

**DRAFT ONLY  
NOT APPROVED FOR  
INTRODUCTION**

HOUSE BILL NO. \_\_\_\_\_

Insurance-viatical settlements.

Sponsored by: Joint Corporations, Elections and Political  
Subdivisions Interim Committee

A BILL

for

1 AN ACT relating to insurance; providing for regulation of  
2 the sale of viatical settlements; providing for licensure;  
3 providing for approval of contracts; providing for  
4 reporting; providing for examination of licensees;  
5 providing for disclosures; prohibiting certain practices in  
6 the sale of viatical settlements; providing for limitations  
7 on advertising; providing for fraud prevention; providing  
8 penalties; and providing for an effective date.

9

10 *Be It Enacted by the Legislature of the State of Wyoming:*

11

12 **Section 1.** W.S. 26-51-101 through 26-51-132 are  
13 created to read:

1

2

ARTICLE 51

3

VIATICAL SETTLEMENTS

4

5

**26-51-101. Short title.**

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This article may be cited as the Viatical Settlements Act.

8

9

**26-51-102. Definitions.**

10

11

(a) As used in this article:

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(i) "Advertising" means any written, electronic

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or printed communication or any communication by means of

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recorded telephone messages or transmitted on radio,

16

television, the Internet, the World Wide Web or a similar

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proprietary or common carrier electronic system, including

18

film strips, motion pictures and videos, published,

19

disseminated, circulated or placed directly before the

20

public, in this state, for the purpose of creating an

21

interest in or inducing a person to purchase or sell,

22

assign, devise, bequest or transfer the death benefit or

1 ownership of a life insurance policy pursuant to a viatical  
2 settlement contract;

3

4 (ii) "Business of viatical settlements" means an  
5 activity involved in, but not limited to, the offering,  
6 soliciting, negotiating, procuring, effectuating,  
7 purchasing, investing, financing, monitoring, tracking,  
8 underwriting, selling, transferring, assigning, pledging,  
9 hypothecating or in any other manner, acquiring an interest  
10 in a life insurance policy by means of a viatical  
11 settlement contract;

12

13 (iii) "Chronically ill" means:

14

15 (A) Being unable to perform at least two  
16 (2) activities of daily living, including, but not limited  
17 to, eating, toileting, transferring, bathing, dressing or  
18 continence;

19

20 (B) Requiring substantial supervision to  
21 protect the individual from threats to health and safety  
22 due to severe cognitive impairment; or

23

1                   (C) Having a level of disability similar to  
2 that described in subparagraph (A) of this paragraph as  
3 determined by the United States secretary of health and  
4 human services.

5

6                   (iv) "Financing entity" means an underwriter,  
7 placement agent, lender, purchaser of securities, purchaser  
8 of a policy or certificate from a viatical settlement  
9 provider, credit enhancer or any entity:

10

11                   (A) Whose principal activity related to the  
12 transaction is providing funds to effect the viatical  
13 settlement or purchase of one or more viaticated policies;  
14 and

15

16                   (B) Who has an agreement in writing with one  
17 (1) or more licensed viatical settlement providers to  
18 finance the acquisition of viatical settlement contracts;  
19 but

20

21                   (C) Does not include a non-accredited  
22 investor or a viatical settlement purchaser that has a

1 direct ownership in a policy or certificate that is the  
2 subject of a viatical settlement contract.

3

4 (v) "Fraudulent viatical settlement act"  
5 includes:

6

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

12

13 (I) Presenting, causing to be  
14 presented or preparing with knowledge or belief that it  
15 will be presented to or by a viatical settlement provider,  
16 viatical settlement broker, viatical settlement purchaser,  
17 viatical settlement investment agent, financing entity,  
18 insurer, insurance producer or any other person, false  
19 material information, or concealing material information,  
20 as part of, in support of or concerning a fact material to  
21 one (1) or more of the following:

22

- 1 (1) An application for the  
2 issuance of a viatical settlement contract or insurance  
3 policy;
- 4
- 5 (2) The underwriting of a  
6 viatical settlement contract or insurance policy;
- 7
- 8 (3) A claim for payment or  
9 benefit pursuant to a viatical settlement contract or  
10 insurance policy;
- 11
- 12 (4) Premiums paid on an insurance  
13 policy, or as a result of a viatical settlement purchase  
14 agreement;
- 15
- 16 (5) Payments and changes in  
17 ownership or beneficiary made in accordance with the terms  
18 of a viatical settlement contract, viatical settlement  
19 purchase agreement or insurance policy;
- 20
- 21 (6) The reinstatement or  
22 conversion of an insurance policy;
- 23

1                                   (7)    In the solicitation, offer,  
2    effectuation or sale of a viatical settlement contract,  
3    insurance policy or viatical settlement purchase agreement;  
4

5                                   (8)    The issuance of written  
6    evidence of viatical settlement contract, viatical  
7    settlement purchase agreement or insurance; or  
8

9                                   (9)    A financing transaction.  
10

11                                 (II)    Employing any plan, financial  
12    structure, device, scheme, or artifice to defraud related  
13    to viaticated policies;  
14

15                                 (III)   The solicitation, application or  
16    issuance of a life insurance policy, employing any device,  
17    scheme or artifice in violation of W.S. 26-15-102; and  
18

19                                 (IV)   Engaging in stranger-originated  
20    life insurance.  
21

1                   (B)     In the furtherance of a fraud or to  
2 prevent the detection of a fraud any person commits or  
3 permits its employees or its agents to:

4

5                   (I)     Remove, conceal, alter, destroy or  
6 sequester from the commissioner the assets or records of a  
7 licensee or other person engaged in the business of  
8 viatical settlements;

9

10                  (II)     Misrepresent or conceal the  
11 financial condition of a licensee, financing entity,  
12 insurer or other person;

13

14                  (III)     Transact the business of  
15 viatical settlements in violation of laws requiring a  
16 license, certificate of authority or other legal authority  
17 for the transaction of the business of viatical  
18 settlements; or

19

20                  (IV)     File with the commissioner or the  
21 equivalent chief insurance regulatory official of another  
22 jurisdiction a document containing false information or



1 otherwise conceals information about a material fact from  
2 the commissioner;

3

4 (C) Embezzlement, theft, misappropriation  
5 or conversion of monies, funds, premiums, credits or other  
6 property of a viatical settlement provider, insurer,  
7 insured, viator, insurance policy owner or any other person  
8 engaged in the business of viatical settlements or  
9 insurance;

10

11 (D) Recklessly entering into, negotiating,  
12 brokering, otherwise dealing in a viatical settlement  
13 contract, the subject of which is a life insurance policy  
14 that was obtained by presenting false information  
15 concerning any fact material to the policy or by  
16 concealing, for the purpose of misleading another,  
17 information concerning any fact material to the policy,  
18 where the person or the persons intended to defraud the  
19 policy's issuer, the viatical settlement provider or the  
20 viator. For purposes of this subparagraph, "Recklessly"  
21 means engaging in the conduct in conscious and clearly  
22 unjustifiable disregard of a substantial likelihood of the  
23 existence of the relevant facts or risks, such disregard

1 involving a gross deviation from acceptable standards of  
2 conduct;

3

4 (E) Facilitating the change of state of  
5 ownership of a policy or certificate or the state of  
6 residency of a viator to a state or jurisdiction that does  
7 not have a law similar to this article for the express  
8 purposes of evading or avoiding the provisions of this  
9 article; or

10

11 (F) Attempting to commit, assisting, aiding  
12 or abetting in the commission of, or conspiracy to commit  
13 the acts or omissions specified in this subsection.

