

SENATE BILL NO. 151
INTRODUCED BY J. BRUEGGEMAN
BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING INSURANCE LAWS PERTAINING TO VIATICAL SETTLEMENTS; PROHIBITING VIATICAL SETTLEMENT FRAUD AND PROVIDING REMEDIES AND PENALTIES; INCLUDING SUSPECTED VIATICAL SETTLEMENT FRAUD IN ACTIVITIES THAT MUST BE REPORTED BY INSURERS AND OTHERS; ~~EXPANDING THE DEFINITION OF INSURANCE TRANSACTIONS TO INCLUDE VIATICAL SETTLEMENT CONTRACTS;~~ REVISING REQUIREMENTS FOR VIATICAL SETTLEMENT CONTRACT TERMS; ~~REVISING DISCLOSURE REQUIREMENTS FOR VIATICAL SETTLEMENT PROVIDERS AND BROKERS;~~ LENGTHENING TO 3 BUSINESS DAYS THE AMOUNT OF TIME A VIATICAL SETTLEMENT PROVIDER HAS TO DEPOSIT PROCEEDS OF A SETTLEMENT INTO AN ESCROW OR TRUST ACCOUNT; ~~REVISING PRACTICES THAT ARE PROHIBITED WITH RESPECT TO VIATICAL SETTLEMENTS BY INSURERS, INSURANCE PRODUCERS, AND VIATICAL SETTLEMENT PROVIDERS AND BROKERS;~~ ESTABLISHING CRITERIA FOR DETERMINING CONFLICT OF LAWS QUESTIONS; AMENDING SECTIONS 33-1-1301, 33-1-1302, 33-1-1303, ~~33-19-104,~~ 33-20-1308, ~~33-20-1311,~~ ~~33-20-1313,~~ AND 33-20-1314, MCA; AND PROVIDING EFFECTIVE DATES."

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

Section 1. Section 33-1-1301, MCA, is amended to read:

"33-1-1301. Insurance, viatical settlement contract, medical care discount card, pharmacy discount card, and securities fraud education and prevention program -- definitions. (1) The commissioner may:

(a) establish an insurance, viatical settlement contract, medical care discount card, pharmacy discount card, and securities fraud education and prevention program; and

(b) conduct investigations of insurance, viatical settlement contract, medical care discount card, pharmacy discount card, and securities fraud.

(2) As used in this ~~section~~ part:

(a) "medical care discount card" and "pharmacy discount card" have the meanings provided in 33-38-102;

AND

~~(b) "stranger-originated life insurance" or "STOLI" means a practice or plan to initiate a life insurance policy for the benefit of a third-party investor who, at the time of policy origination, has no insurable interest in the insured. STOLI practices include but are not limited to cases in which life insurance is purchased with resources or guaranties from or through a person or entity who, at the time of policy inception, could not lawfully initiate the policy and where, at the time of inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy or the policy benefits to a third party.~~

~~(c)(B) "viatical settlement broker", "viatical settlement contract", and "viatical settlement provider" have the meanings provided in 33-20-1302."~~

Section 2. Section 33-1-1302, MCA, is amended to read:

"33-1-1302. Insurance, viatical settlement contract, medical care discount card, and pharmacy discount card fraud -- insurer. (1) A person commits the act of insurance, viatical settlement contract, medical care discount card, or pharmacy discount card fraud when:

(a) in the course of offering or selling insurance, a medical care discount card, or a pharmacy discount card, the person misrepresents a material fact, known to the person to be untrue or made with reckless indifference as to whether it is true, with the intention of causing another person to rely upon the misrepresentation to that relying person's detriment; or

(b) with respect to a viatical settlement ~~contract~~, the person violates the provisions of [section 3].

(2) A PERSON COMMITS THE ACT OF INSURANCE FRAUD OR VIATICAL SETTLEMENT FRAUD BY ENGAGING IN ANY TRANSACTION, ACT, PRACTICE, COURSE OF BUSINESS, OR COURSE OF DEALING THAT INVOLVES A VIOLATION OF INSURABLE INTEREST LAWS.

