x \$35) in fiscal year 1998.
5. Companies will be examined on the same basis as insurance companies, once every five years. Five exams will be conducted each fiscal year. Exams are conducted by contract examiners and costs (approximately \$2,000 each) are recovered from the companies through a state special revenue account. The total increase in revenues and expenses will be \$10,000 per year.
6. There will be an estimated three complaints that result in enforcement actions in fiscal year 1998 and five complaints in fiscal year 1999, and each year thereafter. Investigation costs related to these actions will be \$2,000 per year. It is estimated that one of the cases will be appealed to a contested hearing each year. Taking of complaints and enforcement actions will be handled by existing staff. Fine revenue will be \$5,000 per year beginning in fiscal year 1999.
7. Contracted services of \$2,000 will be procured in fiscal year 1998 to integrate a licensing system into the SAO's existing information system.

FISCAL IMPACT:

State Auditor's Office:		
<u>Expenditures:</u>	<u>FY98</u>	<u>FY99</u>
Operating Expenses	<u>Difference</u> 14,700	<u>Difference</u> 12,000
<u>Funding:</u>		
General Fund (01)	4,700	2,000
State Special (02)	<u>10,000</u>	<u>10,000</u>
Total	14,700	12,000
<u>Revenues:</u>		
General Fund (01)	19,325	21,300
State Special (02)	<u>10,000</u>	<u>10,000</u>
Total	29,325	31,300

Net Impact on Fund Balance: (revenue minus expense)

General Fund (01)	14,625	19,300
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Dave Lewis 3-11-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Fred Van Valkenburg 3-11-97
 FRED VAN VALKENBURG, PRIMARY SPONSOR DATE

1 SENATE BILL NO. 112

2 INTRODUCED BY VAN VALKENBURG
3 BY REQUEST OF THE STATE AUDITOR
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A VIATICAL SETTLEMENT ACT; PROVIDING FOR
6 LICENSURE OF VIATICAL SETTLEMENT PROVIDERS AND BROKERS; PROVIDING FOR REGULATION BY
7 THE INSURANCE COMMISSIONER; PROVIDING AUTHORITY TO PROMULGATE RULES; PROVIDING
8 MINIMAL REQUIREMENTS FOR VIATICAL SETTLEMENT CONTRACTS; PROVIDING FOR EXAMINATION
9 OF LICENSEES AND LICENSE APPLICANTS; PROVIDING FOR DISCLOSURE OF INFORMATION; PROVIDING
10 FOR CONDITIONS PRECEDENT TO VIATICAL SETTLEMENT CONTRACTS; PROVIDING FOR
11 CONFIDENTIALITY; AND PROVIDING REQUIREMENTS FOR PAYMENT PURSUANT TO VIATICAL
12 SETTLEMENT CONTRACTS."
13

14 STATEMENT OF INTENT

15 A statement of intent is required for this bill because [section ~~46~~ 15] grants rulemaking authority
16 to the insurance commissioner. The rulemaking authority is consistent with the requirements of Public Law
17 104-191, H.R. 3103, which provides for the adoption of standards promulgated by the national association
18 of insurance commissioners. The commissioner in adopting rules needs to establish trade practice
19 standards for regulating advertising and solicitation of viatical settlement contracts, for evaluating
20 reasonableness of payments under viatical settlement contracts, and for determining the forms necessary
21 to effectively administer the bill. The rules adopted should be consistent with any regulations adopted
22 under Public Law 104-191, H.R. 3103. [SECTION 15] ALSO REQUIRES THE COMMISSIONER TO ADOPT
23 RULES THAT ESTABLISH FEES THAT ARE COMMENSURATE WITH THOSE REQUIRED UNDER 33-22-708.
24

25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
26

27 NEW SECTION. Section 1. Short title. [Sections 1 through ~~46~~ 15] may be cited as the "Viatical
28 Settlement Act".
29

30 NEW SECTION. Section 2. Definitions. As used in [sections 1 through ~~46~~ 15], unless the context

1 requires otherwise, the following definitions apply:

2 (1) (a) "Viatical settlement broker" means an individual who, for a fee, commission, or other
3 consideration:

4 (i) offers or advertises the availability of viatical settlement contracts;

5 (ii) introduces holders of life insurance policies or certificates insuring the lives of individuals with
6 a terminal illness or condition to viatical settlement providers; or

7 (iii) offers or attempts to negotiate viatical settlement contracts between the policyholders or
8 certificate holders and one or more viatical settlement providers.

9 (b) Viatical settlement broker does not mean an attorney, accountant, or financial planner retained
10 to represent the policyholder or certificate holder unless compensation paid to the attorney, accountant,
11 or consultant is paid by the viatical settlement provider.

12 (2) "Viatical settlement contract" means a written agreement between a viatical settlement provider
13 and the holder of a group or individual life insurance policy insuring the life of an individual with a terminal
14 illness or condition or between a viatical settlement provider and the certificate holder of a policy in which:

15 (a) the terms establish that the viatical settlement provider pays something of value in return for
16 the policyholder's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit
17 or ownership of the insurance policy or certificate to the viatical settlement provider; and

18 (b) the policyholder or certificate holder holds an irrevocable right under the policy or certificate
19 to name the beneficiary.

20 (3) (a) "Viatical settlement provider" means a person who solicits, enters into, or negotiates viatical
21 settlement contracts or offers to enter into or negotiate viatical settlement contracts.

22 (b) A viatical settlement provider may use the term "life settlement provider" to describe the
23 business transacted under the license and may use the term "life settlement contract" instead of "viatical
24 settlement contract".

