

**As Introduced**

**127th General Assembly  
Regular Session  
2007-2008**

**H. B. No. 404**

**Representatives Hottinger, Barrett**

—

**A B I L L**

To amend sections 3916.01 to 3916.20 and to enact 1  
sections 3916.031 and 3916.161 of the Revised Code 2  
to make changes to the law governing viatical 3  
settlements. 4

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 3916.01, 3916.02, 3916.03, 3916.04, 5  
3916.05, 3916.06, 3916.07, 3916.08, 3916.09, 3916.10, 3916.11, 6  
3916.12, 3916.13, 3916.14, 3916.15, 3916.16, 3916.17, 3916.18, 7  
3916.19, and 3916.20 be amended and sections 3916.031 and 3916.161 8  
of the Revised Code be enacted to read as follows: 9

**Sec. 3916.01.** As used in this chapter: 10

(A) "Advertising" means any written, electronic, or printed 11  
communication or any communication by means of recorded telephone 12  
messages or transmitted on radio, television, the internet, or 13  
similar communications media, including, but not limited to, film 14  
strips, motion pictures, and videos, that is ~~directly or~~ 15  
~~indirectly~~ published, disseminated, circulated, or placed directly 16  
before the public for the purpose of creating an interest in or 17  
inducing a person to sell, assign, devise, bequest, or transfer 18  
the death benefit or ownership of a life insurance policy pursuant 19  
to a viatical settlement contract. 20

(B) "Business of viatical settlements" means an activity 21  
involved in the offering, solicitation, negotiation, procurement, 22  
effectuation, purchasing, investing, financing, monitoring, 23  
tracking, underwriting, selling, transferring, assigning, 24  
pledging, or hypothecating or in any other manner acquiring an 25  
interest in a life insurance policy by means of viatical 26  
settlement contracts ~~or purchase agreements or any similar~~ 27  
activity related to viatical settlement contracts or purchase 28  
agreements. 29

(C) "Chronically ill" means certified, at least annually, by 30  
a licensed health professional as having any of the following 31  
conditions: 32

(1) Being unable to perform, for at least ninety days without 33  
substantial assistance from another individual due to a loss of 34  
functional capacity, at least two activities of daily living, 35  
including, but not limited to, eating, toileting, transferring, 36  
bathing, dressing, or continence; 37

(2) Requiring substantial supervision to protect the 38  
individual from threats to health and safety due to severe 39  
cognitive impairment; 40

(3) Having a level of disability similar to that described in 41  
division (C)(1) of this section, as determined by the United 42  
States secretary of health and human services; 43

(D) "Escrow agent" means an independent third-party person 44  
who, pursuant to a written agreement, controls and effects, in an 45  
escrow transaction, the delivery of the escrow transaction related 46  
to the acquisition of a life insurance policy pursuant to a 47  
viatical settlement contract. "Escrow agent" does not include any 48  
person associated, affiliated with, or under the control of a 49  
person licensed under this chapter. 50

(E)(1) "Financing entity" means an underwriter, placement 51

agent, lender, purchaser of securities, purchaser of a policy ~~or~~ 52  
~~certificate~~ from a viatical settlement provider, credit enhancer, 53  
or any other person that has a direct ownership interest in a 54  
policy ~~or certificate~~ that is the subject of a viatical settlement 55  
contract and to which both of the following apply: 56

(a) Its principal activity related to the transaction is 57  
providing funds to effect the viatical settlement or the purchase 58  
of one or more viaticated policies. 59

(b) It has an agreement in writing with one or more licensed 60  
viatical settlement providers to finance the acquisition of 61  
viatical settlement contracts. 62

(2) "Financing entity" does not include a non-accredited 63  
investor or viatical settlement purchaser. 64

~~(E)~~(F) "Fraudulent viatical settlement act" means an act or 65  
omission committed by any person who, knowingly or with intent to 66  
defraud and for the purpose of depriving another of property or 67  
for pecuniary gain, commits, or permits any of its employees or 68  
agents to commit, any of the following acts: 69

(1) Presenting, causing to be presented, or preparing with 70  
knowledge or belief that it will be presented to or by a viatical 71  
settlement provider, viatical settlement broker, life expectancy 72  
provider, viatical settlement purchaser, financing entity, 73  
insurer, insurance broker, insurance agent, or any other person, 74  
any false material information, or concealing any material 75  
information, as part of, in support of, or concerning a fact 76  
material to, one or more of the following: 77

(a) An application for the issuance of a viatical settlement 78  
contract or insurance policy ~~or certificate~~; 79

(b) The underwriting of a viatical settlement contract or 80  
~~insurance~~ insurance policy ~~or certificate~~; 81

(c) A claim for payment or benefit pursuant to a viatical settlement contract or <del>insurnace</del> <u>insurance</u> policy <del>or certificate</del> ;	82
	83
(d) Any premiums paid on an insurance policy <del>or certificate</del> ;	84
(e) Any payments <u>and</u> changes in ownership or beneficiary made in accordance with the terms <u>in of a</u> viatical settlement contract or insurance policy <del>or certificate</del> ;	85
	86
	87
(f) The reinstatement or conversion of an insurance policy <del>or certificate</del> ;	88
	89
(g) The solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy <del>or certificate</del> ;	90
	91
(h) The issuance of written evidence of a viatical settlement contract or insurance policy <del>or certificate</del> ;	92
	93
(i) A financing transaction.	94
(2) In the furtherance of a fraud or to prevent the detection of a fraud, doing any of the following:	95
	96
(a) Removing, concealing, altering, destroying, or sequestering from the superintendent <u>of insurance</u> the assets or records of a licensee or another person engaged in the business of viatical settlements;	97
	98
	99
	100
(b) Misrepresenting or concealing the financial condition of a licensee, financing entity, insurer, or any other person;	101
	102
(c) Transacting the business of viatical settlements in violation of any law of this state requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements;	103
	104
	105
	106
(d) Filing with the superintendent of insurance or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing from the superintendent any information about a material fact.	107
	108
	109
	110

~~(3) Presenting, causing to be presented, or preparing with knowledge or reason to believe that it will be presented, to or by a viatical settlement provider, viatical settlement broker, insurer, insurance agent, financing entity, viatical settlement purchaser, or any other person, in connection with a viatical settlement transaction or insurance transaction, an insurance policy or certificate that the actor knows was fraudulently obtained by the insured, the owner, or any agent of the insured or owner~~ Recklessly entering into, negotiating, brokering, or otherwise dealing in a viatical settlement contract involving a life insurance policy that was obtained by presenting false information of any fact material to the policy, or by concealing information concerning any fact material to the policy for the purpose of misleading and with the intent to defraud the insurer of the policy, the viatical settlement provider, or the viator;

(4) Committing any embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner, or any other person engaged in the business of viatical settlements or insurance;

(5) Employing any plan, financial structure, device, scheme, or artifice to defraud in relation to a viaticated policy;

(6) Facilitating the change of the state in which a person owns a policy or the state of residency of a viator to a state or jurisdiction that does not have laws similar to this chapter for the express purposes of evading or avoiding the provisions of this chapter;

(7) Attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit any act or omission specified in divisions (E)(1) to ~~(4)~~(6) of this section.

~~(F)~~(G) "Recklessly" has the same meaning as in section

<u>2901.22 of the Revised Code.</u>	142
<u>(H) "Defraud" has the same meaning as in section 2913.01 of the Revised Code.</u>	143
<u>(I) "Life expectancy" means an opinion or evaluation as to how long a particular person is going to live.</u>	144
<u>(J) "Life expectancy provider" means a person who determines, or claims to have the necessary education, training, and expertise to determine life expectancies or mortality ratings used to determine life expectancies on behalf of or in connection with any of the following:</u>	145
<u>(1) A viatical settlement provider, viatical settlement broker, or person engaged in the business of viatical settlements;</u>	146
<u>(2) A viatical settlement investment as defined by section 1707.01 of the Revised Code;</u>	147
<u>(3) A viatical settlement contract or viatical settlement investment.</u>	148
<u>(K) Notwithstanding section 1.59 of the Revised Code, "person" means a natural person or a legal entity, including, but not limited to, an individual, partnership, limited liability company, association, trust, or corporation.</u>	149
<u><del>(G)</del>(L) "Policy" means an individual or group policy, group certificate, contract, or arrangement of insurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.</u>	150
<u><del>(H)</del>(M) "Related provider trust" means a titling trust or any other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding ownership or beneficial interest in purchased policies in connection with a financing transaction, provided that the trust has a written</u>	151
	152
	153
	154
	155
	156
	157
	158
	159
	160
	161
	162
	163
	164
	165
	166
	167
	168
	169
	170
	171

agreement with the licensed viatical settlement provider under 172  
which the licensed viatical settlement provider is responsible for 173  
ensuring compliance with all statutory and regulatory requirements 174  
and under which the trust agrees to make all records and files 175  
related to viatical settlement transactions available to the 176  
superintendent as if those records and files were maintained 177  
directly by the licensed viatical settlement provider. 178

~~(I)~~(N) "Special purpose entity" means a corporation, 179  
partnership, trust, limited liability company or other similar 180  
entity formed solely to provide access, either directly or 181  
indirectly, to institutional capital markets for a financing 182  
entity or licensed viatical settlement provider or in connection 183  
with a transaction in which the securities in the special purpose 184  
entity meet either of the following standards: 185

(1) The securities are acquired by the viator or by qualified 186  
institutional buyers as defined in 17 C.F.R. 230.144A, as amended. 187

(2) The securities pay a fixed rate of return commensurate 188  
with established asset-backed institutional capital markets. 189

~~(J)~~(O) "Terminally ill" means certified by a physician as 190  
having an illness or ~~sickness~~ physical condition that can 191  
reasonably be expected to result in death in twenty-four months or 192  
less. 193

~~(K)~~(P) "Viatical settlement broker" means a person that, on 194  
behalf of a viator and for a fee, commission, or other valuable 195  
consideration, offers or attempts to negotiate viatical 196  
settlements between a viator and one or more viatical settlement 197  
providers or viatical settlement brokers. "Viatical settlement 198  
broker" does not include an attorney, a certified public 199  
accountant, or a financial planner accredited by a nationally 200  
recognized accreditation agency, who is retained to represent the 201  
viator ~~and,~~ whose compensation is not paid directly or indirectly 202

by the viatical settlement provider or purchaser, and whose 203  
viatical settlement activities are incidental to the practice of 204  
the person's profession. 205

~~(L)(0)(1)~~ "Viatical settlement contract" means any of the 206  
following: 207

~~(1)(a)~~ A written agreement establishing between a viator and 208  
a viatical settlement provider or any affiliate of the viatical 209  
settlement provider that establishes the terms under which 210  
compensation or any thing of value, that is less than the expected 211  
death benefit of the insurance policy ~~or certificate~~ will be paid 212  
in return for the viator's present or future assignment, transfer, 213  
sale, devise, or bequest of the death benefit or ownership of any 214  
portion of the insurance policy ~~or certificate of insurance;~~ 215

~~(2)~~ ~~A contract for a loan or any other financing transaction~~ 216  
~~secured primarily by an individual or group life insurance policy~~ 217  
~~or certificate, other than a loan by a life insurance company~~ 218  
~~pursuant to the terms of the life insurance contract or a loan~~ 219  
~~secured by the cash value of a policy or certificate;~~ 220

~~(3)~~ ~~An agreement to transfer ownership or change the~~ 221  
~~beneficiary designation of the policy or certificate at a later~~ 222  
~~date, regardless of the date that compensation is paid to the~~ 223  
~~viator~~ (b) A premium finance loan made for a life insurance policy 224  
by a lender to a viator on, before, or after the date of issuance 225  
of the policy in either of the following situations: 226

(i) The viator or the insured receives on the date of the 227  
premium finance loan a guarantee of a future viatical settlement 228  
value of the policy. 229

(ii) The viator or the insured agrees on the date of the 230  
premium finance loan to sell the policy or any portion of the 231  
policy's death benefit on any date following the issuance of the 232  
policy. 233