~~(2)(3)~~ The commissioner may, after having conducted a hearing pursuant to 33-1-701, impose the penalties provided for in 33-1-317 for a violation of [section 3] or this section. Failure to pay a fine under this section results in a lien upon the assets and property of the person as provided in 33-1-318(3).

~~(3)(4)~~ In addition to any penalty provided for in 33-1-317, the commissioner may require a person regulated under this title who commits insurance, viatical settlement contract, medical care discount card, or pharmacy discount card fraud to make full restitution to the victim for all financial losses sustained as a result of the fraud with interest of 10% a year from the date of the fraud plus any costs and reasonable attorney fees, less the amount of any income, refund, or other benefit received by the victim from the insurance, viatical settlement contract, medical care discount card, or pharmacy discount card.

~~(4)(5)~~ The commissioner may require a person who commits ~~insurance fraud~~ A VIOLATION OF THIS PART

to make full restitution to any ~~insurer, purported insurer, or insurance producer~~ PERSON who may have sustained any losses as a result of the fraud with interest of 10% a year from the date of the loss plus any costs and reasonable attorney fees.

~~(5)~~(6) An insurer, insurance producer, or other person who sustained any losses and who was awarded restitution may bring suit to recover those sums, including any attorney fees, interest at 10% a year, and costs incurred in obtaining a judgment.

~~(6)~~(7) Failure of a person to pay any amount ordered under this section constitutes a forfeiture of the right to do business in this state.

~~(7)~~(8) A person who purposely or knowingly is involved in the misappropriation or theft of insurance premiums or proceeds, viatical settlement proceeds, a medical care discount card fee, or a pharmacy discount card fee commits the offense of theft and deceptive practices and is punishable as provided in 45-6-301 and 45-6-317, and the commissioner may refer evidence concerning the violation to the attorney general or other appropriate prosecuting attorney.

~~(8) As used in this section "medical care discount card" and "pharmacy discount card" have the meanings provided in 33-38-102."~~

NEW SECTION. Section 3. Viatical settlement fraud. Viatical settlement fraud consists of but is not limited to the following committed by a person or the person's agents or employees:

(1) acts or omissions by any person who, knowingly and with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, engages in or permits the person's employees or agents to engage in acts that include but are not limited to:

(a) presenting, causing to be presented, or preparing with knowledge and belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, premium finance lender, life insurer, life insurance producer, or any other person false material information; or

(b) 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 contract or life insurance policy;

(ii) the underwriting of a viatical settlement contract or life insurance policy;

(iii) a claim for payment or benefit pursuant to a viatical settlement contract or life insurance policy;

(iv) premiums paid on a life insurance policy;

(v) payments and changes in ownership or beneficiary made in accordance with the terms of a viatical

settlement contract or life insurance policy;

(vi) the reinstatement or conversion of a life insurance policy;

(vii) the solicitation, offer to enter into, or effectuation of a viatical settlement contract or life insurance policy;

(viii) the issuance of written evidence of viatical settlement contracts or life insurance; or

(ix) any application for, the existence of, or any payments related to a loan secured directly or indirectly by any interest in a life insurance policy.

~~(2) entering into any practice or plan that involves stranger-originated life insurance. Trusts that are subject to this subsection, if they are created to give the appearance of insurable interest and are used to initiate policies for investors, violate insurable interest laws and the prohibition against wagering on life.~~

~~———(3) failing to disclose to the insurer, when the insurer has requested disclosure, that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insurer or its authorized representatives in connection with the issuance of the policy;~~

~~(4)(2) employing any device, scheme, or artifice:~~

~~———(a) to defraud in the business of viatical settlements; or~~

~~———(b) in the solicitation of, application for, or issuance of a life insurance policy that violates the insurable interest statutes;~~

~~(5)(3) removing, concealing, altering, destroying, or sequestering from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;~~

