

(H. B. 2402)
(Reconsidered)

(No. 147)

(Approved August 4, 2006)

AN ACT

To amend paragraphs A, D, E, J, M, P, Q, R, to add a new paragraph C, to add a new paragraph G, to eliminate paragraph S and to renumber paragraphs B, C, D, F, H, I, J, K, L, M, N, O, P, Q and R as D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S and T, respectively, of Article 43.010; to amend paragraphs A, E, F, G, and H, to add a new paragraph B, to add a new paragraph C, to amend current paragraph B and renumber it as D, and to renumber paragraphs C, D, E, F, G and H as paragraphs E, F, G, H and J, respectively, of Article 43.020; to amend paragraph A of Article 43.030; to amend Article 43.040, 43.070, 43.080, 43.090, 43.100, 43.110 and 43.140; and to add a new Article 43.150, to Act No. 77 of June 19, 1957, as amended; to amend Sections 3 and 6 to regulate the sale of and investments in viatical settlements, to create the figure of the viatical settlement investment agent, to clarify the jurisdiction of the Office of the Insurance Commissioner over the viatical settlements business, to correct errors in the wording, to postpone the effectiveness of Act No. 164 of December 28, 2005; and for other purposes.

STATEMENT OF MOTIVES

The purpose of Act No. 164 of December 28, 2005, is to add a new Chapter 43 to the Insurance Code of Puerto Rico in order to define and regulate certain activities of the viatical settlement business that qualify as insurance and submit them to the jurisdiction of the Office of the Insurance Commissioner (“OIC”).

As explained in the Statement of Motives of Act No. 164, the viatical settlement business comprises two factors: the first one is the transfer by the viator or owner of a life insurance policy of part or the total death benefits under said policy, in exchange for the payment of a compensation under a viatical settlement

between the viator and the viatical settlement provider. The second is the acquisition of the referred interest, or part thereof, by viatical settlement purchasers, by means of investments in viatical settlements.

The Statement of Motives of Act No. 164 also emphasizes the fact that under the Viatical Settlements Model Act, a model statute promulgated by the National Association of Insurance Commissioners (NAIC), upon which Act No. 164 is mainly based, contemplates two types of legislation, as the state deems it convenient: one that regulates only the aspect of the sale by the viator of the benefits of a life insurance policy, and another that regulates both, the aspect of the sale by the viator and the investment by the viatical settlement purchasers.

Section 3 of Act No. 164 clearly establishes and directs that the Office of the Insurance Commissioner shall have exclusive jurisdiction to regulate the viatical settlement business guaranteed by a surety bond. For such purposes, said Office must have effective tools for the regulation of both the investment and the insurance aspects of the viatical settlement business guaranteed by a surety bond. For such purposes, the interest of this Legislature is to specify the parameters that shall define the investment aspect of the viatical settlement business, and to delegate in the Office of the Insurance Commissioner a broad spectrum of powers for the said Office to regulate the viatical settlement business in Puerto Rico in an efficient and integrated manner. For such purposes, said Office must have effective tools to regulate both, investment and insurance aspects of the viatical settlement business. Therefore, this Legislature is interested in specifying the parameters that shall define the investment aspect of the viatical settlements business, clarifying that the Office of the Insurance Commissioner shall have exclusive jurisdiction over investments in viatical settlements by means of surety bonds, that Circular Letter No. CIF CC-022 of June 11, 2002, shall not apply to investments in viatical settlements guaranteed by surety bonds and to delegate upon the Office of the

Insurance Commissioner a broad spectrum of powers, the Office to regulate the viatical settlements business in Puerto Rico in an efficient and integrated manner.

In acknowledgement thereof, Section 43.130 of Section 2 of said Act bestows upon the OIC the authority to promulgate the necessary regulations within 180 days following the approval of said Act. On the other hand, Section 6 provides that Act No. 164 shall take effect 90 days after its approval. For such purpose, the provisions established in Section 6 clarify that the Commissioner shall draft regulations, if he/she deems it necessary, to govern the procedures set forth by this Act, without it being an obstacle to the implementation thereof.