14

15 (vi) "Life insurance producer" means any person  
16 licensed in this state as a resident or nonresident  
17 insurance producer who has received qualification or  
18 authority for life insurance coverage or a life line of  
19 coverage pursuant to W.S. 26-9-207;

20

21 (vii) "Policy" means an individual or group  
22 policy, group certificate, contract or arrangement of life

1 insurance owned by a resident of this state, regardless of  
2 whether delivered or issued for delivery in this state;

3

4 (viii) "Related provider trust" means a titling  
5 trust or other trust established by a licensed viatical  
6 settlement provider or a financing entity for the sole  
7 purpose of holding the ownership or beneficial interest in  
8 purchased policies in connection with a financing  
9 transaction. The trust shall have a written agreement with  
10 the licensed viatical settlement provider under which the  
11 licensed viatical settlement provider is responsible for  
12 ensuring compliance with all statutory and regulatory  
13 requirements and under which the trust agrees to make all  
14 records and files related to viatical settlement  
15 transactions available to the commissioner as if those  
16 records and files were maintained directly by the licensed  
17 viatical settlement provider.

18

19 (ix) "Special purpose entity" means a  
20 corporation, partnership, trust, limited liability company  
21 or other similar entity formed solely to provide either  
22 directly or indirectly access to institutional capital  
23 markets:

1

2

(A) For a financing entity or licensed viatical settlement provider; or

4

5

(B) Either:

6

7

(I) In connection with a transaction in which the securities in the special purposes entity are acquired by the viator or by "qualified institutional buyers" as defined in Rule 144 promulgated under the Securities Act of 1933, as amended; or

12

13

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

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**\*\*\* Staff note: It is not clear exactly what is required to be a "Special purpose entity given this definition. \*\*\***

21

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25

(x) "Stranger-originated life insurance" or "STOLI", means a practice or a plan to initiate a life insurance policy for the benefit of a third party investor who, at the time of policy origination, has no insurance interest in the insured. STOLI practices include but are

1 not limited to cases in which life insurance is purchased  
2 with resources or guarantees from or through a person or  
3 entity who, at the time of policy inception, could not  
4 lawfully initiate the policy himself or itself and where,  
5 at the time of policy inception, there is an arrangement or  
6 agreement, whether verbal or written, to directly or  
7 indirectly transfer the ownership of the policy or the  
8 policy benefits to a third party. Trusts that are created  
9 to give the appearance of insurance interest and are used  
10 to initiate policies for investors violate insurance  
11 interest laws and the prohibitions against wagering on  
12 life. STOLI arrangements do not include those practices  
13 set forth in subparagraph (a)(xv)(B) of this section;

14

15 (xi) "Terminally ill" means having an illness or  
16 sickness that can reasonably be expected to result in death  
17 in twenty-four (24) months or less;

18

19 (xii) "Viatical settlement broker" means a  
20 person, including a life insurance producer as provided for  
21 in W.S. 26-51-103, who working exclusively on behalf of a  
22 viator and for a fee, commission or other valuable  
23 consideration, offers or attempts to negotiate viatical

1 settlement contracts between a viator and one (1) or more  
2 viatical settlement providers or one (1) or more viatical  
3 settlement brokers. Notwithstanding the manner in which  
4 the viatical settlement broker is compensated, a viatical  
5 settlement broker is deemed to represent only the viator,  
6 and not the insurer or the viatical settlement provider,  
7 and owes a fiduciary duty to the viator to act according to  
8 the viator's instructions and in the best interest of the  
9 viator. The term does not include an attorney, certified  
10 public accountant or a financial planner accredited by a  
11 nationally recognized accreditation agency, who is retained  
12 to represent the viator and whose compensation is not paid  
13 directly or indirectly by the viatical settlement provider  
14 or purchaser;

15

16 (xiii) "Viatical settlement contract" means a  
17 written agreement between a viator and a viatical  
18 settlement provider or any affiliate of the viatical  
19 settlement provider establishing the terms under which  
20 compensation or anything of value is or will be paid, which  
21 compensation or value is less than the expected death  
22 benefits of the policy, in return for the viator's present  
23 or future assignment, transfer, sale, devise or bequest of

1 the death benefit or ownership of any portion of the  
2 insurance policy or certificate of insurance. "Viatical  
3 settlement contract" also includes the transfer for  
4 compensation or value of ownership or beneficial interest  
5 in a trust or other entity that owns such policy if the  
6 trust or other entity was formed or availed of for the  
7 principal purpose of acquiring one (1) or more life  
8 insurance contracts, which life insurance contract insures  
9 the life of a person residing in this state. With respect  
10 to viatical settlement contracts, the following apply:

11

12 (A) "Viatical settlement contract" includes  
13 a premium finance loan made for a life insurance policy by  
14 a lender to viator on, before or after the date of issuance  
15 of the policy where:

16

17 (I) The viator or the insured receives  
18 on the date of the premium finance loan a guarantee of a  
19 future viatical settlement value of the policy; or

20

21 (II) The viator or the insured agrees  
22 on the date of the premium finance loan to sell the policy

1 or any portion of its death benefit on any date following  
2 the issuance of the policy.

3

4 (B) "Viatical settlement contract" does not  
5 include:

6

7 (I) A policy loan or accelerated death  
8 benefit made by the insurer pursuant to the policy's terms;

9

10 (II) Loan proceeds that are used  
11 solely to pay:

12

13 (1) Premiums for the policy;

14

15 (2) The costs of the loan,  
16 including, without limitation, interest, arrangement fees,  
17 utilization fees and similar fees, closing costs, legal  
18 fees and expenses, trustee fees and expenses, and third  
19 party collateral provider fees and expenses, including fees  
20 payable to letter of credit issuers;

21

22 (III) A loan made by a bank or other  
23 licensed financial institution in which the lender takes an



1 interest in a life insurance policy solely to secure  
2 repayment of a loan or, if there is a default on the loan  
3 and the policy is transferred, the transfer of such a  
4 policy by the lender, provided that the default itself is  
5 not pursuant to an agreement or understanding with any  
6 other person for the purpose of evading regulation under  
7 this article;

8

9 (IV) An agreement where all the  
10 parties are closely related to the insured by blood or law  
11 or have a lawful substantial economic interest in the  
12 continued life, health and bodily safety of the person  
13 insured, or are trusts established primarily for the  
14 benefit of such parties;

15

16 (V) Any designation, consent or  
17 agreement by an insured who is an employee of an employer  
18 in connection with the purchase by the employer, or trust  
19 established by the employer, of life insurance on the life  
20 of the employee;

21

22 (VI) A bona fide business succession  
23 planning arrangement:

1

2

(1) Between one (1) or more  
shareholders in a corporation or between a corporation and  
one (1) or more of its shareholders or one (1) or more  
trusts established by its shareholders;

6

7

(2) Between one (1) or more  
partners in a partnership or between a partnership and one  
(1) or more of its partners or one (1) or more trusts  
established by its partners; or

11

12

(3) Between one (1) or more  
members in a limited liability company or between a limited  
liability company and one (1) or more of its members or one  
(1) or more trusts established by its members.

16

17

(VII) An agreement entered into by a  
service recipient, or a trust established by the service  
recipient, and a service provider, or a trust established  
by the service provider, who performs significant services  
for the service recipient's trade or business; or

22

1                   (VIII) Any other contract, transaction  
2 or arrangement exempted from the definition of viatical  
3 settlement contract by the commissioner based on a  
4 determination that the contract, transaction or arrangement  
5 is not of the type intended to be regulated by this  
6 article.

7  
8                   (xiv) "Viatical settlement investment agent"  
9 means a person who is an appointed or contracted agent of a  
10 licensed viatical settlement provider who solicits or  
11 arranges the funding for the purchase of a viatical  
12 settlement by a viatical settlement purchaser and who is  
13 acting on behalf of a viatical settlement provider. With  
14 respect to viatical settlement investment agents:

15  
16                   (A) A viatical settlement investment agent  
17 shall not have any contact directly or indirectly with the  
18 viator or insured or have knowledge of the identity of the  
19 viator or insured; and

20  
21                   (B) A viatical settlement investment agent  
22 is deemed to represent the viatical settlement provider of

1 whom the viatical settlement investment agent is an  
2 appointed or contracted agent.