~~(6)(4) misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or other person;~~

~~(7)(5) transacting 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;~~

~~(8)(6) filing with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact;~~

~~(9)(7) engaging in embezzlement, theft, misappropriation, or conversion of money, funds, premiums, credits, or other property of a viatical settlement provider, viatical settlement broker, insurer, insured, policy owner, or any other person engaged in the business of viatical settlements or life insurance;~~

~~(10)(8) knowingly and with intent to defraud 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 if the policy owner or the owner's agent intended to defraud the issuer of the policy;

~~(11)~~(9) attempting to commit or to assist, aid, or abet in the commission of or conspiring to commit the acts or omissions specified in this section; or

~~(12)~~(10) misrepresenting the state of residence of a policy owner to be a state or jurisdiction that does not have a law substantially similar to this part or Montana's Viatical Settlement Act, Title 33, chapter 20, part 13, for the purpose of evading or avoiding the provisions of Montana law.

Section 4. Section 33-1-1303, MCA, is amended to read:

"33-1-1303. Reporting requirements. (1) An insurer, insurance producer, or other person who has reason to believe that insurance, viatical settlement contract, medical care discount card, or pharmacy discount card fraud has occurred shall report the suspected fraud to the commissioner or to the insurance producer's or other person's insurer within 60 days of discovery of the occurrence. An insurer shall review a report given to the insurer, and if the insurer determines that there is a reasonable likelihood that fraud has occurred the insurer shall forward the report to the commissioner within 30 days of receipt.

(2) In the absence of malice, an insurer, insurance producer, or other person may not be subjected to civil liability for reporting or providing information or otherwise cooperating with an investigation of insurance, viatical settlement contract, medical care discount card, or pharmacy discount card fraud."

~~Section 5.~~ Section 33-19-104, MCA, is amended to read:

~~"33-19-104. Definitions.~~ As used in this chapter, the following definitions apply:

~~(1) (a) "Adverse underwriting decision" means any of the following actions with respect to insurance transactions involving insurance coverage that are individually underwritten:~~

~~(i) a declination of insurance coverage;~~

~~(ii) a termination of insurance coverage;~~

~~(iii) failure of an insurance producer to apply for insurance coverage with a specific insurance institution that the insurance producer represents and that is requested by an applicant;~~

~~(iv) in the case of a property or casualty insurance coverage:~~

~~(A) placement by an insurance institution or insurance producer of a risk with a residual market mechanism, an unauthorized insurer, or an insurance institution that specializes in substandard risks; or~~

~~(B) the charging of a higher rate on the basis of information that differs from that which the applicant or~~

policyholder furnished;

~~—— (v) in the case of a life, health, or disability insurance coverage, an offer to insure at higher than standard rates.~~

~~—— (b) The following actions are not adverse underwriting decisions, but the insurance institution or insurance producer responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:~~

~~—— (i) the termination of an individual policy form on a class or statewide basis;~~

~~—— (ii) a declination of insurance coverage solely because the coverage is not available on a class or statewide basis; or~~

~~—— (iii) the rescission of a policy.~~

~~—— (2) "Affiliate" or "affiliated" means a person who directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with another person.~~

~~—— (3) "Applicant" means a person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.~~

~~—— (4) "Consumer report" means any written, oral, or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used in connection with an insurance transaction.~~

~~—— (5) "Consumer reporting agency" means a person who:~~

~~—— (a) regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;~~

~~—— (b) obtains information primarily from sources other than insurance institutions; and~~

~~—— (c) furnishes consumer reports to other persons.~~

~~—— (6) "Control", including the terms "controlled by" or "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.~~

~~—— (7) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or insurance producer of requested insurance coverage.~~

~~—— (8) "Individual" means a natural person who:~~

~~—— (a) regarding property or casualty insurance, is a past, present, or proposed named insured or certificate~~

holder;

~~—— (b) regarding life, health, or disability insurance, is a past, present, or proposed principal insured or certificate holder;~~