25 (c) Viatical settlement provider does not mean:

26 (i) a bank, savings bank, savings and loan association, credit union, or other licensed lending
27 institution that takes an assignment of a life insurance policy only as collateral for a loan;

28 (ii) an insurer issuing a life insurance policy providing accelerated benefits pursuant to 33-20-127
29 or pursuant to the laws of the state to which the policy was subject when issued;

30 (iii) an individual who enters into a single agreement in a calendar year for the transfer of life

1 insurance policies for any value less than the expected death benefit; or

2 (iv) any corporation, partnership, or partner that purchases a life insurance contract of an employee
3 or retiree of the corporation or of a partner. The settlement made on any contract exempt under this
4 section must be reasonable and subject to the standards imposed on licensees under [section 4].

5

6 **NEW SECTION. Section 3. License application.** (1) A person may not act as or purport to be a
7 viatical settlement provider or viatical settlement broker unless licensed as a viatical settlement provider or
8 viatical settlement broker under [sections 1 through ~~46~~ 15].

9 (2) In order to obtain a license to transact business as a viatical settlement provider or as a viatical
10 settlement broker, an applicant shall apply for the license on forms prescribed by the commissioner and
11 shall pay the fee required for the application.

12 (3) The commissioner may request biographical, organizational, locational, financial, employment,
13 and other information on the application form that the commissioner determines to be relevant to the
14 evaluation of applications and to the granting of the license. The commissioner may require a statement
15 of the business plan or plan of operation of the applicant. The commissioner shall require an applicant for
16 a viatical settlement provider license to file with the application for the commissioner's approval a copy of
17 the viatical settlement contract that the applicant intends to use in business under the license.

18 (4) If an applicant is a corporation, the corporation must be:

19 (a) incorporated or organized under the laws of this state; or

20 (b) a foreign corporation authorized to transact business in this state.

21 (5) If the applicant is a partnership, the partnership must be organized under the laws of this state.

22

23 **NEW SECTION. Section 4. Issuance of license.** (1) The commissioner may issue a license to the
24 applicant if the commissioner determines that the applicant:

25 (a) has satisfied all of the requirements for the license for which an application is made;

26 (b) has not engaged in conduct that would authorize the commissioner to refuse to issue a license
27 under [sections 1 through ~~46~~ 15]; and

28 (c) is financially responsible and has a good business reputation.

29 (2) The commissioner may issue a license to a nonresident applicant only if the nonresident
30 applicant files with the commissioner in writing an appointment of the commissioner to be the agent of the

1 applicant upon whom all legal process in any action or proceeding against the applicant may be served. In
 2 the appointment, the applicant shall agree that any lawful process against the applicant that is served upon
 3 the commissioner is of the same legal force and validity as if served upon the applicant and that the
 4 authority will continue in force as long as any liability remains outstanding in this state. An appointment
 5 under this subsection becomes effective on the date that the commissioner issues the license to the
 6 applicant.

7 (3) If the commissioner denies an application, the commissioner shall inform the applicant and state
 8 the grounds for the denial.

9 (4) An individual may act as a viatical settlement provider or viatical settlement broker under the
 10 authority of the license of a firm or of a corporate viatical settlement provider whether or not the individual
 11 holds a license as a viatical settlement provider if:

12 (a) the individual is a member or employee of the firm or is an employee, officer, or director of the
 13 corporation; and

14 (b) the individual is designated by the firm or corporation on its license application or on a form that
 15 amends or supplements the application as being authorized to act as a viatical settlement provider under
 16 the authority of the license.

17

18 **NEW SECTION. Section 5. Expiration of license.** (1) A license issued under [sections 1 through
 19 ~~16~~ 15] expires on its expiration date unless it is renewed on or before its expiration date.

20 (2) Unless the commissioner designates another date, a license expires on the last day of the
 21 month in which the second anniversary of the initial issuance date of the license occurs and on the last day
 22 of the month of the second anniversary following each renewal.

23

24 **NEW SECTION. Section 6. Notification by licensee of material change affecting qualification for**
 25 **license.** A licensee shall immediately notify the commissioner of any material change in ownership or
 26 control or in any other matter affecting the qualification of the licensee for the license in this state, including
 27 keeping the commissioner informed about personnel and address changes.

28

29 **NEW SECTION. Section 7. Suspension -- revocation -- refusal to issue or renew license.** (1) The
 30 commissioner may suspend, revoke, refuse to issue, or refuse to renew a license if the commissioner

- 1 determines that the licensee or applicant for a license is untrustworthy or incompetent to act as a licensee
2 or is guilty of one or more of the following:
- 3 (a) dishonesty, fraud, or gross negligence in the conduct of business as a licensee;
 - 4 (b) a pattern of unreasonable payments to policyholders or certificate holders;
 - 5 (c) falsification of an application for the license or renewal of the license or misrepresentation or
6 engagement in any other dishonest act in relation to the application;
 - 7 (d) conduct resulting in a conviction of a felony under the laws of any state or of the United States;
 - 8 (e) conviction of any crime, an essential element of which is dishonesty or fraud, under the laws
9 of any state or of the United States;
 - 10 (f) refusal to renew or cancellation, revocation, or suspension of authority to transact insurance
11 or business as a viatical settlement provider, viatical settlement broker, or similar entity in another state;
 - 12 (g) failure to pay a civil penalty imposed by final order of the commissioner or to carry out terms
13 of probation set by the commissioner;
 - 14 (h) refusal by a licensee to be examined or to produce accounts, records, or files for examination,
15 refusal by any officers or employees to give information with respect to the affairs of the licensee, or
16 refusal to perform any other legal obligation as to the examination, when required by the commissioner;
 - 17 (i) affiliation with or under the same general management or interlocking directorate or ownership
18 as another viatical settlement provider, viatical settlement broker, or insurer, any of which unlawfully
19 transacts business in this state;
 - 20 (j) failure at any time to meet any qualification for which issuance of the license could have been
21 refused had the failure then existed and been known to the commissioner; or
 - 22 (k) violation of any rule or order of the commissioner or any provision of Montana law.
- 23 (2) The commissioner may suspend or refuse to renew a license immediately and without hearing
24 if the commissioner determines that one or both of the following circumstances exist:
- 25 (a) the licensee is insolvent;
 - 26 (b) the financial condition or business practices of the licensee otherwise pose an imminent threat
27 to the public health, safety, or welfare of the residents of this state.
- 28 (3) The commissioner may refuse to issue a license in the name of any firm, partnership, or
29 corporation if the commissioner believes that any officer, employee, stockholder, or partner who may
30 materially influence the conduct of the applicant does not meet the standards of this section.

