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HOUSE BILL NO. 2268

Offered January 8, 2003

Prefiled January 8, 2003

A BILL to amend and reenact §§ 38.2-1800 and 38.2-1865.1 of the Code of Virginia; to amend the Code of Virginia by adding in Title 38.2 a chapter numbered 60, consisting of sections numbered 38.2-6000 through 38.2-6016; and to repeal Chapter 57 (§§ 38.2-5700 through 38.2-5707) of Title 38.2 of the Code of Virginia, relating to the Viatical Settlements Act.

Patron—Hargrove

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 38.2-1800 and 38.2-1865.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 38.2 a chapter numbered 60, consisting of sections numbered 38.2-6000 through 38.2-6016, as follows:

§ 38.2-1800. Definitions.

As used in this chapter:

"Agent," "insurance agent," "producer," or "insurance producer," when used without qualification, means an individual or business entity that sells, solicits, or negotiates contracts of insurance or annuity in this Commonwealth.

"Appointed agent," "appointed insurance agent," "appointed producer," or "appointed insurance producer," when used without qualification, means an individual or business entity licensed in this Commonwealth to sell, solicit, or negotiate contracts of insurance or annuity of the classes authorized within the scope of such license and who is appointed by a company licensed in this Commonwealth to sell, solicit, or negotiate on its behalf contracts of insurance of the classes authorized within the scope of such license and, if authorized by the company, may collect premiums on those contracts.

"Automobile club authority" means the authority in this Commonwealth to sell, solicit, or negotiate automobile club contracts on behalf of automobile clubs licensed under Chapter 3.1 (§ 13.1-400.1 et seq.) of Title 13.1.

"Business entity" means a partnership, limited partnership, limited liability company, corporation, or other legal entity other than a sole proprietorship.

"Dental services authority" means the authority in this Commonwealth to sell, solicit, or negotiate dental services plan contracts on behalf of dental services plans licensed under Chapter 45 (§ 38.2-4500 et seq.) of this title.

"Filed" means received by the Commission.

"Health agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate insurance as defined in §§ 38.2-108 and 38.2-109, and including contracts issued by insurers, health services plans, health maintenance organizations, dental services plans, and optometric services plans licensed in this Commonwealth.

"Home protection insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate home protection insurance as defined in § 38.2-129 on behalf of insurers licensed in this Commonwealth.

"Home state" means the District of Columbia and any state or territory of the United States, except Virginia, or any province of Canada, in which an insurance producer maintains such person's principal place of residence or principal place of business and is licensed by that jurisdiction to act as a resident insurance producer.

"Legal services insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate legal services insurance as defined in § 38.2-127 on behalf of insurers licensed in this Commonwealth.

"Legal services plan authority" means the authority in this Commonwealth to sell, solicit, or negotiate legal services plan contracts on behalf of legal services plans licensed under Chapter 44 (§ 38.2-4400 et seq.) of this title.

"License" means a document issued by the Commission authorizing an individual or business entity to act as an insurance producer for the lines of authority specified in the document. Except as provided in § 38.2-1833, the license itself does not create any authority, actual, apparent or inherent, in the licensee to represent, commit, or bind an insurer.

"Licensed agent," "licensed insurance agent," "licensed producer," or "licensed insurance producer," when used without qualification, means an individual or business entity licensed in this Commonwealth

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59 to sell, solicit, or negotiate contracts of insurance or annuity of the classes authorized within the scope
60 of such license.

61 "Life and annuities insurance agent" means an agent licensed in this Commonwealth to sell, solicit,
62 or negotiate life insurance and annuity contracts as defined in §§ 38.2-102, 38.2-103, 38.2-104,
63 38.2-105.1, 38.2-106, and 38.2-107.1, respectively, on behalf of insurers licensed in this Commonwealth.

64 "Limited burial insurance authority" means the authority in this Commonwealth to sell, solicit, or
65 negotiate burial insurance society membership where the certificates of membership will not exceed
66 \$5,000 on any individual, on behalf of insurers licensed under Chapter 40 (§ 38.2-4000 et seq.) of this
67 title; or to represent an association referred to in § 38.2-3318.1, limited to soliciting members of that
68 association for burial association group life insurance certificates in amounts of \$5,000 or less.

69 "Limited lines credit insurance agent" means an agent licensed in this Commonwealth whose
70 authority is restricted to selling, soliciting, or negotiating, on behalf of insurers licensed in this
71 Commonwealth, one or more of the following coverages to individuals through a master, corporate,
72 group or individual policy: (i) credit life insurance and credit accident and sickness insurance, but only
73 to the extent authorized in Chapter 37.1 (§ 38.2-3717 et seq.) of this title; (ii) credit involuntary
74 unemployment insurance as defined in § 38.2-122.1; (iii) credit property insurance, as defined in
75 § 38.2-122.2; (iv) mortgage accident and sickness insurance; (v) mortgage redemption insurance; (vi)
76 mortgage guaranty insurance; and (vii) any other form of insurance offered in connection with an
77 extension of credit that is limited to partially or wholly extinguishing that credit obligation and that the
78 Commission specifically determines may be sold, solicited, or negotiated by those holding a limited lines
79 credit insurance agent license. Each insurer that sells, solicits or negotiates any of the coverages set forth
80 in this definition shall provide to each individual whose duties will include selling, soliciting or
81 negotiating such coverages a program of instruction that may, at the discretion of the Commission, be
82 submitted for approval by the Commission or reviewed by the Commission subsequent to its
83 implementation.

84 "Limited lines life and health agent" means an individual or business entity authorized by the
85 Commission whose license authority to sell, solicit, or negotiate is limited to the following, or any other
86 type of authority that the Commission may deem it necessary to recognize for the purposes of
87 complying with § 38.2-1836: dental services authority; legal services plan authority; limited burial
88 insurance authority; mutual assessment life and health insurance authority; optometric services authority;
89 and travel accident insurance authority. Limited lines life and health insurance shall not include life
90 insurance, health insurance, property insurance, casualty insurance, and title insurance.

91 "Limited lines property and casualty agent" means an individual or business entity authorized by the
92 Commission whose license authority to sell, solicit, or negotiate is limited to the following, or any other
93 type of authority that the Commission may deem it necessary to recognize for the purposes of
94 complying with § 38.2-1836: automobile club authority; home protection insurance authority; legal
95 services insurance authority; mutual assessment property and casualty insurance authority; ocean marine
96 insurance authority; pet accident, sickness and hospitalization insurance authority; and travel baggage
97 insurance authority. Limited lines property and casualty insurance shall not include life insurance, health
98 insurance, property insurance, casualty insurance, and title insurance.

99 "Mortgage accident and sickness insurance authority" means the authority in this Commonwealth to
100 sell, solicit, or negotiate mortgage accident and sickness insurance on behalf of insurers licensed in this
101 Commonwealth.

102 "Mortgage guaranty insurance authority" means the authority in this Commonwealth to sell, solicit, or
103 negotiate mortgage guaranty insurance on behalf of insurers licensed in this Commonwealth.

104 "Mortgage redemption insurance authority" means the authority in this Commonwealth to sell, solicit,
105 or negotiate mortgage redemption insurance on behalf of insurers licensed in this Commonwealth. As
106 used in this chapter, "mortgage redemption insurance" means a nonrenewable, nonconvertible, decreasing
107 term life insurance policy written in connection with a mortgage transaction for a period of time
108 coinciding with the term of the mortgage. The initial sum shall not exceed the amount of the
109 indebtedness outstanding at the time the insurance becomes effective, rounded up to the next \$1,000.

110 "Motor vehicle rental contract enroller" means an unlicensed hourly or salaried employee of a motor
111 vehicle rental company that is in the business of providing primarily private motor vehicles to the public
112 under a rental agreement for a period of less than six months, and receives no direct or indirect
113 commission from the insurer, the renter or the vehicle rental company.