~~—— (c) is a past, present, or proposed policyowner;~~

~~—— (d) is a past or present applicant;~~

~~—— (e) is a past or present claimant; or~~

~~—— (f) derived, derives, or is proposed to derive insurance coverage under an insurance policy or certificate subject to this chapter.~~

~~—— (9) "Institutional source" means a person or governmental entity that provides information about an individual to an insurance producer, insurance institution, or insurance support organization, other than:~~

~~—— (a) an insurance producer;~~

~~—— (b) the individual who is the subject of the information; or~~

~~—— (c) a natural person acting in a personal capacity rather than a business or professional capacity.~~

~~—— (10) "Insurance function" means claims administration, claims adjustment and management, fraud investigation, fraud prevention, underwriting, loss control, ratemaking functions, reinsurance, risk management, case management, disease management, quality assessment, quality improvement, provider credentialing verification, utilization review, peer review activities, subrogation, grievance procedures, insurance transactions, internal administration of compliance and policyholder service functions, and technical, administrative, or professional services related to the provision of the functions described in this subsection.~~

~~—— (11) (a) "Insurance institution" means a corporation, association, partnership, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, or other person engaged in the business of insurance, including health maintenance organizations, and health service corporations as defined in 33-30-101.~~

~~—— (b) Insurance institution does not include insurance producers or insurance support organizations.~~

~~—— (12) "Insurance producer" means an insurance producer as defined in 33-17-102 and 33-30-311.~~

~~—— (13) (a) "Insurance support organization" means a person who assembles or collects information about natural persons for the purpose of providing the information to an insurance institution or insurance producer for insurance transactions, including:~~

~~—— (i) the furnishing of consumer reports or investigative consumer reports to an insurance institution or insurance producer for use in connection with an insurance transaction; or~~

~~—— (ii) the collection of personal information from insurance institutions, insurance producers, or other insurance support organizations for the purpose of detecting or preventing fraud, material misrepresentation, or~~

material nondisclosure in connection with insurance underwriting or insurance claim activity:

~~———— (b) The following persons are not insurance support organizations for purposes of this chapter: insurance producers, government institutions, medical care institutions, and medical professionals.~~

~~———— (14) "Insurance transaction" means a transaction involving insurance or a viatical settlement contract that is primarily for personal, family, or household needs, rather than for business or professional needs, and that entails:~~

~~———— (a) the determination of an individual's eligibility for an insurance coverage, benefit, or payment; or~~

~~———— (b) the servicing of an insurance application, policy, contract, or certificate; or~~

~~———— (c) the soliciting of, negotiating of, or entering into a viatical settlement contract.~~

~~———— (15) "Investigative consumer report" means a consumer report or portion of a consumer report containing information about a natural person's character, general reputation, personal characteristics, or mode of living obtained through personal interviews with the person's neighbors, friends, associates, acquaintances, or others who may have knowledge concerning this type of information.~~

~~———— (16) "Licensee" means:~~

~~———— (a) an insurance institution, insurance producer, or other person who is licensed or required to be licensed, authorized or required to be authorized, or registered or required to be registered pursuant to this title; or~~

~~———— (b) a surplus lines insurer.~~

~~———— (17) "Medical care institution" means a facility or institution that is licensed to provide health care services to natural persons, including but not limited to health maintenance organizations, home health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies, and skilled nursing facilities.~~

~~———— (18) "Medical professional" means a person who is licensed or certified to provide health care services to natural persons, including but not limited to a chiropractor, clinical dietitian, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker, or speech-language pathologist.~~

~~———— (19) "Medical record information" means personal information that:~~

~~———— (a) relates to an individual's physical or mental condition, medical history, medical claims history, or medical treatment; and~~

~~———— (b) is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent, or legal guardian.~~

~~———— (20) "Person" means a natural person, corporation, association, partnership, or other legal entity.~~