<u>(2) "Viatical settlement contract" does not include any of</u>	234
<u>the following:</u>	235
<u>(a) A policy loan or accelerated death benefit made by the</u>	236
<u>insurer pursuant to the policy's terms;</u>	237
<u>(b) Loan proceeds that are used solely to pay premiums for</u>	238
<u>the policy and the costs of the loan including interest,</u>	239
<u>arrangement fees, utilization fees and similar fees, closing</u>	240
<u>costs, legal fees and expenses, trustee fees and expenses, and</u>	241
<u>third-party collateral provider fees and expenses, including fees</u>	242
<u>payable to letter of credit issuers.</u>	243
<u>(c) A loan made by a regulated financial institution in which</u>	244
<u>the lender takes an interest in a life insurance policy solely to</u>	245
<u>secure repayment of a loan or, if there is a default on the loan</u>	246
<u>and the policy is transferred, the transfer of such a policy by</u>	247
<u>the lender, provided that neither the default itself nor the</u>	248
<u>transfer is pursuant to an agreement or understanding with any</u>	249
<u>other person for the purpose of evading regulation under this</u>	250
<u>chapter;</u>	251
<u>(d) A premium finance loan made by a lender that does not</u>	252
<u>violate sections 1321.71 to 1321.83 of the Revised Code, if the</u>	253
<u>premium finance loan is not described in division (O)(1)(b) of</u>	254
<u>this section;</u>	255
<u>(e) An agreement where all parties are closely related to the</u>	256
<u>insured by blood or law or have a lawfully substantial economic</u>	257
<u>interest in the continued life, health, and bodily safety of the</u>	258
<u>person insured, or are trusts established primarily for the</u>	259
<u>benefit of such parties;</u>	260
<u>(f) Any designation, consent, or agreement by an insured who</u>	261
<u>is an employee of an employer in connection with the purchase by</u>	262
<u>the employer, or trust established by the employer, of life</u>	263
<u>insurance on the life of the employee;</u>	264

<u>(g) Any of the following bona fide business succession</u>	265
<u>planning arrangements:</u>	266
<u>(i) An arrangement between one or more shareholders in a</u>	267
<u>corporation or between a corporation and one or more of its</u>	268
<u>shareholders or one or more trusts established by its</u>	269
<u>shareholders;</u>	270
<u>(ii) An arrangement between one or more partners in a</u>	271
<u>partnership or between a partnership and one or more of its</u>	272
<u>partners or one or more trusts established by its partners;</u>	273
<u>(iii) An arrangement between one or more members in a limited</u>	274
<u>liability company or between a limited liability company and one</u>	275
<u>or more of its members or one or more trusts established by its</u>	276
<u>members.</u>	277
<u>(h) An agreement entered into by a service recipient, a trust</u>	278
<u>established by the service recipient and a service provider, or a</u>	279
<u>trust established by the service provider who performs significant</u>	280
<u>services for the service recipient's trade or business;</u>	281
<u>(i) Any other contract, transaction, or arrangement exempted</u>	282
<u>from the definition of viatical settlement contract by rule</u>	283
<u>adopted by the superintendent of insurance based on the</u>	284
<u>superintendent's determination that the contract, transaction, or</u>	285
<u>arrangement is not of the type regulated by this chapter.</u>	286
<del>(M)</del> (R)(1) "Viatical settlement provider" means a person,	287
other than a viator, that enters into or effectuates a viatical	288
settlement contract.	289
(2) "Viatical settlement provider" does not include any of	290
the following:	291
(a) A bank, savings bank, savings and loan association,	292
credit union, or other <u>regulated</u> financial institution;	293
(b) <u>A premium finance company exempted under section 1321.72</u>	294

of the Revised Code from the licensure requirements of section 295  
3921.73 of the Revised Code that takes an assignment of a life 296  
insurance policy or certificate solely as collateral for a premium 297  
finance loan; 298

~~(b)(c)~~ The issuer of a life insurance policy ~~or certificate 299~~  
~~providing accelerated benefits as defined in section 3915.21 of 300~~  
~~the Revised Code and pursuant to the contract;~~ 301

~~(e)(d)~~ An individual who enters into or effectuates not more 302  
than one agreement in any calendar year for the transfer of life 303  
insurance policies ~~or certificates~~ for any value less than the 304  
expected death benefit; 305

~~(d)(e)~~ An authorized or eligible insurer that provides stop 306  
loss coverage or financial guarantee insurance to a viatical 307  
settlement provider, purchaser, financing entity, special purpose 308  
entity, or related provider trust; 309

~~(e)(f)~~ A financing entity; 310

~~(f)(g)~~ A special purpose entity; 311

~~(g)(h)~~ A related provider trust; 312

~~(h)(i)~~ A viatical settlement purchaser; 313

(j) Any other person the superintendent determines is not 314  
consistent with the definition of viatical settlement provider. 315

~~(N)(S)~~ "Viaticated policy" means a life insurance policy ~~or 316~~  
~~certificate~~ that has been acquired by a viatical settlement 317  
provider pursuant to a viatical settlement contract. 318

~~(O)(T)~~ "Viator" means the owner of a life insurance policy or 319  
a certificate holder under a group policy that has not previously 320  
been viaticated who resides in this state and who, in return for 321  
compensation or any thing of value that is less than the expected 322  
death benefit of the policy or certificate, assigns, transfers, 323  
sells, devises, or bequests the death benefit or ownership of any 324

portion of the insurance policy or certificate of insurance. For 325  
the purposes of this chapter, a "viator" is not limited to an 326  
owner of a life insurance policy or a certificate holder under a 327  
group policy insuring the life of an individual with a terminal or 328  
chronic illness or condition except where specifically addressed. 329  
"Viator" does not include any of the following: 330

(1) A ~~licensee~~ viatical settlement provider or viatical 331  
settlement broker licensed under this chapter; 332

(2) ~~An accredited investor or~~ A qualified institutional buyer 333  
as defined ~~respectively~~ in Regulation D, ~~Rule 501 or Rule 144A of~~ 334  
~~the Securities Act of 1933~~ 17 C.F.R. 230.144A, as amended; 335

(3) A financing entity; 336

(4) A special purpose entity; 337

(5) A related provider trust. 338

~~(P)~~(U) "Viatical settlement purchaser" means a person who 339  
~~gives~~ provides a sum of money as consideration for a life 340  
insurance policy or an interest in the death benefits of a life 341  
insurance policy that has been or will be the subject of a 342  
viatical settlement contract, or a person who owns, acquires, or 343  
is entitled to a beneficial interest in a trust that owns a 344  
viatical settlement contract or is the beneficiary of a life 345  
insurance policy that has been or will be the subject of a 346  
viatical settlement contract, for the purpose of deriving an 347  
economic benefit. "Viatical settlement purchaser" does not include 348  
any of the following: 349

(1) A ~~licensee~~ viatical settlement provider or viatical 350  
settlement broker licensed under this chapter; 351

(2) An accredited investor ~~or qualified institutional buyer~~ 352  
as defined ~~respectively~~ in Regulation D, ~~Rule 501 or Rule 144A of~~ 353  
17 C.F.R. 230.501 adopted under the "Securities Act of 1933," 48 354

Stat. 77, 15 U.S.C. 77a et seq. as amended; 355

(3) A qualified institutional buyer as defined in 17 C.F.R. 230.144A; 356  
357

(4) A financing entity; 358

~~(4)~~(5) A special purpose entity; 359

~~(5)~~(6) A related provider trust. 360

~~(Q)~~(V) "Licensee" means a person licensed as a viatical settlement provider, viatical settlement broker, or life expectancy provider under this chapter. 361  
362  
363

~~(R)~~(W) "NAIC" means the national association of insurance commissioners. 364  
365

~~(S) "Securities Act of 1933" has the same meaning as in section 1707.01 of the Revised Code~~ (X) "Regulated financial institution" means a bank, a savings association, or credit union operating under authority granted by the superintendent of financial institutions, the regulatory authority of any other state of the United States, the office of thrift supervision, the national credit union administration, or the office of the comptroller of the currency. 366  
367  
368  
369  
370  
371  
372  
373

**Sec. 3916.02.** ~~No~~ (A) Notwithstanding division (C) of this section, no person shall operate in this state as a viatical settlement provider ~~or~~, viatical settlement broker, or life expectancy provider without first having obtained a license from the superintendent of insurance and, if different from the owner of the insurance policy to be viaticated is not a resident of this state, from the comparable official of the state of residence of the viator owner. If 374  
375  
376  
377  
378  
379  
380  
381

(B) If there is more than one viator owner on a single policy or certificate and the viators owners are residents of different states, the viatical settlement shall be governed by the law of 382  
383  
384

the state in which the ~~viator~~ owner having the largest percentage 385  
ownership of the policy ~~or certificate~~ resides or, if the ~~viators~~ 386  
owners hold equal ownership, the state of residence of one ~~viator~~ 387  
owner agreed upon in writing by all ~~viators~~ owners. 388

(C) A person who represents the viator and is not compensated 389  
directly or indirectly by the viatical settlement provider, who is 390  
licensed as an attorney, certified public accountant, or financial 391  
planner accredited by a nationally recognized accreditation agency 392  
may negotiate viatical settlement contracts on behalf of a viator 393  
without obtaining a license pursuant to division (A) of this 394  
section. 395

**Sec. 3916.03.** (A) An applicant for a license as a viatical 396  
settlement provider ~~or~~, viatical settlement broker, or life 397  
expectancy provider shall submit an application for the license in 398  
a manner prescribed by the superintendent of insurance. The 399  
application shall be accompanied by a fee established by the 400  
superintendent by rule adopted in accordance with ~~chapter~~ Chapter 401  
119. of the Revised Code. 402

(B) A license issued under this chapter to a person other 403  
than an individual authorizes all partners, officers, members, or 404  
designated employees of the person to act as viatical settlement 405  
providers or viatical settlement brokers, as applicable, and all 406  
those partners, officers, members, or designated employees shall 407  
be named in the application and any supplements to the 408  
application. 409

(C) Upon the filing of an application under this section and 410  
the payment of the license fee, the superintendent shall make an 411  
investigation of the applicant and issue to the applicant a 412  
license that states in substance that the person is authorized to 413  
act as a viatical settlement provider ~~or~~, viatical settlement 414  
broker, or life expectancy provider, as applicable, if all of the 415

following apply: 416

(1) Regarding an application for a license as a viatical 417  
settlement provider, the applicant provides a detailed plan of 418  
operation. 419

(2) The superintendent finds all of the following: 420

(a) The applicant is competent and trustworthy and intends to 421  
act in good faith in the capacity of a viatical settlement 422  
provider ~~or~~, viatical settlement broker, or life expectancy 423  
provider, as applicable. 424

(b) The applicant has a good business reputation and has had 425  
experience, training, or education so as to be qualified to act in 426  
the capacity of a viatical settlement provider ~~or~~, viatical 427  
settlement broker, or life expectancy provider, as applicable. 428

(3) If the applicant is a person other than an individual, 429  
the applicant provides a certificate of good standing from the 430  
state of its domicile. 431

(4) The applicant provides an antifraud plan that meets the 432  
requirements of division (G) of section 3916.18 of the Revised 433  
Code. 434

(5) Regarding an application for a license as a viatical 435  
settlement provider or a viatical settlement broker, the applicant 436  
has demonstrated financial responsibility pursuant to division (D) 437  
of this section. 438

(D)(1) An applicant for license as a viatical settlement 439  
provider or viatical settlement broker shall provide proof of 440  
financial responsibility in a format prescribed by the 441  
superintendent in the amount of two hundred fifty thousand dollars 442  
through either of the following means: 443

(a) A surety bond executed and issued by an insurer 444  
authorized to issue surety bonds in this state. The bond shall be 445

in favor of this state and shall authorize recovery by the 446  
superintendent on behalf of any person in this state who sustains 447  
damages as a result of an erroneous act, failure to act, 448  
conviction of fraud or conviction of unfair practices committed by 449  
a licensed viatical settlement provider or licensed viatical 450  
settlement broker. 451

(b) A deposit of cash, certificates of deposit, or securities 452  
in any combination. 453

(2) If an applicant is licensed as a viatical settlement 454  
provider or viatical settlement broker in another state, the 455  
superintendent shall accept as valid any similar proof of 456  
financial responsibility the applicant filed in that state. 457

(3) The superintendent may request proof of financial 458  
responsibility at any time the superintendent considers necessary. 459

(E) An applicant shall provide all information requested by 460  
the superintendent. The superintendent may, at any time, require 461  
an applicant to fully disclose the identity of all stockholders, 462  
partners, officers, members, and employees, and may, in the 463  
exercise of the superintendent's discretion, refuse to issue a 464  
license to an applicant that is not an individual if the 465  
superintendent is not satisfied that each officer, employee, 466  
stockholder, partner, or member who may materially influence the 467  
applicant's conduct meets the standards set forth in this chapter. 468

