

(Substitute for
H. B. 2000)

(No. 164)

(Approved December 28, 2005)

AN ACT

To add a new Chapter 43 to the “Insurance Code of Puerto Rico,” Act No. 77 of June 19, 1957, as amended, which shall establish the “Act to Regulate Viatical Settlements, Life Settlements and Other Transactions Regarding Life Insurance Benefits,” in order to define and regulate certain activities related to this business that qualify as an insurance, and submit them to the jurisdiction of the Office of the Insurance Commissioner.

STATEMENT OF MOTIVES

In the early 1990s, a new financial mechanism known as viatical settlement contracts was developed. Originally, these contracts served as instruments to help those terminally ill patients who needed immediate cash to pay for their highly expensive medical treatments. For many people, this mechanism represented hope, considering their unfortunate situation.

As time passed by, the use of this mechanism increased, though it was not regulated. While many people regard it as insurance, many consider it an investment mechanism. This is why many questions arose regarding the government agency that had jurisdiction to regulate and oversee these activities. This situation has caused, among other things, ambiguity in the regulation of the viatical settlement business, lack of tools to adequately oversee it, and duplication of work in some government agencies.

The business of viatical settlements comprises two factors: the one that classifies it as insurance and the other that classifies it as an investment.

In the absence of legislation on the business of viatical settlements to clearly provide on which government agency is in charge of regulating this business, both the Office of the Commissioner of Financial Institutions and the Office of the Insurance Commissioner have had to intervene in consultations, investigations and other issues that have been presented to them regarding this matter. In the case of the Office of the Insurance Commissioner, Article 11.280 of the Insurance Code of Puerto Rico considers and allows the assignment of benefits of an insurance policy. However, the Insurance Code does not provide for the sale arising from this assignment, therefore they are not regulated by the Office of the Insurance Commissioner. In contrast, the Office of the Insurance Commissioner has stated that, even though pure viatical settlements are not directly contemplated in the Insurance Code of Puerto Rico, the disclosure of information with respect to these transactions are regulated by Articles 27.040 and 27.150 of the Insurance Code of Puerto Rico, which prohibit the disclosure of misrepresented, false or misleading information regarding insurance policies and the insurance business. Within this context, this Office issued its letter OCS I-I-177-96. In turn, the Office of Financial Institutions issued Circular Letter Number CIF CC-022 on June 11, 2002, whereby it provided that the Uniform Securities Act of Puerto Rico applies to investments in viatical settlements. In addition, benefit acceleration riders are approved by the Office of the Insurance Commissioner through life insurance policy endorsements.

It is interesting to point out that in the United States of America only 13 states have not passed legislation to regulate the viatical settlement business. Some of the states that have approved it, regard any business related to viatical settlement contracts as insurance, others as an investment and others,

as in Puerto Rico, deem that the business of viatical settlements is a hybrid between insurance and investment. In fact, the National Association of Insurance Commissioners (NAIC, English acronym) promulgated a Model Act, the *Viatical Settlements Act*, upon which the present legislation is based, and which considers the possibility of two types of legislation, as the government deems convenient: 1) one that regulates only the insurance component, and; 2) another that regulates both the insurance and the investment components.

The boom and acceptance that this business has had in other jurisdictions where legislation has been approved to regulate the business of viatical settlements, reflect the consumer's need for this product to be in the market. In addition, the experience of these jurisdictions has clearly demonstrated the need for such business to be regulated adequately in order to guarantee the consumer's right to sell his/her insurance policy at a fair price and to protect the consumer, who often due to a terminal illness is forced to resort to this alternative in order to satisfy his/her economic needs in view of highly expensive medical treatments, from dishonest or fraudulent practices. Taking into consideration that the consumer's protection is marked by a profound public interest, the intention of this Legislature by promulgating this law is to provide adequate regulations for those activities that qualify as insurance in the business of viatical settlements.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.– Short title

This Act shall be known as the “Act to Regulate Viatical Settlements, Life Settlements and Other Transactions Regarding Life Insurance Benefits.”

Section 2.— A new chapter 43 is hereby added to Act No. 77 of June 19, 1957, as amended, known as the “Insurance Code of Puerto Rico,” as follows:

CHAPTER 43.- VIATICAL SETTLEMENTS, LIFE SETTLEMENTS
AND OTHER TRANSACTIONS REGARDING LIFE INSURANCE
BENEFITS

Section 43.010.– Definitions

A. “Fraudulent viatical settlement acts” include:

(1) Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in acts including:

(a) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, viatical settlement investment agent, financing entity, insurer, insurance producer or any other person, false material information, or concealing material information, as part of, or to support a material fact concerning one or more of the following actions:

- (i) An application for the issuance of a viatical settlement contract or insurance policy;
- (ii) The underwriting of a viatical settlement contract or insurance policy;
- (iii) A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy.
- (iv) Premiums paid on an insurance policy.
- (v) Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract, or insurance policy.