~~———— (21) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. Personal information includes an individual's name and address and medical record information but does not include privileged information.~~

~~———— (22) "Policyholder" means a person who:~~

~~———— (a) in the case of individual property or casualty insurance, is a present named insured;~~

~~———— (b) in the case of individual life, health, or disability insurance, is a present policyowner; or~~

~~———— (c) in the case of group insurance that is individually underwritten, is a present group certificate holder.~~

~~———— (23) "Pretext interview" means an interview during which a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:~~

~~———— (a) pretends to be someone else;~~

~~———— (b) pretends to represent a person not in fact being represented;~~

~~———— (c) misrepresents the true purpose of the interview; or~~

~~———— (d) refuses to provide identification upon request.~~

~~———— (24) "Privileged information" means any individually identifiable information that:~~

~~———— (a) relates to a civil or criminal proceeding involving an individual; and~~

~~———— (b) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual. Information otherwise meeting the requirements of privileged information under this subsection is considered personal information under this chapter if it is disclosed in violation of 33-19-306.~~

~~———— (25) "Residual market mechanism" means an association, organization, or other entity defined or described in 61-6-144.~~

~~———— (26) "Separate, written authorization" means an individual's written authorization that is:~~

~~———— (a) obtained by the recipient of personal or privileged information that has been disclosed to the recipient pursuant to 33-19-306(10), (11), (14), (15), and (17); and~~

~~———— (b) separate from any written authorization obtained by the disclosing insurance institution, insurance producer, or insurance-support organization.~~

~~———— (27) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.~~

~~(28) "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the commissioner to transact the business of insurance in this state."~~

Section 5. Section 33-20-1308, MCA, is amended to read:

"33-20-1308. Terms of contract. (1) A viatical settlement contract must be in writing. A viatical settlement provider shall establish in the contract the terms under which the viatical settlement provider will pay compensation or anything of value in return for the policyholder's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

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

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

(4) If a viatical settlement provider enters into a viatical settlement that allows the viator to retain an interest in the policy, the viatical settlement contract must contain all of the following provisions:

(a) that the viatical settlement provider shall effect the transfer of the amount of the death benefit only to the extent or portion of the amount viaticated. Benefits in excess of the amount viaticated must be paid directly to the viator's beneficiary by the insurance company.

(b) that the premiums to be paid by the viatical settlement provider and the viator will be apportioned unless the viatical settlement contract specifies that all premiums must be paid by the viatical settlement provider. The contract may also require that the viator reimburse the viatical settlement provider for the premiums attributable to the retained interest.

(c) that the viatical settlement provider shall, upon acknowledgment of the perfection of the transfer,

either:

(i) advise the insured in writing that the insurance company has confirmed the viator's interest in the policy; or

(ii) provide the insured with a copy of the instrument provided by the insurance company to the viatical settlement provider that acknowledges the viator's interest in the policy."

~~Section 7. Section 33-20-1311, MCA, is amended to read:~~

~~"33-20-1311. Disclosure of information to policyholder. (1) A viatical settlement provider shall disclose the information specified in this section to the policyholder or certificate holder entering the viatical settlement contract prior to the date on which the viatical settlement contract is signed by all parties when an application for a viatical settlement contract is taken. The disclosure must be in the form approved by the commissioner. The information must include the following:~~

~~(a) a statement that a viatical settlement broker represents exclusively the viator, not the insurer, the viatical settlement provider, or any other person, and owes a fiduciary duty to the viator, including a duty to act according to the viator's instructions and in the best interest of the viator;~~

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

~~(c) the affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be settled;~~

~~(d) the name, business address, and telephone number of the independent third-party escrow agent and the fact that the viator may inspect or receive copies of the relevant escrow or trust agreements or documents;~~

~~(e) a statement that the medical, financial, or personal information solicited or obtained by a viatical settlement provider or a viatical settlement broker about a viator and insured, including the identity of the viator and insured or the identity of family members of the viator and insured, is confidential and may not be disclosed in any form to any person unless:~~