~~(E)~~(F) Except as otherwise provided in this division, a 469  
license as a viatical settlement provider ~~or~~, viatical settlement 470  
broker, or life expectancy provider expires on the last day of 471  
March next after its issuance or continuance. A license as a 472  
viatical settlement provider ~~or~~, viatical settlement broker, or 473  
life expectancy provider may, in the discretion of the 474  
superintendent and the payment of an annual renewal fee 475  
established by the superintendent by rule adopted in accordance 476

with ~~chapter~~ Chapter 119. of the Revised Code, be continued past 477  
the last day of March next after its issue and after the last day 478  
of March in each succeeding year. Failure to pay the renewal fee 479  
by the required date results in the expiration of the license 480  
without a hearing under Chapter 119. of the Revised Code. 481

~~(F)~~(G) Any individual licensed as a viatical settlement 482  
broker shall complete not less than fifteen hours of continuing 483  
education biennially. The superintendent shall approve continuing 484  
education courses that shall be related to viatical settlements 485  
and viatical settlement transactions. The superintendent shall 486  
adopt rules for the enforcement of this division. 487

(H) The superintendent shall not issue a license to a 488  
nonresident applicant, unless either of the following applies: 489

(1) The applicant files and maintains a written designation 490  
of an agent for service of process with the superintendent. 491

(2) The applicant has filed with the superintendent the 492  
applicant's written irrevocable consent that any action against 493  
the applicant may be commenced against the applicant by service of 494  
process on the superintendent. 495

~~(G)~~(I) A viatical settlement provider ~~or~~, viatical settlement 496  
broker, or life expectancy provider shall provide to the 497  
superintendent new or revised information regarding any change in 498  
its officers, any stockholder owning ten per cent or more of its 499  
~~stockholders~~ stock, or its partners, directors, members, or 500  
designated employees within thirty days of the change. 501

~~(H)~~(J) Any fee collected under this section shall be paid 502  
into the state treasury to the credit of the department of 503  
insurance operating fund created by section 3901.021 of the 504  
Revised Code. 505

**Sec. 3916.031.** (A) Any corporation, partnership, or other 506

business that is licensed as a viatical settlement broker shall 507  
maintain at least one designated individual who is individually 508  
licensed as a viatical settlement broker to be responsible for the 509  
business's compliance with this chapter. 510

(B) Notwithstanding division (B) of section 3916.15 of the 511  
Revised Code, the superintendent of insurance may revoke without a 512  
hearing under Chapter 119. of the Revised Code the license of any 513  
business that does not meet the requirement of this section. 514

**Sec. 3916.04.** Irrespective of the manner in which the 515  
licensed viatical settlement broker is compensated, a licensed 516  
viatical settlement broker is deemed to represent only the viator 517  
and owes a fiduciary duty to the viator to act according to the 518  
viator's instructions and in the best interest of the viator. 519

**Sec. 3916.05.** (A) A person shall not use a viatical 520  
settlement contract form or provide a disclosure statement form to 521  
a viator in this state unless the viatical settlement contract 522  
form or the disclosure statement form is filed with and approved 523  
by the superintendent of insurance. The superintendent shall 524  
disapprove a viatical settlement contract form or a disclosure 525  
statement form if, in the superintendent's opinion, the viatical 526  
settlement contract form, the disclosure statement form, or any 527  
provision contained therein fails to meet the requirements of 528  
section 3916.06 of the Revised Code, is unreasonable, is contrary 529  
to the interests of the public, or is otherwise misleading or 530  
unfair to the viator. At the superintendent's discretion, the 531  
superintendent may require the submission of advertising material 532  
to which section 3916.17 of the Revised Code applies. 533

(B) The superintendent may adopt rules in accordance with 534  
Chapter 119. of the Revised Code to establish reasonable fees for 535  
any service or transaction performed by the department of 536

insurance pursuant to division (A) of this section. Any fee 537  
collected pursuant to those rules shall be paid into the state 538  
treasury to the credit of the department of insurance operating 539  
fund created by section 3901.021 of the Revised Code. 540

**Sec. 3916.06.** (A)(1) With each application for a viatical 541  
settlement, a licensed viatical settlement provider or licensed 542  
viatical settlement broker shall disclose at least the following 543  
to a viator no later than the time all parties sign the 544  
application for the viatical settlement contract: 545

(a) That there are possible alternatives to viatical 546  
settlement contracts, including any accelerated death benefits 547  
offered under the viator's life insurance policy or certificate; 548

(b) That some or all of the proceeds of the viatical 549  
settlement may be subject to federal income taxation and state 550  
franchise and income taxation, and that assistance should be 551  
sought from a professional tax advisor; 552

(c) That the proceeds of the viatical settlement could be 553  
subject to the claims of creditors; 554

(d) That receipt of the proceeds of the viatical settlement 555  
may adversely affect the viator's eligibility for medical 556  
assistance under Chapter 5111. of the Revised Code or other 557  
government benefits or entitlements, and that advice should be 558  
obtained from the appropriate government agencies; 559

(e) That the viator has a right to rescind the viatical 560  
settlement contract ~~for at least fifteen~~ by providing notice of 561  
rescission and repaying all proceeds and any premiums, loans, and 562  
loan interest paid as a result of the viatical settlement within 563  
sixty calendar days after all parties sign the viatical settlement 564  
contract or thirty calendar days after the viator receives the 565  
viatical settlement proceeds, as provided in section 3916.08 of 566

the Revised Code, whichever is sooner. If the insured dies during 567  
the rescission period, the viatical settlement contract shall be 568  
deemed to have been rescinded, subject to repayment by the viator 569  
or the viator's estate of all viatical settlement proceeds and any 570  
premiums, loans, and loan interest to the ~~viatical settlement~~ 571  
~~company~~ licensed viatical settlement provider within sixty days of 572  
the death of the insured. 573

(f) That funds will be sent to the viator within three 574  
business days after the licensed viatical settlement provider has 575  
received written acknowledgment from the insurer or group 576  
administrator that ownership of the policy or interest in the 577  
certificate has been transferred and that the beneficiary has been 578  
designated pursuant to the viatical settlement contract; 579

(g) That entering into a viatical settlement contract may 580  
cause other rights or benefits, including conversion rights and 581  
waiver of premium benefits that may exist under the policy or 582  
certificate, to be forfeited by the viator and that assistance 583  
should be sought from a financial advisor. 584

(h) That following execution of the viatical settlement 585  
contract, the licensed viatical settlement provider, or the 586  
licensed viatical settlement provider's authorized representative 587  
may contact the insured for the purpose of determining the 588  
insured's health status and to confirm the insured's residential 589  
or business address and telephone number or for other purposes 590  
permitted by law. Any such contact shall be limited to once in any 591  
three-month period if the insured has a life expectancy of more 592  
than one year or to once per month if the insured has a life 593  
expectancy of one year or less. 594

(2) The licensed viatical settlement provider or licensed 595  
viatical settlement broker shall provide the disclosures under 596  
division (A)(1) of this section in a separate document that is 597  
signed by the viator and the licensed viatical settlement provider 598

or licensed viatical settlement broker. 599

(3) Disclosure to a viator under division (A)(1) of this 600  
section shall include distribution of a brochure describing the 601  
process of viatical settlements. The licensed viatical settlement 602  
provider or licensed viatical settlement broker shall use the 603  
NAIC's form for the brochure unless another one is developed or 604  
approved by the superintendent. 605

(4) The disclosure document under division (A)(1) of this 606  
section shall contain the following language: 607

"All medical, financial, or personal information solicited or 608  
obtained by a viatical settlement provider or viatical settlement 609  
broker about an insured, including the insured's identity or the 610  
identity of family members, a spouse, or a significant other may 611  
be disclosed as necessary to effect the viatical settlement 612  
between the viator and the viatical settlement provider. If you 613  
are asked to provide this information, you will be asked to 614  
consent to the disclosure. The information may be provided to 615  
someone who buys the policy or provides funds for the purchase. 616  
You may be asked to renew your permission to share information 617  
every two years." 618

(B)(1) A licensed viatical settlement provider shall disclose 619  
at least the following to a viator prior to the date the viatical 620  
settlement contract is signed by all the necessary parties: 621

(a) The affiliation, if any, between the licensed viatical 622  
settlement provider and the issuer of the insurance policy ~~or~~ 623  
~~certificate~~ to be viaticated; 624

(b) The name, business address, and telephone number of the 625  
licensed viatical settlement provider; 626

(c) ~~Regarding a viatical settlement broker, the amount and~~ 627  
~~method of calculating the broker's compensation. As used in this~~ 628  
~~division, "compensation" includes anything of value paid or given~~ 629

~~to a viatical settlement broker for the placement of a policy or~~ 630  
~~certificate. Any affiliations or contractual arrangements between~~ 631  
~~the licensed viatical settlement provider and the viatical~~ 632  
~~settlement purchaser;~~ 633

(d) If an insurance policy ~~or certificate~~ to be viaticated 634  
has been issued as a joint policy ~~or certificate~~ or involves 635  
family riders or any coverage of a life other than the insured 636  
under the policy ~~or certificate~~ to be viaticated, the possible 637  
loss of coverage on the other lives under the policy ~~or~~ 638  
~~certificate~~ and that advice should be sought from the viator's 639  
insurance ~~producer~~ agent or the company issuing the policy ~~or~~ 640  
~~certificate;~~ 641

(e) The dollar amount of the current death benefit payable to 642  
the licensed viatical settlement provider under the policy ~~or~~ 643  
~~certificate~~, and, if known, the availability of any additional 644  
guaranteed insurance benefits, the dollar amount of any accidental 645  
death and dismemberment benefits under the policy ~~or certificate~~, 646  
and the ~~viatical settlement provider's~~ extent to which the 647  
viator's interest in those benefits will be transferred as a 648  
result to the viatical settlement contract. 649

(f) ~~The~~ Whether the funds will be in escrow with an escrow 650  
agent during the transfer process and, if so, the name, business 651  
address, and telephone number of the ~~independent third party~~ 652  
escrow agent, and the fact that the viator or owner may inspect or 653  
receive copies of the relevant escrow or trust agreements or 654  
documents. 655

(2) The licensed viatical settlement broker shall disclose at 656  
least the following to a viator prior to the date the viatical 657  
settlement contract is signed by all the necessary parties: 658

(a) The name, business address, and telephone number of the 659  
licensed viatical settlement broker; 660

(b) A full, complete, and accurate description of all offers, counter-offers, acceptances, and rejections relating to the proposed viatical settlement contract; 661  
662  
663

(c) Any affiliations or contractual agreements between the licensed viatical settlement broker and any person making an offer in connection with the proposed viatical settlement contract; 664  
665  
666

(d) The amount and method of calculating the licensed viatical settlement broker's compensation and, if any portion of the licensed viatical settlement broker's compensation is taken from the viatical settlement offer, the total amount of the viatical settlement offer and the licensed viatical settlement broker's compensation as a percentage of that total. As used in this division, "compensation" includes anything of value paid or given to a licensed viatical settlement broker for the placement of a policy. 667  
668  
669  
670  
671  
672  
673  
674  
675

(3) The licensed viatical settlement provider or licensed viatical settlement broker shall conspicuously display the disclosures required under ~~division~~ divisions (B)(1) and (2) of this section in the viatical settlement contract or in a separate document signed by the viator and the licensed viatical settlement provider or licensed viatical settlement broker, as appropriate. 676  
677  
678  
679  
680  
681

(C) If the licensed viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy or certificate, the licensed viatical settlement provider shall communicate in writing the change in ownership or beneficiary to the insured within twenty days after the change. 682  
683  
684  
685  
686

(D) If, for the purpose of engaging in the business of viatical settlements, a licensed viatical settlement broker or licensed viatical settlement provider is party to a plan, transaction, or series of transactions to originate, renew, continue, or finance a life insurance policy with the insurer that 687  
688  
689  
690  
691

issued the policy within the first five years of the issuance of 692  
that policy the licensed viatical settlement broker or licensed 693  
viatical settlement provider shall fully disclose the plan, 694  
transaction, or series of transactions to that insurer prior to 695  
the initiation of the plan, transaction, or series of 696  
transactions. 697

**Sec. 3916.07.** (A) A licensed viatical settlement provider 698  
entering into a viatical settlement contract shall first obtain 699  
all of the following: 700

(1) If the viator is the insured, a written statement from an 701  
attending physician that the viator is of sound mind and under no 702  
constraint or undue influence to enter into a viatical settlement 703  
contract. As used in this division, "physician" means a person 704  
authorized under Chapter 4731. of the Revised Code to practice 705  
medicine and surgery or osteopathic medicine and surgery. 706

(2) A document in which the insured consents in writing, as 707  
required by division (E) of section 3916.13 of the Revised Code, 708  
to the release of the insured's medical records to a licensed 709  
viatical settlement provider or licensed viatical settlement 710  
broker and to the insurance company that issued the life insurance 711  
policy ~~or certificate~~ covering the life of the insured. 712