1 (4) A viatical settlement provider or viatical settlement broker holding a license that has not been
2 renewed or that has been revoked shall surrender the license to the commissioner at the commissioner's
3 request.

4 (5) The commissioner may take any other administrative action authorized under Montana law in
5 addition to or in lieu of the actions authorized under [sections 1 through ~~46~~ 15].

6
7 ~~NEW SECTION. Section 8. Maximum fees, commissions, or other valuable consideration. A~~
8 ~~viatical settlement provider or viatical settlement broker may not charge or receive a fee, commission, or~~
9 ~~other valuable consideration in excess of 2% of the amount paid to the policyholder or certificate holder~~
10 ~~on a policy that is the subject of the viatical settlement provider's or viatical settlement broker's services~~
11 ~~unless the commissioner approves another rate of compensation as reasonable and appropriate under the~~
12 ~~circumstances.~~

13
14 NEW SECTION. Section 8. Terms of contract. (1) A viatical settlement contract must be in
15 writing. A viatical settlement provider shall establish in the contract the terms under which the viatical
16 settlement provider will pay compensation or anything of value in return for the policyholder's or certificate
17 holder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance
18 policy or certificate to the viatical settlement provider.

19 (2) A viatical settlement provider may not use a viatical settlement contract in this state unless the
20 viatical settlement provider has filed the contract form with the commissioner and the commissioner has
21 approved the contract form according to the provisions set forth in 33-1-501. The commissioner shall
22 disapprove a viatical settlement contract form if, in the commissioner's judgment, the contract or any
23 provision of the contract is unreasonable, contrary to the interests of the public, or otherwise misleading
24 or unfair to the policyholder or certificate holder.

25 (3) Each viatical settlement contract entered into in this state must contain a provision enabling
26 the policyholder or certificate holder to rescind the contract not later than the 30th day after the date on
27 which the contract is executed by all parties or not later than the 15th day after the policyholder or
28 certificate holder receives the viatical settlement proceeds, whichever is the longer period. In order to
29 rescind a contract, a policyholder or certificate holder who has received the proceeds shall return them to
30 the viatical settlement provider.

1 **NEW SECTION. Section 9. Annual report by provider.** Unless the commissioner grants a time
2 extension, a viatical settlement provider shall file a report for the preceding calendar year with the
3 commissioner on or before March 1 of each year. The report must be in the form and must contain the
4 information that the commissioner prescribes. The report must be verified as follows:

5 (1) if the viatical settlement provider is a corporation, by at least two principal officers of the
6 viatical settlement provider;

7 (2) if the viatical settlement provider is a partnership, by two partners; or

8 (3) if the viatical settlement provider is not a corporation or a partnership, by the provider's owner
9 and manager.

10
11 **NEW SECTION. Section 10. Examination of business and practices of licensee or applicant --**
12 **maintenance of business records.** (1) The commissioner may examine the business and practices of any
13 licensee or applicant for a license when the commissioner determines an examination to be necessary. The
14 commissioner may order a licensee or applicant to produce any records, books, files, or other information
15 reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of
16 the law or contrary to the interests of the public. The licensee or applicant shall pay the expenses incurred
17 in conducting any examination.

18 (2) A viatical settlement provider shall maintain records of all transactions of viatical settlement
19 contracts of the viatical settlement provider and shall make the records available to the commissioner for
20 inspection during reasonable business hours. The records must be maintained for a period of not less than
21 5 years from the date of their creation.

22 (3) The commissioner may at any time require a licensee to fully disclose the identity of all
23 stockholders, partners, officers, and employees.

24 (4) The names of and individual identification data for all policyholders and certificate holders who
25 have entered viatical settlement contracts with viatical settlement providers are confidential and may not
26 be disclosed except as considered necessary by the commissioner in administration of [sections 1 through
27 ~~16~~ 15].

28
29 **NEW SECTION. Section 11. Disclosure of information to policyholder.** A viatical settlement
30 provider shall disclose the information specified in this section to the policyholder or certificate holder

1 entering the viatical settlement contract prior to the date on which the viatical settlement contract is signed
2 by all parties. The disclosure must be in the form prescribed by the commissioner. The information must
3 include the following:

4 (1) possible alternatives to viatical settlement contracts for persons with terminal illnesses or
5 conditions, including but not limited to accelerated benefits offered by the issuer of the life insurance policy;

6 (2) the fact that some or all of the proceeds of the viatical settlement may be taxable and that
7 assistance should be sought from a personal tax adviser. Viatical settlement brokers, viatical settlement
8 providers, or their respective employees or agents may not act as personal tax advisers for purposes of this
9 disclosure requirement.