~~(i) disclosure is reasonably necessary to effect the viatical settlement between the viator and the viatical settlement provider;~~

~~(ii) disclosure is reasonably necessary to effect the viatical settlement between a viator and a financing entity including individual and institutional purchasers;~~

~~(iii) the viator and insured have provided prior written consent to the disclosure; or~~

~~(iv) disclosure is permitted under state or federal law;~~

~~(f) a statement that a change of ownership could in the future limit the insured's ability to purchase future~~

~~insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life;~~

~~—— (g) a statement that a change of ownership could in the future limit the insured's ability to purchase future insurance on the insured's life or result in significantly higher premiums because of the insured's higher issue age, a change in health status, or other factors;~~

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

~~—— (i) a statement that the commissioner requires delivery of a buyer's guide or a similar consumer advisory package in the form prescribed by the commissioner to viators during the solicitation process;~~

~~—— (j) a statement that the insured may be contacted by either the viatical settlement provider or viatical settlement broker or their authorized representative for the purpose of determining the insured's health status or to verify the insured's address and that the contact must be limited to once every 3 months if the insured has a life expectancy of more than 1 year, and not more than once per month if the insured has a life expectancy of 1 year or less;~~

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

~~—— (3)(l) the fact a statement that the viatical settlement could be subject to the claims of creditors;~~

~~—— (m) a statement that entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate of a group policy, to be forfeited by the viator and that assistance should be sought from a professional financial adviser;~~

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

~~—— (5)(o) a statement of the right of a policyholder or certificate holder to rescind a viatical settlement contract as provided in 33-20-1308. The disclosure must state the deadlines for rescission and the return of proceeds received.~~

~~—— (6)(p) the date by which the funds will be available to the policyholder or certificate holder and the source independent third-party escrow agent of the funds; and~~

~~—— (q) the amount of and method of calculating the compensation, which includes anything of value paid or given or to be paid or given, to the viatical settlement broker or any other person acting for the viator in~~

~~connection with the transaction; and~~

~~——— (7)(r) the fact a statement that the viatical settlement contract is void if the viatical settlement provider or viatical settlement broker fails to tender payment of the proceeds as provided in the viatical settlement contract.~~

~~——— (2) A viatical settlement broker shall provide the viator and the viatical settlement provider with the disclosures required by this subsection (2) not later than the date upon which the viatical settlement contract is signed by all parties. The disclosures must be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator. The viatical settlement broker shall disclose all of the following:~~

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

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

~~——— (c) any affiliation or contractual arrangement between the viatical settlement broker and any person making an offer in connection with the proposed viatical settlement contract;~~

~~——— (d) the name of each viatical settlement broker who will receive compensation and the amount of compensation to be received by that viatical settlement broker. For purposes of this subsection (2)(d), "compensation" means anything of value paid or given to the viatical settlement broker in connection with the viatical settlement contract.~~

~~——— (e) a complete reconciliation of the gross offer or bid by the viatical settlement provider to the net amount of proceeds or value to be received by the viator. For purposes of this subsection (2)(e), "gross offer or bid" means the total amount or value offered by the viatical settlement provider for the purchase of one or more life insurance policies, inclusive of commissions and fees.~~

~~——— **Section 8.** Section 33-20-1313, MCA, is amended to read:~~

~~——— **"33-20-1313. Requirements for entering into viatical settlement contract -- prohibitions on finder's fee -- solicitations -- discrimination -- false or misleading advertising or solicitation -- misuse of confidential information.** (1) A person viator may not enter into a viatical settlement contract within a 2-year period from the date of issuance of an insurance policy or certificate unless the person viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the 2-year period:~~

~~——— (a) (i) the policy or certificate was issued upon the person's viator's exercise of conversion rights arising out of a group or individual policy or certificate and the total of the time covered under the conversion policy or certificate plus the time covered by the policy or certificate prior to the conversion equal at least 24 months; and~~