3

4 (xv) "Viatical settlement provider" means a  
5 person, other than a viator, who enters into or effectuates  
6 a viatical settlement contract with a viator resident in  
7 this state. "Viatical settlement provider" does not  
8 include:

9

10 (A) A bank, savings bank, savings and loan  
11 association, credit union or other licensed lending  
12 institution that takes an assignment of a life insurance  
13 policy solely as collateral for a loan;

14

15 (B) A premium finance company making premium  
16 finance loans and exempted by the commissioner from the  
17 licensing requirement under the premium finance laws that  
18 takes an assignment of a life insurance policy solely as  
19 collateral for a loan;

20

21 (C) The issuer of the life insurance policy;

22

1                   (D)    An authorized or eligible insurer that  
2 provides stop loss coverage or financial guaranty insurance  
3 to a viatical settlement provider, purchaser, financing  
4 entity, special purpose entity or related provider trust;

5

6                   (E)    A natural person who enters into or  
7 effectuates no more than one (1) agreement in a calendar  
8 year for the transfer of life insurance policies for any  
9 value less than the expected death benefit;

10

11                   (F)    A financing entity;

12

13                   (G)    A special purpose entity;

14

15                   (H)    A related provider trust;

16

17                   (J)    A viatical settlement purchaser; or

18

19                   (K)    Any other person who the commissioner  
20 determines is not the type of person intended to be covered  
21 by the definition of viatical settlement provider.

22

1           (xvi)    "Viatical settlement purchase agreement"  
2 means a contract or agreement, entered into by a viatical  
3 settlement purchaser, to which the viator is not a party,  
4 to purchase a life insurance policy or an interest in a  
5 life insurance policy, that is entered into for the purpose  
6 of deriving an economic benefit;

7  
8           (xvii)   "Viatical settlement purchaser" means a  
9 person who provides a sum of money as consideration for a  
10 life insurance policy or an interest in the death benefits  
11 of a life insurance policy, or a person who owns or  
12 acquires or is entitled to a beneficial interest in a trust  
13 that owns a viatical settlement contract or is the  
14 beneficiary of a life insurance policy that has been or  
15 will be the subject of a viatical settlement contract, for  
16 the purpose of deriving an economic benefit. "Viatical  
17 settlement purchaser" does not include:

18

19                   (A) A licensee under this article;

20

21                   (B) An accredited investor or qualified  
22 institutional buyer as defined, respectively, in Rule

1 501(a) or Rule 144A promulgated under the Federal  
2 Securities Act of 1933, as amended;

3

4 (C) A financing entity;

5

6 (D) A special purpose entity; or

7

8 (E) A related provider trust.

9

10 (xviii) "Viaticated policy" means a life  
11 insurance policy or certificate that has been acquired by a  
12 viatical settlement provider pursuant to a viatical  
13 settlement contract;

14

15 (xix) "Viator" means the owner of a life  
16 insurance policy or a certificate holder under a group  
17 policy who resides in this state and enters or seeks to  
18 enter into a viatical settlement contract. For the  
19 purposes of this article, a viator shall not be limited to  
20 an owner of a life insurance policy or a certificate holder  
21 under a group policy insuring the life of an individual  
22 with a terminal or chronic illness or condition except  
23 where specifically addressed. If there is more than one

1 (1) viator on a single policy and the viators are residents  
2 of different states, the transaction shall be governed by  
3 the law of the state in which the viator having the largest  
4 percentage ownership resides or, if the viators hold equal  
5 ownership, the state of residence of one (1) viator agreed  
6 upon in writing by all the viators. "Viator" does not  
7 include:

8

9 (A) A licensee under this article,  
10 including a life insurance producer acting as a viatical  
11 settlement broker pursuant to this article;

12

13 (B) A qualified institutional buyer as  
14 defined in Rule 144A promulgated under the Federal  
15 Securities Act of 1933, as amended;

16

17 (C) A financing entity;

18

19 (D) A special purpose entity; or

20

21 (E) A related provider trust.

22

23 **26-51-103. License and bond requirements.**



1

2           (a)     A person shall not operate as a viatical  
3 settlement provider or viatical settlement broker without  
4 first obtaining a license from the commissioner of the  
5 state of residence of the viator.

6

7           (b)     A person shall not operate as a viatical  
8 settlement investment agent without first obtaining a  
9 license from the commissioner of the state of residence of  
10 the viatical settlement purchaser. If there is more than  
11 one (1) purchaser of a single policy and the purchasers are  
12 residents of different states, the viatical settlement  
13 purchase agreement shall be governed by the law of the  
14 state in which the purchaser having the largest percentage  
15 ownership resides or, if the purchasers hold equal  
16 ownership, the state of residence of one (1) purchaser  
17 agreed upon in writing by all purchasers.

18

19           (c)     A life insurance producer who has been duly  
20 licensed as a resident insurance producer with a life line  
21 of authority in this state or his home state for at least  
22 one (1) year and is licensed as a nonresident producer in  
23 this state shall be deemed to meet the licensing

1 requirements of this section and shall be permitted to  
2 operate as a viatical settlement broker. Not later than  
3 thirty (30) days from the first day of operating as a  
4 viatical settlement broker, the life insurance producer  
5 shall notify the commissioner that he is acting as a  
6 viatical settlement broker on a form prescribed by the  
7 commissioner, and shall pay any applicable fee to be  
8 determined by the commissioner. Notification shall include  
9 an acknowledgement by the life insurance producer that he  
10 will operate as a viatical settlement broker in accordance  
11 with this article. The insurer that issued the policy  
12 being viaticated shall not be responsible for any act or  
13 omission of a viatical settlement broker or viatical  
14 settlement provider arising out of or in connection with  
15 the viatical settlement transaction, unless the insurer  
16 receives compensation for the placement of a viatical  
17 settlement contract from the viatical settlement provider  
18 or viatical settlement broker in connection with the  
19 viatical settlement contract.

20

21 (d) A person licensed as an attorney, certified public  
22 accountant or financial planner accredited by a nationally  
23 recognized accreditation agency, who is retained to

1 represent the viator, whose compensation is not paid  
2 directly or indirectly by the viatical settlement provider  
3 or purchaser, may negotiate viatical settlement contracts  
4 on behalf of the viator without having to obtain a license  
5 as a viatical settlement broker.

6

7 (e) Application for a viatical settlement provider,  
8 viatical settlement broker or viatical settlement  
9 investment agent license shall be made to the commissioner  
10 by the applicant on a form prescribed by the commissioner,  
11 and these applications shall be accompanied by the fees  
12 specified in W.S. 26-4-101.

13

14 (f) Licenses may be renewed from year to year on the  
15 anniversary date upon payment of the annual renewal fees  
16 specified in W.S. 26-4-101. Failure to pay the fees by the  
17 renewal date results in expiration of the license.

18

19 (g) The applicant shall provide information on forms  
20 required by the commissioner. The commissioner shall have  
21 authority, at any time, to require the applicant to fully  
22 disclose the identity of all stockholders, partners,  
23 officers, members and employees, and the commissioner may,

1 in the exercise of the commissioner's discretion, refuse to  
2 issue a license in the name of a legal entity if not  
3 satisfied that any officer, employee, stockholder, partner  
4 or member thereof who may materially influence the  
5 applicant's conduct meets the standards of this article.

6

7 (h) A license issued to a legal entity authorizes all  
8 partners, officers, members and designated employees to act  
9 as viatical settlement providers, viatical settlement  
10 brokers or viatical settlement investment agents, as  
11 applicable, under the license, and all those persons shall  
12 be named in the application and any supplements to the  
13 application.