Considering the implicit vulnerability of the viatical settlement business, this Legislature deems it convenient to postpone the date of effectiveness of Act No. 164 so that it coincides with the promulgation of the regulations necessary to carry out the purposes pursued by Act No. 164. Thus, the citizens, the insurance industry, and the participants, as well as the transactions made as a part of the viatical settlement business shall be protected by appropriate rules that facilitate and clarify the scope of the rights, duties and responsibilities of each of the participants in this business. The execution of viatical settlement business transactions prior to the application of the provisions on this business creates a disruption between the legal business and the rules that govern the same that in no way contributes toward consumer protection.

Act No. 164 provides for the OIC to issue licenses, examine and regulate new figures and transactions. Appropriate regulations require the OIC to be trained, as well as the implementation of new structures and internal and external processes.

Based upon all of the above, and with the purpose of implementing the provisions set forth in Act No. 164, of December 28, 2005, with respect to the adoption of a new Chapter 43 of the Insurance Code of Puerto Rico in an orderly and adequate manner, the intention of this Legislature is to clarify the details

established in this Act and postpones the effectiveness of Act No. 164 until 180 days after its initial approval. This measure prevents a scenario in which the rules that govern the viatical settlement business are not formally defined and implemented. Moreover, the OIC is hereby granted a reasonable term to perform the necessary administrative changes.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.— Paragraph A of Article 43.010 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“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 profit, 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, in support of or concerning a fact material to one or more of the following:

- (i) An application for the issuance of a viatical settlement or insurance policy.
- (ii) The underwriting of a viatical settlement or insurance policy.
- (iii) A claim for payment or benefit pursuant to a viatical settlement 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 or insurance policy.
 - (vi) The reinstatement or conversion of an insurance policy.
 - (vii) The solicitation, offer, execution or sale of a viatical settlement or insurance policy.
 - (viii) The issuance or disclosure of written evidence of a viatical settlement or insurance policy.
 - (ix) A financing transaction.
- (b) Employing any device, scheme, or artifice to defraud in relation to a viaticated insurance policy;
- (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 viatical settlement business or insurance; or
- (4) Recklessly entering into, brokering, or otherwise dealing in a viatical settlement, 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."

Section 2.– Article 43.010 of Act No. 77 of June 19, 1957, as amended, is hereby amended to add a new paragraph C to read as follows:

“C. ‘Viatical settlement investment agent’ means a person appointed or designated by a viatical settlement provider, who holds a license as a life insurance producer issued by the Insurance Commissioner in accordance with Chapter 9 of this Code, who solicits or expedites the financing for the purchase of viatical settlement by the viatical settlement purchaser, and who represents the viatical settlement provider.

- (1) A viatical settlement investment agent shall have no direct contact with the viator, nor shall he/she know the identity of the viator.

- (2) A viatical settlement investment agent represents the viatical settlement provider as his/her designated or retained agent.
- (3) The acts of the viatical settlement investment agent in the sale or transfer of viatical settlements shall not constitute the purchase, sale or transfer of securities, as said term is defined in Section 401(1) of Act No. 60 of June 18, 1963, as amended, known as the Uniform Securities Act of Puerto Rico.”

Section 3.— Paragraph D of Article 43.010 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“F. “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 or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement, for the purpose of deriving an economic benefit that will be guaranteed by a bond. Viatical settlement purchaser does not include: ...”

Section 4.— Paragraph E of Article 43.010 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“B. “Viatical settlement” 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 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 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. Viatical settlements shall not be considered as securities as the term is defined in Section 401(l) of Act No. 60 of June 18, 1963, as amended, known as 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 its benefits may be sold to purchasers residing in the Commonwealth of Puerto Rico.”