114 "Motor vehicle rental contract insurance agent" means a person who (i) is a selling agent of a motor
115 vehicle rental company that is in the business of providing primarily private passenger motor vehicles to
116 the public under a rental agreement for a period of less than six months and (ii) whose license in this
117 Commonwealth is restricted to selling, soliciting, or negotiating only the following insurance coverages,
118 and solely in connection with and incidental to the rental contract:

119 1. Personal accident insurance which provides benefits in the event of accidental death or injury
120 occurring during the rental period;

2. Liability coverage sold to the renter in excess of the rental company's obligations under §§ 38.2-2204, 38.2-2205, or Title 46.2, as applicable;

3. Personal effects insurance which provides coverages for the loss of or damage to the personal effects of the renter and other vehicle occupants while such personal effects are in or upon the rental vehicle during the rental period;

4. Roadside assistance and emergency sickness protection programs; and

5. Other travel-related or vehicle-related insurance coverage that a motor vehicle rental company offers in connection with and incidental to the rental of vehicles.

The term "motor vehicle rental contract insurance agent" does not include motor vehicle rental contract enrollers.

"Mutual assessment life and health insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate mutual assessment life and accident and sickness insurance on behalf of insurers licensed under Chapter 39 (§ 38.2-3900 et seq.) of this title, but only to the extent permitted under § 38.2-3919.

"Mutual assessment property and casualty insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate mutual assessment property and casualty insurance on behalf of insurers licensed under Chapter 25 (§ 38.2-2500 et seq.) of this title, but only to the extent permitted under § 38.2-2525.

"NAIC" means the National Association of Insurance Commissioners.

"Negotiate" means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

"Ocean marine insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate those classes of insurance classified in § 38.2-126, except those classes specifically classified as inland marine insurance, on behalf of insurers licensed in this Commonwealth.

"Optometric services authority" means the authority in this Commonwealth to sell, solicit, or negotiate optometric services plan contracts on behalf of optometric services plans licensed under Chapter 45 (§ 38.2-4500 et seq.) of this title.

"Personal lines agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate insurance as defined in §§ 38.2-110 through 38.2-114, 38.2-116, 38.2-117, 38.2-118, 38.2-124, 38.2-125, 38.2-126, 38.2-129, 38.2-130, and 38.2-131 for transactions involving insurance primarily for personal, family, or household needs rather than for business or professional needs.

"Pet accident, sickness and hospitalization insurance authority" means the authority in this Commonwealth to sell, solicit, or negotiate pet accident, sickness and hospitalization insurance on behalf of insurers licensed in this Commonwealth.

"Property and casualty insurance agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate both personal and commercial lines of insurance as defined in §§ 38.2-110 through 38.2-122.2, and §§ 38.2-124 through 38.2-134 on behalf of insurers licensed in this Commonwealth.

"Resident" means (i) an individual residing in Virginia; (ii) an individual residing outside of Virginia whose principal place of business is in Virginia, who is able to demonstrate to the satisfaction of the Commission that the laws of his home state prevent him from obtaining a resident agent license in that state, and who affirmatively chooses to qualify as and be treated as a resident of Virginia for purposes of licensing and continuing education, both in Virginia and in the state in which the individual resides, if applicable; (iii) a partnership duly formed and recorded in Virginia; (iv) a corporation incorporated and existing under the laws of Virginia; (v) a limited liability company organized and existing under the laws of Virginia; or (vi) a foreign business entity that is not licensed as a resident agent in any other jurisdiction, and that demonstrates to the satisfaction of the Commission that its principal place of business is within the Commonwealth of Virginia.

"Restricted nonresident health agent" means a nonresident agent whose license authority in his home state does not include all of the authority granted under a health agent license in Virginia. The license issued to such agent shall authorize the agent to sell, solicit, or negotiate in Virginia, on behalf of insurers licensed in Virginia, only those kinds or classes of insurance for which the agent is authorized in his home state.

"Restricted nonresident life and annuities agent" means a nonresident agent whose license authority in his home state does not include all of the authority granted under a life and annuities agent license in Virginia. The license issued to such agent shall authorize the agent to sell, solicit, or negotiate in Virginia, on behalf of insurers licensed in Virginia, only those kinds or classes of insurance for which the agent is authorized in his home state.

"Restricted nonresident personal lines agent" means a nonresident agent whose license authority in his home state does not include all of the authority granted under a personal lines agent license in

182 Virginia. The license issued to such agent shall authorize the agent to sell, solicit, or negotiate in
183 Virginia, on behalf of insurers licensed in Virginia, only those kinds or classes of insurance for which
184 the agent is authorized in his home state.

185 "Restricted nonresident property and casualty agent" means a nonresident agent whose license
186 authority in his home state does not include all of the authority granted under a property and casualty
187 agent license in Virginia. The license issued to such agent shall authorize the agent to sell, solicit, or
188 negotiate in Virginia, on behalf of insurers licensed in Virginia, only those kinds or classes of insurance
189 for which the agent is authorized in his home state.

190 "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on
191 behalf of an insurer.

192 "Settlement agent" means a person licensed as a title insurance agent and registered with the Virginia
193 State Bar pursuant to Chapter 1.3 (§ 6.1-2.19 et seq.) of Title 6.1.

194 "Solicit" means attempting to sell insurance or asking or urging a person to apply for a particular
195 class of insurance from one or more insurers.

196 "Surplus lines broker" means a person licensed pursuant to Article 5.1 (§ 38.2-1857.1 et seq.) of this
197 chapter, and who is thereby authorized to engage in the activities set forth in Chapter 48 (§ 38.2-4800 et
198 seq.) of this title.

199 "Terminate" means the cancellation of the relationship between an insurance producer and the
200 insurer, or the termination of an insurance producer's authority to transact insurance.

201 "Title insurance agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate
202 title insurance, and performing all of the services set forth in § 38.2-4601.1, on behalf of title insurance
203 companies licensed under Chapter 46 (§ 38.2-4600 et seq.) of this title.

204 "Travel accident insurance authority" means the authority in this Commonwealth to sell, solicit, or
205 negotiate travel accident insurance to individuals on behalf of insurers licensed in this Commonwealth.

206 "Travel baggage insurance authority" means the authority in this Commonwealth to sell, solicit, or
207 negotiate travel baggage insurance to individuals on behalf of insurers licensed in this Commonwealth.

208 "Variable contract agent" means an agent licensed in this Commonwealth to sell, solicit, or negotiate
209 variable life insurance and variable annuity contracts on behalf of insurers licensed in this
210 Commonwealth.

211 "Viatical settlement broker" means a person licensed pursuant to *in accordance with* Article 6.1
212 (§ 38.2-1865.1 et seq.) of this chapter, and who is thereby authorized to engage in the activities set forth
213 in Chapter 57 (~~§ 38.2-5700 et seq.~~) 60 (§ 38.2-6000 et seq.) of this title.

214 "Uniform Business Entity Application" means the current version of the NAIC Uniform Business
215 Entity Application for resident and nonresident business entities.

216 "Uniform Application" means the current version of the NAIC Uniform Application for resident and
217 nonresident producer licensing.

218 § 38.2-1865.1. (Effective September 1, 2002) License required for viatical settlement brokers;
219 Commission's authority; conditions.

220 A. No person shall act as a viatical settlement broker, or solicit a viatical settlement contract while
221 acting as a viatical settlement broker, on or after January 1, 1998, without first obtaining a license from
222 the Commission. *A person who holds a valid life insurance producer's license, however, shall be*
223 *deemed to hold a viatical settlement broker's license upon the filing of a notice by such individual with*
224 *the Commission, on a form prescribed by the Commission, and the payment of any applicable fees.*

225 B. Application for a viatical settlement broker's license shall be made to the Commission in the
226 manner, in the form, and accompanied by the nonrefundable license processing fee prescribed by the
227 Commission.