14

15 (j) Upon the filing of an application and the payment  
16 of the license fee, the commissioner shall make an  
17 investigation of each applicant and issue a license if the  
18 commissioner finds that the applicant:

19

20 (i) If a viatical settlement provider, has  
21 provided a detailed plan of operation;

22

1           (ii) Is competent and trustworthy and intends to  
2 act in good faith in the capacity involved by the license  
3 applied for;

4  
5           (iii) Has a good business reputation and has had  
6 experience, training or education to be qualified in the  
7 business for which the license is applied for;

8  
9           (iv) Has demonstrated evidence of financial  
10 responsibility as follows:

11  
12           (A) If a viatical settlement provider, has  
13 demonstrated evidence of financial responsibility in a  
14 format prescribed by the commissioner through either a  
15 surety bond executed and issued by an insurer authorized to  
16 issue surety bonds in this state or a deposit of cash,  
17 certificates of deposit or securities or any combination  
18 thereof in the amount of two hundred fifty thousand dollars  
19 (\$250,000.00);

20  
21           (B) If a viatical settlement broker, has  
22 demonstrated evidence of financial responsibility in a  
23 format prescribed by the commissioner through either a

1 surety bond executed and issued by an insurer authorized to  
2 issue surety bonds in this state or a deposit of cash,  
3 certificates of deposit or securities or any combination  
4 thereof in the amount of two hundred fifty thousand dollars  
5 (\$250,000.00);

6

7 (C) The commissioner may ask for evidence  
8 of financial responsibility at any time the commissioner  
9 deems necessary;

10

11 (D) Any surety bond issued pursuant to this  
12 paragraph shall be in the favor of this state and shall  
13 specifically authorize recovery by the commissioner on  
14 behalf of any person in this state who sustained damages as  
15 the result of erroneous acts, failure to act, conviction of  
16 fraud or conviction of unfair practices by the viatical  
17 settlement provider or viatical settlement broker;

18

19 (E) Notwithstanding any provision of this  
20 section to contrary, the commissioner shall accept, as  
21 evidence of financial responsibility, proof that financial  
22 instruments in accordance with the requirements in this  
23 paragraph have been filed with one (1) state where the

1 applicant is licensed as a viatical settlement provider or  
2 viatical settlement broker.

3

4 (v) If a legal entity, provides a certificate of  
5 good standing from the state of its domicile; and

6

7 (vi) If a viatical settlement provider or  
8 viatical settlement broker, has provided an anti-fraud plan  
9 that meets the requirements of W.S. 26-51-128.

10

11 (k) The commissioner shall not issue a license to a  
12 nonresident applicant unless a written designation of an  
13 agent for service of process is filed and maintained with  
14 the commissioner or the applicant has filed with the  
15 commissioner the applicant's written irrevocable consent  
16 that any action against the applicant may be commenced  
17 against the applicant by service of process on the  
18 commissioner.

19

20 (m) A viatical settlement provider, viatical  
21 settlement broker or viatical settlement investment agent  
22 shall provide to the commissioner any new or revised  
23 information about officers, ten percent (10%) or more

1 stockholders, partners, directors, members or designated  
2 employees within thirty (30) days of any change.

3

4 (n) An individual licensed as a viatical settlement  
5 broker shall complete on a biennial basis fifteen (15)  
6 hours of training related to viatical settlements and  
7 viatical settlement transactions, as required by the  
8 commissioner; provided, however, that a life insurance  
9 producer who is operating as a viatical settlement broker  
10 pursuant to subsection (c) of this section shall not be  
11 subject to the requirements of this subsection. Any person  
12 failing to meet the requirements of this subsection shall  
13 be subject to the penalties imposed by the commissioner as  
14 provided in this article.

15

16 **26-51-104. License revocation and denial.**

17

18 (a) The commissioner may refuse to issue, suspend,  
19 revoke or refuse to renew the license of a viatical  
20 settlement provider, viatical settlement broker or viatical  
21 settlement investment agent if the commissioner finds that:

22



1           (i)    There was any material misrepresentation in  
2 the application for the license;

3

4           (ii)   The licensee or any officer, partner, member  
5 or key management personnel has been convicted of  
6 fraudulent or dishonest practices, is subject to a final  
7 administrative action involving fraudulent or dishonest  
8 practices or is otherwise shown to be untrustworthy or  
9 incompetent;

10

11           (iii)       The viatical settlement provider  
12 demonstrates a pattern of unreasonable payments to viators;

13

14           (iv)   The licensee or any officer, partner, member  
15 or key management personnel has been found guilty of, or  
16 has pleaded guilty or nolo contendere to, any felony, or to  
17 a misdemeanor involving fraud, regardless of whether a  
18 judgment of conviction has been entered by the court;

19

20           (v)    The viatical settlement provider has entered  
21 into any viatical settlement contract that has not been  
22 approved pursuant to this article;

23

1           (vi) The viatical settlement provider has failed  
2 to honor contractual obligations set out in a viatical  
3 settlement contract or a viatical settlement purchase  
4 agreement;

5

6           (vii) The licensee no longer meets the  
7 requirements for initial licensure;

8

9           (viii) The viatical settlement provider has  
10 assigned, transferred or pledged a viaticated policy to a  
11 person other than a viatical settlement provider licensed  
12 in this state, viatical settlement purchaser, an accredited  
13 investor or qualified institutional buyer as defined  
14 respectively in Rule 501(a) or Rule 144A promulgated under  
15 the Federal Securities Act of 1933, as amended, financing  
16 entity, special purpose entity, or related provider trust;  
17 or

18

19           (ix) The licensee or any officer, partner, member  
20 or key management personnel has violated any provision of  
21 this article.

22

1           (b) The commissioner may suspend, revoke or refuse to  
2 renew the license of a viatical settlement broker or a life  
3 insurance producer operating as a viatical settlement  
4 broker pursuant to this article if the commissioner finds  
5 that the viatical settlement broker or life insurance  
6 producer has violated the provisions of this article or has  
7 otherwise engaged in bad faith conduct with one (1) or more  
8 viators.

9

10           (c) If the commissioner denies a license application  
11 or suspends, revokes or refuses to renew the license of a  
12 viatical settlement provider, viatical settlement broker or  
13 viatical settlement investment agent, or suspends, revokes,  
14 or refuses to renew a license of a life insurance producer  
15 operating as a viatical settlement broker pursuant to this  
16 article the commissioner shall conduct a hearing in  
17 accordance with W.S. 16-3-101 through 16-3-115.

18

19           **26-51-105. Approval of viatical settlement contracts**  
20 **and disclosure statements.**

21

22 A person shall not use a viatical settlement contract form  
23 or provide to a viator a disclosure statement form in this

1 state unless first filed with and approved by the  
2 commissioner. The commissioner shall disapprove a viatical  
3 settlement contract form or disclosure statement form if,  
4 in the commissioner's opinion, the contract or provisions  
5 contained therein fail to meet the requirements of W.S. 26-  
6 51-116, 26-51-118, 26-51-121 or 26-51-123 or are  
7 unreasonable, contrary to the interests of the public, or  
8 otherwise misleading or unfair to the viator. At the  
9 commissioner's discretion, the commissioner may require the  
10 submission of advertising material.

11

12 **26-51-106. Reporting requirements and privacy.**

13

14 (a) Each viatical settlement provider shall file with  
15 the commissioner on or before March 1 of each year an  
16 annual statement containing such information as the  
17 commissioner may prescribe by regulation. In addition to  
18 any other requirements, for any policy settled within five  
19 (5) years of such policy's date of issuance, the annual  
20 statement shall specify the total number, aggregate face  
21 amount and life settlements proceeds of policies settled  
22 during the immediately preceding calendar year, together  
23 with a breakdown of the information by policy issue year.

1 Such information shall be limited to only those  
2 transactions where the viator is a resident of this state.  
3 Individual transaction data regarding the business of  
4 viatical settlements or data that could compromise the  
5 privacy of personal, financial and health information of  
6 the viator or insured shall be filed with the commissioner  
7 on a confidential basis.