Section 5.– Paragraph F of Article 43.010 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“H. “Viatical settlement broker” means a person who on behalf of a viator and for a fee, commission or other valuable consideration offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers. . . . 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.”

Section 6.— Article 43.010 of Act No. 77 of June 19, 1957, as amended, is hereby amended to add a new paragraph G to read as follows:

“G. ‘Viatical settlement purchase agreement’ means a contract or agreement between a viatical settlements purchaser and a person who is not a viator, to acquire a life insurance policy, or interest in the death benefits of a life insurance policy, or to acquire interest in a trust that owns viatical settlements or is the beneficiary of a life insurance policy that has been or shall be the subject of a viatical settlement, with the purpose of deriving an economic benefit that will be guaranteed by a bond. The purchase, sale or transfer of a viatical settlement, or any interest therein, under a viatical settlement purchase agreement shall not constitute the purchase, sale or transfer of securities, as said term is defined in Section 401(l) of Act No. 60 of June 18, 1963, as amended, known as the Uniform Securities Act of Puerto Rico.”

Section 7.— Subsection (1)(b) of paragraph J of Article 43.010 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“(b) Who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlements.”

Section 8.— Paragraph M of Article 43.010 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“‘Viatical Settlement Business’ means an activity involved in the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating or in any other manner, of viatical settlements and viatical settlement purchase agreement contracts, as well as any other related activity that the Commissioner defines as such through regulations.”

Section 9.— Paragraph P of Article 43.010 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“‘Viaticated policy’ means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement. The purchase, sale or transfer of a viaticated policy or viatical settlement, or any interest therein, shall not constitute the purchase, sale or transfer of securities, as said term is defined in Section 401(1) of Act No. 60 of June 18, 1963, as amended, known as the Uniform Securities Act of Puerto Rico.”

Section 10.— Paragraph Q of Article 43.010 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“‘Viatical settlement provider’ means a person, other than a viator, who enters into or executes a viatical settlement. Viatical settlement provider does not include:

- (1) . . .
- (2) . . .
- (3) . . .
- (9) An accredited investor or qualified institutional buyer as defined 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.”

Section 11.— Paragraph R of Article 43.010 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

‘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. . . .”

Section 12.— Paragraph S of Article 43.010 of Act No. 77 of June 19, 1957, as amended, is hereby eliminated.

Section 13.— Paragraphs B, C, D, F, G, H, I, J, K, L, M, N, O, P, Q and R of Article 43.010 of Act No. 77 of June 19, 1957, as amended, are hereby renumbered as D, E, F, H, I, J, K, L, M, N, O, P, Q, R, S and T, respectively.

Section 14.— Paragraph A of Article 43.020 of Act No. 77 of June 19, 1957, as amended, is hereby substituted with a new paragraph A to read as follows:

“A. Regarding viators residing in Puerto Rico, a person shall not operate as a viatical settlement broker without first obtaining a license from the Insurance Commissioner of Puerto Rico. In addition to the requirements provided in this Chapter, a viatical settlements broker shall hold and maintain in effect a license as life insurance producer issued in accordance with Chapter 9 of this Code.

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 concerned.

Regarding viators residing in Puerto Rico, a person shall not operate as a viatical settlement provider without first obtaining a license from the Insurance Commissioner of Puerto Rico.”

Section 15.— Article 43.020 of Act No. 77 of June 19, 1957, as amended, is hereby amended to add a new paragraph B to read as follows:

“B. Regarding viatical settlement purchasers residing in Puerto Rico, a person shall not operate as a viatical settlement investment agent without first obtaining a license as life insurance producer issued by the

Insurance Commissioner in accordance with Chapter 9 of this Code. If there is more than one purchaser on a single policy and the purchasers are residents of different jurisdictions, the viatical settlement purchase agreement shall be governed by the law of the jurisdiction in which the purchaser having the largest percentage ownership resides. Should the purchasers hold equal ownership, the viatical settlement purchase agreement shall be governed by the law of jurisdiction of residence of one viator agreed upon in writing by all the purchasers concerned.”