- (vi) The reinstatement or conversion of an insurance policy.
 - (vii) The solicitation, offer, effectuation or sale of a viatical settlement contract or insurance policy.
 - (viii) The issuance or disclosure of written evidence of a viatical settlement contract or insurance policy;
 - (ix) A financing transaction.
- (b) Employing any device, scheme, or artifice to defraud related to viaticated policies;
- (2) Committing or allowing its employees or agents to commit the following acts in the furtherance of a fraud or to prevent the detection of a fraud:
- (a) Remove, conceal, alter, destroy or sequester from the Commissioner the assets or records of an authorized person or entity;
 - (b) Misrepresent or conceal the financial condition of the authorized person or entity, financing entity, insurer or other person;
 - (c) Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of viatical settlements; or
 - (d) File with the Commissioner or the chief insurance regulatory officer of another jurisdiction a document containing false information or that otherwise conceals information about a material fact from the commissioner;

- (3) Embezzlement, theft, misappropriation or conversion of monies, funds, premiums, credits or other property of a viatical settlement provider, insurer, insured, viator, insurance policy owner or any other person engaged in the business of viatical settlements or insurance; or
 - (4) Recklessly entering into, brokering, or otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the viator or the viator's agent intended to defraud the policy's issuer. "Recklessly" means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct;
 - (5) Attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.
- B. "Advertisement" 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.
- C. "Commissioner" means the Insurance Commissioner of Puerto Rico.

D. “Viatical settlement purchaser” means a person who gives a sum of money to another person other than the viator, as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy; or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit that will be guaranteed by a bond.

Viatical settlement purchaser does not include:

- (1) A person or entity authorized to do business under this Act ;
- (2) An accredited investor or qualified institutional buyer as defined respectively in the Federal Securities Act of 1933, as amended, and its regulations and the Uniform Securities Act of Puerto Rico;
- (3) A financing entity;
- (4) A special purpose entity; or
- (5) A related provider trust.

E. “Viatical settlement contract” means a written agreement executed in Puerto Rico or in any state of the United States establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator’s assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. A viatical settlement contract also includes a contract for a loan or other financing transaction with a viator secured primarily by an individual or group life insurance policy, (other than a loan by

a life insurance company pursuant to the terms of the life insurance contract), or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement with a viator to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator. For the purposes of this act, viatical settlement contracts shall not be considered as securities nor shall be subject to the provisions of the Uniform Securities Act of Puerto Rico. Those viatical settlement contracts executed outside the jurisdiction of the Commonwealth of Puerto Rico, shall not be regulated by the Office of the Insurance Commissioner of Puerto Rico, yet, they shall be regulated by the Commissioner of the jurisdiction where said contract was executed, thus being established that the its benefits may be sold to purchasers residing in the Commonwealth of Puerto Rico.

- F. “Viatical settlement broker” means a person that on behalf of a viator and for a fee, commission or other valuable consideration offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator’s instructions and in the best interest of the viator. The term does not include an attorney, certified public accountant or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.

- G. “Chronically ill” means:
- (1) A person unable to perform at least two (2) activities of daily living (i.e., eating, toileting, transferring, bathing, dressing or continence);
 - (2) A person requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or
 - (3) A person who has a level of disability similar to that described in Paragraph (1) as determined by the Secretary of Health;
- H. “Terminally ill” means a person who has an illness or sickness that can reasonably be expected to result in death in twenty-four (24) months or less.
- I. “Special purpose entity” means a corporation, partnership, trust, limited liability company or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets for a financing entity or licensed viatical settlement provider.
- J. “Financing entity” means:
- (1) 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:
 - (a) whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies; and

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

(2) Financing entity does not include non-accredited investors or viatical settlement purchasers.

K. “Authorized entity or person” means the licensed viatical settlement provider and the licensed viatical settlement broker.

L. “Viatical settlement trust” means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the Commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.

M. “Business of viatical settlements” means

(1) An activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating or in any other manner, of viatical settlement contracts or purchase agreements, as well as any other

activity defined by the Commissioner as such through regulations.

- N. “Person” means a natural person or a legal entity, including, but not limited to, an individual, partnership, limited liability company, association, trust, or corporation.
- O. “Policy” means an individual or group policy, group certificate, contract or arrangement of life insurance affecting the rights of a resident of the Commonwealth of Puerto Rico or bearing a reasonable relation to the Commonwealth of Puerto Rico, regardless of whether delivered or issued for delivery in Puerto Rico and was underwritten in the United States or in the Commonwealth of Puerto Rico.
- P. “Viaticated policy” means a life insurance policy or certificate that has been acquired by a viatical settlement provider with residence in the United States or in the Commonwealth of Puerto Rico, pursuant to a viatical settlement contract.
- Q. “Viatical settlement provider” means a person, other than a viator, that enters into or effectuates a viatical settlement contract. Viatical settlement provider does not include:
 - (1) A bank, savings bank, savings and loan association, credit union or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;
 - (2) The issuer of a life insurance policy providing accelerated benefits pursuant to the policy;
 - (3) An authorized or eligible insurer that provides stop loss coverage to a viatical settlement provider, purchaser,

financing entity, special purpose entity or related provider trust;

- (4) A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;
- (5) A financing entity;
- (6) A special purpose entity;
- (7) A related provider trust; or
- (8) A viatical settlement purchaser
- (9) An accredited investor or qualified institutional buyer as defined respectively in the Federal Securities Act of 1933, as amended, and its regulations and the Uniform Securities Act of Puerto Rico, who purchases a viaticated policy from a viatical settlement provider.