10 (3) the fact that the viatical settlement could be subject to the claims of creditors;

11 (4) the fact that receipt of a viatical settlement may adversely affect the recipient's eligibility for
12 medicaid or other government benefits or entitlement and that advice should be obtained from the
13 appropriate agencies;

14 (5) the right of a policyholder or certificate holder to rescind a viatical settlement contract as
15 provided in [section 9 8]. The disclosure must state the deadlines for rescission and the return of proceeds
16 received.

17 (6) the date by which the funds will be available to the policyholder or certificate holder and the
18 source of the funds; and

19 (7) the fact that the viatical settlement contract is void if the viatical settlement provider or viatical
20 settlement broker fails to tender payment of the proceeds as provided in the viatical settlement contract.

21

22 **NEW SECTION. Section 12. Conditions precedent to entering into viatical settlement contract.**

23 (1) Before a viatical settlement provider enters into a viatical settlement contract with a policyholder or
24 certificate holder who has a terminal illness or condition, the viatical settlement provider shall first obtain
25 the following:

26 (a) a written statement from an attending physician that the policyholder or certificate holder is of
27 sound mind and not under constraint or undue influence; and

28 (b) a witnessed document in which the policyholder or certificate holder:

29 (i) consents to the viatical settlement contract;

30 (ii) acknowledges that the illness or condition is terminal;

1 (iii) represents that the policyholder or certificate holder has a full and complete understanding of
2 the viatical settlement contract;

3 (iv) confirms that the policyholder or certificate holder has a full and complete understanding of the
4 benefits of the life insurance policy;

5 (v) releases the medical records of the policyholder or certificate holder relating to the terminal
6 illness or condition; and

7 (vi) acknowledges that the policyholder or certificate holder has entered into the viatical settlement
8 contract freely and voluntarily.

9 (2) A viatical settlement provider may enter a viatical settlement contract only after the individual
10 whose life would be the subject of the viatical settlement contract is determined to have a terminal illness
11 or condition, as follows:

12 (a) if the individual is the policyholder or certificate holder, an attending physician of the
13 policyholder or certificate holder shall make the determination; or

14 (b) if the individual is a person other than the policyholder or certificate holder, an attending
15 physician of the individual or of the policyholder or certificate holder shall make the determination.

16 (3) For purposes of this section, "attending physician" means a medical doctor, a doctor of
17 osteopathy, or a naturopathic physician licensed in this state, who is primarily responsible for the treatment
18 or a portion of treatment of the individual whose life would be the subject of the viatical settlement
19 contract.

20

21 **NEW SECTION. Section 13. Prohibitions on finder's fee -- solicitations -- discrimination -- false or**
22 **misleading advertising or solicitation -- misuse of confidential information.** (1) A licensee may not pay or
23 offer to pay a finder's fee, commission, or other compensation to a person described in this subsection (1)
24 in connection with a policy insuring the life of an individual with a terminal illness or condition. The
25 prohibition under this subsection (1) applies with respect to payments or offers of payment to:

26 (a) the physician, attorney, or accountant of the policyholder, the certificate holder, or the insured
27 individual;

28 (b) any person other than a physician, attorney, or accountant described in subsection (1)(a) who
29 provides medical, legal, or financial planning services to the policyholder, to the certificate holder, or to the
30 insured individual when the individual is other than the policyholder or certificate holder; or

1 (c) any person other than one described in subsection (1)(a) or (1)(b) who acts as an agent of the
2 policyholder, certificate holder, or insured individual.

3 (2) A licensee may not solicit an investor who could influence the treatment of the illness or
4 condition of the individual whose life would be the subject of a viatical settlement contract.

5 (3) All information solicited or obtained from a policyholder or certificate holder by a licensee is
6 subject to the confidentiality requirements set forth in Title 33, chapter 19. For purposes of this subsection,
7 a licensee must be considered an insurance-support organization as defined in 33-19-104.

8 (4) A licensee may not discriminate in the making of a viatical settlement contract on the basis of
9 race, age, sex, national origin, creed, religion, occupation, marital or family status, or sexual orientation and
10 may not discriminate between persons who have dependents and persons who do not have dependents.

11 (5) A person licensed pursuant to [section 4] may not engage in any false or misleading advertising,
12 solicitation, or practice as described in 33-18-203.

13 (6) A person licensed pursuant to [section 4] may not sell another product of insurance to the
14 contract holder unless approval is obtained from the commissioner.

15
16 **NEW SECTION. Section 14. Payment to escrow or trust account -- lump- sum payment.** (1)
17 Immediately upon receipt of documents from the policyholder or certificate holder effecting the transfer of
18 the insurance policy or certificate, the viatical settlement provider shall pay the proceeds of the settlement
19 to an escrow or trust account managed by a trustee or escrow agent in a bank approved by the
20 commissioner, pending acknowledgment of the transfer by the issuer of the life insurance policy. The
21 trustee or escrow agent shall transfer the proceeds due to the policyholder or certificate holder immediately
22 upon receipt of acknowledgment of the transfer from the insurer.

23 (2) A viatical settlement provider shall make payment of the proceeds of a viatical settlement
24 contract in a lump sum except as provided in this subsection. A viatical settlement provider may not retain
25 any portion of the proceeds. A viatical settlement provider may make installment payments only if the
26 viatical settlement provider has purchased an annuity issued by an authorized insurer or a similar financial
27 instrument issued by a financial institution authorized to engage in the business of a financial institution in
28 this state.

29 (3) Failure by the viatical settlement provider to tender the viatical settlement by the date disclosed
30 to the policyholder or certificate holder renders the contract void.