8

9 (b) Except as otherwise allowed or required by law, a  
10 viatical settlement provider, viatical settlement broker,  
11 viatical settlement investment agent, insurance company,  
12 insurance producer, information bureau, rating agency or  
13 company, or any other person with actual knowledge of an  
14 insured's identity, shall not disclose that identity as an  
15 insured, or the insured's financial or medical information  
16 to any other person unless the disclosure:

17

18 (i) Is necessary to effect a viatical settlement  
19 between the viator and a viatical settlement provider and  
20 the viator and insured have provided prior written consent  
21 to the disclosure;

22

1           (ii) Is necessary to effect a viatical settlement  
2 purchase agreement between the viatical settlement  
3 purchaser and a viatical settlement provider and the viator  
4 and insured have provided prior written consent to the  
5 disclosure;

6

7           (iii) Is provided in response to an investigation  
8 or examination by the commissioner or any other  
9 governmental officer or agency or pursuant to the  
10 requirements of W.S. 26-51-124;

11

12           (iv) Is a term of or condition to the transfer of  
13 a policy by one viatical settlement provider to another  
14 viatical settlement provider;

15

16           (v) Is necessary to permit a financing entity,  
17 related provider trust or special purpose entity to finance  
18 the purchase of policies by a viatical settlement provider  
19 and the viator and insured have provided prior written  
20 consent to the disclosure;

21

22           (vi) Is necessary to allow the viatical  
23 settlement provider or viatical settlement broker or their

1 authorized representatives to make contacts for the purpose  
2 of determining health status; or

3

4 (vii) Is required to purchase stop loss coverage  
5 or financial guaranty insurance.

6

7 **26-51-107. Authority, scope and scheduling of**  
8 **examinations.**

9

10 (a) The commissioner may conduct an examination under  
11 this article of a licensee as often as the commissioner in  
12 his discretion deems appropriate after considering the  
13 factors set forth in this subsection. In scheduling and  
14 determining the nature, scope, and frequency of the  
15 examinations, the commissioner shall consider such matters  
16 as consumer complaints, results of financial statement  
17 analyses and ratios, changes in management or ownership,  
18 actuarial opinions, report of independent certified public  
19 accountants and other relevant criteria as determined by  
20 the commissioner.

21

22 (b) For purposes of completing an examination of a  
23 licensee under this article, the commissioner may examine

1 or investigate any person, or the business of any person,  
2 in so far as the examination or investigation is, in the  
3 sole discretion of the commissioner, necessary or material  
4 to the examination of the licensee.

5  
6 (c) In lieu of an examination under this article of  
7 any foreign or alien licensee licensed in this state, the  
8 commissioner may, at the commissioner's discretion, accept  
9 an examination report on the licensee as prepared by the  
10 commissioner for the licensee's state of domicile or port-  
11 of-entry state. As far as practical, the examination of a  
12 foreign or alien licensee shall be made in cooperation with  
13 the insurance supervisory officials of other states in  
14 which the licensee transacts business.

15

16 **26-51-108. Record retention requirements.**

17

18 (a) A person required to be licensed by this article  
19 shall for five (5) years retain copies of all:

20

21 (i) Proposed, offered or executed contracts,  
22 purchase agreements, underwriting documents, policy forms  
23 and applications from the date of the proposal, offer or



1 execution of the contract or purchase agreement, whichever  
2 is later;

3

4 (ii) All checks, drafts or other evidence and  
5 documentation related to the payment, transfer, deposit or  
6 release of funds from the date the transaction; and

7

8 (iii) All other records and documents related to  
9 the requirements of this article.

10

11 (b) Nothing in this section relieves a person of the  
12 obligation to produce the documents listed in subsection  
13 (a) of this section to the commissioner after the retention  
14 period has expired if the person has retained the  
15 documents.

16

17 (c) Records required to be retained under this section  
18 shall be legible and complete and may be retained in paper,  
19 photograph, microprocess, magnetic, mechanical or  
20 electronic media, or by any process that accurately  
21 reproduces or forms a durable medium for the reproduction  
22 of a record.

23

1           **26-51-109. Conduct of examinations.**

2

3           (a) Upon determining that an examination should be  
4 conducted under this article, the commissioner shall issue  
5 an examination warrant appointing one (1) or more examiners  
6 to perform the examination and instructing them as to the  
7 scope of the examination. In conducting the examination,  
8 the examiner shall observe those guidelines and procedures  
9 set forth in the Examiners Handbook adopted by the National  
10 Association of Insurance Commissioners (NAIC). The  
11 commissioner may also employ such other guidelines or  
12 procedures as the commissioner may deem appropriate.

13

14           (b) Every licensee or person from whom information is  
15 sought, its officers, directors and agents shall provide to  
16 the examiners timely, convenient and free access at all  
17 reasonable hours at its offices to all books, records,  
18 accounts, papers, documents, assets and computer or other  
19 recordings relating to the property, assets, business and  
20 affairs of the licensee being examined. The officers,  
21 directors, employees and agents of the licensee or person  
22 shall facilitate the examination and aid in the examination  
23 so far as it is in their power to do so. The refusal of a

1 licensee, by its officers, directors, employees or agents,  
2 to submit to examination or to comply with any reasonable  
3 written request of the commissioner shall be grounds for  
4 suspension or refusal of, or nonrenewal of any license or  
5 authority held by the licensee to engage in the viatical  
6 settlement business or other business subject to the  
7 commissioner's jurisdiction. Any proceedings for  
8 suspension, revocation or refusal of any license or  
9 authority shall be conducted pursuant to W.S. 26-2-125 and  
10 16-3-101 through 16-3-115.

11

12 (c) The commissioner shall have the power to issue  
13 subpoenas, to administer oaths and to examine under oath  
14 any person as to any matter pertinent to the examination.  
15 Upon the failure or refusal of a person to obey a subpoena,  
16 the commissioner may petition a court of competent  
17 jurisdiction, and upon proper showing, the court may enter  
18 an order compelling the witness to appear and testify or  
19 produce documentary evidence. Failure to obey the court  
20 order shall be punishable as contempt of court.

21

22 (d) When making an examination under this article, the  
23 commissioner may retain attorneys, appraisers, independent

1 actuaries, independent certified public accountants or  
2 other professionals and specialists as examiners, the  
3 reasonable cost of which shall be borne by the licensee  
4 that is the subject of the examination.

5  
6 (e) Nothing in this article shall be construed to  
7 limit the commissioner's authority to terminate or suspend  
8 an examination in order to pursue other legal or regulatory  
9 action pursuant to the insurance laws of this state.  
10 Findings of fact and conclusions made pursuant to any  
11 examination shall be prima facie evidence in any legal or  
12 regulatory action.

13  
14 (f) Nothing in this article shall be construed to  
15 limit the commissioner's authority to use and, if  
16 appropriate, to make public any final or preliminary  
17 examination report, any examiner or licensee workpapers or  
18 other documents or any other information discovered or  
19 developed during the course of any examination in the  
20 furtherance of any legal or regulatory action which the  
21 commissioner may, in his sole discretion, deem appropriate.

22  
23 **26-51-110. Examination reports.**

1

2           (a) Examination reports shall be comprised of only  
3 facts appearing upon the books, records or other documents  
4 of the licensee, its agents or other persons examined, or  
5 as ascertained from the testimony of its officers or agents  
6 or other persons examined concerning its affairs, and such  
7 conclusions and recommendations as the examiners find  
8 reasonably warranted from the facts.

9

10           (b) No later than sixty (60) days following completion  
11 of the examination, the examiner in charge shall file with  
12 the commissioner a verified written report of examination  
13 under oath. Upon receipt of the verified report, the  
14 commissioner shall transmit the report to the licensee  
15 examined, together with a notice that shall afford the  
16 licensee examined a reasonable opportunity of not more than  
17 thirty (30) days to make a written submission or rebuttal  
18 with respect to any matters contained in the examination  
19 report.