R. “Viator” means the owner of a life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract. For the purposes of this Act, a viator shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. “Viator” does not include:

- (1) A person or entity authorized to do business under this Act;
- (2) An accredited investor or qualified institutional buyer as defined respectively in the Federal Securities Act of 1933, as amended, and its regulations and the Uniform Securities Act of Puerto Rico;

- (3) A financing entity;
 - (4) A special purpose entity; or
 - (5) A related provider trust.
- S. “General Agent” means an agent with a valid license issued by the Office of the Insurance Commissioner of Puerto Rico to sell health insurance policies, and who has been authorized by the Viatical Settlement Provider to conduct all related transactions between the viatical settlement purchaser and the provider.

Section 43.020.– License Requirements

- A. A person shall not operate regarding viators residing in Puerto Rico as a viatical settlement provider or viatical settlement broker without first obtaining a license from the Insurance Commissioner of Puerto Rico. If there is more than one viator on a single policy and the viators are residents of different jurisdictions, the viatical settlement shall be governed by the law of the jurisdiction in which the viator having the largest percentage ownership resides. Should the viators hold equal ownership, the viatical settlement shall be governed by the law of jurisdiction of residence of one viator agreed upon in writing by all viators.

To obtain a license, the viatical settlement broker shall comply with the provisions of Chapter 9 of the Insurance Code of Puerto Rico, with the exception of the preceding Section 3 regarding insurance broker licenses.

- B. Application for a viatical settlement broker license and for authorization as a viatical settlement investment provider shall be made to the Commissioner by the applicant on a form prescribed by the Commissioner, and these applications shall be accompanied by

the fees specified in Section 7.010(1) of the Insurance Code of Puerto Rico and Rule 77 of its Regulations. The viatical settlement broker shall pay the same amount established by the referred legal provisions for corporate brokers whose production does not exceed one million dollars. The viatical settlement provider shall pay the same amount established by the referred legal provisions for corporate brokers whose production exceeds one million dollars. Should the viator reside in another jurisdiction, the law of the jurisdiction of residence of such viator shall govern the viatical settlement contract.

- C. Licenses may be renewed from year to year on the anniversary date upon payment of the annual renewal fees specified in the preceding Section. Viatical settlement brokers shall renew their licenses in a series of steps pursuant to the rules established by the Commissioner for the renewal of the insurance broker license, which shall be renewed simultaneously. Failure to pay the fees by the renewal date results in expiration of the license.
- D. The applicant shall provide information on forms required by the Commissioner by means of regulation or regulatory document. The Commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members and employees, and the Commissioner may, in the exercise of the Commissioner's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant's conduct meets the standards of this Act.

- E. A license issued to a provider authorizes all partners, officers, members and designated employees to act as service agreement providers, as applicable, under the license, and all those persons shall be named in the application and any supplements to the application.
- F. Upon the filing of an application and the payment of the license fee, the Commissioner shall make an investigation of each applicant and issue a license if the Commissioner finds that the applicant:
 - (1) Intends to act in good faith in the performance of activities related to the license applied for;
 - (2) Has a good business reputation and has had experience, training or education so as to be qualified in the business for which the license is applied for;
 - (3) If a viatical settlement provider, has provided a detailed plan of operation;
 - (4) If a legal entity, provides a certificate of good standing from the state of its domicile; and
 - (5) If a viatical settlement provider or viatical settlement broker, has provided an anti-fraud plan that meets the requirements of Section 12.
 - (6) If a viatical settlement broker, has a valid life insurance and disability license;
 - (7) Had paid the corresponding bond.
- G. The Commissioner shall not issue a license to a nonresident applicant, unless a written designation of an agent for service of process is filed and maintained with the Office of the Commissioner or the applicant has filed with the Commissioner a written

irrevocable consent that any action against the applicant may be commenced against the applicant by service of process through the Commissioner pursuant to Section 9.280. The nonresident broker shall also comply with the provisions of Sections 9.260 and 9.270 of the Insurance Code of Puerto Rico.

- H. A viatical settlement agreement provider or viatical settlement agreement broker shall provide to the Commissioner new or revised information about officers, ten percent (10%) or more stockholders, partners, directors, members or designated employees within thirty (30) days of the change or of the information being requested.

Section 43.030.– License Revocation and Denial

- A. The Commissioner may refuse to issue, suspend, revoke or refuse to renew the license of a viatical settlement provider, or viatical settlement broker if the Commissioner finds that the authorized person or entity:

- (1) Made any material misrepresentation of an essential fact in the application for the license;
- (2) The authorized person or entity or any officer, partner, member or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent;
- (3) The viatical settlement provider demonstrates a pattern of unreasonable payments to viators;
- (4) The authorized person or entity, or its officer, partner, member or key management personnel has been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or to a

misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction be final and unappealable.