1 **NEW SECTION. Section 15. Rules -- standards -- bond.** The commissioner may, in accordance
2 with the provisions of 33-1-313, adopt rules for the purpose of carrying out [sections 1 through ~~46~~ 15].
3 In addition, the commissioner:

4 (1) may establish standards for evaluating reasonableness of payments under viatical settlement
5 contracts. The authority includes but is not limited to regulation of discount rates used to determine the
6 amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life
7 insurance policy. For the purpose of the standards, the commissioner shall consider payments made in
8 regional and national viatical settlement markets to the extent that this information is available, as well as
9 model standards developed by the national association of insurance commissioners.

10 (2) shall require a bond and an errors and omissions insurance policy of both kinds of licensees;
11 and

12 (3) shall adopt rules to establish:

13 (A) trade practice standards for the purpose of regulating advertising and solicitation of viatical
14 settlement contracts; AND

15 (B) FEES THAT ARE COMMENSURATE WITH FEES CHARGED PURSUANT TO 33-2-708.

16

17 **NEW SECTION. Section 16. Codification instruction.** [Sections 1 through ~~46~~ 15] are intended to
18 be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through ~~46~~
19 15].

20

-END-

1 SENATE BILL NO. 112

2 INTRODUCED BY VAN VALKENBURG

3 BY REQUEST OF THE STATE AUDITOR

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A VIATICAL SETTLEMENT ACT; PROVIDING FOR
 6 LICENSURE OF VIATICAL SETTLEMENT PROVIDERS AND BROKERS; PROVIDING FOR REGULATION BY
 7 THE INSURANCE COMMISSIONER; PROVIDING AUTHORITY TO PROMULGATE RULES; PROVIDING
 8 MINIMAL REQUIREMENTS FOR VIATICAL SETTLEMENT CONTRACTS; PROVIDING FOR EXAMINATION
 9 OF LICENSEES AND LICENSE APPLICANTS; PROVIDING FOR DISCLOSURE OF INFORMATION; PROVIDING
 10 FOR CONDITIONS PRECEDENT TO VIATICAL SETTLEMENT CONTRACTS; PROVIDING FOR
 11 CONFIDENTIALITY; AND PROVIDING REQUIREMENTS FOR PAYMENT PURSUANT TO VIATICAL
 12 SETTLEMENT CONTRACTS."

14 STATEMENT OF INTENT

15 A statement of intent is required for this bill because [section ~~46~~ 15] grants rulemaking authority
 16 to the insurance commissioner. The rulemaking authority is consistent with the requirements of Public Law
 17 104-191, H.R. 3103, which provides for the adoption of standards promulgated by the national association
 18 of insurance commissioners. The commissioner in adopting rules needs to establish trade practice
 19 standards for regulating advertising and solicitation of viatical settlement contracts, for evaluating
 20 reasonableness of payments under viatical settlement contracts, and for determining the forms necessary
 21 to effectively administer the bill. The rules adopted should be consistent with any regulations adopted
 22 under Public Law 104-191, H.R. 3103. [SECTION 15] ALSO REQUIRES THE COMMISSIONER TO ADOPT
 23 RULES THAT ESTABLISH FEES THAT ARE COMMENSURATE WITH THOSE REQUIRED UNDER 33-22-708.

24
 25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

26
 27 NEW SECTION. Section 1. Short title. [Sections 1 through ~~46~~ 15] may be cited as the "Viatical
 28 Settlement Act".

29
 30 NEW SECTION. Section 2. Definitions. As used in [sections 1 through ~~46~~ 15], unless the context

1 requires otherwise, the following definitions apply:

2 (1) (a) "Viatical settlement broker" means an individual who, for a fee, commission, or other
3 consideration:

4 (i) offers or advertises the availability of viatical settlement contracts;

5 (ii) introduces holders of life insurance policies or certificates insuring the lives of individuals with
6 a terminal illness or condition to viatical settlement providers; or

7 (iii) offers or attempts to negotiate viatical settlement contracts between the policyholders or
8 certificate holders and one or more viatical settlement providers.

9 (b) Viatical settlement broker does not mean an attorney, accountant, or financial planner retained
10 to represent the policyholder or certificate holder unless compensation paid to the attorney, accountant,
11 or consultant is paid by the viatical settlement provider.

12 (2) "Viatical settlement contract" means a written agreement between a viatical settlement provider
13 and the holder of a group or individual life insurance policy insuring the life of an individual with a terminal
14 illness or condition or between a viatical settlement provider and the certificate holder of a policy in which:

15 (a) the terms establish that the viatical settlement provider pays something of value in return for
16 the policyholder's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit
17 or ownership of the insurance policy or certificate to the viatical settlement provider; and

18 (b) the policyholder or certificate holder holds an irrevocable right under the policy or certificate
19 to name the beneficiary.

20 (3) (a) "Viatical settlement provider" means a person who solicits, enters into, or negotiates viatical
21 settlement contracts or offers to enter into or negotiate viatical settlement contracts.

22 (b) A viatical settlement provider may use the term "life settlement provider" to describe the
23 business transacted under the license and may use the term "life settlement contract" instead of "viatical
24 settlement contract".

25 (c) Viatical settlement provider does not mean:

26 (i) a bank, savings bank, savings and loan association, credit union, or other licensed lending
27 institution that takes an assignment of a life insurance policy only as collateral for a loan;

28 (ii) an insurer issuing a life insurance policy providing accelerated benefits pursuant to 33-20-127
29 or pursuant to the laws of the state to which the policy was subject when issued;

30 (iii) an individual who enters into a single agreement in a calendar year for the transfer of life

1 insurance policies for any value less than the expected death benefit; or

2 (iv) any corporation, partnership, or partner that purchases a life insurance contract of an employee
3 or retiree of the corporation or of a partner. The settlement made on any contract exempt under this
4 section must be reasonable and subject to the standards imposed on licensees under [section 4].