228 C. A business entity acting as a viatical settlement broker is required to obtain a viatical settlement
229 broker license. In addition to the other requirements in this section, and before approving the
230 application, the Commission shall find that:

231 1. The business entity has paid the fee set forth in this section;

232 2. The business entity has filed the appropriate documents, as follows:

233 a. A domestic corporation shall have filed its articles of incorporation with the clerk of the
234 Commission, and shall have been issued a charter by the Commission;

235 b. A domestic limited liability company shall have filed its articles of organization with the clerk of
236 the Commission, and shall have been issued a certificate of organization by the Commission;

237 c. A domestic limited partnership shall have applied for and received a certificate of limited
238 partnership from the clerk of the Commission;

239 d. A domestic partnership shall have filed its partnership agreement with the clerk of the appropriate
240 court; and

241 e. A foreign partnership, limited partnership, limited liability company or corporation shall have
242 complied with the requirements of § 38.2-1865.4; and

243 3. The business entity has designated a licensed ~~producer~~ *viatical settlement broker as the individual*

responsible for the business entity's compliance with the insurance *and other laws of this title, and related rules and regulations of this Commonwealth.*

D. The Commission may require any documents reasonably necessary to verify the information contained in an application.

E. Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the clerk of the Commission as the agent for service of process on the applicant in any action or proceeding arising in this Commonwealth out of or in connection with the exercise of the license. Such appointment of the clerk of the Commission as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in this Commonwealth. Service of process on the clerk of the Commission shall conform to the provisions of Chapter 8 (§ 38.2-800 et seq.) of this title.

F. The license processing fee required by this section shall be collected by the Commission, paid directly into the state treasury, and credited to the "Bureau of Insurance Special Fund - State Corporation Commission" for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

G. Before June 1 of each year, each viatical settlement broker shall remit the nonrefundable renewal fee and renewal application prescribed by the Commission for the renewal of the license effective July 1 of that year.

H. Viatical settlement broker's licenses may be renewed for a one-year period ending on the following June 30 if the required renewal application and renewal fee have been received by the Commission on or before June 1, and the license has not been terminated, suspended or revoked on or before June 30.

I. The renewal fee required by this section shall be collected by the Commission, paid directly into the state treasury, and credited to the "Bureau of Insurance Special Fund - State Corporation Commission" for the maintenance of the Bureau of Insurance as provided in subsection B of § 38.2-400.

J. Each applicant for a viatical settlement broker's license shall provide satisfactory evidence that no disciplinary action has resulted in the suspension or revocation of any federal or state license.

K. ~~In the absence of a written agreement making the broker the viator's agent, viatical settlement brokers are presumed to be agents of viatical settlement providers.~~

~~L.~~ A viatical settlement broker shall not, without the written agreement of the viator obtained before performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.

CHAPTER 60. VIATICAL SETTLEMENTS ACT.

§ 38.2-6000. Definitions.

As used in this chapter:

"Advertising" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet or similar communications media, including film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to sell a life insurance policy pursuant to a viatical settlement contract.

"Business of viatical settlements" means an activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, or hypothecating in any other manner, of viatical settlement contracts or purchase agreements.

"Chronically ill" means (i) being unable to perform at least 2 activities of daily living, which shall include eating, toileting, transferring, bathing, dressing or continence, (ii) requiring substantial supervision by another person to protect the individual from threats to health and safety due to severe cognitive impairment, or (iii) having a level of disability similar to that described in clause (i) as determined by the federal Secretary of Health and Human Resources.

"Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of 1 or more viaticated policies or to provide credit enhancement and who has an agreement in writing with 1 or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts or provide stop loss insurance. Financing entity does not include a nonaccredited investor or viatical settlement purchaser.

"Fraudulent viatical settlement act" includes:

1. Acts or omissions committed by any person who, knowingly or with intent to defraud, for the

305 purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its
306 agents to engage in acts including:

307 a. Presenting, causing to be presented or preparing with knowledge or belief that it will be presented
308 to or by a viatical settlement provider, viatical settlement broker, or viatical settlement provider
309 representative, viatical settlement purchaser, financing entity, insurer, insurance producer or any other
310 person, false material information, or concealing material information, as part of, in support of or
311 concerning a fact material to 1 or more of the following: (i) an application for the issuance of a
312 viatical settlement contract or insurance policy; (ii) the underwriting of a viatical settlement contract or
313 insurance policy; (iii) a claim for payment or benefit pursuant to a viatical settlement contract or
314 insurance policy; (iv) premiums paid on an insurance policy; (v) payments and changes in ownership or
315 beneficiary made in accordance with the terms of a viatical settlement contract, or insurance policy; (vi)
316 the reinstatement or conversion of an insurance policy; (vii) in the solicitation, offer, effectuation or sale
317 of a viatical settlement contract or insurance policy; (viii) the issuance of written evidence of a viatical
318 settlement contract or insurance policy; or (ix) a financing transaction;

319 b. Employing any device, scheme, or artifice to defraud related to viaticated policies;

320 2. In the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits
321 its employees or its agents to: (i) remove, conceal, alter, destroy or sequester from the Commission the
322 assets or records of a licensee or other person engaged in the business of viatical settlements; (ii)
323 misrepresent or conceal the financial condition of a licensee, financing entity, insurer or other person;
324 (iii) transact the business of viatical settlements in violation of laws requiring a license, certificate of
325 authority or other legal authority for the transaction of the business of viatical settlements; or (iv) file
326 with the Commission or the chief insurance regulatory official of another jurisdiction a document
327 containing false information or otherwise conceals information about a material fact from the
328 Commission;

329 3. Embezzlement, theft, misappropriation or conversion of monies, funds, premiums, credits or other
330 property of a viatical settlement provider, insurer, insured, viator, insurance policyowner or any other
331 person engaged in the business of viatical settlements or insurance;

332 4. Recklessly entering into, brokering, or otherwise dealing in a viatical settlement contract, the
333 subject of which is a life insurance policy that was obtained by presenting false information concerning
334 any fact material to the policy or by concealing, for the purpose of misleading another, information
335 concerning any fact material to the policy, where the viator or the viator's agent intended to defraud the
336 policy's issuer. "Recklessly" means engaging in the conduct in conscious and clearly unjustifiable
337 disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard
338 involving a gross deviation from acceptable standards of conduct; or

339 5. Attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit
340 the acts or omissions specified in this subsection.

341 "Licensee under this chapter" means a person licensed by the Commission as a viatical settlement
342 provider or viatical settlement broker or other person licensed by the Commission to perform the duties
343 of a viatical settlement provider or viatical settlement broker.

344 "NAIC" means National Association of Insurance Commissioners.

345 "Policy" means an individual or group policy, group certificate, contract or arrangement of life
346 insurance affecting the rights of a resident of this Commonwealth or bearing a reasonable relation to
347 this Commonwealth, regardless of whether delivered or issued for delivery in this Commonwealth.

348 "Related provider trust" means a titling trust or other trust established by a licensed viatical
349 settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial
350 interest in purchased policies in connection with a financing transaction. The trust shall have a written
351 agreement with the licensed viatical settlement provider under which the licensed viatical settlement
352 provider is responsible for ensuring compliance with all statutory and regulatory requirements and
353 under which the trust agrees to make all records and files related to viatical settlement transactions
354 available to the Commission as if those records and files were maintained directly by the licensed
355 viatical settlement provider.

356 "Special purpose entity" means a corporation, partnership, trust, limited liability company or other
357 similar entity formed solely to provide either directly or indirectly access to institutional capital markets
358 for a financing entity or licensed viatical settlement provider.

359 "Terminally ill" means having an illness or sickness that can reasonably be expected to result in
360 death in less than 25 months.

361 "Viatical settlement broker" means a person that on behalf of a viator and for a fee, commission or
362 other valuable consideration offers or attempts to negotiate viatical settlement contracts between a
363 viator and 1 or more viatical settlement providers. Notwithstanding the manner in which a viatical
364 settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and
365 owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests
366 of the viator. The term does not include an attorney, certified public accountant or a financial planner

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

369 "Viatical settlement contract" means a written agreement establishing the terms under which
370 compensation or anything of value will be paid, which compensation or value is less than the expected
371 death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale,
372 devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate
373 of insurance. A viatical settlement contract also includes a contract for a loan or other financing
374 transaction with a viator secured primarily by an individual or group life insurance policy, other than a
375 loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured
376 by the cash value of a policy. A viatical settlement contract includes an agreement with a viator to
377 transfer ownership or change the beneficiary designation at a later date regardless of the date that
378 compensation is paid to the viator.