- (5) The viatical settlement provider had entered into any viatical settlement contract that has not been approved pursuant to this Act;
 - (6) The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;
 - (7) The broker or the provider no longer meet the requirements for initial licensure or its authorization;
 - (8) The viatical settlement provider has assigned, transferred or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, viatical settlement purchaser, an accredited investor or qualified institutional buyer as defined respectively in the Federal Securities Act of 1933, as amended, its Regulations and the Uniform Securities Act of Puerto Rico, a financing entity, special purpose entity, or related provider trust; or
 - (9) The authorized person or entity, its officer, partner, member or key management personnel have violated any provision of this Act.
- B. If the commissioner denies a license application or suspends, revokes or refuses to renew the license of a viatical settlement provider or a viatical settlement broker, the Commissioner shall conduct a hearing in accordance with the provisions of the Insurance Code of Puerto Rico, its Regulations and the Uniform Administrative Procedures Act of Puerto Rico.

Section 32.040.— Approval of Viatical Settlement Contracts and Disclosure Statements

A person shall not use a viatical settlement contract executed in the Commonwealth of Puerto Rico or provide to a viator a disclosure statement form in Puerto Rico unless they have been filed with and approved by the Commissioner. The Commissioner shall disapprove a viatical settlement contract form or disclosure statement form if, in the Commissioner's opinion, the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. At the Commissioner's discretion, the Commissioner may require, through Regulations, the submission of advertising material regarding the viatical settlements.

Section 43.050.— Reporting Requirements and Privacy

- A. Every authorized person or entity shall file with the Commissioner on or before March 1 of each year an annual statement containing such information as the Commissioner may prescribe by regulation.
- B. 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 execute a viatical settlement contract 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 Commissioner or any other governmental officer or agency or pursuant to the provisions of Section 43.110 (C) of this Act;
- (3) Is a term of or condition to the transfer of a policy by one 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.

Section 43.060.– Examinations or Investigations

A. Authority, Scope and Scheduling of Examinations

- (1) The Commissioner may conduct an examination under this Act of an authorized person or entity as often as the Commissioner in his or her sole discretion deems appropriate.
- (2) For purposes of completing an examination of an authorized person or entity under this Act, the commissioner 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 Commissioner, necessary or material to the examination of the authorized person or entity.
- (3) In lieu of an examination of any foreign or alien person or entity authorized in Puerto Rico under this Act, the

Commissioner may, at her/his discretion, accept an examination report on the authorized person or entity as prepared by the Commissioner for the state of domicile or port-of-entry state of said authorized person or entity.

B. Record Retention Requirements

- (1) A person required to be licensed by this Act shall retain for five (5) years copies of the following documents:
 - (a) Proposed, offered or executed contracts, purchase agreements, underwriting documents, policy forms, and applications from the date of the proposal, offer or execution of the contract or purchase agreement, whichever is later;
 - (b) All checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of funds from the date of the transaction; and
 - (c) All other records and documents related to the requirements of this Act.
- (2) This Section does not waive a person's obligation to produce these documents to the Commissioner after the retention period has expired if the person has retained the documents.
- (3) Records required to be retained by this Section must be legible and complete and may be retained in paper, photograph, microprocessor, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

C. Examination Process

- (1) Upon determining that an examination should be conducted, the Commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the *Examiners' Handbook* adopted by the National Association of Insurance Commissioners (NAIC). The examiners may also employ such other guidelines or procedures, as the Commissioner may deem appropriate.
- (2) Every authorized person or entity, or person from whom information is sought, its officers, directors and agents shall provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets and computer or other recordings relating to the property, assets, business and affairs of the authorized person or entity being examined. The officers, directors, employees and agents of the authorized person or entity shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of an authorized person or entity, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the Commissioner shall be grounds for suspension or refusal of, or non renewal of any license or authority held by the authorized person or entity to engage in the viatical settlement business or other business subject to the Commissioner's jurisdiction. Any proceedings

for suspension, revocation or refusal of any license or authority shall be conducted pursuant to the Insurance Code of Puerto Rico and the Uniform Administrative Procedures Act of Puerto Rico.

- (3) The Commissioner shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the Commissioner may petition a court of competent jurisdiction, and upon proper showing, the Court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.
- (4) When making an examination under this Act, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the reasonable cost of which shall be borne by the authorized person or entity that is the subject of the examination.
- (5) Nothing contained in this Act shall be construed to limit the Commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the Insurance Code of Puerto Rico. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or administrative action.
- (6) Nothing contained in this Act shall be construed to limit the Commissioner's authority to use and, if appropriate, to make

public any final or preliminary examination report, any examiner or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or administrative action which the Commissioner may, in his or her sole discretion, deem appropriate.

D. Examination Reports

- (1) Examination reports shall be comprised of only facts appearing upon the books, records or other documents of the authorized person or entity, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts. These reports shall never disclose the violators' confidential financial, medical or personal information.
- (2) The Commissioner shall transmit the report to the authorized person or entity investigated or examined, together with a notice that shall afford the authorized person or entity a reasonable opportunity of not more than twenty (20) days to make a written comment or rebuttal with respect to any matters contained in the examination report.
- (3) The commissioner may initiate any proceedings or actions provided by law, if at his/her discretion the Commissioner determines that it is appropriate as a result of an investigation or examination.