5
6 **NEW SECTION. Section 3. License application.** (1) A person may not act as or purport to be a
7 viatical settlement provider or viatical settlement broker unless licensed as a viatical settlement provider or
8 viatical settlement broker under [sections 1 through ~~46~~ 15].

9 (2) In order to obtain a license to transact business as a viatical settlement provider or as a viatical
10 settlement broker, an applicant shall apply for the license on forms prescribed by the commissioner and
11 shall pay the fee required for the application.

12 (3) The commissioner may request biographical, organizational, locational, financial, employment,
13 and other information on the application form that the commissioner determines to be relevant to the
14 evaluation of applications and to the granting of the license. The commissioner may require a statement
15 of the business plan or plan of operation of the applicant. The commissioner shall require an applicant for
16 a viatical settlement provider license to file with the application for the commissioner's approval a copy of
17 the viatical settlement contract that the applicant intends to use in business under the license.

18 (4) If an applicant is a corporation, the corporation must be:

19 (a) incorporated or organized under the laws of this state; or

20 (b) a foreign corporation authorized to transact business in this state.

21 (5) If the applicant is a partnership, the partnership must be organized under the laws of this state.

22
23 **NEW SECTION. Section 4. Issuance of license.** (1) The commissioner may issue a license to the
24 applicant if the commissioner determines that the applicant:

25 (a) has satisfied all of the requirements for the license for which an application is made;

26 (b) has not engaged in conduct that would authorize the commissioner to refuse to issue a license
27 under [sections 1 through ~~46~~ 15]; and

28 (c) is financially responsible and has a good business reputation.

29 (2) The commissioner may issue a license to a nonresident applicant only if the nonresident
30 applicant files with the commissioner in writing an appointment of the commissioner to be the agent of the

1 applicant upon whom all legal process in any action or proceeding against the applicant may be served. In
2 the appointment, the applicant shall agree that any lawful process against the applicant that is served upon
3 the commissioner is of the same legal force and validity as if served upon the applicant and that the
4 authority will continue in force as long as any liability remains outstanding in this state. An appointment
5 under this subsection becomes effective on the date that the commissioner issues the license to the
6 applicant.

7 (3) If the commissioner denies an application, the commissioner shall inform the applicant and state
8 the grounds for the denial.

9 (4) An individual may act as a viatical settlement provider or viatical settlement broker under the
10 authority of the license of a firm or of a corporate viatical settlement provider whether or not the individual
11 holds a license as a viatical settlement provider if:

12 (a) the individual is a member or employee of the firm or is an employee, officer, or director of the
13 corporation; and

14 (b) the individual is designated by the firm or corporation on its license application or on a form that
15 amends or supplements the application as being authorized to act as a viatical settlement provider under
16 the authority of the license.

17

18 **NEW SECTION. Section 5. Expiration of license.** (1) A license issued under [sections 1 through
19 ~~16~~ 15] expires on its expiration date unless it is renewed on or before its expiration date.

20 (2) Unless the commissioner designates another date, a license expires on the last day of the
21 month in which the second anniversary of the initial issuance date of the license occurs and on the last day
22 of the month of the second anniversary following each renewal.

23

24 **NEW SECTION. Section 6. Notification by licensee of material change affecting qualification for**
25 **license.** A licensee shall immediately notify the commissioner of any material change in ownership or
26 control or in any other matter affecting the qualification of the licensee for the license in this state, including
27 keeping the commissioner informed about personnel and address changes.

28

29 **NEW SECTION. Section 7. Suspension -- revocation -- refusal to issue or renew license.** (1) The
30 commissioner may suspend, revoke, refuse to issue, or refuse to renew a license if the commissioner

1 determines that the licensee or applicant for a license is untrustworthy or incompetent to act as a licensee
2 or is guilty of one or more of the following:

3 (a) dishonesty, fraud, or gross negligence in the conduct of business as a licensee;

4 (b) a pattern of unreasonable payments to policyholders or certificate holders;

5 (c) falsification of an application for the license or renewal of the license or misrepresentation or
6 engagement in any other dishonest act in relation to the application;

7 (d) conduct resulting in a conviction of a felony under the laws of any state or of the United States;

8 (e) conviction of any crime, an essential element of which is dishonesty or fraud, under the laws
9 of any state or of the United States;

10 (f) refusal to renew or cancellation, revocation, or suspension of authority to transact insurance
11 or business as a viatical settlement provider, viatical settlement broker, or similar entity in another state;

12 (g) failure to pay a civil penalty imposed by final order of the commissioner or to carry out terms
13 of probation set by the commissioner;

14 (h) refusal by a licensee to be examined or to produce accounts, records, or files for examination,
15 refusal by any officers or employees to give information with respect to the affairs of the licensee, or
16 refusal to perform any other legal obligation as to the examination, when required by the commissioner;

17 (i) affiliation with or under the same general management or interlocking directorate or ownership
18 as another viatical settlement provider, viatical settlement broker, or insurer, any of which unlawfully
19 transacts business in this state;

20 (j) failure at any time to meet any qualification for which issuance of the license could have been
21 refused had the failure then existed and been known to the commissioner; or

22 (k) violation of any rule or order of the commissioner or any provision of Montana law.

23 (2) The commissioner may suspend or refuse to renew a license immediately and without hearing
24 if the commissioner determines that one or both of the following circumstances exist:

25 (a) the licensee is insolvent;

26 (b) the financial condition or business practices of the licensee otherwise pose an imminent threat
27 to the public health, safety, or welfare of the residents of this state.

28 (3) The commissioner may refuse to issue a license in the name of any firm, partnership, or
29 corporation if the commissioner believes that any officer, employee, stockholder, or partner who may
30 materially influence the conduct of the applicant does not meet the standards of this section.