379 "Viatical settlement provider" means a person, other than a viator, that enters into or effectuates a
380 viatical settlement contract. Viatical settlement provider does not include: (i) a bank, savings bank,
381 savings and loan association, credit union or other licensed lending institution that takes an assignment
382 of a life insurance policy as collateral for a loan; (ii) the issuer of a life insurance policy providing
383 accelerated benefits under § 38.2-3115.1 and pursuant to the contract; (iii) an authorized or eligible
384 insurer that provides stop loss coverage to a viatical settlement provider, viatical settlement purchaser,
385 financing entity, special purpose entity or related provider trust; (iv) a natural person who enters into
386 or effectuates no more than 1 agreement in a calendar year for the transfer of life insurance policies for
387 any value less than the expected death benefit; (v) a financing entity; (iv) a special purpose entity; (vii)
388 a related provider trust; (viii) a viatical settlement purchaser; or (ix) an accredited investor or qualified
389 institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal
390 Securities Act of 1933, as amended, and who purchases a viaticated policy from a viatical settlement
391 provider and does not communicate with the viator or insured who is a resident of this Commonwealth
392 except through a licensee under this chapter.

393 "Viatical settlement provider representative" means a person who is not a viatical settlement broker
394 and who is employed by, or contracts exclusively with, a viatical settlement provider and who by nature
395 of the person's employment or contract offers or attempts to negotiate a viatical settlement contract with
396 a viator by representing the viatical settlement provider with whom the person is employed or
397 contracted.

398 "Viatical settlement purchaser" means a person who gives a sum of money as consideration for a life
399 insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or
400 acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the
401 beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement
402 contract, for the purpose of deriving an economic benefit. Viatical settlement purchaser does not include
403 (i) a licensee under this chapter; (ii) an accredited investor or qualified institutional buyer as defined
404 respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended;
405 (iii) a financing entity; (iv) a special purpose entity; or (v) a related provider trust.

406 "Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical
407 settlement provider pursuant to a viatical settlement contract.

408 "Viator" means the owner of a life insurance policy or a certificate holder under a group policy who
409 enters or seeks to enter into a viatical settlement contract. For the purposes of this chapter, a viator
410 shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy
411 insuring the life of an individual with a terminal or chronic illness except where specifically addressed.
412 Viator does not include (i) a licensee under this chapter; (ii) an accredited investor or qualified
413 institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal
414 Securities Act of 1933, as amended; (iii) a financing entity; (iv) a special purpose entity; or (v) a
415 related provider trust.

416 § 38.2-6001. Viatical settlement brokers.

417 No person shall act as a viatical settlement broker with a resident of this Commonwealth without
418 first obtaining a license from the Commission in accordance with Article 6.1 (§ 38.2-1865.1 et seq.) of
419 Chapter 18 of this title. If there is more than 1 viator on a single policy and the viators are residents of
420 different states, the viatical settlement shall be governed by the law of the state in which the viator
421 having the largest percentage resides or, if the viators hold equal ownership, the state of residence of
422 one viator agreed upon in writing by all the viators.

423 § 38.2-6002. Viatical settlement providers, license requirements.

424 A. No person shall act as a viatical settlement provider with a resident of this Commonwealth
425 without first obtaining a license from the Commission.

426 1. A person seeking to be licensed as a viatical settlement provider in this Commonwealth shall
427 apply for such license in a form acceptable to the Commission and shall pay to the Commission a

428 nonrefundable application fee of \$300. The application fee required by this subdivision shall be
429 collected by the Commission, paid directly into the state treasury, and credited to the "Bureau of
430 Insurance Special Fund - State Corporation Commission" for the maintenance of the Bureau of
431 Insurance as provided in subsection B of § 38.2-400.

432 2. A viatical settlement provider's license expiring on June 30 may be renewed on July 1 for a
433 one-year period ending on June 30 of the following year if a required renewal application and a
434 nonrefundable renewal fee of \$300 have been received and the license is not terminated, suspended or
435 revoked at the time of renewal. The renewal fee required by this subdivision shall be collected by the
436 Commission and paid directly into the state treasury and credited to the "Bureau of Insurance Special
437 Fund - State Corporation Commission" for the maintenance of the Bureau of Insurance as provided in
438 subsection B of § 38.2-400.

439 B. The applicant shall provide information on forms required by the Commission. The Commission
440 shall have authority, at any time, to require the applicant to disclose fully the identity of all
441 stockholders, partners, officers, members and employees, and the Commission may, in the exercise of the
442 Commission's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any
443 officer, employee, stockholder, partner or member thereof who may materially influence the applicant's
444 conduct meets the standards of this chapter.

445 C. A license issued to a legal entity authorizes all partners, officers, members and designated
446 employees to act as the viatical settlement provider under the license, and all those persons shall be
447 named in the application and any application supplements.

448 D. Upon the filing of an application and the payment of the nonrefundable application fee, the
449 Commission shall make such investigation of each applicant as the Commission may determine to be
450 appropriate and issue a license if it finds that the applicant: (i) has provided a detailed plan of
451 operation; (ii) is competent and trustworthy; (iii) indicates its intention to act in good faith within the
452 confines of the license; (iv) has a good business reputation; (v) if an individual, has had experience,
453 training or education that qualifies him for licensure; (vi) if a resident partnership, limited liability
454 company or corporation, has recorded the existence of the partnership, limited liability company or
455 corporation pursuant to law; (vii) if a corporation, has specific authority to act as a viatical settlement
456 provider in its charter; (viii) if a nonresident partnership, limited liability company or corporation, has
457 furnished proof of its authority to transact business in Virginia; and (ix) has provided an anti-fraud
458 plan that meets the requirements of subdivision E 2 of § 38.2-6011.

459 E. If the applicant for a viatical settlement provider license is a nonresident, such applicant, as a
460 condition precedent to receiving or holding a license, shall designate a resident of this Commonwealth
461 as the person upon whom any process, notices or order, required or permitted by law to be served upon
462 such nonresident viatical settlement provider may be served; and such licensee shall promptly notify the
463 clerk of the Commission in writing of every change in its designated agent for service of process, and
464 such change shall not become effective until acknowledged by the Commission. Whenever a nonresident
465 viatical settlement provider transacting business in this Commonwealth fails to appoint or maintain a
466 registered agent in this Commonwealth, or whenever its registered agent cannot with reasonable
467 diligence be found at the registered office, the clerk of the Commission shall be an agent of the
468 nonresident upon whom service may be made in accordance with § 12.1-19.1.

469 F. The Commission may suspend, revoke, refuse to issue or refuse to renew the license of a viatical
470 settlement provider if the Commission finds that the applicant or licensee has (i) made any material
471 misrepresentation in the application; (ii) been guilty of fraudulent or dishonest practices, (iii) been
472 subject to a final administrative action or has otherwise been shown to be untrustworthy or incompetent
473 to act as a viatical settlement provider; (iv) demonstrated a pattern of unreasonable payments to
474 viators; (v) been convicted of a felony or any misdemeanor involving fraud or moral turpitude; (vi)
475 entered into any viatical settlement contract that has not been approved pursuant to this chapter; (vii)
476 failed to honor contractual obligations set out in a viatical settlement contract; (viii) demonstrated or
477 represented that it no longer meets the requirements for initial licensure; (ix) has assigned, transferred
478 or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this
479 Commonwealth, viatical settlement purchaser, an accredited investor or qualified institutional buyer as
480 defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as
481 amended, financing entity, special purpose entity, or related provider trust; (x) violated any provisions
482 of this chapter or other applicable provisions of this title or has in its employ or organization any
483 officer, partner, member or key management personnel who has violated any provision of this chapter or
484 other applicable provisions of this title; or (xi) has renewed or requested renewal of its license before
485 implementing the anti-fraud initiatives required by subsection E of § 38.2-6011.

486 G. A viatical settlement provider shall be bonded as required by the Commission. Rules issued
487 pursuant to § 38.2-6014 may identify other mechanisms for financial accountability.

488 H. A viatical settlement provider representative shall be appointed by a viatical settlement provider,
489 but no additional license is required.

§ 38.2-6003. Approval of viatical settlement contracts and disclosure statements.

A. A person shall not use a viatical settlement contract or provide to a viator a disclosure statement form in this Commonwealth unless filed with and approved by the Commission in accordance with procedures set forth in § 38.2-316. In the absence of more specific regulation or rules promulgated by the Commission for the business of viatical settlements, standards and requirements of general application set forth in § 38.2-316 and rules promulgated thereunder shall be deemed applicable to viatical settlement contracts and disclosure statement forms, required by this chapter.