E. Confidentiality of Examination Information

- (1) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the Commissioner, unless required by law.
- (2) Except as otherwise provided in this Act, all working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the Commissioner or any other person in the course of an investigation or examination made under this Act, or in the course of analysis or investigation by the Commissioner of the financial condition or market conduct of an authorized person or entity shall be confidential by law and therefore privileged, and shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action, unless otherwise ordered by the Court. The Commissioner is authorized to use the documents, materials or other information regarding any administrative or legal action brought as part of the Commissioner's official duties.
- (3) Documents, materials or other information, including, but not limited to, all working papers, and copies thereof, in the possession or control of the NAIC and its affiliates and subsidiaries shall be confidential by law and therefore privileged information, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if they are:
 - (a) Created, produced and/or obtained by or disclosed to the NAIC and its affiliates and subsidiaries in the course of assisting an investigation or examination made under this

Act, or assisting the Commissioner in the analysis or investigation of the financial condition or market conduct of an authorized person or entity; or

(b) Disclosed to the NAIC and its affiliates and subsidiaries under Subsection E (4) by the Commissioner.

(c) For the purposes of Subsections E (2) and (3), “Act” includes the law of another state or jurisdiction that is substantially similar to this Act.

(4) Neither the Commissioner nor any person that received the documents, material or other information while acting under the authority of the commissioner, 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 pursuant to Subsection E(1) of this Section, unless otherwise ordered by the Court.

(5) In the performance of his/her duties the Commissioner:

(a) May share documents, materials or other information, including the confidential and/or privileged documents, materials or information pursuant to Subsection E(1) of this Section, with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that said agency, organization or authority agrees to maintain the confidentiality and privileged status of the document, material, 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 the understanding that they are confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and
 - (c) May enter into agreements governing sharing and use of information consistent with this subsection.
- (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 commissioner under this Section or as a result of sharing as authorized in Subsection 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 apply and be enforced in any legal or administrative procedure conducted in Puerto Rico.
- (8) Nothing contained in this Act shall prevent or be construed as prohibiting the commissioner from disclosing the content of an 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 Puerto Rico

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 Act.

F. Conflict of Interests

- (1) An examiner may not be appointed by the Commissioner 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 Act. This Section shall not be construed to automatically preclude an examiner from being:
 - (a) A viator;
 - (b) An insured in a viaticated insurance policy; or
 - (c) A beneficiary in an insurance policy that is proposed to be viaticated.
- (2) Notwithstanding the requirements of this clause, the Commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this Act. These professionals shall never be retained at the same time by the Commissioner or by the person under investigation.

G. Immunity from Liability

- (1) No cause of action shall arise nor shall any liability be imposed against the Commissioner, the Commissioner's authorized

representatives or any examiner appointed by the Commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this Section.

- (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 Commissioner or the Commissioner's authorized representative or examiner pursuant to an examination made under this Act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This paragraph does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in Paragraph (1).
- (3) A person identified in Paragraphs (1) or (2) shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant damage arising out of activities in carrying out the provisions of this Act and the party bringing the action was not substantially justified in doing so. For purposes of this subsection a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

H. Investigative Authority of the Commissioner

The commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.

Section 43.070.— Disclosures

- A. With each application for a viatical settlement contract, a viatical settlement provider or viatical settlement broker shall provide the

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

1. There are possible alternatives to viatical settlement contracts including any accelerated death benefits or policy loans offered under the viator's life insurance policy.
2. Some or all of the proceeds of the viatical settlement contract may be taxable under state income tax and other state or federal taxes, and assistance should be sought from a professional tax advisor.
3. Proceeds of the viatical settlement contract could be subject to the claims of creditors.
4. Receipt of the proceeds of a viatical settlement contract may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.
5. The viator has the right to rescind a viatical settlement contract for fifteen (15) calendar days after the receipt of the viatical settlement contract proceeds by the viator, as provided in Section 43.080(C). If the insured dies during the rescission period, the settlement contract shall be deemed to have been rescinded, subject to repayment of all viatical settlement contract proceeds and any premiums, loans and loan interest to the viatical settlement provider or purchaser.

6. Funds will be sent to the viator within three (3) business days after the viatical settlement provider has received the insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.
7. Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator. Assistance should be sought from a financial adviser.
8. Disclosure to a viator shall include distribution of a brochure describing the process of viatical settlement contracts.
9. The disclosure document shall contain the following language:
"All medical, financial or personal information requested or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to execute the viatical settlement contract between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."
10. The insured may be contacted by either the viatical settlement provider or broker or its authorized representative for the purpose of determining the insured's health status. This contact

is limited to once every three (3) months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less.

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

1. The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated.
2. The document shall include the name, address and telephone number of the viatical settlement provider.
3. A viatical settlement broker shall disclose to a prospective viator the amount and method of calculating the broker's compensation. The term "compensation" includes anything of value paid or given to a viatical settlement broker for the placement of a policy.
4. If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement.