1 (4) A viatical settlement provider or viatical settlement broker holding a license that has not been
2 renewed or that has been revoked shall surrender the license to the commissioner at the commissioner's
3 request.

4 (5) The commissioner may take any other administrative action authorized under Montana law in
5 addition to or in lieu of the actions authorized under [sections 1 through ~~16~~ 15].

6

7 ~~NEW SECTION. Section 8. Maximum fees, commissions, or other valuable consideration. A~~
8 ~~viatical settlement provider or viatical settlement broker may not charge or receive a fee, commission, or~~
9 ~~other valuable consideration in excess of 2% of the amount paid to the policyholder or certificate holder~~
10 ~~on a policy that is the subject of the viatical settlement provider's or viatical settlement broker's services~~
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12 ~~circumstances.~~

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14 NEW SECTION. Section 8. Terms of contract. (1) A viatical settlement contract must be in
15 writing. A viatical settlement provider shall establish in the contract the terms under which the viatical
16 settlement provider will pay compensation or anything of value in return for the policyholder's or certificate
17 holder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance
18 policy or certificate to the viatical settlement provider.

19 (2) A viatical settlement provider may not use a viatical settlement contract in this state unless the
20 viatical settlement provider has filed the contract form with the commissioner and the commissioner has
21 approved the contract form according to the provisions set forth in 33-1-501. The commissioner shall
22 disapprove a viatical settlement contract form if, in the commissioner's judgment, the contract or any
23 provision of the contract is unreasonable, contrary to the interests of the public, or otherwise misleading
24 or unfair to the policyholder or certificate holder.

25 (3) Each viatical settlement contract entered into in this state must contain a provision enabling
26 the policyholder or certificate holder to rescind the contract not later than the 30th day after the date on
27 which the contract is executed by all parties or not later than the 15th day after the policyholder or
28 certificate holder receives the viatical settlement proceeds, whichever is the longer period. In order to
29 rescind a contract, a policyholder or certificate holder who has received the proceeds shall return them to
30 the viatical settlement provider.

1 **NEW SECTION. Section 9. Annual report by provider.** Unless the commissioner grants a time
2 extension, a viatical settlement provider shall file a report for the preceding calendar year with the
3 commissioner on or before March 1 of each year. The report must be in the form and must contain the
4 information that the commissioner prescribes. The report must be verified as follows:

5 (1) if the viatical settlement provider is a corporation, by at least two principal officers of the
6 viatical settlement provider;

7 (2) if the viatical settlement provider is a partnership, by two partners; or

8 (3) if the viatical settlement provider is not a corporation or a partnership, by the provider's owner
9 and manager.

10
11 **NEW SECTION. Section 10. Examination of business and practices of licensee or applicant --**
12 **maintenance of business records.** (1) The commissioner may examine the business and practices of any
13 licensee or applicant for a license when the commissioner determines an examination to be necessary. The
14 commissioner may order a licensee or applicant to produce any records, books, files, or other information
15 reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of
16 the law or contrary to the interests of the public. The licensee or applicant shall pay the expenses incurred
17 in conducting any examination.

18 (2) A viatical settlement provider shall maintain records of all transactions of viatical settlement
19 contracts of the viatical settlement provider and shall make the records available to the commissioner for
20 inspection during reasonable business hours. The records must be maintained for a period of not less than
21 5 years from the date of their creation.

22 (3) The commissioner may at any time require a licensee to fully disclose the identity of all
23 stockholders, partners, officers, and employees.

24 (4) The names of and individual identification data for all policyholders and certificate holders who
25 have entered viatical settlement contracts with viatical settlement providers are confidential and may not
26 be disclosed except as considered necessary by the commissioner in administration of [sections 1 through
27 ~~46~~ 15].

28
29 **NEW SECTION. Section 11. Disclosure of information to policyholder.** A viatical settlement
30 provider shall disclose the information specified in this section to the policyholder or certificate holder

1 entering the viatical settlement contract prior to the date on which the viatical settlement contract is signed
2 by all parties. The disclosure must be in the form prescribed by the commissioner. The information must
3 include the following:

4 (1) possible alternatives to viatical settlement contracts for persons with terminal illnesses or
5 conditions, including but not limited to accelerated benefits offered by the issuer of the life insurance policy;

6 (2) the fact that some or all of the proceeds of the viatical settlement may be taxable and that
7 assistance should be sought from a personal tax adviser. Viatical settlement brokers, viatical settlement
8 providers, or their respective employees or agents may not act as personal tax advisers for purposes of this
9 disclosure requirement.

10 (3) the fact that the viatical settlement could be subject to the claims of creditors;

11 (4) the fact that receipt of a viatical settlement may adversely affect the recipient's eligibility for
12 medicaid or other government benefits or entitlement and that advice should be obtained from the
13 appropriate agencies;

14 (5) the right of a policyholder or certificate holder to rescind a viatical settlement contract as
15 provided in [section 9 8]. The disclosure must state the deadlines for rescission and the return of proceeds
16 received.

17 (6) the date by which the funds will be available to the policyholder or certificate holder and the
18 source of the funds; and

19 (7) the fact that the viatical settlement contract is void if the viatical settlement provider or viatical
20 settlement broker fails to tender payment of the proceeds as provided in the viatical settlement contract.