20

21           (c) In the event the commissioner determines that  
22 regulatory action is appropriate as a result of an

1 examination, the commissioner may initiate any proceedings  
2 or actions provided by law.

3

4 **26-51-111. Confidentiality of examination information.**

5

6 (a) Names and individual identification data for all  
7 viators shall be considered private and confidential  
8 information and shall not be disclosed by the commissioner,  
9 unless required by law.

10

11 (b) Except as otherwise provided in this article, all  
12 examination reports, working papers, recorded information,  
13 documents and copies thereof produced by, obtained by or  
14 disclosed to the commissioner or any other person in the  
15 course of an examination made under this article, or in the  
16 course of analysis or investigation by the commissioner of  
17 the financial condition or market conduct of a licensee  
18 shall be confidential by law and privileged, shall not be  
19 subject to W.S. 16-4-201 through 16-4-205, shall not be  
20 subject to subpoena and shall not be subject to discovery  
21 or admissible in evidence in any private civil action. The  
22 commissioner is authorized to use the documents, materials  
23 or other information in the furtherance of any regulatory

1 or legal action brought as part of the commissioner's  
2 official duties. For the purposes of this subsection,  
3 "article" includes the law of another state or jurisdiction  
4 that is substantially similar to this article.

5

6 (c) Documents, materials or other information,  
7 including, but not limited to, all working papers and  
8 copies thereof, in the possession or control of the NAIC  
9 and its affiliates and subsidiaries shall be confidential  
10 by law and privileged, shall not be subject to subpoena,  
11 and shall not be subject to discovery or admissible in  
12 evidence in any private civil action if they are:

13

14 (i) Created, produced or obtained by or disclosed  
15 to the NAIC and its affiliates and subsidiaries in the  
16 course of assisting an examination made under this article,  
17 or assisting a commissioner in the analysis or  
18 investigation of the financial condition or market conduct  
19 of a licensee; or

20

21 (ii) Disclosed to the NAIC and its affiliates and  
22 subsidiaries under subsection (e) of this section by a  
23 commissioner.

1

2 (d) Neither the commissioner nor any person who  
3 received the documents, material or other information while  
4 acting under the authority of the commissioner, including  
5 the NAIC and its affiliates and subsidiaries, shall be  
6 permitted to testify in any private civil action concerning  
7 any confidential documents, materials or information  
8 subject to subsection (a) of this section.

9

10 (e) In order to assist in the performance of the  
11 commissioner's duties, the commissioner:

12

13 (i) May share documents, materials or other  
14 information, including the confidential and privileged  
15 documents, materials or information subject to subsection  
16 (a) of this section, with other state, federal and  
17 international regulatory agencies, with the NAIC and its  
18 affiliates and subsidiaries, and with state, federal and  
19 international law enforcement authorities, provided that  
20 the recipient agrees to maintain the confidentiality and  
21 privileged status of the document, material, communication  
22 or other information;

23



1           (ii)       May receive documents, materials,  
2 communications or information, including otherwise  
3 confidential and privileged documents, materials or  
4 information, from the NAIC and its affiliates and  
5 subsidiaries, and from regulatory and law enforcement  
6 officials of other foreign or domestic jurisdictions, and  
7 shall maintain as confidential or privileged any document,  
8 material or information received with notice or the  
9 understanding that it is confidential or privileged under  
10 the laws of the jurisdiction that is the source of the  
11 document, material or information.

12

13       (f) No waiver of any applicable privilege or claim of  
14 confidentiality in the documents, materials or information  
15 shall occur as a result of disclosure to the commissioner  
16 under this section or as a result of sharing as authorized  
17 in subsection (e) of this section.

18

19       (g) A privilege established under the law of any state  
20 or jurisdiction that is substantially similar to the  
21 privilege established under this section shall be available  
22 and enforced in any proceeding in, and in any court of,  
23 this state.

1

2 (h) Nothing contained in this article shall prevent or  
3 be construed as prohibiting the commissioner from  
4 disclosing the content of an examination report,  
5 preliminary examination report or results, or any matter  
6 relating thereto, to the commissioner of any other state or  
7 country, or to law enforcement officials of this or any  
8 other state or agency of the federal government at any time  
9 or to the NAIC, so long as such agency or office receiving  
10 the report or matters relating thereto agrees in writing to  
11 hold it confidential and in a manner consistent with this  
12 article.

13

14 **26-51-112. Conflict of interest.**

15

16 (a) An examiner may not be appointed by the  
17 commissioner if the examiner, either directly or  
18 indirectly, has a conflict of interest or is affiliated  
19 with the management of or owns a pecuniary interest in any  
20 person subject to examination under this article. This  
21 section shall not be construed to automatically preclude an  
22 examiner from being:

23

1 (i) A viator;

2

3 (ii) An insured in a viaticated insurance policy;

4 or

5

6 (iii) A beneficiary in an insurance policy that  
7 is proposed to be viaticated.

8

9 (b) Notwithstanding the requirements of this section,  
10 the commissioner may retain from time to time, on an  
11 individual basis, qualified actuaries, certified public  
12 accountants or other similar individuals who are  
13 independently practicing their professions, even though  
14 these persons may from time to time be similarly employed  
15 or retained by persons subject to examination under this  
16 article.

17

18 **26-51-113. Cost of examinations.**

19

20 Cost for examinations shall be as provided in W.S. 26-2-  
21 122.

22

23 **26-51-114. Immunity from liability.**

1

2 (a) No cause of action shall arise nor shall any  
3 liability be imposed against the commissioner, the  
4 commissioner's authorized representatives or any examiner  
5 appointed by the commissioner for any statements made or  
6 conduct performed in good faith while carrying out the  
7 provisions of this article.

8

9 (b) No cause of action shall arise, nor shall any  
10 liability be imposed against any person for the act of  
11 communicating or delivering information or data to the  
12 commissioner or the commissioner's authorized  
13 representative or examiner pursuant to an examination made  
14 under this article, if the act of communication or delivery  
15 was performed in good faith and without fraudulent intent  
16 or the intent to deceive. This subsection does not  
17 abrogate or modify in any way any common law or statutory  
18 privilege or immunity heretofore enjoyed by any person  
19 identified in subsection (a) of this subsection.

20

21 (c) A person identified in subsection (a) or (b) of  
22 this section shall be entitled to an award of attorney's  
23 fees and costs if he is the prevailing party in a civil

1 cause of action for libel, slander or any other relevant  
2 tort arising out of activities in carrying out the  
3 provisions of this article and the party bringing the  
4 action was not substantially justified in doing so. For  
5 purposes of this subsection a proceeding is "substantially  
6 justified" if it had a reasonable basis in law or fact at  
7 the time that it was initiated.