5. The dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. If known, the viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the viatical settlement provider's interest in those benefits.
 6. The name, business address, and telephone number of the independent third party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.
- C. If the provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate the change in ownership or beneficiary to the insured within twenty (20) days after the change.

Section 43.080.— General Rules

- A. 1. A viatical settlement provider entering into a viatical settlement contract shall 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; and
 - b) A document in which the insured consents to the release of his or her medical records to a viatical settlement provider, viatical settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.

2. Within twenty (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 Paragraph (3).
3. The viatical settlement provider shall deliver a copy of the medical release required under Paragraph (1)(b), a copy of the viator's application for the viatical settlement contract, the notice required under Paragraph (2) and a request for verification, unless other standards are developed by the Commissioner.
4. The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider within thirty (30) calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract.
5. Prior to or at the time of execution of the viatical settlement contract, the viatical settlement contract provider under the jurisdiction of the Commonwealth of Puerto Rico, shall obtain a sworn statement 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 or she has a full and complete understanding of the benefits

of the life insurance policy, acknowledges that he or she is entering into the viatical settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, 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.

6. If a viatical settlement broker performs any of these activities required of the viatical settlement provider, the provider is deemed to have fulfilled the requirements of this Section.
- B. All medical information solicited or obtained by any authorized person or entity shall be subject to the applicable provisions of state law relating to confidentiality of medical information.
 - C. All viatical settlement contracts executed in the Commonwealth of Puerto Rico shall provide the viator with an unconditional right to rescind the contract for at least fifteen (15) calendar days from the receipt of the viatical settlement contract proceeds. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the provider of viatical settlements subscribed in the jurisdiction of the Commonwealth of Puerto Rico, of all viatical settlement proceeds, and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or purchaser.
 - D. The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment or change in beneficiary directly to the independent escrow agent. Within three (3) business days after the date the

escrow agent receives the document (or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the provider), the provider shall pay or transfer the proceeds of the viatical settlement contract executed in the jurisdiction of the Commonwealth of Puerto Rico, into an escrow or trust account maintained in a state or federally-chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the viatical settlement provider or related provider trust. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator.

- E. Failure to tender consideration to the viator for the viatical settlement contract within the time disclosed pursuant to Section 8A(6) renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.
- F. Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement contract is effectuated, shall only be made by the viatical settlement provider or broker licensed in Puerto Rico or its authorized representatives and shall be limited to once every three (3) months for insureds with a life

expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement contract providers and viatical settlement contract brokers shall be responsible for the actions of their authorized representatives.

Section 43.090.– Prohibited Practices

It is a violation of this Act for any person to enter into a viatical settlement contract within a two-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:

- A. The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least twenty-four (24) months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;
- B. The viator is a charitable organization exempt from taxation.
- C. The viator is not a natural person.
- D. (1) The viator submits independent evidence to the viatical settlement contract provider that one or more of the following conditions have been met within the two-year period:

- a) The viator or insured is terminally or chronically ill;
- b) The viator's spouse dies;
- c) The viator divorces his or her spouse;
- d) The viator retires from full-time employment;
- e) The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment;
- f) The viator was the insured's employer at the time the policy or certificate was issued and the employment relationship terminated;
- g) A final and unappealable order is entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee or liquidator to all or a substantial part of the viator's assets;
- 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 or her ownership interests in a closely held corporation.

The certification required under subsections (A) to (D) shall be sworn and signed before a notary public.

- (2) Copies of the independent evidence described in Paragraph (1) of this subsection and documents required by Section 43.080A shall be submitted to the insurer when the viatical settlement contract provider submits a request to the insurer for

verification of coverage. The copies shall be accompanied by a sworn statement signed before a notary public by which the viatical settlement contract provider states that the copies are true and correct copies of the documents received by the viatical settlement provider.

- E. If the viatical settlement contract provider submits to the insurer a copy of the owner or insured's certification described in Subsection D when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this Section and the insurer shall timely respond to the request.

Section 43.100.– Advertising

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

- A. This Section shall apply to any advertising of viatical settlement contracts or related products or services intended for dissemination in Puerto Rico, including Internet advertising viewed by persons

located in Puerto Rico. 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. Every person or entity authorized to negotiate viatical settlement contracts 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 person or entity authorized to negotiate viatical settlements, as well as of 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 authorized person or entity to negotiate viatical settlement contracts to disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the authorized person or entity.
- 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, product or service 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 Commissioner 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 of coverage, premium payable, or state or federal tax consequence. The fact that the viatical settlement contract offered is made available for inspection prior to closing of the sale, or an offer is made to refund the payment if the viator is not satisfied or that the viatical settlement 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 an insurer 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; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators. In using testimonials, appraisals or analysis, the person or entity authorized to negotiate viatical settlement contracts 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 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 person or entity authorized to negotiate viatical settlement contracts is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the person or entity authorized to negotiate viatical settlement contracts, or receives any payment or other consideration

from the person or entity authorized to negotiate viatical settlement contracts for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