~~——— (ii) the time covered under a group policy or certificate was calculated without regard to any change in~~

insurance carriers if the coverage was continuous and under the same group sponsorship; or

~~—— (b) the person viator submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the 2-year period:~~

~~—— (i) the person viator is terminally ill or chronically ill; or~~

~~—— (ii) the viator's spouse dies;~~

~~—— (iii) the viator's marriage is dissolved;~~

~~—— (iv) the viator retires from full-time employment;~~

~~—— (v) the viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment;~~

~~—— (vi) a final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, 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; or~~

~~—— (ii)(vii) the person viator has disposed of the person's viator's ownership interest in a closely held corporation pursuant to the terms of a buyout agreement or similar agreement that was in effect at the time that the insurance policy or certificate was issued.~~

~~—— (2) Copies of the certification and independent evidence required under subsection (1) must be submitted by the viatical settlement provider to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage. The copies must be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.~~

~~—— (3) A licensee may not pay or offer to pay a finder's fee, commission, or other compensation to a person described in this subsection (3) in connection with a policy insuring the life of an individual with a terminal illness or condition. The prohibition under this subsection (3) applies with respect to payments or offers of payment to:~~

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

~~—— (b) any person other than a physician, attorney, or accountant described in subsection (3)(a) who provides medical, legal, or financial planning services to the policyholder, to the certificate holder, or to the insured individual when the individual is other than the policyholder or certificate holder; or~~

~~—— (c) any person other than one described in subsection (3)(a) or (3)(b) who acts as an agent of the policyholder, certificate holder, or insured individual.~~

~~—— (4) A licensee may not solicit an investor who could influence the treatment of the illness or condition~~

of the individual whose life would be the subject of a viatical settlement contract.

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

~~————(6) A licensee may not discriminate in the making of a viatical settlement contract on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status, or sexual orientation and may not discriminate between persons who have dependents and persons who do not have dependents.~~

~~————(7) A person licensed pursuant to 33-20-1304 may not engage in any false or misleading advertising, solicitation, or practice as described in 33-18-203.~~

~~————(8) A person licensed pursuant to 33-20-1304 may not sell another product of insurance to the contract holder unless approval is obtained from the commissioner."~~

Section 6. Section 33-20-1314, MCA, is amended to read:

"33-20-1314. Payment to escrow or trust account -- lump-sum payment. (1) ~~Immediately upon~~ Within 3 business days after receipt of documents from the policyholder or certificate holder effecting the transfer of the insurance policy or certificate, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a bank approved by the commissioner, pending acknowledgment of the transfer by the issuer of the life insurance policy. The trustee or escrow agent shall transfer the proceeds due to the policyholder or certificate holder immediately upon receipt of acknowledgment of the transfer from the insurer.

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

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

~~————**NEW SECTION. Section 10. Prohibited practices.** (1) For the purposes of this section, "licensee" means an insurer, insurance producer, viatical settlement provider, viatical settlement broker, or other person who is licensed or required to be licensed, is authorized or required to be authorized, or is registered or required to~~

be registered pursuant to this title.

~~———— (2) A licensee may not:~~

~~———— (a) pay or offer to pay a finder's fee, commission, or other compensation to a person described in this subsection (2)(a) in connection with a policy insuring the life of an individual with a terminal illness or condition.~~

~~The prohibition under this subsection (2)(a) applies with respect to payments or offers of payment to:~~

~~———— (i) the physician, attorney, or accountant of the policyholder, the certificate holder, or the insured individual;~~

~~———— (ii) any person, other than a physician, attorney, or accountant described in subsection (2)(a)(i), who provides medical, legal, or financial planning services to the policyholder or the certificate holder, or to the insured individual when that person is other than the policyholder or certificate holder; or~~

~~———— (iii) any person, other than one described in subsection (2)(a)(i) or (2)(a)(ii), who acts as an agent of the policyholder, certificate holder, or insured individual.~~