21

22 **NEW SECTION. Section 12. Conditions precedent to entering into viatical settlement contract.**

23 (1) Before a viatical settlement provider enters into a viatical settlement contract with a policyholder or
24 certificate holder who has a terminal illness or condition, the viatical settlement provider shall first obtain
25 the following:

26 (a) a written statement from an attending physician that the policyholder or certificate holder is of
27 sound mind and not under constraint or undue influence; and

28 (b) a witnessed document in which the policyholder or certificate holder:

29 (i) consents to the viatical settlement contract;

30 (ii) acknowledges that the illness or condition is terminal;

1 (iii) represents that the policyholder or certificate holder has a full and complete understanding of
2 the viatical settlement contract;

3 (iv) confirms that the policyholder or certificate holder has a full and complete understanding of the
4 benefits of the life insurance policy;

5 (v) releases the medical records of the policyholder or certificate holder relating to the terminal
6 illness or condition; and

7 (vi) acknowledges that the policyholder or certificate holder has entered into the viatical settlement
8 contract freely and voluntarily.

9 (2) A viatical settlement provider may enter a viatical settlement contract only after the individual
10 whose life would be the subject of the viatical settlement contract is determined to have a terminal illness
11 or condition, as follows:

12 (a) if the individual is the policyholder or certificate holder, an attending physician of the
13 policyholder or certificate holder shall make the determination; or

14 (b) if the individual is a person other than the policyholder or certificate holder, an attending
15 physician of the individual or of the policyholder or certificate holder shall make the determination.

16 (3) For purposes of this section, "attending physician" means a medical doctor, a doctor of
17 osteopathy, or a naturopathic physician licensed in this state, who is primarily responsible for the treatment
18 or a portion of treatment of the individual whose life would be the subject of the viatical settlement
19 contract.

20

21 **NEW SECTION. Section 13. Prohibitions on finder's fee -- solicitations -- discrimination -- false or**
22 **misleading advertising or solicitation -- misuse of confidential information.** (1) A licensee may not pay or
23 offer to pay a finder's fee, commission, or other compensation to a person described in this subsection (1)
24 in connection with a policy insuring the life of an individual with a terminal illness or condition. The
25 prohibition under this subsection (1) applies with respect to payments or offers of payment to:

26 (a) the physician, attorney, or accountant of the policyholder, the certificate holder, or the insured
27 individual;

28 (b) any person other than a physician, attorney, or accountant described in subsection (1)(a) who
29 provides medical, legal, or financial planning services to the policyholder, to the certificate holder, or to the
30 insured individual when the individual is other than the policyholder or certificate holder; or

1 (c) any person other than one described in subsection (1)(a) or (1)(b) who acts as an agent of the
2 policyholder, certificate holder, or insured individual.

3 (2) A licensee may not solicit an investor who could influence the treatment of the illness or
4 condition of the individual whose life would be the subject of a viatical settlement contract.

5 (3) All information solicited or obtained from a policyholder or certificate holder by a licensee is
6 subject to the confidentiality requirements set forth in Title 33, chapter 19. For purposes of this subsection,
7 a licensee must be considered an insurance-support organization as defined in 33-19-104.

8 (4) A licensee may not discriminate in the making of a viatical settlement contract on the basis of
9 race, age, sex, national origin, creed, religion, occupation, marital or family status, or sexual orientation and
10 may not discriminate between persons who have dependents and persons who do not have dependents.

11 (5) A person licensed pursuant to [section 4] may not engage in any false or misleading advertising,
12 solicitation, or practice as described in 33-18-203.

13 (6) A person licensed pursuant to [section 4] may not sell another product of insurance to the
14 contract holder unless approval is obtained from the commissioner.

15

16 **NEW SECTION. Section 14. Payment to escrow or trust account -- lump- sum payment.** (1)
17 Immediately upon receipt of documents from the policyholder or certificate holder effecting the transfer of
18 the insurance policy or certificate, the viatical settlement provider shall pay the proceeds of the settlement
19 to an escrow or trust account managed by a trustee or escrow agent in a bank approved by the
20 commissioner, pending acknowledgment of the transfer by the issuer of the life insurance policy. The
21 trustee or escrow agent shall transfer the proceeds due to the policyholder or certificate holder immediately
22 upon receipt of acknowledgment of the transfer from the insurer.

23 (2) A viatical settlement provider shall make payment of the proceeds of a viatical settlement
24 contract in a lump sum except as provided in this subsection. A viatical settlement provider may not retain
25 any portion of the proceeds. A viatical settlement provider may make installment payments only if the
26 viatical settlement provider has purchased an annuity issued by an authorized insurer or a similar financial
27 instrument issued by a financial institution authorized to engage in the business of a financial institution in
28 this state.

29 (3) Failure by the viatical settlement provider to tender the viatical settlement by the date disclosed
30 to the policyholder or certificate holder renders the contract void.

1 **NEW SECTION. Section 15. Rules -- standards -- bond.** The commissioner may, in accordance
2 with the provisions of 33-1-313, adopt rules for the purpose of carrying out [sections 1 through ~~46~~ 15].

3 In addition, the commissioner:

4 (1) may establish standards for evaluating reasonableness of payments under viatical settlement
5 contracts. The authority includes but is not limited to regulation of discount rates used to determine the
6 amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life
7 insurance policy. For the purpose of the standards, the commissioner shall consider payments made in
8 regional and national viatical settlement markets to the extent that this information is available, as well as
9 model standards developed by the national association of insurance commissioners.

10 (2) shall require a bond and an errors and omissions insurance policy of both kinds of licensees;
11 and

12 (3) shall adopt rules to establish:

13 (A) trade practice standards for the purpose of regulating advertising and solicitation of viatical
14 settlement contracts; AND

15 (B) FEES THAT ARE COMMENSURATE WITH FEES CHARGED PURSUANT TO 33-2-708.

16
17 **NEW SECTION. Section 16. Codification instruction.** [Sections 1 through ~~46~~ 15] are intended to
18 be codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through ~~46~~
19 15].

20

-END-