- (c) When an endorsement refers to benefits received under a viatical settlement contract, all pertinent information shall be retained for a period of five (5) years after its use.
- E. An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.
- F. An advertisement shall not disparage insurers, viatical settlement contract providers, viatical settlement contract brokers, viatical settlement contract investment agents, insurance producers, policies, services or methods of marketing.
- G. The name of the person or entity authorized to negotiate viatical settlement contracts shall be clearly identified in all advertisements about the authorized person or entity or its viatical settlement, contract products or services, and if any specific viatical settlement contract is advertised, the viatical settlement contract shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.
- H. An advertisement shall not use a trade name, group designation, name of the parent company of a person or entity authorized to negotiate viatical settlement contracts, name of a particular division of said authorized person or entity, service mark, slogan, symbol or other device or reference without disclosing the name of said

authorized person or entity, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the person or entity authorized to negotiate viatical settlement contracts, or to create the impression that a company other than said authorized person or entity would have any responsibility for the financial obligation under a viatical settlement contract.

- I. An advertisement shall not use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.
- J. An advertisement may state that the person or entity authorized to negotiate viatical settlement contracts is licensed in Puerto Rico or in any other jurisdiction the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that competing authorized persons or entities may not be so licensed. The advertisement may ask the audience to consult the website of the authorized person or entity, or contact the department of insurance to find out if said jurisdiction requires licensing and, if so, whether the viatical settlement contract provider or broker is licensed.
- K. An advertisement shall not create the impression that the viatical settlement contract provider, its financial condition or status, the payment of its claims or the merits, desirability, or advisability of its viatical settlement contracts are recommended or endorsed by any government entity.

- L. The name of the actual authorized person or entity shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the authorized person or entity, service mark, slogan, symbol or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the authorized person or entity or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the authorized person or entity.
- M. An advertisement shall not directly or indirectly create the impression that any division or agency of the Commonwealth of Puerto Rico or of the United States government endorses, approves or favors:
- (1) Any person or entity authorized to negotiate viatical settlement contracts or its business practices or methods of operation; or
 - (2) The merits, desirability or advisability of any viatical settlement contract; or
 - (3) Any viatical settlement contract; or
 - (4) Any life insurance policy or life insurance insurer.
- N. If the advertisement emphasizes the speed with which the viatication process will occur, the advertising must disclose the average time frame from completed application to the date of offer, and from acceptance of the offer to receipt of the funds by the viator.
- O. If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the authorized person or entity during the past six (6) months.

Section 43.110.– Fraud Prevention and Control

A. Fraudulent viatical settlement contract acts or practices, interference and participation of convicted felons are hereby prohibited.

1. A person shall not commit a fraudulent viatical settlement act.
2. A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this Act or investigations of suspected or actual violations of this Act.
3. A person in the business of viatical settlement contracts shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlement contracts.

B. Fraud Warning

1. Viatical settlements contracts and applications for viatical settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement: “Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and imprisonment.”
2. The lack of a statement as required in Paragraph (1) of this subsection does not constitute a defense in any prosecution for a fraudulent viatical settlement contract act.

C. Mandatory Reporting of Fraudulent Viatical Settlement Contract Acts

1. Any person engaged in the business of viatical settlement contracts having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be or has been

committed shall provide to the Commissioner the information required by, and in a manner prescribed by the Commissioner.

2. Any 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 Commissioner the information required by, and in a manner prescribed by the Commissioner.

D. Immunity

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

- a) The Commissioner or the Commissioner's employees, agents or representatives;
- b) Federal, state or local law enforcement or regulatory officials or their employees, agents or representatives;
- c) Any person involved in the prevention and detection of fraudulent viatical settlement acts or that person's agents, employees or representatives;
- d) The National Association of Insurance Commissioners (NAIC, English acronym), National Association of Securities Dealers (NASD, English acronym), the North American Securities Administrators Association (NASAA, English acronym), or their employees, agents or representatives, or other regulatory agency overseeing life insurance, viatical settlements, securities or investment fraud; or

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

2. Paragraph (1) of this subsection shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that Paragraph (1) does not apply because the person filing the report or furnishing the information did so with actual malice.

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

4. This section does not repeal or modify the privileges or immunities enjoyed by a person described in Paragraph (1).

E. Confidentiality

1. The documents and evidence provided pursuant to Subsection D of this Section or obtained by the Commissioner in an investigation of fraudulent viatical settlement acts shall be privileged and confidential, and shall not be a public record nor be subject to discovery or subpoena in a civil or criminal action.

2. Paragraph (1) of this subsection does not prohibit release by the Commissioner of documents and evidence obtained in an investigation of viatical settlement acts, under the following circumstances:
 - a) In administrative or judicial proceedings to enforce laws administered by the Commissioner;
 - b) To federal, state or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts or to the NAIC; or
 - c) At the discretion of the Commissioner, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act.
 3. Disclosure of documents and evidence under Paragraph (2) of this subsection does not repeal or modify the privilege granted in Paragraph (1).
- F. Other Law Enforcement or Regulatory Authority.