Section 16.— Article 43.020 of Act No. 77 of June 19, 1957, as amended, is hereby amended to add a new paragraph C to read as follows:

“C. A viatical settlement provider may offer, sell or solicit viatical settlement purchase agreements directly to or from viatical settlement purchasers residing in Puerto Rico only if he/she has obtained a license as life insurance producer issued by the Insurance Commissioner in accordance with Chapter 9 of this Code.”

Section 17.— Paragraph B of Article 43.020 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“D. The application for a viatical settlement broker license and for authorization as a viatical settlement investment provider shall be submitted to the Commissioner by the applicant on a form prescribed by the Commissioner, and these applications shall be accompanied by the fees specified in Article 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.”

Section 18.– Paragraph E of Article 43.020 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“G. A license issued to a provider authorizes all partners, officers, members and designated employees to act as viatical settlement providers, as applicable, under the license, and all those persons shall be named in the application and any supplements to the application.”

Section 19.– Paragraph F of Article 43.020 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“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) . . .
- (2) . . .
- (3) . . .
- (4) . . .
- (5) If a viatical settlement provider or viatical settlement broker, has provided an anti-fraud plan that meets the requirements of Article 43.110 of the Insurance Code.
- (6) If a viatical settlement broker, holds and maintains a valid life insurance producer license;
- (7) Has paid the corresponding bond.”

Section 20.– Paragraph G of Article 43.020 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“G. The Commissioner shall not issue a license to a nonresident applicant, unless a written designation . . . The nonresident broker shall also

comply with the provisions of Article 9.260 of the Insurance Code of Puerto Rico.”

Section 21.– Paragraph H of Article 43.020 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“H. The viatical settlement providers or viatical settlement brokers shall provide to the Commissioner new or revised information regarding officers, shareholders who own ten percent (10%) or more of the stock, partners, directors, members or designated employees within thirty (30) days of the change or of the information thus requested.”

Section 22.– Paragraphs C, D, E, F, G and H of Article 43.020 of Act No. 77 of June 19, 1957, as amended, are hereby renumbered as E, F, G, H, I and J, respectively.

Section 23.– Paragraph A of Article 43.030 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“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) ...
- (2) ...
- (3) ...
- (4) ...
- (5) The viatical settlement provider has entered into any viatical settlement that has not been approved pursuant to this Act;
- (6) The viatical settlement provider has failed to honor contractual obligations set forth in a viatical settlement.
- (7) ...

- (8) The viatical settlement provider has assigned, transferred or pledged a policy subject to a viatical settlement contract 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 viatical settlement trust; or
- (9) ...”

Section 24.– Article 43.040 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Article 43.040.– Approval of Viatical Settlements and Disclosure Statements

No person shall use a viatical settlement 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 the Commissioner for his/her approval. The Commissioner shall approve or deny the forms within sixty (60) days after being filed, unless said term is extended for an additional sixty (60) days, if the Commissioner notifies said extension within the initial sixty (60) days. Once the initial term has elapsed, if the Commissioner failed to notify the extension thereof, or the additional term without the Commissioner having denied the forms, it shall be understood that the same are approved. The Commissioner shall disapprove a viatical settlement 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.

The provider shall submit to the Office of the Insurance Commissioner the viatical settlement purchase agreements solely for knowledge and information purposes.”

Section 25.– Article 43.070 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Article 43.070.– Disclosures

A. With each application for a viatical settlement, 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 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 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 could be subject to the claims of creditors.
4. Receipt of the proceeds of a viatical settlement may adversely affect the viator’s eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.