~~———— (b) solicit an investor who could influence the treatment of the illness or condition of the individual whose life would be the subject of a viatical settlement contract; or~~

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

~~———— (3) A person licensed pursuant to 33-20-1304 may not:~~

~~———— (a) engage in any false or misleading advertising, solicitation, or practice described in 33-18-203; or~~

~~———— (b) sell another product of insurance to the contract holder unless approval is obtained from the commissioner.~~

~~———— (4) A viatical settlement provider may not also act as a viatical settlement broker, whether entitled to collect a fee directly or indirectly, in the same viatical settlement.~~

~~———— (5) A viatical settlement broker may not, without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement, seek or obtain any compensation from the viator.~~

~~———— (6) A viatical settlement provider may not use a longer life expectancy than is realistic in order to reduce the payout to which the viator is entitled.~~

~~———— (7) It is unlawful for any person to:~~

~~———— (a) enter into a viatical settlement contract if the person knew or reasonably should have known that the life insurance policy was obtained by means of a false, deceptive, or misleading application for the policy;~~

~~———— (b) engage in any transaction, practice, or course of business if the person knew or reasonably should~~

have known that the intent was to avoid the notice requirements of this part;

~~——— (c) engage in any fraudulent act or practice in connection with any transaction relating to a viatical settlement involving a viator who is a resident of this state;~~

~~——— (d) issue, solicit, market, or otherwise promote the purchase of an insurance policy for the purpose of or with an emphasis on settling the policy;~~

~~——— (e) enter into a premium finance agreement with any person or agency, or any person affiliated with the person or agency, pursuant to which the person receives any proceeds, fees, or other consideration, directly or indirectly, from the policy or viator of the policy or any other person with respect to the premium finance agreement or any settlement contract or other transaction related to the policy, that is in addition to the amounts required to pay the principal, interest, and service charges related to policy premiums pursuant to the premium finance agreement or subsequent sale of the agreement. Any payment, charge, fee, or other amount in addition to the amounts required to pay the principal, interest, and service charges related to policy premiums paid under the premium finance agreement must be remitted to the original owner of the policy or to the policy owner's estate if the policy owner is not living at the time of the determination of the overpayment.~~

NEW SECTION. Section 7. Conflict of laws. (1) If there is more than one owner on a single life insurance policy and the owners are residents of different states, the viatical settlement contract is governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all of the owners. The law of the state of the insured governs if equal owners fail to agree in writing upon a state of residence for jurisdictional purposes.

(2) (a) A viatical settlement provider from this state who enters into a viatical settlement contract with a viator who is a resident of another state that has enacted statutes or adopted regulations governing viatical settlement contracts is governed in the effectuation of that viatical settlement contract by the statutes and regulations of the viator's state of residence.

(b) A viatical settlement provider from this state who enters into a viatical settlement contract with a viator who is a resident of another state that has not enacted statutes or adopted regulations governing viatical settlement contracts is governed in the effectuation of that viatical settlement contract by the laws of this state. The viatical settlement provider shall give the viator notice that this state regulates the transaction into which the viator is entering. The viatical settlement provider shall maintain all records required by this state and use forms approved in this state.

(3) If there is a conflict in the laws that apply to a viator and a viatical settlement purchaser in any individual transaction, the laws of the state that apply to the viator take precedence and the viatical settlement provider shall comply with those laws.

NEW SECTION. Section 8. Codification instruction. (1) [Section 3] is intended to be codified as an integral part of Title 33, chapter 1, part 13, and the provisions of Title 33, chapter 1, part 13, apply to [section 3].

(2) [~~Sections 10 and 11~~] are [SECTION 7] IS intended to be codified as an integral part of Title 33, chapter 20, part 13, and the provisions of Title 33, chapter 20, part 13, apply to [~~sections 10 and 11~~] [SECTION 7].

NEW SECTION. Section 9. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 10. Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [~~Sections 6 through 11~~] are [SECTION 5] IS effective January 1, 2010.

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