(B) Within twenty days after a viator executes documents 713  
necessary to transfer any rights under an insurance policy ~~or~~ 714  
~~certificate~~ or within twenty days of entering any expressed or 715  
implied agreement, option, promise, or other form of understanding 716  
to viaticate the policy, the licensed viatical settlement provider 717  
shall give written notice to the insurer that issued that 718  
insurance policy ~~or certificate~~ that the policy ~~or certificate~~ has 719  
or will become a viaticated policy ~~or certificate~~. The notice 720  
shall be accompanied by the documents required by division (C) of 721  
this section. 722

(C) The licensed viatical settlement provider shall deliver a 723  
copy of the medical release required under division (A)(2) of this 724  
section, a copy of the viator's application for the viatical 725  
settlement contract, the notice required under division (B) of 726  
this section, and a request for verification of coverage to the 727  
insurer that issued the life insurance policy ~~or certificate~~ that 728  
is the subject of the viatical transaction. The licensed viatical 729  
settlement provider shall use the NAIC's form for verification of 730  
coverage unless ~~standards for verification are~~ another form is 731  
developed or approved by the superintendent of insurance. 732

(D) The insurer shall respond to a request for verification 733  
of coverage submitted on an approved form by a licensed viatical 734  
settlement provider or licensed viatical settlement broker within 735  
thirty calendar days after the date the request is received and 736  
shall indicate whether, based on the medical evidence and 737  
documents provided, the insurer intends to pursue an investigation 738  
at that time regarding possible fraud or the validity of the life 739  
insurance contract ~~or certificate~~ that is the subject of the 740  
request. The insurer shall accept an original or facsimile or 741  
electronic copy of such request and any accompanying authorization 742  
signed by the viator. Failure by the insurer to meet its 743  
obligations under this division is a violation of division (D) of 744  
section 3916.16 and section 3916.21 of the Revised Code. 745

(E) Prior to or at the time of execution of the viatical 747  
settlement contract, the licensed viatical settlement provider 748  
shall obtain a witnessed document in which the viator consents to 749  
the viatical settlement contract, represents that the viator has a 750  
full and complete understanding of the viatical settlement 751  
contract and a full and complete understanding of the benefits of 752  
the life insurance policy ~~or certificate~~, and acknowledges that 753  
the viator is entering into the viatical settlement contract 754

freely and voluntarily and, for persons with a terminal or chronic 755  
illness or condition, acknowledges that the insured has a terminal 756  
or chronic illness and that the terminal or chronic illness or 757  
condition was diagnosed after the life insurance policy ~~or~~ 758  
~~certificate~~ was issued. 759

(F) If a licensed viatical settlement broker performs any of 760  
the activities specified in this section on behalf of the licensed 761  
viatical settlement provider, the licensed viatical settlement 762  
provider is deemed to have fulfilled the requirements of this 763  
section. 764

(G) All medical information solicited or obtained by any 765  
licensee shall be subject to the applicable provisions of state 766  
law relating to confidentiality of medical information. 767

**Sec. 3916.08.** (A) Each viatical settlement contract entered 768  
into in this state shall provide the viator with an ~~unconditional~~ 769  
~~absolute~~ right to rescind the contract ~~for at least fifteen by~~ 770  
providing notice of rescission and repaying all proceeds and any 771  
premiums, loans, and loan interest paid as a result of the 772  
viatical settlement within sixty calendar days after all parties 773  
sign the viatical settlement contract or thirty calendar days 774  
after the receipt of the viatical settlement proceeds pursuant to 775  
division (A) of section 3916.09 of the Revised Code. If the 776  
insured dies during the rescission period, the viatical settlement 777  
contract is deemed to have been rescinded, subject to repayment of 778  
all viatical settlement proceeds and any premiums, loans, and loan 779  
interest to the licensed viatical settlement provider within sixty 780  
days of the death of the insured. ~~If~~ 781

(B) If a licensed viatical settlement provider has paid 782  
commissions or other compensation to a licensed viatical 783  
settlement broker and the viator rescinds the viatical settlement 784  
contract, the licensed viatical settlement broker shall refund all 785

such commissions and compensation to the licensed viatical settlement provider, within five business days following receipt of written notice from the licensed viatical settlement provider. 786  
The notice shall include a copy of the viator's notice of recession or the notice of the death of the viator. 787  
788  
789  
790

(C) If a viatical settlement contract is rescinded by the viator pursuant to this section, ownership of the insurance policy or certificate reverts to the viator or to the viator's estate if the viator is deceased, irrespective of any transfer of ownership of the policy or certificate by the viator, licensed viatical settlement provider, or any other person. 791  
792  
793  
794  
795  
796

**Sec. 3916.09.** (A) The licensed 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 business days after the date the escrow agent receives the documents, or from the date the licensed viatical settlement provider receives the documents if the viator erroneously provides the documents directly to the licensed viatical settlement provider, the licensed viatical settlement provider shall pay or transfer the proceeds of the viatical settlement to an escrow or trust account in a ~~state or federally chartered~~ regulated financial institution whose deposits are insured by the federal deposit insurance corporation. Upon payment of the settlement proceeds into the escrow or trust account, the escrow agent or trustee shall deliver the original change in ownership, assignment, or change in beneficiary forms to the licensed viatical settlement provider, a representative of the licensed viatical settlement provider, or related provider trust. Upon the ~~licensed provider's~~ escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company, the 797  
798  
799  
800  
801  
802  
803  
804  
805  
806  
807  
808  
809  
810  
811  
812  
813  
814  
815  
816  
817

~~licensed provider escrow agent shall instruct the escrow agent to~~ 818  
~~pay the settlement proceeds to the viator. The escrow agent shall~~ 819  
~~make payment within three business days of the date the provider~~ 820  
~~received the acknowledged forms from the insurance company Funds~~ 821  
~~are considered sent by a licensed viatical settlement provider to~~ 822  
~~a viator as of the date that the escrow agent either releases the~~ 823  
~~funds for wire transfer to the viator or places a check for~~ 824  
~~delivery to the viator via United States postal service or other~~ 825  
~~nationally recognized delivery service.~~ 826

(B) Failure to transfer the proceeds to the viator within the 827  
period of time disclosed pursuant to division (A)(1)(f) of section 828  
3916.06 of the Revised Code renders the viatical settlement 829  
contract voidable by the viator for lack of consideration until 830  
the time consideration is tendered to and accepted by the viator. 831  
If a viatical settlement contract is voided by the viator pursuant 832  
to this division, ownership of the insurance policy ~~or certificate~~ 833  
reverts to the viator or to the viator's estate if the viator is 834  
deceased, irrespective of any transfer of ownership of the policy 835  
~~or certificate~~ by the viator, licensed viatical settlement 836  
provider, or any other person. 837

**Sec. 3916.10.** After a viatical settlement has occurred, 838  
contact with the insured for the purpose of determining the health 839  
status of the insured by the licensed viatical settlement provider 840  
or licensed viatical settlement broker shall be made only by the 841  
licensed viatical settlement provider ~~or~~, licensed viatical 842  
settlement broker licensed in this state, or the authorized 843  
representative of the licensed viatical settlement provider or 844  
licensed viatical settlement broker. The licensed viatical 845  
settlement provider ~~or~~, licensed viatical settlement broker, or 846  
authorized representative shall not contact the insured for the 847  
purpose of determining the insured's health status more than once 848

every three months if the insured has a life expectancy of more 849  
than one year, or more than once per month if the insured has a 850  
life expectancy of one year or less. The licensed viatical 851  
settlement provider or licensed viatical settlement broker shall 852  
explain the procedure for making these contacts at the time the 853  
viatical settlement contract is entered into. 854

The limitations set forth in this section do not apply to 855  
contacts made with an insured under a viaticated policy for 856  
purposes other than to determine the insured's health status. 857

~~Viatical~~ Licensed viatical settlement providers and licensed 858  
viatical settlement brokers are responsible for the actions of 859  
their authorized representatives, for the purposes of this 860  
section. 861

**Sec. 3916.11.** (A)(1) A ~~licensee under this chapter~~ licensed 862  
viatical settlement provider and licensed viatical settlement 863  
broker shall, for five years, retain copies of all of the 864  
following: 865

(a) All proposed, offered, or executed contracts, purchase 866  
agreements, underwriting documents, policy forms, and applications 867  
from the date of the proposal, offer, or execution of the contract 868  
or purchase agreement, whichever is later; 869

(b) All checks, drafts, or other evidence and documentation 870  
related to the payment, transfer, deposit, or release of funds 871  
from the date of the transaction; 872

(c) All other records and documents related to the 873  
requirements of this chapter. 874

(2) This section does not relieve a person of the obligation 875  
to produce the documents described in division (A)(1) of this 876  
section to the superintendent of insurance after the retention 877  
period specified in that division has expired if the person has 878

retained the documents. 879

(3) Records required to be retained by this section must be 880  
legible and complete and may be retained in paper, photograph, 881  
microprocess, magnetic, mechanical, or electronic media, or by any 882  
process that accurately reproduces or forms a durable medium for 883  
the reproduction of a record. 884

(B)(1) Upon determining that an examination should be 885  
conducted, subject to division (E) of this section, the 886  
superintendent shall appoint one or more examiners to perform the 887  
examination and instruct them as to the scope of the examination. 888  
The superintendent may employ any guidelines or procedures for 889  
purposes of this division that the superintendent considers 890  
appropriate. 891

(2) Every licensee licensed viatical settlement provider, 892  
licensed viatical settlement broker, or person from whom 893  
information is sought, and all officers, directors, employees, and 894  
agents of any licensee licensed viatical settlement provider, 895  
licensed viatical settlement broker, or person from whom 896  
information is sought, shall provide to the examiners timely, 897  
convenient, and free access at all reasonable hours at the 898  
licensee's licensed viatical settlement provider, licensed 899  
viatical settlement broker, or person's offices to all books, 900  
records, accounts, papers, documents, assets, and computer or 901  
other recordings relating to the property, assets, business, and 902  
affairs of the licensee licensed viatical settlement provider or 903  
licensed viatical settlement broker being examined. The officers, 904  
directors, employees, and agents of the licensee licensed viatical 905  
settlement provider, licensed viatical settlement broker, or 906  
person shall facilitate the examination and aid in the examination 907  
so far as it is in their power to do so. 908

The refusal of a licensee licensed viatical settlement 909  
provider or licensed viatical settlement broker, by its officers, 910

directors, employees, or agents, to submit to examination or to 911  
comply with any reasonable written request of the superintendent 912  
shall be grounds for suspension, revocation, denial of issuance, 913  
or nonrenewal of any license or authority held by the ~~licensee~~ 914  
viatical settlement provider or viatical settlement broker to 915  
engage in the viatical settlement business or other business 916  
subject to the superintendent's jurisdiction. Any proceedings for 917  
suspension, revocation, or denial, ~~or nonrenewal~~ of any license or 918  
authority is subject to ~~chapter~~ Chapter 119. of the Revised Code. 919

(3) The superintendent has the power to issue subpoenas, to 920  
administer oaths, and to examine under oath any person as to any 921  
matter pertinent to the examination. Upon the failure or refusal 922  
of a person to obey a subpoena, the superintendent may petition a 923  
court of competent jurisdiction, and, upon proper showing, the 924  
court may enter an order compelling the witness to appear and 925  
testify or produce documentary evidence. Failure to obey the court 926  
order shall be punishable as contempt of court. 927

(4) When making an examination under this chapter, the 928  
superintendent may retain attorneys, appraisers, independent 929  
actuaries, independent certified public accountants, or other 930  
professionals and specialists as examiners, and the ~~licensee~~ 931  
licensed viatical settlement provider or licensed viatical 932  
settlement broker that is the subject of the examination shall 933  
bear the cost of those examiners. Examiners who are appointed by 934  
the superintendent, but who are not employees of the department of 935  
insurance, shall be compensated for their work, travel, and living 936  
expenses at reasonable and customary rates. 937

(5) Nothing contained in this chapter limits the 938  
superintendent's authority to terminate or suspend an examination 939  
in order to pursue other legal or regulatory action pursuant to 940  
the insurance laws of this state. Findings of fact and conclusions 941  
made pursuant to any examination shall be prima-facie evidence in 942

any legal or regulatory action. 943

(6) Nothing contained in this chapter limits the 944  
superintendent's authority to use and, if appropriate, to make 945  
public any final or preliminary examination report, any examiner 946  
or ~~licensee~~ licensed viatical settlement provider or licensed 947  
viatical settlement broker working papers or other documents, or 948  
any other information discovered or developed during the course of 949  
any examination in the furtherance of any legal or regulatory 950  
action that the superintendent, in the superintendent's sole 951  
discretion, considers appropriate. 952