5. The viator has the right to rescind a viatical settlement for fifteen (15) calendar days after the receipt of the viatical settlement proceeds by the viator, as provided in Article 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. The execution of a viatical settlement 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 settlements.
9. The disclosure document shall contain the following statement 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 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 is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement 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 actual death benefit currently 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 26.– Article 43.080 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Article 43.080.– General Rules

- A. 1. A viatical settlement provider executing a viatical settlement shall first obtain:
 - a) If the viator is the insured, a written statement from a attending physician with license in effect, that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement; 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 into 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 and said 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, 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, 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, represents that the viator has a full and complete understanding of the viatical settlement, 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 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 Article.
 - B. All medical information solicited or obtained by any authorized person or entity shall be subject to the applicable provisions of state law related to confidentiality of medical information.
 - C. All viatical settlements executed in the Commonwealth of Puerto Rico shall provide the viator with an unconditional right to rescind the settlement for at least fifteen (15) calendar days from the receipt of the viatical settlement 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 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 within the time disclosed pursuant to Section 8A(6) renders the viatical settlement 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 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 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 providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.”

Section 27. –Article 43.090 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Article 43.090.– Prohibited Practices

It is a violation of this Act for any person to enter into a viatical settlement 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. ...
- B. ...
- C. ...
- D. (1) The viator submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:
 - a) ...
 - b) ...
 - c) ...
 - ...
 - i) ...

The certification required under subsections (A) to (B) 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 43.080(A) shall be submitted to the insurer when the viatical settlements 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 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 satisfies the requirements of this Article and the insurer shall timely respond to the request."

Section 28.— Article 43.100 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

"Article 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. This purpose is intended to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of viatical settlements to assure that product descriptions are presented in a manner that prevents unfair, deceptive or misleading advertising and is conducive to accurate presentation and description of viatical settlements through the advertising media and material used by authorized persons or entities to negotiate said contracts.

- A. This Article shall apply to any advertising of viatical settlements 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 Article shall be interpreted so as to minimize or eliminate conflict with federal regulation whenever possible.

- B. Every person or entity authorized to negotiate viatical settlements 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. The system of control shall include a regular routine notification, at least once a year, to agents and others authorized by the authorized person or entity to negotiate viatical settlements 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. ...
- D. ... The information required to be disclosed under this Article shall not be underrated, 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, covered loss, payable premium, or state or federal tax consequence. The fact that the viatical settlement offered is made available for inspection prior

to the 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) ...
- (3) ...
- (4) ...
- (5) Testimonials, appraisals or analysis used in advertisements must be genuine; represent the actual opinion of the author; be applicable to the viatical settlement 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 settlements makes as its own all the statements contained therein, and the statements are subject to all the provisions of this Article.
 - (a) ...
 - (b) An advertisement shall not state or imply that a viatical settlement benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that it is indeed the case, and unless any relationship between an organization and the person or entity authorized to negotiate viatical settlements is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the person or entity authorized to negotiate viatical settlements or receives any payment or other consideration from the person or entity authorized to negotiate

viatical settlements 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, 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 providers, viatical settlement brokers, viatical settlement investment agents, insurance producers, policies, services or methods of marketing.
- G. The name of the person or entity authorized to negotiate viatical settlements shall be clearly identified in all advertisements about the authorized person or entity or its viatical settlements, products or services, and if any specific viatical settlement is advertised, the viatical settlement 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 settlements, 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 settlements, 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.

- I. ...
- 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 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 provider or broker is licensed.
- K. An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims or the merits, desirability, or advisability of its viatical settlement are recommended or endorsed by any government entity.
- L. ...
- 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 settlements or its business practices or methods of operation; or
 - (2) The merits, desirability or advisability of any viatical settlement; or
 - (3) Any viatical settlement; or
 - (4) Any life insurance policy or life insurance insurer.
- N. ...
- O. ...”

Section 29.– Article 43.110 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Article 43.110.– Fraud Prevention and Control

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

1. ...

2. ...

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

B. Fraud Warning

1. Viatical settlements 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 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 act.

C. Mandatory Reporting of Fraudulent Viatical Settlement Acts

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

2. ...