8

9 **26-51-115. Investigative authority of the**  
10 **commissioner.**

11

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

15

16 **26-51-116. Disclosure to viator.**

17

18 (a) With each application for a viatical settlement, a  
19 viatical settlement provider or viatical settlement broker  
20 shall provide the viator with at least the following  
21 disclosures no later than the time the application for the  
22 viatical settlement contract is signed by all parties. The  
23 disclosures shall be provided in a separate document that

1 is signed by the viator and the viatical settlement  
2 provider or viatical settlement broker, and shall provide  
3 the following information:

4

5 (i) There are possible alternatives to viatical  
6 settlement contracts including any accelerated death  
7 benefits or policy loans offered under the viator's life  
8 insurance policy;

9

10 (ii) That a viatical settlement broker represents  
11 exclusively the viator, and not the insurer or the viatical  
12 settlement provider, and owes a fiduciary duty to the  
13 viator, including a duty to act according to the viator's  
14 instructions and in the best interest of the viator;

15

16 (iii) Some or all of the proceeds of the viatical  
17 settlement may be taxable under federal income tax and  
18 state franchise and income taxes, and assistance should be  
19 sought from a professional tax advisor;

20

21 (iv) Proceeds of the viatical settlement could be  
22 subject to the claims of creditors;

23

1           (v)     Receipt of the proceeds of a viatical  
2 settlement may adversely affect the viator's eligibility  
3 for Medicaid or other government benefits or entitlements,  
4 and advice should be obtained from the appropriate  
5 government agencies;

6

7           (vi)    The viator has the right to rescind a  
8 viatical settlement contract before the earlier of sixty  
9 (60) calendar days after the date upon which the viatical  
10 settlement contract is executed by all parties or thirty  
11 (30) calendar days after the viatical settlement proceeds  
12 have been paid to the viator, as provided in W.S. 26-51-  
13 118(m).     Rescission, if exercised by the viator, is  
14 effective only if both notice of the rescission is given,  
15 and the viator repays all proceeds and any premiums, loans  
16 and loan interest paid on account of the viatical  
17 settlement within the rescission period.     If the insured  
18 dies during the rescission period, the viatical settlement  
19 contract shall be deemed to have been rescinded, subject to  
20 repayment by the viator or the viator's estate of all  
21 viatical settlement proceeds and any premiums, loans and  
22 loan interest paid on account of the viatical settlement  
23 within sixty (60) days of the insured's death;

1

2           (vii) Funds will be sent to the viator within  
3 three (3) business days after the viatical settlement  
4 provider has received the insurer or group administrator's  
5 written acknowledgment that ownership of the policy or  
6 interest in the certificate has been transferred and the  
7 beneficiary has been designated;

8

9           (viii) Entering into a viatical settlement  
10 contract may cause other rights or benefits, including  
11 conversion rights and waiver of premium benefits that may  
12 exist under the policy or certificate, to be forfeited by  
13 the viator. Assistance should be sought from a financial  
14 adviser;

15

16           (ix) Disclosure to a viator shall include  
17 distribution of a brochure describing the process of  
18 viatical settlements. The NAIC's form for the brochure  
19 shall be used unless another form is developed or approved  
20 by the commissioner;

21

22           (x) The disclosure document shall contain the  
23 following language: "All medical, financial or personal



1 information solicited or obtained by a viatical settlement  
2 provider or viatical settlement broker about an insured,  
3 including the insured's identity or the identity of family  
4 members, a spouse or a significant other may be disclosed  
5 as necessary to effect the viatical settlement between the  
6 viator and the viatical settlement provider. If you are  
7 asked to provide this information, you will be asked to  
8 consent to the disclosure. The information may be provided  
9 to someone who buys the policy or provides funds for the  
10 purchase. You may be asked to renew your permission to  
11 share information every two (2) years.";

12

13 (xi) Following execution of a viatical contract,  
14 the insured may be contacted for the purpose of determining  
15 the insured's health status and to confirm the insured's  
16 residential or business street address and telephone  
17 number, or as otherwise provided in this article. This  
18 contact shall be limited to once every three (3) months if  
19 the insured has a life expectancy of more than one (1)  
20 year, and no more than once per month if the insured has a  
21 life expectancy of one (1) year or less. All such  
22 contracts shall be made only by a viatical settlement  
23 provider licensed in the state in which the viator resided

1 at the time of the viatical settlement, or by the  
2 authorized representative of a duly licensed viatical  
3 settlement provider.

4

5 (b) A viatical settlement provider shall provide the  
6 viator with at least the following disclosures no later  
7 than the date the viatical settlement contract is signed by  
8 all parties. The disclosures shall be conspicuously  
9 displayed in the viatical settlement contract or in a  
10 separate document signed by the viator and provide the  
11 following information:

12

13 (i) The affiliation, if any, between the viatical  
14 settlement provider and the issuer of the insurance policy  
15 to be viaticated;

16

17 (ii) The document shall include the name,  
18 business address and telephone number of the viatical  
19 settlement provider;

20

21 (iii) Any affiliations or contractual  
22 arrangements between the viatical settlement provider and  
23 the viatical settlement purchaser;

1

2           (iv) If an insurance policy to be viaticated has  
3 been issued as a joint policy or involves family riders or  
4 any coverage of a life other than the insured under the  
5 policy to be viaticated, the viator shall be informed of  
6 the possible loss of coverage on the other lives under the  
7 policy and shall be advised to consult with his insurance  
8 producer or the insurer issuing the policy for advice on  
9 the proposed viatical settlement;

10

11           (v) The dollar amount of the current death  
12 benefit payable to the viatical settlement provider under  
13 the policy or certificate. If known, the viatical  
14 settlement provider shall also disclose the availability of  
15 any additional guaranteed insurance benefits, the dollar  
16 amount of any accidental death and dismemberment benefits  
17 under the policy or certificate and the extent to which the  
18 viator's interest in those benefits will be transferred as  
19 a result of the viatical settlement contract; and

20

21           (vi) Whether the funds will be escrowed with an  
22 independent third party during the transfer process, and if  
23 so, the name, business address, and telephone number of the

1 independent third party escrow agent and the fact that the  
2 viator or owner may inspect or receive copies of the  
3 relevant escrow or trust agreements or documents.

4

5 (c) A viatical settlement broker shall provide the  
6 viator with at least the following disclosures no later  
7 than the date the viatical settlement contract is signed by  
8 all parties. The disclosures shall be conspicuously  
9 displayed in the viatical settlement contract or in a  
10 separate document signed by the viator and provide the  
11 following information:

12

13 (i) The name, business address and telephone  
14 number of the viatical settlement broker;

15

16 (ii) A full, complete and accurate description of  
17 all offers, counter-offers, acceptances and rejections  
18 relating to the proposed viatical settlement contract;

19

20 (iii) A written disclosure of any affiliations or  
21 contractual arrangements between the viatical settlement  
22 broker and any person making an offer in connection with  
23 the proposed viatical settlement contracts;

1

2           (iv) The amount and method of calculating the  
3 broker's compensation, which term "compensation" includes  
4 anything of value paid or given to a viatical settlement  
5 broker for the placement of a policy; and

6

7           (v) Where any portion of the viatical settlement  
8 broker's compensation, as defined in paragraph (iv) of this  
9 subsection, is taken from a proposed viatical settlement  
10 offer, the broker shall disclose the total amount of the  
11 viatical settlement offer and the percentage of the  
12 viatical settlement offer comprised by the viatical  
13 settlement broker's compensation.

14

15           (d) If the viatical settlement provider transfers  
16 ownership or changes the beneficiary of the insurance  
17 policy, the provider shall communicate in writing the  
18 change in ownership or beneficiary to the insured within  
19 twenty (20) days after the change.