B. At the Commission's discretion, the Commission may require the submission of advertising material used in this Commonwealth.

§ 38.2-6004. Reporting requirements.

A. Each licensee under this chapter shall file with the Commission on or before March 1 of each year the certification required by subsection E of § 38.2-6011 and an annual report containing such information as the Commission may prescribe by rule or regulation, provided, however, that such information shall be limited to only those transactions where the viator is a resident of this Commonwealth. If there is more than 1 viator on a single policy and the viators are residents of different states, the viatical settlement shall be governed by the law of the state in which the viator having the largest percentage resides or, if the viators hold equal ownership, the state of residence of 1 viator agreed upon in writing by all the viators.

B. A viatical settlement provider shall report in writing to the Commission the following:

1. New or revised information about its officers, stockholders owning 10 percent or greater interest in the licensee or an affiliate of the licensee, partners, directors, members or designated employees within 30 calendar days of the change;

2. Any change in business or residence address or name within 30 calendar days of the change.

C. A licensed viatical settlement provider convicted of a felony shall report within 30 calendar days to the Commission the facts and circumstances regarding the criminal conviction.

§ 38.2-6005. Privacy.

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

1. Is necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

2. Is provided in response to an investigation or examination by the Commission or another governmental agency or officer or pursuant to the requirements of subsection C of § 38.2-6011;

3. Is a term of or condition to the transfer of a policy by 1 viatical settlement provider to another viatical settlement provider;

4. Is necessary to permit a financing entity, related provider trust or special purpose entity to finance the purchase of policies by a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;

5. Is necessary to allow the viatical settlement provider or viatical settlement broker or their authorized representatives to make contacts for the purpose of determining health status; or

6. Is required to purchase stop loss coverage.

§ 38.2-6006. Examinations; record retention; investigations.

A. Except as provided in § 38.2-1865.1, viatical settlement providers, viatical settlement brokers, and persons seeking a license under this title to transact the business of viatical settlements in this Commonwealth shall be subject to examination by the Commission pursuant to Article 4 (§ 38.2-1317 et seq.) of Chapter 13 of this title. For purposes of completing such examination, the Commission may examine or investigate any person, or the business of any person, in so far as the examination or investigation is, in the sole discretion of the Commission, necessary or material to the examination of a licensee. In lieu of an examination under this title of any foreign or alien licensee licensed in this Commonwealth, the Commission may, in its discretion, accept an examination report on the licensee as prepared by the Commission for the licensee's state of domicile or port-of-entry state.

B. A person required to be licensed by this chapter shall for 5 years retain copies of (i) all proposed, offered or executed contracts, purchase agreements, underwriting documents, policy forms, and applications from the date of the proposal, offer or execution of the contract or purchase agreement, whichever is later; (ii) all checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of funds from the date of the transaction; and (iii) all other records and documents related to the requirements of this chapter. This section does not relieve a person of the obligation to produce these documents to the Commission after the retention period has expired if the person has retained the documents. Records required to be retained by this section must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical,

551 or electronic media, or by any process that accurately reproduces or forms a durable medium for the
552 reproduction of a record.

553 C. 1. Upon determining that an examination should be conducted, the Commission shall issue an
554 examination warrant appointing 1 or more examiners to perform the examination and instructing them
555 as to the scope of the examination. In conducting the examination, the examiner shall observe those
556 guidelines and procedures set forth in the Examiners' Handbook adopted by the NAIC. The Commission
557 may also employ such other guidelines or procedures as it deems appropriate.

558 2. Every licensee or person to whom information is sought, its officers, directors, and agents shall
559 provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all
560 books, records, accounts, papers, documents, assets, and computer or other recordings relating to the
561 property, business, and affairs of the licensee being examined. The officers, directors, employees, and
562 agents of the licensee or person shall facilitate the examination and aid in the examination so far as it
563 is in their power to do so. The refusal of a licensee, by its officers, directors, employees, or agents, to
564 submit to examination or to comply with any reasonable written request of the Commission shall be
565 grounds for suspension or refusal of, or nonrenewal of, any license or authority held by the licensee to
566 engage in the viatical settlement business or other business subject to the Commission's jurisdiction. Any
567 proceeding for suspension, revocation or refusal of any licensee or authority shall be conducted
568 pursuant to § 38.2-219.

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

574 4. When making an examination under this chapter, the Commission may retain attorneys,
575 appraisers, independent actuaries, independent certified public accountants or other professionals and
576 specialists as examiners, the reasonable costs of which shall be borne by the licensee that is the subject
577 of the examination.

578 5. Nothing contained in this chapter shall be construed to limit the Commission's authority to
579 terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the
580 insurance laws of Commonwealth. Findings of fact and conclusions made pursuant to any examination
581 shall be prima facie evidence in any legal or regulatory action.

582 6. Nothing contained in this chapter shall be construed to limit the Commission's authority to use
583 and, if appropriate, to make public any final or preliminary examination report, any examiner or
584 licensee work papers or other documents, or any other information discovered or developed during the
585 course of any examination in furtherance of any legal or regulatory action that the Commission may, in
586 its sole discretion, deem appropriate.

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

591 2. No later than 60 days following completion of the examination, the examiner in charge shall file
592 with the Commission a verified written report of examination under oath. Upon receipt of the verified
593 report, the Commission shall transmit the report to the licensee examined, together with a notice that it
594 shall afford the licensee examined a reasonable opportunity of not more than 30 days to make a written
595 submission or rebuttal with respect to any matters contained in the examination report.

596 3. If the Commission determines that regulatory action is appropriate as a result of the examination,
597 it may initiate any proceedings or actions provided by law.

598 E. 1. Names and individual identification data for all viators shall be considered private and
599 confidential information and shall not be disclosed by the Commission, unless required by law.

600 2. Except as otherwise provided in this title, all examination reports, working papers, recorded
601 information, documents and copies thereof produced by, obtained by or disclosed to the Commission or
602 any other person in the course of an examination made under this chapter, or in the course of analysis
603 or investigation by the Commission of the financial condition or market conduct of a licensee shall be
604 confidential by law and privileged, and shall not be subject to the Freedom of Information Act
605 (§ 2.2-3700 et seq.), shall not be subject to subpoena, and shall not be subject to discovery or
606 admissible in evidence in any private civil action. The Commission is authorized to use the documents,
607 materials or other information in the furtherance of any legal or regulatory action brought as a part of
608 the Commission's official duties.

609 3. Documents, materials or other information, including, but not limited to, all working papers, and
610 copies thereof, in the possession or control of the NAIC and its affiliates or subsidiaries shall be
611 confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to
612 discovery or admissible in evidence in any private civil action if they are:

a. Created, produced or obtained by or disclosed to the NAIC and its affiliates or subsidiaries in the course of assisting an examination made under this chapter, or assisting the Commission in the analysis or investigation of the financial condition or market conduct of a licensee; or

b. Disclosed to the NAIC and its affiliates and subsidiaries under subdivision 4 by the Commission.

c. For the purposes of subdivision 2, "title" includes the law of another state or jurisdiction that is substantially similar to this title.

4. Neither the Commission nor any other person who received the documents, material or other information while acting under the authority of the Commission, including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to subdivision E 1.

5. In order to assist in the performance of the Commission's duties, the Commission:

a. May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to subdivision E 1, with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal, and international law-enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, communication or other information;

b. May receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law-enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

6. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the Commission under this section or as a result of sharing as authorized in subdivision E 4.

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

8. Nothing contained in this chapter shall prevent or be construed as prohibiting the Commission from disclosing the content of any examination report, preliminary examination report or results, or any matter relating thereto, to the commissioner of any other state or country, or to law-enforcement officials of this or any other state or agency of the federal government at any time or to the NAIC, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this chapter.

F. 1. An examiner may not be appointed by the Commission if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this chapter. This subdivision shall not be construed to automatically preclude an examiner from being (i) a viator; (ii) an insured in a viaticated insurance policy; or (iii) a beneficiary in an insurance policy that is proposed to be viaticated.