(C)(1) Examination reports shall be comprised of only facts 953  
appearing upon the books, records, or other documents of the 954  
licensee, its agents, or other persons examined, or as ascertained 955  
from the testimony of its officers, agents, or other persons 956  
examined concerning its affairs, and the conclusions and 957  
recommendations that the examiners find reasonably warranted from 958  
the facts. 959

(2) Upon completion of the examination, the examiner in 960  
charge shall file with the superintendent a verified written 961  
report of examination. Upon receipt of the verified report, the 962  
superintendent shall transmit the report to the ~~licensee~~ licensed 963  
viatical settlement provider or licensed viatical settlement 964  
broker examined, together with a notice that shall afford the 965  
~~licensee~~ licensed viatical settlement provider or licensed 966  
viatical settlement broker examined a reasonable opportunity of 967  
not more than thirty days from receipt of the report to make a 968  
written submission or rebuttal with respect to any matters 969  
contained in the examination report. 970

(3) If the superintendent determines that regulatory action 971  
is appropriate as a result of an examination, the superintendent 972  
may initiate any proceedings or actions provided by law. 973

(D)(1) Names and individual identification data for all 974  
viators shall be considered private and confidential information 975  
and shall not be disclosed by the superintendent, unless required 976  
by law. 977

(2) Except as otherwise provided in this chapter or in the 978  
law of another state or jurisdiction that is substantially similar 979  
to this chapter, all examination reports, working papers, recorded 980  
information, documents, and copies of those reports, papers, 981  
information, documents, and copies produced by, obtained by, or 982  
disclosed to the superintendent or to any other person in the 983  
course of an examination made under this chapter or under the law 984  
of another state or jurisdiction that is substantially similar to 985  
this chapter, or in the course of the superintendent's analysis or 986  
investigation of the financial condition or market conduct of a 987  
licensee are confidential by law and privileged, are not a public 988  
record open for inspection under section 149.43 of the Revised 989  
Code, are not subject to subpoena, and are not subject to 990  
discovery or admissible in evidence in any private civil action. 991  
The superintendent may use the documents, materials, or other 992  
information in the furtherance of any regulatory or legal action 993  
brought as part of the superintendent's official duties. 994

(3) Documents, materials, or other information, including, 995  
but not limited to, all working papers, and copies of working 996  
papers, in the possession or control of the NAIC and its 997  
affiliates and subsidiaries are confidential by law and 998  
privileged, are not subject to subpoena, and are not subject to 999  
discovery or admissible in evidence in any private civil action, 1000  
if either of the following applies: 1001

(a) They are created, produced, or obtained by or disclosed 1002  
to the NAIC and its affiliates and subsidiaries in the course of 1003  
assisting an examination made under this chapter or assisting the 1004  
superintendent or the comparable official in another state in the 1005

analysis or investigation of the financial condition or market 1006  
conduct of a licensee. 1007

(b) The superintendent or the comparable official in another 1008  
state discloses them to the NAIC and its affiliates and 1009  
subsidiaries under division (D)(5) of this section or under a 1010  
comparable provision in the law of the other state. 1011

(4) Neither the superintendent nor any person that received 1012  
the documents, material, or other information while acting under 1013  
the authority of the superintendent, including the NAIC and its 1014  
affiliates and subsidiaries, shall be permitted to testify in any 1015  
private civil action concerning any confidential documents, 1016  
materials, or information subject to division (D)(1) of this 1017  
section. 1018

(5)(a) In order to assist in the performance of the 1019  
superintendent's duties, the superintendent may do any of the 1020  
following: 1021

(i) Share documents, materials, or other information, 1022  
including the confidential and privileged documents, materials, or 1023  
information subject to division (D)(1) of this section, with other 1024  
state, federal, and international regulatory agencies, with the 1025  
NAIC and its affiliates and subsidiaries, and with state, federal, 1026  
and international law enforcement authorities, if the recipient 1027  
agrees to maintain the confidentiality and privileged status of 1028  
the document, material, communication, or other information; 1029

(ii) Receive documents, materials, communications, or 1030  
information, including otherwise confidential and privileged 1031  
documents, materials, or information, from the NAIC and its 1032  
affiliates and subsidiaries, and from regulatory and law 1033  
enforcement officials of other foreign or domestic jurisdictions; 1034

(iii) Enter into agreements governing sharing and use of 1035  
information consistent with this section. 1036

(b) The superintendent shall maintain as confidential or privileged any document, material, or information received under division (D)(5)(a)(ii) of this section with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

(6) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the superintendent under this section or as a result of sharing as authorized in division (D)(5) of this section.

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

(8) Nothing contained in this chapter prevents or prohibits the superintendent from disclosing the content of an examination report, preliminary examination report or results, or any matter relating to those reports or results, to the official of any other state or country that is comparable to the superintendent, or to law enforcement officials of this or any other state or agency of the federal government at any time, or to the NAIC, if the agency or office receiving the report or matters relating to it agrees in writing to hold it confidential and in a manner consistent with this chapter.

(E)(1) The superintendent may not appoint an examiner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of, or owns a pecuniary interest in, any person subject to examination under this chapter. This division does not automatically preclude any of the following from being an examiner:

(a) A viator;	1069
(b) An insured in a viaticated insurance policy <del>or</del> <del>certificate</del> ;	1070 1071
(c) A beneficiary in an insurance policy or certificate that is proposed to be viaticated.	1072 1073
(2) Notwithstanding the requirements of division (E) of this section, the superintendent may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.	1074 1075 1076 1077 1078 1079 1080
(F)(1) As used in division (F) of this section, "expenses" include all of the following:	1081 1082
(a) Compensation of examiners for each day or portion of a day worked;	1083 1084
(b) Travel and living expenses of examiners;	1085
(c) All other incidental expenses incurred by or on behalf of examiners;	1086 1087
(d) An allocated share of all expenses not described in division (F)(1), (2), or (3) of this section that are necessarily incurred in the performance of a market conduct examination, including the expenses of direct overhead and support staff for examiners.	1088 1089 1090 1091 1092
(2) When a market conduct examination is made of <del>an insurer a</del> <u>licensed viatical settlement provider or licensed viatical</u> <u>settlement broker</u> , the <del>insurer</del> <u>licensed viatical settlement</u> <u>provider or licensed viatical settlement broker</u> shall pay the expenses of the examination. The expenses of an examination include those incurred on or after the date on which the	1093 1094 1095 1096 1097 1098

superintendent notifies the ~~insurer~~ licensed viatical settlement 1099  
provider or licensed viatical settlement broker of the examination 1100  
through the issuance of the final examination report. 1101

(3) Upon ~~an insurer's~~ a licensed viatical settlement provider 1102  
or licensed viatical settlement broker's failure to comply with 1103  
division (A) of this section, the superintendent may initiate 1104  
proceedings in accordance with Chapter 119. of the Revised Code to 1105  
revoke, suspend, or refuse to renew the ~~certificate of authority~~ 1106  
~~or~~ license of the ~~insurer~~ viatical settlement provider or viatical 1107  
settlement broker. Additionally, the superintendent may request 1108  
the attorney general to initiate a civil action in the court of 1109  
common pleas of Franklin county to obtain and enforce a judgment 1110  
for expenses incurred in the performance of a market conduct 1111  
examination. 1112

(G)(1) No cause of action shall arise nor shall any liability 1113  
be imposed against the superintendent, any authorized 1114  
representative of the superintendent, or any examiner appointed by 1115  
the superintendent for any statements made or conduct performed in 1116  
good faith while carrying out the provisions of this chapter. 1117

(2) No cause of action shall arise nor shall any liability be 1118  
imposed against any person for the act of communicating or 1119  
delivering information or data to the superintendent, any 1120  
authorized representative of the superintendent, or any examiner 1121  
appointed by the superintendent pursuant to an examination made 1122  
under this chapter, if the act of communication or delivery was 1123  
performed in good faith and without fraudulent intent or the 1124  
intent to deceive. ~~Division (G)(2) of this section~~ This division 1125  
does not abrogate or modify in any way any common law or statutory 1126  
privilege or immunity previously enjoyed by any person identified 1127  
in division (G)(1) of this section. 1128

(3) A person identified in division (G)(1) or (2) of this 1129  
section shall be entitled to an award of attorney's fees and costs 1130

if the person is the prevailing party in a civil action for libel, 1131  
slander, or any other relevant tort arising out of activities in 1132  
carrying out the provisions of this chapter and the party bringing 1133  
the action was not substantially justified in bringing the action. 1134  
For purposes of this division ~~(G)(3) of this section~~, a proceeding 1135  
is "substantially justified" if it had a reasonable basis in law 1136  
or fact at the time that it was initiated. 1137

(H) The superintendent may investigate suspected fraudulent 1138  
viatical settlement acts and persons engaged in the business of 1139  
viatical settlements. 1140

**Sec. 3916.12.** Each viatical settlement provider ~~and viatical~~ 1141  
~~settlement broker~~ licensed under this chapter shall file with the 1142  
superintendent of insurance, on or before the first day of March 1143  
of each year, an annual statement containing the information 1144  
required by the superintendent by rule adopted in accordance with 1145  
~~chapter~~ Chapter 119. of the Revised Code. The superintendent may 1146  
require information concerning transactions involving a viator who 1147  
is a resident of this state only. The superintendent shall keep 1148  
confidential and not a matter of public record all individual 1149  
transaction data regarding the business of viatical settlements 1150  
and data that could compromise the privacy of personal, financial, 1151  
and health information of the viator or insured. 1152

**Sec. 3916.13.** Except as otherwise permitted or required by 1153  
law, a licensed viatical settlement provider, licensed viatical 1154  
settlement broker, insurance company, insurance agent, insurance 1155  
broker, information bureau, rating agency or company, or any other 1156  
person with actual knowledge of an insured's identity, shall not 1157  
disclose that identity as an insured, including the insured's name 1158  
and individual identification data, or the insured's financial or 1159  
medical information, unless any of the following apply: 1160

(A) The disclosure is necessary to effect a viatical settlement between the viator and a licensed viatical settlement provider, and the viator and insured have provided prior written consent to the disclosure.

(B) The disclosure is provided in response to an investigation or examination by the superintendent of insurance or by any other governmental officer or agency or pursuant to the requirements of division (C) of section 3916.18 of the Revised Code.

(C) The disclosure is a term of, or condition to, the transfer of a viaticated policy by one licensed viatical settlement provider to another licensed viatical settlement provider.

(D) The disclosure is necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies ~~or certificates~~ by a licensed viatical settlement provider, and the viator and insured have provided prior written consent to the disclosure.

(E) The disclosure is necessary to allow the licensed viatical settlement provider or licensed viatical settlement broker or their authorized representatives to make contacts for the purpose of determining health status.

(F) The disclosure is required to purchase stop-loss coverage or financial guaranty insurance.