D. ...

E. ...

F. ...

G. Antifraud Program

Viatical settlement providers and viatical settlement brokers shall implement an Antifraud Program to detect, prosecute and prevent fraudulent viatical settlement acts. At the discretion of the Commissioner or upon request of an authorized person or entity, the Commissioner may order the following modifications, as necessary, to ensure an effective antifraud program. The modifications may be more or less restrictive than the required program provided they comply with the purpose of this Article. The Antifraud Program shall include:

1. The appointment of fraud investigators, who may be viatical settlement providers or viatical settlement brokers or employees of independent contractors; and

2. ...”

Section 30.– Article 43.140 of Act No. 77 of June 19, 1957, as amended, is hereby amended to read as follows:

“Article 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 fairness of payments under viatical settlements 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 providers and brokers.
- D. Require a bond or other mechanism for accountability of possible illegal acts to viatical settlement providers and brokers; and
- E. Adopt rules governing the relationship and responsibilities of both insurers and viatical settlement providers and brokers during the viatication of a life insurance policy or certificate.
- F. Adopt rules governing the relationship and responsibilities of both viatical settlement investment providers and agents during the purchase, sale or transfer process of viatical settlements.”

Section 31.— Act No. 77 of June 19, 1957, as amended, is hereby amended to add a new Article 43.150 to read as follows:

“Article 43.150.— Jurisdiction

The Office of the Insurance Commissioner of Puerto Rico shall have exclusive jurisdiction to oversee viatical settlement transactions. The Office of the Insurance Commissioner of Puerto Rico shall have exclusive jurisdiction to oversee viatical settlement purchase contract transactions, provided that the purchase of viatical settlements is guaranteed by a bond that would respond to viatical settlement purchasers for the fixed benefits they are entitled to in case the viator outlives the term established in the viatical settlement purchase contract.”

Section 32.— Section 3 of Act No. 164 of December 28, 2005, is hereby eliminated.

Section 33.— Applicability

The provisions set forth herein shall apply to all transactions of viatical settlement business subject thereto that are executed after December 28, 2005.

Section 34.— Section 5 of Act No. 164 of December 28, 2005, is eliminated.

“... ”

The Commissioner, if he/she deems it necessary, may establish regulations to govern the proceedings set forth in this Act, without this preventing the implementation thereof.”

Section 35.— Section 6 of Act No. 164 of December 28, 2005, is hereby amended to read as follows:

“This Act shall take effect one hundred eighty (180) days after its approval.”

Section 36.— If any part of this Act or its applicability were ruled unconstitutional or null by any court

, the remaining provisions thereof shall remain in full force and effect.

Section 37.— This Act shall take effect immediately.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 147 (H.B. 2402) (Reconsidered) 3rd Session of the 15th Legislature of Puerto Rico:

AN ACT to amend paragraphs A, D, E, J, M, P, Q, R, to add a new paragraph C, to add a new paragraph G, to eliminate paragraph S and to renumber paragraphs B, C, D, F, H, I, J, K, L, M, N, O, P, Q and R as D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S and T, respectively, of Article 43.010; to amend paragraphs A, E, F, G, and H, to add a new paragraph B, to add a new paragraph C, to amend current paragraph B and renumber it as D, and to renumber paragraphs C, D, E, F, G and H as paragraphs E, F, G, H and J, respectively, of Article 43.020; to amend paragraph A of Article 43.030; to amend Article 43.040, 43.070, 43.080, 43.090, 43.100, 43.110 and 43.140; and to add a new Article 43.150, to Act No. 77 of June 19, 1957, as amended; to amend Sections 3 and 6 to regulate the sale of and investments in viatical settlements, to create the figure of the viatical settlement investment agent, to clarify the jurisdiction of the Office of the Insurance Commissioner over the viatical settlements business, to correct errors in the wording, to postpone the effectiveness of Act No. 164 of December 28, 2005; and for other purposes,

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

In San Juan, Puerto Rico, today 10th of October of 2006.

Francisco J. Domenech
Director