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

G. 1. No cause of action shall arise nor shall any liability be imposed against the Commission, the Commission's authorized representatives, or any examiner appointed by the Commission for any statements made or conduct performed in good faith while carrying out the provisions of this chapter.

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

3. A person identified in subdivision 1 or 2 shall be entitled to an award of attorney's fees and costs if such person is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this section, a proceeding was "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

H. The Commission may investigate suspected fraudulent viatical settlement acts and persons engaged or alleged to be engaged in the business of viatical settlements, including the investigation of the conduct of insurers and producers related to the business of viatical settlements.

§ 38.2-6007. Disclosure.

674 A. With each application for a viatical settlement, the viatical settlement provider or viatical
675 settlement broker shall provide the viator with at least the following disclosures no later than the time
676 the application for the viatical settlement contract is signed by all parties. The disclosures shall be
677 provided in a separate document that is signed by the viator and the viatical settlement provider or
678 viatical settlement broker, and shall provide the following information:

679 1. There are possible alternatives to viatical settlement contracts including any accelerated death
680 benefits or policy loans offered under the viator's life insurance policy.

681 2. Some or all of the proceeds of the viatical settlement may be taxable under federal income tax
682 and state franchise and income taxes, and assistance should be sought from a professional tax advisor.

683 3. Proceeds of the viatical settlement could be subject to the claims of creditors.

684 4. Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for
685 Medicaid or other government benefits or entitlements, and advice should be obtained from the
686 appropriate government agencies.

687 5. The viator has the right to rescind a viatical settlement contract for 15 calendar days after the
688 receipt of the viatical settlement proceeds by the viator, as provided in subsection C of § 38.2-6008. If
689 the insured dies during the rescission period, the settlement contract shall be deemed to have been
690 rescinded, subject to repayment of all viatical settlement proceeds and any premiums, loans and loan
691 interest to the viatical settlement provider or viatical settlement purchaser.

692 6. Funds will be sent to the viator within 3 business days after the viatical settlement provider has
693 received the insurer or group administrator's acknowledgment that ownership of the policy or interest in
694 the certificate has been transferred and the beneficiary has been designated.

695 7. Entering into a viatical settlement contract may cause other rights or benefits, including
696 conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be
697 forfeited by the viator. Assistance should be sought from a financial adviser.

698 8. Disclosure to a viator shall include distribution of a brochure describing the process of viatical
699 settlements. The NAIC's form for the brochure shall be used unless one is developed by the Commission.

700 9. The disclosure document shall contain the following language: "All medical, financial or personal
701 information solicited or obtained by a viatical settlement provider or viatical settlement broker about an
702 insured, including the insured's identity or the identity of family members, a spouse or a significant
703 other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical
704 settlement provider. If you are asked to provide this information, you will be asked to consent to the
705 disclosure. The information may be provided to someone who buys the policy or provides funds for the
706 purchase. You may be asked to renew your permission to share information every 2 years."

707 10. The insured may be contacted by either the viatical settlement provider or broker or its
708 authorized representative for the purpose of determining the insured's health status. This contact is
709 limited to once every 3 months if the insured has a life expectancy of more than 1 year, and no more
710 than once per month if the insured has a life expectancy of 1 year or less.

711 B. A viatical settlement provider shall provide the viator with at least the following disclosures no
712 later than the date the viatical settlement contract is signed by all parties. The disclosures shall be
713 conspicuously displayed in the viatical settlement contract or in a separate document signed by the
714 viator and the viatical settlement provider or viatical settlement broker, and provide the following
715 information:

716 1. State the affiliation, if any, between the viatical settlement provider and the issuer of the insurance
717 policy to be viaticated.

718 2. The document shall include the name, address and telephone number of the viatical settlement
719 provider.

720 3. State the dollar amount of the current death benefit payable to the viatical settlement provider
721 under the policy or certificate. If known, the viatical settlement provider shall also disclose the
722 availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death
723 and dismemberment benefits under the policy or certificate and the viatical settlement provider's interest
724 in those benefits.

725 4. State the name, business address, and telephone number of the independent third-party escrow
726 agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or
727 trust agreements or documents, and

728 5. If an insurance policy to be viaticated has been issued as a joint policy or involves family riders
729 or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be
730 informed of the possible loss of coverage on the other lives under the policy and shall be advised to
731 consult with his insurance producer or the insurer issuing the policy for advice on the proposed viatical
732 settlement.

733 C. If the provider transfers ownership or changes the beneficiary of the insurance policy, the
734 provider shall communicate the change in ownership or beneficiary to the insured within 20 days after
735 the change.

D. A life insurance company shall send written notice to the owner of a life insurance policy or a certificate holder under a group life insurance policy that a viatical settlement contract is an available alternative transaction to such owner at the time of each of the following:

1. When a life insurance company receives from such owner a request to surrender, in whole or in part, a life insurance policy or a certificate under a group life insurance policy.

2. When a life insurance company receives from such owner a request to receive an accelerated death benefit under a life insurance policy or a certificate under a group life insurance policy.

3. When a life insurance company receives from such owner a request collaterally to assign a life insurance policy or a certificate under a group life insurance policy as security for a loan.

4. When a life insurance company sends to such owner a notice of lapse of a life insurance policy or a certificate under a group life insurance policy.

5. When a life insurance company receives from such owner a request to receive a policy loan against a life insurance policy or a certificate under a group life insurance policy, and at least annually for a life insurance policy or a certificate under a group life insurance policy against which a policy loan is outstanding.

6. When a life insurance company receives from such owner a request to exchange a life insurance policy or a certificate under a group life insurance policy.

7. At least annually for a life insurance policy or a certificate under a group life insurance policy that is a paid-up policy or otherwise does not require such owner to make any future payments of insurance premiums.

8. At least annually for a life insurance policy or a certificate under a group life insurance policy for which an insured thereunder is 65 years of age or older.

9. When a life insurance company receives from an owner of a certificate under a group life insurance policy a request to convert such certificate to a life insurance policy.

10. When a life insurance company receives from such owner a request to exercise a waiver of premium benefit under a life insurance policy or a certificate under a group life insurance policy.

11. When a life insurance company sends to such owner notice of a transfer or assumption reinsurance of a life insurance policy or a certificate under a group life insurance policy.

§ 38.2-6008. General rules.

A. A viatical settlement provider entering into a viatical settlement contract shall:

1. First obtain:

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

b. If applicable, a witnessed document in which the viator represents that the insured is terminally ill or chronically ill and that the illness was diagnosed after the policy was issued; and

c. A document in which the insured consents to the release of his medical records to a viatical settlement provider, viatical settlement broker, viatical settlement provider representative, and the insurance company that issued the life insurance policy covering the life of the insured.

2. Within 20 days after a viator executes documents necessary to transfer any rights under an insurance policy or within 20 days of entering any agreement, option, promise or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy. The notice shall be accompanied by the documents required by subdivision 3.

3. The viatical settlement provider shall deliver a copy of the medical release required under subdivision 1 b of this subsection, a copy of the viator's application for the viatical settlement contract, and the notice required under subdivision 2.

4. The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider not later than 30 calendar days after the date the request is received. The insurer shall complete and issue the verification of coverage to the viatical settlement provider or indicate in which respects it is unable to respond. In its response the insurer shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation regarding possible fraud or the validity of the insurance contract, and shall provide sufficient detail of all reasons for such investigation to the viatical settlement provider.

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

797 6. If a viatical settlement broker performs any of these activities required of the viatical settlement
798 provider, the provider is deemed to have fulfilled the requirements of this section.

799 B. All medical information solicited or obtained by any licensee shall be subject to the applicable
800 provisions of state law relating to privacy or confidentiality of medical information.

801 C. All viatical settlement contracts entered into in this Commonwealth shall provide the viator with
802 an unconditional right to rescind the contract for at least 15 calendar days from the receipt of the
803 viatical settlement proceeds. If the insured dies during the rescission period, the viatical settlement
804 contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement
805 provider or purchaser of all viatical settlement proceeds, and any premiums, loans and loan interest
806 that have been paid by the viatical settlement provider or purchaser.