**Sec. 3916.14.** (A)(1) The superintendent of insurance may conduct an examination under this chapter of a licensee as often as the superintendent in the superintendent's sole discretion considers appropriate. The superintendent shall consider all of the following to determine the nature, scope, and frequency of examinations:

<u>(a) Consumer complaints;</u>	1191
<u>(b) The results of financial statement analyses and ratios;</u>	1192
<u>(c) Any changes in ownership, officers, or directors;</u>	1193
<u>(d) Actuarial opinions;</u>	1194
<u>(e) Any report of independent certified public accountants;</u>	1195
<u>(f) Any other criteria the superintendent determines to be appropriate.</u>	1196 1197
(2) For the purposes of completing an examination of a licensee under this chapter, the superintendent may examine or investigate any person, or the business of any person, insofar as the examination or investigation, in the sole discretion of the superintendent, is necessary or material to the examination of the licensee.	1198 1199 1200 1201 1202 1203
(3) In lieu of an examination under this chapter of any foreign or alien licensee licensed under this chapter, the superintendent, at the superintendent's discretion, may accept an examination report on the licensee as prepared by the official of the licensee's state of domicile or port-of-entry state who is comparable to the superintendent. <u>As far as is practical, the superintendent shall cooperate with that official for any examination of a foreign or alien licensee.</u>	1204 1205 1206 1207 1208 1209 1210 1211
(B) The licensee or applicant shall pay to the superintendent all costs, assessments, forfeitures, or fines incurred in conducting an examination under this section. The superintendent shall deposit the money into the state treasury to the credit of the department of insurance operating fund created by section 3901.021 of the Revised Code.	1212 1213 1214 1215 1216 1217
<b>Sec. 3916.15.</b> (A) The superintendent of insurance may refuse to issue or may suspend, revoke, or refuse to renew the license of a viatical settlement provider <del>or</del> , <u>viatical settlement broker, or</u>	1218 1219 1220

life expectancy provider, if the superintendent finds that any of 1221  
the following apply: 1222

(1) There was a material misrepresentation in the application 1223  
for the license. 1224

(2) The applicant or licensee or any officer, partner, 1225  
member, key management personnel, or designee of the applicant or 1226  
licensee has been convicted of fraudulent or dishonest practices, 1227  
is subject to a final administrative action in another state, or 1228  
is otherwise shown to be untrustworthy or incompetent. 1229

(3) The licensee is a viatical settlement provider that 1230  
demonstrates a pattern of unreasonable payments to viators. 1231

(4) The licensee or any officer, partner, member, key 1232  
management personnel, or designee of the licensee has been 1233  
convicted of or has pleaded guilty or no contest to a felony or to 1234  
a misdemeanor involving fraud, moral turpitude, dishonesty, or 1235  
breach of trust, regardless of whether a judgment of conviction 1236  
has been entered by the court. 1237

(5) The licensee is a viatical settlement provider that has 1238  
used a viatical settlement contract form that has not been 1239  
approved under this chapter. 1240

(6) The licensee is a viatical settlement provider that has 1241  
failed to honor contractual obligations set out in a viatical 1242  
settlement contract. 1243

(7) The licensee no longer meets the requirements for initial 1244  
licensure. 1245

(8) The licensee is a viatical settlement provider that has 1246  
assigned, transferred, or pledged a viaticated policy to a person 1247  
that is not a one of the following: 1248

(a) A viatical settlement provider licensed in this state, ~~ai~~ 1249

<u>(b) A viatical settlement purchaser;</u>	1250
<u>(c) An accredited investor as defined in Regulation D, 17 C.F.R. 230.501 adopted under the "Securities Act of 1933," 48 Stat. 77, 15 U.S.C. 77a, et seq., as amended;</u>	1251 1252 1253
<u>(d) A qualified institutional buyer as defined in 17 C.F.R. 230.144A, as amended;</u>	1254 1255
<u>(e) A financing entity,</u> <del> a;</del>	1256
<u>(f) A special purpose entity,</u> <del> or a;</del>	1257
<u>(g) A related provider trust.</u>	1258
(9) The licensee or any officer, partner, member, key management personnel, or designee of the licensee has violated any provision of this chapter or any rule adopted under this chapter.	1259 1260 1261
(10) The licensee or any officer, partner, member, key management personnel, or designee of the licensee has committed any coercive, fraudulent, or dishonest act, or made any untrue, deceptive, or misleading statement, in connection with a viatical transaction or a proposed viatical transaction.	1262 1263 1264 1265 1266
(B) Before the superintendent refuses to issue a license under this chapter, or suspends, <u>or</u> revokes, <del>or refuses to renew</del> the license of a viatical settlement provider <del>or</del> , <u>viatical settlement broker, or life expectancy provider</u> , the superintendent shall provide the licensee or applicant with notice and an opportunity for hearing as provided in <del>chapter</del> <u>Chapter</u> 119. of the Revised Code, except as follows:	1267 1268 1269 1270 1271 1272 1273
(1)(a) Any notice of opportunity for hearing, the hearing officer's findings and recommendations, or the superintendent's order shall be served by certified mail at the last known address of the licensee or applicant. Service shall be evidenced by return receipt signed by any person.	1274 1275 1276 1277 1278
For purposes of this section, the "last known address" is the	1279

address that appears in the licensing records of the department of 1280  
insurance. 1281

(b) If the certified mail envelope is returned with an 1282  
endorsement showing that service was refused, or that the envelope 1283  
was unclaimed, the notice and all subsequent notices required by 1284  
Chapter 119. of the Revised Code may be served by ordinary mail to 1285  
the last known address of the licensee or applicant. The mailing 1286  
shall be evidenced by a certificate of mailing. Service is deemed 1287  
complete as of the date of such certificate provided that the 1288  
ordinary mail envelope is not returned by the postal authorities 1289  
with an endorsement showing failure of delivery. The time period 1290  
in which to request a hearing, as provided in Chapter 119. of the 1291  
Revised Code, begins to run on the date of mailing. 1292

(c) If service by ordinary mail fails, the superintendent may 1293  
cause a summary of the substantive provisions of the notice to be 1294  
published once a week for three consecutive weeks in a newspaper 1295  
of general circulation in the county where the last known place of 1296  
residence or business of the licensee or applicant is located. The 1297  
notice is considered served on the date of the third publication. 1298

(d) Any notice required to be served under Chapter 119. of 1299  
the Revised Code shall also be served upon the attorney of the 1300  
licensee or applicant by ordinary mail if the attorney has entered 1301  
an appearance in the matter. 1302

(e) The superintendent may, at any time, perfect service on a 1303  
licensee or applicant by personal delivery of the notice by an 1304  
employee of the department. 1305

(f) Notices regarding the scheduling of hearings and all 1306  
other matters not described in division (B)(1)(a) of this section 1307  
shall be sent by ordinary mail to the licensee or applicant and to 1308  
the attorney of the licensee or applicant. 1309

(2) Any subpoena for the appearance of a witness or the 1310

production of documents or other evidence at a hearing, or for the 1311  
purpose of taking testimony for use at a hearing, shall be served 1312  
by certified mail, return receipt requested, by an attorney or by 1313  
an employee of the department designated by the superintendent. 1314  
Such subpoenas shall be enforced in the manner provided in section 1315  
119.09 of the Revised Code. Nothing in this section shall be 1316  
construed as limiting the superintendent's other statutory powers 1317  
to issue subpoenas. 1318

**Sec. 3916.16.** (A) It is a violation of this chapter for any 1319  
person to enter into a viatical settlement contract prior to the 1320  
application for or issuance of a policy that is the subject of the 1321  
viatical settlement contract or within a ~~two-year~~ five-year period 1322  
commencing with the date of issuance of the insurance policy ~~or~~ 1323  
~~certificate~~ unless the viator certifies to the licensed viatical 1324  
settlement provider that one or more of the following conditions 1325  
have been met within ~~that two-year period~~ five years after the 1326  
issuance of the policy: 1327

(1) The policy ~~or certificate~~ was issued upon the viator's 1328  
exercise of conversion rights arising out of a group policy ~~or~~ 1329  
~~certificate~~, provided the total of the time covered under the 1330  
conversion policy ~~or certificate~~ plus the time covered under the 1331  
~~group prior~~ policy or certificate is at least ~~twenty-four~~ sixty 1332  
months. The time covered under ~~the a~~ a group policy ~~or certificate~~ 1333  
shall be calculated without regard to any change in insurance 1334  
carriers, provided the coverage has been continuous and under the 1335  
same group sponsorship. 1336

(2) ~~The viator is a charitable organization exempt from~~ 1337  
~~taxation under 26 U.S.C. section 501(c)(3).~~ 1338

~~(3) The viator is not an individual.~~ 1339

(4) The viator certifies and submits independent evidence to 1340  
the licensed viatical settlement provider that one or more of the 1341

following conditions have been met within that <del>two-year</del> <u>five-year</u>	1342
period:	1343
(a) The viator or insured is terminally or chronically ill.	1344
(b) The viator's spouse dies.	1345
(c) The viator divorces the viator's spouse.	1346
(d) The viator retires from <del>full-time</del> <u>full-time</u> employment.	1347
(e) The viator becomes physically or mentally disabled, and a	1348
physician determines that the disability prevents the viator from	1349
maintaining full-time employment.	1350
(f) <del>The viator was the insured's employer at the time the</del>	1351
<del>policy or certificate was issued and the employment relationship</del>	1352
<del>terminated.</del>	1353
<del>(g)</del> A court of competent jurisdiction enters a final order,	1354
<del>judgement</del> <u>judgment</u> , or decree on the application of a creditor of	1355
the viator and adjudicates the viator bankrupt or insolvent or	1356
approves a petition seeking reorganization of the viator or	1357
appointing a receiver, trustee, or liquidator to all or a	1358
substantial part of the viator's assets.	1359
<del>(h) The viator experiences a significant decrease in income</del>	1360
<del>that is unexpected and that impairs the viator's reasonable</del>	1361
<del>ability to pay the policy premium.</del>	1362
<del>(i) The viator or insured disposes of the viator's or</del>	1363
<del>insured's ownership interests in a closely held corporation.</del>	1364
<u>(3) The viator enters into a viatical settlement contract two</u>	1365
<u>years after the date of issuance of a policy, and all of the</u>	1366
<u>following are true with respect to that policy:</u>	1367
<u>(a) The viator has funded policy premiums using one or more</u>	1368
<u>of the following methods:</u>	1369
<u>(i) Unencumbered assets provided by the insured which may</u>	1370

<u>include an interest in the life insurance policy being viaticated</u>	1371
<u>up to the amount of the policy's net cash surrender value;</u>	1372
<u>(ii) Full recourse liability financing incurred by the</u>	1373
<u>insured;</u>	1374
<u>(iii) An agreement described in division (O)(3)(e) of section</u>	1375
<u>3916.01 of the Revised Code.</u>	1376
<u>(b) The viator does not have an agreement or understanding</u>	1377
<u>with any other person to guarantee any such liability, to</u>	1378
<u>purchase, or to stand ready to purchase the policy, including</u>	1379
<u>through an assumption or forgiveness of the loan;</u>	1380
<u>(c) Neither the insured nor the policy has been evaluated for</u>	1381
<u>settlement.</u>	1382
(B) Copies of the independent evidence described in division	1383
(A) <del>(4)</del> (2) of this section and documents required by section	1384
3916.07 of the Revised Code shall be submitted to the insurer when	1385
the <u>licensed</u> viatical settlement provider <u>or any other party</u>	1386
<u>entering into a viatical settlement contract with a viator</u> submits	1387
a request to the insurer for verification of coverage. The copies	1388
shall be accompanied by a letter of attestation from the <u>licensed</u>	1389
viatical settlement provider that the copies are true and correct	1390
copies of the documents received by the <u>licensed</u> viatical	1391
settlement provider.	1392
(C) If the <u>licensed</u> viatical settlement provider submits to	1393
the insurer a copy of the owner or insured's certification <u>and</u>	1394
<u>independent evidence</u> described in division (A) <del>(4)</del> (2) of this	1395
section when the <u>licensed viatical settlement</u> provider submits a	1396
request to the insurer to effect the transfer of the policy or	1397
certificate to the <u>licensed</u> viatical settlement provider, the copy	1398
conclusively establishes that the viatical settlement contract	1399
satisfies the requirements of this section, and the insurer shall	1400
timely respond to the request.	1401

(D) No insurer, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a viatical settlement contract, may require the viator, insured, licensed viatical settlement provider, or licensed viatical settlement broker to sign any form, disclosure, consent, or waiver form that has not been approved by the superintendent of insurance for use in connection with viatical settlement contracts. 1402  
1403  
1404  
1405  
1406  
1407  
1408  
1409

(E) Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within thirty calendar days to confirm that the insurer has made the change or specify reasons that the change cannot be processed. No insurer shall unreasonably delay effecting change in ownership or beneficiary or seek to interfere with any viatical settlement contract lawfully entered into in this state. 1410  
1411  
1412  
1413  
1414  
1415  
1416

(F) A licensed viatical settlement provider or licensed viatical settlement broker that is party to a plan, transaction, or series of transactions to originate, renew, continue, or finance a life insurance policy with the insurer for the purpose of engaging in the business of viatical settlements at any time prior to or during the first five years after the insurer issues the policy shall fully disclose the plan, transaction, or series of transactions to the insurer that issued that policy. 1417  
1418  
1419  
1420  
1421  
1422  
1423  
1424

**Sec. 3916.161.** (A) No licensed viatical settlement broker knowingly shall solicit an offer from, effectuate a viatical settlement with, or make a sale to any licensed viatical settlement provider, viatical settlement purchaser, financing entity, or related provider trust that is controlling, controlled by, or under common control with the licensed viatical settlement broker. 1425  
1426  
1427  
1428  
1429  
1430  
1431

(B) No licensed viatical settlement provider knowingly shall 1432

enter into a viatical settlement contract with a viator, if, in 1433  
connection with that contract, anything of value will be paid to a 1434  
licensed viatical settlement broker that is controlling, 1435  
controlled by, or under common control with that licensed viatical 1436  
settlement provider or the viatical settlement purchaser, 1437  
financing entity or related provider trust that is involved in the 1438  
contract. 1439