This Act 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 Office of the Insurance Commissioner; or
3. Limit the powers granted elsewhere by the laws of the Commonwealth of Puerto Rico to the Insurance Commissioner or

the Antifraud Unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

G. Antifraud Program

Viatical settlement contract providers and brokers shall implement an Antifraud Program to detect, prosecute and prevent fraudulent viatical settlement acts. At the discretion of the Commissioner and upon request of an authorized person or entity, the Commissioner may order such modifications of the following modifications, as necessary, to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this Section. The Antifraud Program shall include:

1. The appointment of fraud investigators, who may be viatical settlement contract provider or viatical settlement contract broker employees or independent contractors; and
2. The establishment of an antifraud plan, which shall be submitted to the Commissioner. The antifraud plan 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 Commissioner;
 - c) A description of the plan for antifraud education and training of its personnel; and

- d) A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts, and resolve material inconsistencies between medical records and insurance applications.
3. Antifraud plans submitted to the Commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

Section 43.120.– Injunctions; Cease and Desist; Other Civil Remedies

- A. In addition to the penalties and other enforcement provisions of this Act, if any person violates this Act or any regulation pursuant to this Act, the Commissioner may seek an injunction in a court of First Instance and may apply for temporary and permanent orders that the Commissioner determines are necessary to restrain the person from committing the violation to this Act.
- B. Any person damaged by the acts of a person in violation of this Act may bring a civil action against the person committing the violation in a court of competent jurisdiction.
- C. The Commissioner may issue, in accordance with the Insurance Code of Puerto Rico and the Uniform Administrative Procedures Act of Puerto Rico, a cease and desist order upon a person that violates any provision of this Act or its Regulations, or of any order adopted by the Commissioner, or any written agreement entered into with the Commissioner.
- D. When the Commissioner finds that an activity in violation of this Act presents an immediate danger to the public that requires an

immediate final order, the Commissioner may issue an emergency cease and desist order itemizing in particular the facts underlying the same. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for ninety (90) days. If the Commissioner initiates a permanent cease and desist proceedings, the emergency cease and desist order shall remain effect, in the absence of an order to the contrary by a court of competent jurisdiction pursuant to the Uniform Administrative Procedures Act of Puerto Rico.

- E. Any person who violates any provision of this Act is subject to civil penalties provided in Chapter 27 of the Insurance Code of Puerto Rico. In addition, any person who violates any provision of this Act shall be ordered to pay restitution to the persons aggrieved by the violation of this Act.
- F. In addition to the penalties provided in this Act, any person who violates any provision of this Act may be convicted of misappropriation, fraud or any other applicable crime, pursuant to the Criminal Code of Puerto Rico. The conviction does not mean that restitution shall not be paid to the aggrieved persons.

Section 43.130.– Unfair Trade Practices and Fraud

A violation of this Act shall be considered an unfair trade practice and subject to the penalties provided in Chapter 27 of the Insurance Code of Puerto Rico.

Section 43.140.– Authority to Promulgate Regulations

The Commissioner shall have the authority to:

- A. Promulgate regulations within 180 days following the approval of this Act;

- B. Establish standards for evaluating reasonableness of payments under viatical settlement contracts for persons who are terminally or chronically ill. This authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise or bequest of a benefit under a life insurance policy;
- C. Establish appropriate licensing requirements, fees and standards to obtain and renew a license for viatical settlement contract providers and brokers.
- D. Require a bond or other mechanism for accountability of possible illegal acts to viatical settlement contract providers and brokers; and
- E. Adopt rules governing the relationship and responsibilities of both insurers and viatical settlement contract providers and brokers during the viatication of a life insurance policy or certificate.

Section 3.– Jurisdiction

The Office of the Insurance Commissioner of Puerto Rico shall have exclusive jurisdiction to oversee viatical contract transactions and all of their implications; provided the insurance policies sold to viatical settlement contract purchasers are guaranteed by a bond that would respond to viatical settlement contract purchasers for the fixed benefits they are entitled to in case the viator outlives the term established in the viatical settlement contract.

Section 4.– Severability

Should any part of this Act or its applicability be judicially declared unconstitutional or null, said decision shall not affect nor invalidate any of the remaining provisions, which shall remain in full force and effect.

Section 5.– Transitory Provisions

Viatical settlement providers and viatical settlement brokers may carry out the operations authorized in this Act, pending approval or disapproval of their application for a license, as long as said application is filed with the Commissioner by January 15, 2006 and the sale and offering to the purchaser is made by a licensed general agent. The Commissioner, if he/she deems necessary, may establish regulations to govern the proceedings set forth in this Act, without this preventing the implementation thereof.

Section 6.– Effectiveness

This Act shall take effect ninety (90) days after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 164 (Substitute for H.B. 2000.) of the 2nd Session of the 15th Legislature of Puerto Rico:

AN ACT to add a new Chapter 43 to the “Insurance Code of Puerto Rico,” Act No. 77 of June 19, 1957, as amended, which shall establish the “Act to Regulate Viatical Settlements, Life Settlements and Other Transactions Regarding Life Insurance Benefits,” in order to define and regulate certain activities related to this business that qualify as an insurance, and submit them to the jurisdiction of the Office of the Insurance Commissioner,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 3rd of October of 2006.

Francisco J. Domenech
Director