807 D. The viatical settlement provider shall instruct the viator to send the executed documents required
808 to effect the change in ownership, assignment or change in beneficiary directly to the independent
809 escrow agent. Within 3 business days after the date the escrow agent receives the documents, or from
810 the date the viatical settlement provider receives the documents, if the viator erroneously provides the
811 documents directly to the provider, the provider shall pay or transfer the proceeds of the viatical
812 settlement into an escrow or trust account maintained in a state or federally chartered financial
813 institution whose deposits are insured by the Federal Deposit Insurance Corporation. Upon payment of
814 the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in
815 ownership, assignment or change in beneficiary forms to the viatical settlement provider or related
816 provider trust. Upon the escrow agent's receipt of the acknowledgment of the properly completed
817 transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow
818 agent shall pay the settlement proceeds to the viator.

819 E. Failure to tender consideration to the viator for the viatical settlement contract within the time
820 disclosed pursuant to subdivision A 6 of § 38.2-6007 renders the viatical settlement contract voidable by
821 the viator for lack of consideration until the time consideration is tendered to and accepted by the
822 viator.

823 F. Contacts with the insured for the purpose of determining the health status of the insured by the
824 viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall
825 only be made by the viatical settlement provider or broker licensed in this Commonwealth or its
826 authorized representatives and shall be limited to once every three months for insureds with a life
827 expectancy of more than 1 year, and to no more than once per month for insureds with a life
828 expectancy of 1 year or less. The provider or broker shall explain the procedure for these contacts at
829 the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall
830 not apply to any contacts with an insured for reasons other than determining the insured's health status.
831 Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their
832 authorized representatives.

833 § 38.2-6009. Prohibited practices.

834 A. It is a violation of this chapter for any person to enter into a viatical settlement contract within a
835 2-year period commencing with the date of issuance of the insurance policy or certificate unless the
836 viator certifies to the viatical settlement provider that 1 or more of the following conditions have been
837 met within the 2-year period:

838 1. The policy was issued upon the viator's exercise of conversion rights arising out of a group or
839 individual policy, provided the total of the time covered under the conversion policy plus the time
840 covered under the prior policy is at least 24 months. The time covered under a group policy shall be
841 calculated without regard to any change in insurance carriers, provided the coverage has been
842 continuous and under the same group sponsorship;

843 2. The viator is a charitable organization exempt from taxation under 26 U.S.C. § 501(c)(3);

844 3. The viator is not an individual;

845 4. The viator submits independent evidence to the viatical settlement provider that 1 or more of the
846 following conditions have been met within the 2-year period:

847 a. The insured is terminally or chronically ill;

848 b. The viator's spouse dies;

849 c. The viator divorces his spouse;

850 d. The viator retires from full-time employment;

851 e. The viator becomes physically or mentally disabled and a physician determines that the disability
852 prevents the viator from maintaining full-time employment;

853 f. The viator was the insured's employer at the time the policy or certificate was issued and the
854 employment relationship terminated;

855 g. A final order, judgment or decree is entered by a court of competent jurisdiction, on the
856 application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a
857 petition seeking reorganization of the viator or appointing a receiver, trustee or liquidator to all or a
858 substantial part of the viator's assets;

h. The viator experiences a significant decrease in income that is unexpected and that impairs the viator's reasonable ability to pay the policy premium; or

i. The viator or insured disposes of his ownership interests in a closely held corporation pursuant to terms of a buyout or other similar agreement in effect at the time the insurance policy was initially issued.

B. Copies of the certifications and independent evidence required by this subsection and documents required by subsection A of § 38.2-6008 shall be submitted to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

§ 38.2-6010. Advertising for viatical settlements.

A. This section shall apply to any advertising of viatical settlement contracts, or related products or services intended for dissemination in this Commonwealth, including Internet advertising viewed by persons located in this Commonwealth. Where disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

B. Each licensee under this chapter shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its contracts, products and services. All advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the licensee, as well as the individual who created or presented the advertisement. A system of control shall include regular routine notification, at least once a year, to agents and others authorized by the licensee who disseminates advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the licensee.

C. Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Commission from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

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

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

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

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

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

5. Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the viatical settlement contract, product or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, the viatical settlement licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

a. If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the viatical settlement provider, viatical settlement broker or related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

b. An advertisement shall not state or imply that a viatical settlement contract benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement licensee

920 is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the
921 viatical settlement licensee, or receives any payment or other consideration from the viatical settlement
922 licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

923 c. When an endorsement refers to benefits received under a viatical settlement contract all pertinent
924 information shall be retained for a period of 5 years after its use.

925 E. An advertisement shall not contain statistical information unless it accurately reflects recent and
926 relevant facts. The source of all statistics used in an advertisement shall be identified.

927 F. An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement
928 brokers, viatical settlement investment agents, insurance producers, policies, services or methods of
929 marketing.

930 G. The name of the viatical settlement licensee shall be clearly identified in all advertisements about
931 the licensee or its viatical settlement contracts, products or services, and if any specific viatical
932 settlement contract is advertised, the viatical settlement contract shall be identified either by form
933 number or some other appropriate description. If an application is part of the advertisement, the name
934 of the viatical settlement provider shall be shown on the application.

935 H. An advertisement shall not use a trade name, group designation, name of the parent company of
936 a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service
937 mark, slogan, symbol or other device or reference without disclosing the name of the viatical settlement
938 licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true
939 identity of the viatical settlement licensee, or to create the impression that a company other than the
940 viatical settlement licensee would have any responsibility for the financial obligation under a viatical
941 settlement contract.

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

947 J. An advertisement may state that a viatical settlement licensee is licensed in the state where the
948 advertisement appears, provided it does not exaggerate that fact or suggest or imply that a competing
949 viatical settlement licensee may not be so licensed. The advertisement may ask the audience to consult
950 the licensee's website or contact the Bureau of Insurance to find out if this Commonwealth requires
951 licensing and, if so, whether the viatical settlement provider or viatical settlement broker is licensed.

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

955 L. The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall
956 not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee,
957 service mark, slogan, symbol or other device in a manner that would have the capacity or tendency to
958 mislead or deceive as to the true identity of the actual licensee or create the false impression that an
959 affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

960 M. An advertisement shall not directly or indirectly create the impression that any division or agency
961 of the state or of the U.S. government endorses, approves or favors:

- 962 1. Any viatical settlement licensee or its business practices or methods of operation;
963 2. The merits, desirability or advisability of any viatical settlement contract;
964 3. Any viatical settlement contract; or
965 4. Any life insurance policy or life insurance company.

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

969 O. If the advertising emphasizes the dollar amounts available to viators, the advertising shall
970 disclose the average purchase price as a percent of face value obtained by viators contracting with the
971 licensee during the past 6 months.

972 § 38.2-6011. Fraud prevention and control.

973 A. A person shall not commit a fraudulent viatical settlement act. A person shall not knowingly or
974 intentionally interfere with the enforcement of the provisions of this chapter or investigations of
975 suspected or actual violations of this chapter. A person in the business of viatical settlements shall not
976 knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of
977 trust to participate in the business of viatical settlements.

978 B. Viatical settlement contracts and applications for viatical settlements, regardless of the form of
979 transmission, shall contain the following statement or a substantially similar statement: "Any person
980 who knowingly presents false information in an application for insurance or viatical settlement contract
981 may be guilty of a crime and subject to prosecution." The lack of the required statement does not

constitute a defense in any prosecution for a fraudulent viatical settlement act.

C. Any person engaged in the business of viatical settlements having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed shall provide to the Commission the information required by, and in a manner prescribed by, the Commission. Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been committed may provide to the Commission the information required by, and in a manner prescribed by, the Commission.

D. This chapter shall not:

1. Preempt the authority or relieve the duty of other law-enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;

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

3. Limit the powers granted elsewhere by the laws of this Commonwealth to the Commission or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

E. A licensee under this chapter shall within 60 days of licensure and annually thereafter by March 1 of each year certify to the Commission implementation of anti-fraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent viatical settlement acts. Anti-fraud initiatives shall include:

1. Fraud investigators, who may be viatical settlement provider or viatical settlement broker employees or independent contractors; and

2. An anti-fraud plan, which shall include, but not be limited to:

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

b. A description of the procedures for reporting possible fraudulent viatical settlement acts to the Commission;

c. A description of the plan for anti-fraud education and training of underwriters and other personnel; and

d. A description or chart outlining the organizational arrangement of the anti-fraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

F. Anti-fraud plans submitted to the Commission shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in any civil or criminal action.