(C) A violation of this section is a fraudulent viatical 1440  
settlement act pursuant to section 3916.18 of the Revised Code. 1441

**Sec. 3916.17.** (A) The general assembly hereby declares that 1442  
the purpose of this section is to provide prospective viators with 1443  
clear and unambiguous statements in the advertisement of viatical 1444  
settlements and to assure the clear, truthful, and adequate 1445  
disclosure of the benefits, risks, limitations, and exclusions of 1446  
any viatical settlement contract. This purpose is intended to be 1447  
accomplished by the establishment of guidelines and standards of 1448  
permissible and impermissible conduct in the advertising of 1449  
viatical settlements to assure that product descriptions are 1450  
presented in a manner that prevents unfair, deceptive, or 1451  
misleading advertising and is conducive to accurate presentation 1452  
and description of viatical settlements through the advertising 1453  
media and material used by viatical settlement licensees. 1454

Divisions (B) to ~~(P)~~(Q) of this section apply to any 1455  
advertising of viatical settlement contracts, or any related 1456  
products or services intended for dissemination in this state, 1457  
including, but not limited to, internet advertising viewed by 1458  
persons located in this state. In cases in which disclosure 1459  
requirements are established pursuant to federal regulation, this 1460  
section shall be interpreted so as to minimize or eliminate 1461  
conflict with federal regulation wherever possible. 1462

(B)(1) Every licensed viatical settlement provider and 1463

licensed viatical settlement broker shall file with the 1464  
superintendent of insurance all advertisements of its contract, 1465  
products, and services. 1466

(2) No licensed viatical settlement provider shall enter into 1467  
a viatical settlement contract unless the materials promoting, 1468  
advertising, and marketing the viatical settlement contract have 1469  
been filed with the superintendent. 1470

(C) Every licensed viatical settlement licensee provider and 1471  
licensed viatical settlement broker shall establish and at all 1472  
times shall maintain a system of control over the content, form, 1473  
and method of dissemination of all advertisements of its 1474  
contracts, products, and services. All advertisements, regardless 1475  
of by whom they are written, created, designed, or presented, 1476  
shall be the responsibility of the licensed viatical settlement 1477  
licensee provider or licensed viatical settlement broker and of 1478  
the individual who created or presented the advertisement. A 1479  
system of control shall include regular routine notification, at 1480  
least once a year, to agents and others authorized by the licensed 1481  
viatical settlement licensee provider or licensed viatical 1482  
settlement broker who disseminate advertisements of the 1483  
requirements and procedures for approval prior to the use of any 1484  
advertisements not furnished by the licensed viatical settlement 1485  
licensee provider or licensed viatical settlement broker. 1486

~~(C)~~(D) All advertisements that are subject to this section 1487  
shall be truthful and not misleading in fact or by implication. 1488  
The form and content of an advertisement of a viatical settlement 1489  
contract shall be sufficiently complete and clear so as to avoid 1490  
deception and shall not have the capacity or tendency to mislead 1491  
or deceive. The determination of whether an advertisement has the 1492  
capacity or tendency to mislead or deceive shall be made by the 1493  
superintendent ~~of insurance~~, from the overall impression that the 1494  
advertisement may be reasonably expected to create upon a person 1495

of average education or intelligence within the segment of the public to which it is directed.

~~(D)~~(E) Viatical settlement advertisements containing any representation set forth in this division are deemed false and misleading on their face and are prohibited. False and misleading viatical settlement advertisements include, but are not limited to, those including any of the following representations:

(1) "Guaranteed," "fully secured," "100 percent secured," "fully insured," "secure," "safe," "backed by rated insurance companies," "backed by federal law," "backed by state law," or "state guaranty funds," or similar representations;

(2) "No risk," "minimal risk," "low risk," "no speculation," "no fluctuation," or similar representations;

(3) "Qualified or approved for individual retirement accounts (IRAs), Roth IRAs, 401(k) plans, simplified employee pensions (SEPs), 403(b), Keogh plans, TSA, or other retirement account rollovers," "tax deferred," or similar representations;

(4) Utilization of the word "guaranteed" to describe the fixed return, annual return, principal, earnings, profits, investment, or similar representations;

(5) "No sales charges or fees" or similar representations;

(6) "High yield," "superior return," "excellent return," "high return," "quick profit," or similar representations;

(7) Purported favorable representations or testimonials about the benefits of viatical settlement contracts or viatical settlement purchase agreements as an investment, taken out of context from any newspaper, trade paper, journal, radio or television program, or any other form of print and electronic media.

~~(E)~~(F)(1) The information required to be disclosed under this

section shall not be minimized, rendered obscure, or presented in 1526  
an ambiguous fashion or intermingled with the text of the 1527  
advertisement so as to be confusing or misleading. 1528

An advertisement shall not omit material information or use 1529  
any words, phrases, statements, references, or illustrations if 1530  
the omission or use has the capacity, tendency, or effect of 1531  
misleading or deceiving viators, as to the nature or extent of any 1532  
benefit, loss covered, premium payable, or state or federal tax 1533  
consequence. The fact that the viatical settlement contract 1534  
offered is made available for inspection prior to consummation of 1535  
the sale, that an offer is made to refund the payment if the 1536  
viator is not satisfied, or that the viatical settlement contract 1537  
includes a "free look" period that satisfies or exceeds legal 1538  
requirements, does not remedy any misleading statements. 1539

(2) An advertisement shall not use the name or title of a 1540  
life insurance company or a life insurance policy unless the 1541  
advertisement has been approved by ~~the insurer~~ that company. 1542

(3) An advertisement shall not represent that any premium 1543  
payments will not be required to be paid on the life insurance 1544  
policy that is the subject of a viatical settlement contract or 1545  
viatical settlement purchase agreement in order to maintain that 1546  
policy, unless that is the fact. 1547

(4) An advertisement shall not state or imply that interest 1548  
charged on an accelerated death benefit or a policy loan is 1549  
unfair, inequitable, or in any manner an incorrect or improper 1550  
practice. 1551

(5) The words "free," "no cost," "without cost," "no 1552  
additional cost," "at no extra cost," or words of similar import 1553  
shall not be used with respect to any life insurance policy or to 1554  
any benefit or service unless true. An advertisement may specify 1555  
the charge for a benefit or a service or may state that a charge 1556

is included in the payment or use other appropriate language. 1557

(6)(a) ~~Testimonials~~ Testimonials, appraisals, analyses, or 1558  
endorsements used in advertisements must satisfy all of the 1559  
following: 1560

(i) They must be genuine. 1561

(ii) They must represent the current opinion of the author. 1562

(iii) They must be applicable to the viatical settlement 1563  
~~contract~~ contract product or service advertised, if any. 1564

(iv) They must be accurately reproduced with sufficient 1565  
completeness to avoid misleading or deceiving prospective viators 1566  
as to the nature or scope of the testimonials, appraisals, 1567  
analyses, or endorsements. 1568

(b) In using testimonials, appraisals, analyses, or 1569  
endorsements, the licensed viatical settlement ~~licensee~~ provider 1570  
or licensed viatical settlement broker makes as its own all the 1571  
statements contained in the testimonials, appraisals, analyses, or 1572  
endorsements, and the statements are subject to all the provisions 1573  
of this section. 1574

(c) If the individual making a testimonial, ~~appraisal~~ 1575  
appraisal, analysis, or endorsement has a ~~financial~~ financial 1576  
interest in the ~~viatical settlement provider or related entity~~ 1577  
subject of that testimonial, appraisal, analysis, or endorsement 1578  
directly or indirectly as a stockholder, director, officer, 1579  
employee, or otherwise, or receives any benefit directly or 1580  
indirectly other than required union scale wages, that fact shall 1581  
be prominently disclosed in the advertisement. 1582

(d) An advertisement shall not state or ~~imply~~ imply that a 1583  
viatical settlement contract benefit or service has been approved 1584  
or endorsed by a group of individuals, society, association, or 1585  
other organization unless that is the fact and unless any 1586

relationship between the ~~individual~~ group of individuals, society, 1587  
association, or organization and the licensed viatical settlement 1588  
provider is disclosed. If the entity making the endorsement or 1589  
testimonial is owned, controlled, or managed by the licensed 1590  
viatical settlement provider, or receives any payment or other 1591  
consideration from the licensed viatical settlement provider for 1592  
making an endorsement or testimonial, that fact shall be disclosed 1593  
in the advertisement. 1594

(e) When an endorsement refers to benefits received under a 1595  
viatical settlement contract, all pertinent information shall be 1596  
retained for a period of at least five years after its use. 1597

~~(F)~~(G) An advertisement shall not contain statistical 1598  
information unless the information accurately reflects recent and 1599  
relevant facts. The source of all statistics used in an 1600  
advertisement shall be identified. 1601

~~(G)~~(H) An advertisement shall not disparage any insurer, 1602  
viatical settlement provider, viatical settlement broker, viatical 1603  
settlement investment agent, insurance producer, policy, service, 1604  
or method of marketing. 1605

~~(H)~~(I) All advertisements about a licensed viatical 1606  
settlement provider or its viatical settlement contract, products, 1607  
or services shall clearly identify the licensed viatical 1608  
settlement provider's name. If any specific viatical settlement 1609  
contract is advertised, the viatical settlement contract shall be 1610  
identified either by form number or some other appropriate 1611  
description. If an application is part of the advertisement, the 1612  
name of the licensed viatical settlement provider shall be shown 1613  
on the application. 1614

~~(I)~~(J) An advertisement shall not use a trade name, group 1615  
designation, name of the parent company of a licensed viatical 1616  
settlement ~~licensee~~ provider or licensed viatical settlement 1617

broker, name of a particular division of the licensed viatical 1618  
settlement licensee provider or licensed viatical settlement 1619  
broker, service mark, slogan, symbol, or other device or reference 1620  
without disclosing the name of the licensed viatical settlement 1621  
licensee provider or licensed viatical settlement broker, if 1622  
either of the following applies regarding the advertisement: 1623

(1) It would have the capacity or tendency to mislead or 1625  
deceive as to the true identity of the licensed viatical 1626  
settlement licensee provider or licensed viatical settlement 1627  
broker. 1628

(2) It would have the capacity or tendency to create the 1629  
impression that a company other than the licensed viatical 1630  
settlement licensee provider or licensed viatical settlement 1631  
broker would have any responsibility for the financial obligation 1632  
under a viatical settlement contract. 1633

~~(J)~~(K) An advertisement shall not use any combination of 1634  
words, symbols, or physical materials that, by their content, 1635  
phraseology, shape, color, or other characteristics, are so 1636  
similar to a combination of words, symbols, or physical materials 1637  
used by a government program or agency or otherwise appear to be 1638  
of such a nature that they tend to mislead prospective viators 1639  
into believing that the solicitation is in some manner connected 1640  
with a government program or agency. 1641

~~(K)~~(L) An advertisement may state that a licensed viatical 1642  
settlement provider is licensed in the state in which the 1643  
advertisement appears, provided it does not exaggerate that fact 1644  
or suggest or imply that competing viatical settlement providers 1645  
may not be so licensed. The advertisement may ask the audience to 1646  
consult the ~~licensee's~~ licensed provider's web site or contact the 1647  
department of insurance to find out if the state in which the 1648  
advertisement appears requires licensing and, if it does, whether 1649

the viatical settlement provider or viatical settlement broker is licensed. 1650  
1651

~~(L)~~(M) An advertisement shall not create the impression that 1652  
the licensed viatical settlement provider, its financial condition 1653  
or status, the payment of its claims, or the merits, desirability, 1654  
or advisability of its viatical settlement contracts are 1655  
recommended or endorsed by any government entity. 1656

~~(M)~~(N) All advertisements of an actual ~~licensee~~ licensed 1657  
viatical settlement provider or licensed viatical settlement 1658  
broker shall state the name of the actual ~~licensee~~ licensed 1659  
viatical settlement provider or licensed viatical settlement 1660  
broker. An advertisement shall not use a trade name, any group 1661  
designation, name of any affiliate or controlling entity of the 1662  
~~licensee~~ licensed viatical settlement provider or licensed 1663  
viatical settlement broker, service mark, slogan, symbol, or other 1664  
device in a manner that would have the capacity or tendency to 1665  
mislead or deceive as to the true identity of the actual ~~licensee~~ 1666  
licensed viatical settlement provider or licensed viatical 1667  
settlement broker or create the false impression that an affiliate 1668  
or controlling entity would have any responsibility for the 1669  
financial obligation of the ~~licensee~~ licensed viatical settlement 1670  
provider or licensed viatical settlement broker. 1671