§ 38.2-6012. Injunctions; civil remedies; cease and desist.

A. In addition to the penalties and other enforcement provisions of this chapter, if any person violates this chapter or any regulation implementing this chapter, the Commission may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the Commission determines are necessary to restrain the person committing the violation.

B. Any person damaged by the acts of a person in violation of this chapter may bring a civil action against the person committing the violation in a court of competent jurisdiction.

C. A violation of this chapter attendant to the execution of a viatical settlement agreement renders the viatical settlement purchase agreement voidable and subject to rescission by the viatical settlement purchaser, upon return of the policy received to the viatical settlement provider. Suit for rescission may be brought in a court of competent jurisdiction where the alleged violator resides or has a principal place of business or where the alleged violation occurred.

D. The Commission may issue, in accordance with its rules of practice and procedure, a cease and desist order upon a person who violates any provision of this chapter, any regulation or order adopted by the Commission, or any written agreement entered into with the Commission.

E. When the Commission finds that an activity in violation of this chapter presents an immediate danger to the public that requires an immediate final order, the Commission may issue an emergency cease and desist order reciting with particularity the facts underlying its findings. An emergency cease and desist order shall be effective immediately upon service of a copy of the order on the respondent and shall remain effective for 90 days. If the Commission begins nonemergency cease and desist proceedings, the emergency cease and desist order shall remain effective, absent an order by a court of competent jurisdiction.

F. In addition to the penalties and other enforcement provisions of this chapter, any person who violates this chapter shall be subject to civil penalties of up to \$5,000 per violation. Imposition of civil penalties shall be pursuant to an order of the Commission issued pursuant to § 38.2-218. The Commission's order may require a person found to be in violation of this chapter to make restitution to persons aggrieved by violations of this chapter.

G. Any person convicted by a court of competent jurisdiction of a felony or misdemeanor involving

1043 *fraud, misrepresentation, deceit, false swearing or theft in connection with acts constituting a violation*
1044 *this chapter shall be ordered to pay restitution to persons aggrieved by the violation of this chapter.*
1045 *Restitution shall be ordered in addition to any fine or imprisonment, but not in lieu of a fine or*
1046 *imprisonment.*

1047 *§ 38.2-6013. Unfair trade practices.*

1048 *A violation of this chapter shall be considered an unfair trade practice under Chapter 5 (§ 38.2-500*
1049 *et seq.) of this title and subject to the penalties contained in that chapter.*

1050 *§ 38.2-6014. Commission authority.*

1051 *Pursuant to the authority granted by § 38.2-223, the Commission may promulgate such rules and*
1052 *regulations as it may deem necessary to implement this chapter, including, but not limited to:*

1053 *1. Establishing standards for evaluating reasonableness of payments under viatical settlement*
1054 *contracts for insureds who are terminally or chronically ill. This authority includes, but is not limited*
1055 *to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer,*
1056 *sale, devise or bequest of a benefit under a life insurance policy. Viatical settlement providers shall pay*
1057 *an amount greater than the cash surrender value or accelerated death benefit then available where the*
1058 *insured is not terminally ill or chronically ill as defined herein;*

1059 *2. Establish appropriate licensing requirements, fees and standards for continued licensure for*
1060 *viatical settlement providers and viatical settlement brokers;*

1061 *3. Requiring and setting the amount of any bond or other mechanism for financial accountability for*
1062 *viatical settlement providers and viatical settlement brokers; and*

1063 *4. Adopting rules governing the relationship and responsibilities of both insurers and viatical*
1064 *settlement providers and viatical settlement brokers during the viatication of a life insurance policy or*
1065 *certificate.*

1066 *§ 38.2-6015. Immunity from liability.*

1067 *A. No cause of action shall arise nor shall any liability be imposed against the Commission, the*
1068 *Commissioner of Insurance, or any of the Commission's employees or agents, for any statements made*
1069 *or conduct performed in good faith while carrying out the provisions of this chapter.*

1070 *B. No cause of action shall arise, nor shall any liability be imposed against any person for the act of*
1071 *communicating or delivering information or data to the Commission, if the act of communication or*
1072 *delivery was performed in good faith and without fraudulent intent or the intent to deceive.*

1073 *C. No civil liability shall be imposed on and no cause of action shall arise from a person's*
1074 *furnishing information concerning suspected, anticipated or completed fraudulent viatical settlement acts*
1075 *or suspected or completed fraudulent insurance acts, if the information is provided to or received from:*

1076 *1. The Commission, the Commissioner of Insurance, or any of the Commission's employees or agents,*

1077 *2. Federal, state or local law-enforcement or regulatory officials or their employees, agents or*
1078 *representatives;*

1079 *3. A person involved in the prevention and detection of fraudulent viatical settlement acts or that*
1080 *person's agents, employees or representatives;*

1081 *4. The NAIC, National Association of Securities Dealers, the North American Securities*
1082 *Administrators Association, or their employees, agents or representatives, or other regulatory body*
1083 *overseeing life insurance, viatical settlements, securities or investment fraud;*

1084 *5. The life insurer that issued the life insurance policy covering the life of the insured; or*

1085 *6. Any licensee or person whose acts are governed by this chapter.*

1086 *D. Immunity provided by subsection C shall not apply to statements made with actual malice. In an*
1087 *action brought against a person for filing a report or furnishing other information concerning a*
1088 *fraudulent viatical settlement act or a fraudulent insurance act, the party bringing the action shall plead*
1089 *specifically any allegation that subsection C does not apply because the person filing the report or*
1090 *furnishing the information did so with actual malice.*

1091 *E. This section does not abrogate or modify common law or statutory privileges or immunities*
1092 *enjoyed by a person described in subsections A or C.*

1093 *F. The documents and evidence provided pursuant to this section or obtained by the Commission in*
1094 *an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and*
1095 *confidential and shall not be a public record and shall not be subject to discovery or subpoena in a*
1096 *civil or criminal action.*

1097 *G. Subsection F does not prohibit release by the Commission of documents and evidence obtained in*
1098 *an investigation of suspected or actual fraudulent viatical settlement acts:*

1099 *1. In administrative or judicial proceedings to enforce laws administered by the Commission;*

1100 *2. To federal, state or local law-enforcement or regulatory agencies, to an organization established*
1101 *for the purpose of detecting and preventing fraudulent viatical settlement acts or to the NAIC; or*

1102 *3. At the discretion of the Commission, to a person in the business of viatical settlements that is*
1103 *aggrieved by a fraudulent viatical settlement act.*

1104 *H. Release of documents and evidence under subsection G does not abrogate or modify the privilege*

1105 *granted in subsection F.*

1106 *§ 38.2-6016. Applicability of securities laws.*

1107 *Nothing in this chapter shall preempt or otherwise limit the provisions of the Virginia Securities Act*
1108 *(§ 13.1-501 et seq.), or any regulations, notices, bulletins or other interpretations issued by or through*
1109 *the Commission acting pursuant to the Virginia Securities Act. Compliance with the provisions of this*
1110 *chapter shall not constitute compliance with any applicable provision of the Virginia Securities Act and*
1111 *any amendments thereto or any regulations, notices, bulletins or other interpretations issued by or*
1112 *through the Commission acting pursuant to the Virginia Securities Act.*

1113 **2. That Chapter 57 (§§ 38.2-5700 through 38.2-5707) of Title 38.2 of the Code of Virginia is**
1114 **repealed.**

1115 **3. That a viatical settlement provider or viatical settlement broker who was authorized to transact**
1116 **business as a viatical settlement provider or viatical settlement broker in this Commonwealth prior**
1117 **to the effective date of this act may continue to transact such business following the date this act**
1118 **becomes effective, pending approval or disapproval of such person's application for a license**
1119 **issuable pursuant to the provisions of this act, if such person's application for a license was filed**
1120 **with the Commission not later than 60 days following the date the Commission made available the**
1121 **form of application for such license.**

1122 **4. That the provisions of this act shall become effective on September 1, 2003.**