~~(N)~~(O) An advertisement shall not directly or indirectly 1672  
create the impression that any division or agency of this state, 1673  
any other state, or the United States government endorses, 1674  
approves, or favors any of the following: 1675

(1) Any licensed viatical settlement ~~licensee~~ provider or 1676  
licensed viatical settlement broker or its business practices or 1677  
methods of operation; 1678

(2) The merits, desirability, or advisability of any viatical 1679  
settlement contract, ~~or viatical settlement program~~; 1680

(3) Any viatical settlement contract, ~~or viatical settlement~~ 1681  
~~program;~~ 1682

(4) Any life insurance policy ~~or certificate~~ or life 1683  
insurance company. 1684

~~(O)~~(P) If the advertiser emphasizes the speed with which the 1685  
viatication will occur, the advertising must disclose the average 1686  
time frame, from completed application to the date of offer and 1687  
from acceptance of the offer to receipt of the funds by the 1688  
viator. 1689

~~(P)~~(Q) If the advertising emphasizes the dollar amounts 1690  
available to viators, the advertising shall disclose the average 1691  
purchase price as a per cent of face value obtained by viators 1692  
contracting with the licensee during the past six months. 1693

**Sec. 3916.18.** (A)(1) No person shall commit a fraudulent 1694  
viatical settlement act. 1695

(2) No person shall knowingly or intentionally interfere with 1696  
the enforcement of the provisions of this chapter or 1697  
investigations of suspected or actual violations of this chapter. 1698

(3) No person in the business of viatical settlements shall 1699  
knowingly or intentionally permit any person convicted of a felony 1700  
involving dishonesty or breach of trust to participate in the 1701  
business of viatical settlements. 1702

(B)(1) Each viatical settlement contract and each application 1703  
for a viatical settlement, regardless of the form of transmission, 1704  
shall contain the following statement or a substantially similar 1705  
statement: 1706

"Any person who knowingly presents false information in an 1707  
application for insurance or viatical settlement contract is 1708  
guilty of a crime and may be subject to fines and imprisonment." 1709

(2) The lack of a statement as required in division (B)(1) of 1710

this section does not constitute a defense in any prosecution for 1711  
a fraudulent viatical settlement act. 1712

(C)(1) Every person engaged in the business of viatical 1713  
settlements having knowledge or a reasonable belief that a 1714  
fraudulent viatical settlement act is being, will be, or has been 1715  
committed shall provide to the superintendent of insurance the 1716  
information required by the superintendent. The person shall 1717  
provide the information in a manner prescribed by the 1718  
superintendent. 1719

(2) Every person having knowledge or a reasonable ~~belief~~ 1720  
suspicion that a fraudulent viatical settlement act is being, will 1721  
be, or has been committed may provide to the superintendent the 1722  
information required by the superintendent. The person shall 1723  
provide the information under this division in a manner prescribed 1724  
by the superintendent. 1725

(D)(1) No civil liability shall be imposed on, and no cause 1726  
of action shall arise from, a person's furnishing information 1727  
concerning suspected, anticipated, or completed fraudulent 1728  
viatical settlement acts or suspected or completed fraudulent 1729  
insurance acts, if the information is provided to or received from 1730  
any of the following: 1731

(a) The superintendent, or the superintendent's employees, 1732  
agents, or representatives; 1733

(b) Law enforcement or regulatory officials of this state, 1734  
another state, the ~~united states~~ United States, or a political 1735  
subdivision of this state or another state, or any employee, 1736  
agent, or representative of any of those officials+; 1737

(c) A person involved in the prevention and detection of 1738  
fraudulent viatical settlement acts or any agent, employee, or 1739  
representative of any person so involved; 1740

(d) The NAIC, ~~national association of securities dealers~~ 1741

~~(NASD)~~ financial industry regulatory authority (FINRA), the north 1742  
~~american~~ American securities ~~and administrators~~ administrators 1743  
association (NASAA), ~~any~~ employee, ~~agent,~~ or representative of any 1744  
of those associations, ~~or~~ other regulatory body overseeing life 1745  
insurance, viatical settlements, securities, or investment fraud; 1746  
1747

(e) The life insurer that issued the life insurance policy ~~or~~ 1748  
~~certificate~~ covering the life of the insured. 1749

(2) The immunity provided in division (D)(1) of this section 1750  
shall not apply to any statement made with actual malice. In an 1751  
action brought against a person for filing a report or furnishing 1752  
other information concerning a fraudulent viatical settlement act 1753  
~~or a fraudulent insurance act~~, the party bringing the action shall 1754  
plead specifically any allegation that the immunity provided in 1755  
division (D)(1) of this section does not apply because the person 1756  
filing the report or furnishing the information did so with actual 1757  
malice. 1758

(3) If a person is the prevailing party in a civil action for 1759  
libel, slander, or any other relevant tort arising out of 1760  
activities in carrying out the provisions of this chapter, if the 1761  
prevailing party is a person identified in division (D)(1) of this 1762  
section and the immunity described in that division applies to the 1763  
person, and if the party who brought the action was not 1764  
substantially justified in doing so, the person who is the 1765  
prevailing party is entitled to an award of attorney's fees and 1766  
costs arising out of the action. However, the person is not 1767  
entitled to an award of attorney's fees if the person provided 1768  
information about the person's own fraudulent viatical settlement 1769  
acts. For purposes of this division, an action is "substantially 1770  
justified" if it had a reasonable basis in law or fact at the time 1771  
that it was initiated. 1772

(4) This section does not abrogate or modify any common law 1773

or statutory privilege or immunity enjoyed by a person described 1774  
in division (D)(1) of this section. 1775

(E)(1) The documents and evidence provided pursuant to 1776  
division (D) of this section or obtained by the superintendent in 1777  
an investigation of any suspected or actual fraudulent viatical 1778  
settlement act is privileged and confidential, is not a public 1779  
record open for inspection under section 149.43 of the Revised 1780  
Code, and is not subject to discovery or subpoena in a civil or 1781  
criminal action. 1782

(2) Division (E)(1) of this section does not prohibit release 1783  
by the superintendent of any document or evidence obtained in an 1784  
investigation of suspected or actual fraudulent viatical 1785  
settlement acts, in any of the following manners or circumstances: 1786

(a) In any administrative or judicial proceeding to enforce 1787  
any laws ~~administer~~ administered by the superintendent; 1788

(b) To any law enforcement or regulatory agency of this 1789  
state, another state, the ~~united-states~~ United States, or a 1790  
~~politeal~~ political subdivision of this state or another state, to 1791  
an organization established for the purpose of detecting and 1792  
preventing fraudulent viatical settlement ~~act~~ acts, or to the ~~NACI~~ 1793  
NAIC; 1794

(c) At the discretion of the superintendent, to a person in 1795  
the business of viatical settlements that is aggrieved by a 1796  
fraudulent viatical settlement act. 1797

(3) Release of documents and evidence under division (E)(2) 1798  
of this section does not abrogate or modify the privilege granted 1799  
in division (E)(1) of this section. 1800

(F) The provisions of this chapter do not do any of the 1801  
following: 1802

(1) Preempt the authority or relieve the duty of any other 1803

law enforcement or regulatory agencies to investigate, examine, or prosecute suspected violations of law;

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

(3) Limit any power granted elsewhere by the law of this state to the superintendent or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

(G)(1) ~~Viatical~~ Licensed viatical settlement providers and licensed viatical settlement brokers shall adopt and have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent viatical settlement acts. At the discretion of the superintendent, the superintendent may order, or a ~~licensee~~ licensed viatical settlement provider or licensed viatical settlement broker may request and the superintendent may grant, any modifications of the following required initiatives described in divisions (G)(1)(a) and (b) of this section that are necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section. Antifraud initiatives under this division shall include all of the following:

(a) Fraud investigators, who may be licensed viatical settlement provider or licensed viatical settlement broker employees or independent contractors;

(b) An antifraud plan that includes, but ~~not~~ is not limited to, all of the following:

(i) A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and

procedures for resolving material inconsistencies between medical records and insurance applications; 1835  
1836

(ii) A description of the procedures for reporting possible fraudulent viatical settlement acts to the superintendent; 1837  
1838

(iii) A description of the plan for ~~atifraud~~ antifraud education and training of underwriters and other personnel; 1839  
1840

(iv) A description or ~~chart~~ chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications. 1841  
1842  
1843  
1844  
1845  
1846

(2) The superintendent, by rule adopted in accordance with Chapter 119. of the Revised Code, may require that antifraud plans required under division (G)(1) of this section be submitted to the superintendent. If the superintendent requires that antifraud plans be submitted to the superintendent, the plans so submitted are privileged and confidential, are not a public record open for inspection under section 149.43 of the ~~revised code~~ Revised Code, and are not subject to discovery or subpoena in a civil or criminal action. 1847  
1848  
1849  
1850  
1851  
1852  
1853  
1854  
1855

(H) No insurer that issued a policy being viaticated shall be responsible, under this chapter, for any act or omission of a licensed viatical settlement broker or licensed viatical settlement provider arising out of or in connection with the viatical settlement transaction unless the insurer receives compensation for the placement of a viatical settlement contract from the licensed viatical settlement provider or licensed viatical settlement broker in connection with the viatical settlement contract. 1856  
1857  
1858  
1859  
1860  
1861  
1862  
1863  
1864

**Sec. 3916.19.** (A) In addition to the penalties and other 1865  
enforcement provisions contained in this chapter, if any person 1866  
violates any provision of this chapter or any rule or regulation 1867  
implementing any provision of this chapter that constitutes a 1868  
fraudulent viatical settlement act, the superintendent of 1869  
insurance may seek an injunction in a court of competent 1870  
jurisdiction and may apply for any temporary or permanent order 1871  
that the superintendent determines is necessary to restrain the 1872  
person from committing the violation. 1873

(B) Any person damaged by any act of a person in violation of 1874  
any provision of this chapter may bring a civil action against the 1875  
person committing the violation in a court of competent 1876  
jurisdiction. A civil action brought under this division does not 1877  
preclude the superintendent from exercising any regulatory, 1878  
enforcement, or other authority available to the superintendent 1879  
under this chapter. 1880

(C) In addition to the penalties and other enforcement 1881  
provisions contained in this chapter, any person who violates any 1882  
provision of this chapter that constitutes a fraudulent viatical 1883  
settlement act is subject to a civil penalty of up to ten thousand 1884  
dollars per violation. Imposition of civil penalties described in 1885  
this division shall be pursuant to an order of the superintendent 1886  
issued under Chapter 119. of the Revised Code. The 1887  
superintendent's order may require a person found to be in 1888  
violation of this chapter to make restitution to persons aggrieved 1889  
by violations of this chapter. 1890

**Sec. 3916.20.** The superintendent of insurance may adopt rules 1891  
in accordance with Chapter 119. of the Revised Code for purposes 1892  
of implementing this chapter, including, but not limited to, rules 1893  
that do the following: 1894

(A) Govern the relationship and responsibilities of ~~both~~ 1895  
insurers ~~and, licensed~~ viatical settlement providers, and licensed 1896  
viatical settlement brokers during the viatication of a life 1897  
insurance policy ~~or certificate~~. 1898

(B) Establish standards for evaluating the reasonableness of 1899  
payments under viatical settlement contracts for persons with a 1900  
terminal or chronic illness or condition. This authority includes, 1901  
but is not limited to, the regulation of discount rates used to 1902  
determine the amount paid in exchange for the assignment, 1903  
transfer, sale, devise, or bequest of a benefit under a life 1904  
insurance policy ~~or certificate~~ insuring persons with a terminal 1905  
or chronic illness or condition. 1906

(C) Establish appropriate licensing requirements, fees, and 1907  
standards for continued licensure for viatical settlement 1908  
providers ~~and, viatical settlement brokers, and life expectancy~~ 1909  
providers; 1910

(D) Require a bond or other mechanism for ensuring the 1911  
financial accountability of licensed viatical settlement providers 1912  
and licensed viatical settlement brokers. 1913

**Section 2.** That existing sections 3916.01, 3916.02, 3916.03, 1914  
3916.04, 3916.05, 3916.06, 3916.07, 3916.08, 3916.09, 3916.10, 1915  
3916.11, 3916.12, 3916.13, 3916.14, 3916.15, 3916.16, 3916.17, 1916  
3916.18, 3916.19, and 3916.20 of the Revised Code are hereby 1917  
repealed. 1918

**Section 3.** Division (A) of section 3916.02 as amended by this 1919  
act shall take effect 90 days after the effective date of this 1920  
act. 1921