20

21           (e) A viatical settlement provider or its viatical  
22 settlement investment agent shall provide the viatical  
23 settlement purchaser with at least the following

1 disclosures prior to the date the viatical settlement  
2 purchase agreement is signed by all parties. The  
3 disclosures shall be conspicuously displayed in any  
4 viatical purchase contract or in a separate document signed  
5 by the viatical settlement purchaser and viatical  
6 settlement provider or viatical settlement investment  
7 agent, and shall make the following disclosures to the  
8 viatical settlement purchaser:

9

10 (i) The purchaser will receive no returns, i.e.,  
11 dividends and interest, until the insured dies and a death  
12 claim payment is made;

13

14 (ii) The actual annual rate of return on a  
15 viatical settlement contract is dependent upon an accurate  
16 projection of the insured's life expectancy, and the actual  
17 date of the insured's death. An annual "guaranteed" rate  
18 of return is not determinable;

19

20 (iii) The viaticated life insurance contract  
21 should not be considered a liquid purchase since it is  
22 impossible to predict the exact timing of its maturity and  
23 the funds probably are not available until the death of the

1 insured. There is no established secondary market for  
2 resale of these products by the purchaser;

3

4 (iv) The purchaser may lose all benefits or may  
5 receive substantially reduced benefits if the insurer goes  
6 out of business during the term of the viatical investment;

7

8 (v) The purchaser is responsible for payment of  
9 the insurance premium or other costs related to the policy,  
10 if required by the terms of the viatical purchase  
11 agreement. These payments may reduce the purchaser's  
12 return. If a party other than the purchaser is responsible  
13 for the payment, the name and address of that party also  
14 shall be disclosed;

15

16 (vi) The purchaser is responsible for payment of  
17 the insurance premiums or other costs related to the policy  
18 if the insured returns to health. Disclose the amount of  
19 such premiums, if applicable;

20

21 (vii) The name, business address and telephone  
22 number of the independent third party providing escrow  
23 services and the relationship to the broker;

1

2 (viii) The amount of any trust fees or other  
3 expenses to be charged to the viatical settlement  
4 purchaser;

5

6 (ix) Whether the purchaser is entitled to a  
7 refund of all or part of his investment under the  
8 settlement contract if the policy is later determined to be  
9 void;

10

11 (x) That group policies may contain limitations  
12 or caps in the conversion rights, additional premiums may  
13 have to be paid if the policy is converted, the party  
14 responsible for the payment of the additional premiums and,  
15 if a group policy is terminated and replaced by another  
16 group policy, state that there may be no right to convert  
17 the original coverage;

18

19 (xi) The risks associated with policy  
20 contestability including, but not limited to, the risk that  
21 the purchaser will have no claim or only a partial claim to  
22 death benefits should the insurer rescind the policy within  
23 the contestability period;



1

2           (xii) Whether the purchaser will be the owner of  
3 the policy in addition to being the beneficiary, and if the  
4 purchaser is the beneficiary only and not also the owner,  
5 the special risks associated with that status, including,  
6 but not limited to, the risk that the beneficiary may be  
7 changed or the premium may not be paid;

8

9           (xiii) A description of the experience and  
10 qualifications of the person who determines the life  
11 expectancy of the insured, i.e., in-house staff,  
12 independent physicians and specialty firms that weigh  
13 medical and actuarial data; the information this projection  
14 is based on; and the relationship of the projection maker  
15 to the viatical settlement provider, if any;

16

17           (xiv) Disclosure to an investor shall include  
18 distribution of a brochure describing the process of  
19 investment in viatical settlements. The NAIC's form for  
20 the brochure shall be used unless another form is developed  
21 or approved by the commissioner.

22

1           (f)    A viatical settlement provider or its viatical  
2 settlement investment agent shall provide the viatical  
3 settlement purchaser with at least the following  
4 disclosures no later than at the time of the assignment,  
5 transfer or sale of all or a portion of an insurance  
6 policy. The disclosures shall be contained in a document  
7 signed by the viatical settlement purchaser and viatical  
8 settlement provider or viatical settlement investment  
9 agent, and shall make the following disclosures to the  
10 viatical settlement purchaser:

11

12           (i)    All the life expectancy certifications  
13 obtained by the provider in the process of determining the  
14 price paid to the viator;

15

16           (ii)   Whether premium payments or other costs  
17 related to the policy have been escrowed. If escrowed,  
18 state the date upon which the escrowed funds will be  
19 depleted and whether the purchaser will be responsible for  
20 payment of premiums thereafter and, if so, the amount of  
21 the premiums;

22

1           (iii) Whether premium payments or other costs  
2 related to the policy have been waived. If waived,  
3 disclose whether the investor will be responsible for  
4 payment of the premiums if the insurer that wrote the  
5 policy terminates the waiver after purchase and the amount  
6 of those premiums;

7

8           (iv) The type of policy offered or sold, i.e.,  
9 whole life, term life, universal life or a group policy  
10 certificate, any additional benefits contained in the  
11 policy and the current status of the policy;

12

13           (v) If the policy is term insurance, the special  
14 risks associated with term insurance including, but not  
15 limited to, the purchaser's responsibility for additional  
16 premiums if the viator continues the term policy at the end  
17 of the current term;

18

19           (vi) Whether the policy is contestable;

20

21           (vii) Whether the insurer that wrote the policy  
22 has any additional rights that could negatively affect or  
23 extinguish the purchaser's rights under the viatical

1 settlement contract, what these rights are, and under what  
2 conditions these rights are activated;

3

4 (viii) The name and address of the person  
5 responsible for monitoring the insured's condition.  
6 Describe how often the monitoring of the insured's  
7 condition is done, how the date of death is determined, and  
8 how and when this information will be transmitted to the  
9 purchaser.

10

11 (g) The viatical settlement purchase agreement is  
12 voidable by the purchaser at any time within three (3) days  
13 after the disclosures mandated by subsections (e) and (f)  
14 of this section are received by the purchaser.

15

16 **26-51-117. Disclosure to insurer.**

17

18 Prior to the initiation of a plan, transaction or series of  
19 transactions, a viatical settlement broker or viatical  
20 settlement provider shall fully disclose to an insurer a  
21 plan, transaction or series of transactions, to which the  
22 viatical settlement broker or viatical settlement provider  
23 is a party, to originate, renew, continue or finance a life

1 insurance policy with the insurer for the purpose of  
2 engaging in the business of viatical settlements at anytime  
3 prior to, or during the first five (5) years after,  
4 issuance of the policy.

5

6 **26-51-118. General rules.**

7

8 (a) A viatical settlement provider entering into a  
9 viatical settlement contract shall first obtain:

10

11 (i) If the viator is the insured, a written  
12 statement from a licensed attending physician that the  
13 viator is of sound mind and under no constraint or undue  
14 influence to enter into a viatical settlement contract; and

15

16 (ii) A document in which the insured consents to  
17 the release of his medical records to a licensed viatical  
18 settlement provider, viatical settlement broker and the  
19 insurance company that issued the life insurance policy  
20 covering the life of the insured.

21

22 (b) Within twenty (20) days after a viator executes  
23 documents necessary to transfer any rights under an

1 insurance policy or within twenty (20) days of entering any  
2 agreement, option, promise or any other form of  
3 understanding, expressed or implied, to viaticate the  
4 policy, the viatical settlement provider shall give written  
5 notice to the insurer that issued that insurance policy  
6 that the policy has or will become a viaticated policy.  
7 The notice shall be accompanied by the documents required  
8 by subsection (c) of this section.

9

10 (c) The viatical provider shall deliver a copy of the  
11 medical release required under paragraph (a)(i) of this  
12 section, a copy of the viator's application for the  
13 viatical settlement contract, the notice required under  
14 subsection (b) of this section and a request for  
15 verification of coverage to the insurer that issued the  
16 life policy that is the subject of the viatical  
17 transaction. The NAIC's form for verification of coverage  
18 shall be used unless another form is developed or approved  
19 by the commissioner.

20

21 (d) The insurer shall respond to a request for  
22 verification of coverage submitted on an approved form by a  
23 viatical settlement provider or viatical settlement broker

1 within thirty (30) calendar days of the date the request is  
2 received and shall indicate whether, based on the medical  
3 evidence and documents provided, the insurer intends to  
4 pursue an investigation at this time regarding the validity  
5 of the insurance contract or possible fraud. The insurer  
6 shall accept a request for verification of coverage made on  
7 an NAIC form or any other form developed or approved by the  
8 commissioner. The insurer shall accept an original or  
9 facsimile or electronic copy of such request and any  
10 accompanying authorization signed by the viator. Failure by  
11 the insurer to meet its obligations under this subsection  
12 shall be a violation of W.S. 26-51-119(c) and 26-51-130.

13

14 (e) Prior to or at the time of execution of the  
15 viatical settlement contract, the viatical settlement  
16 provider shall obtain a witnessed document in which the  
17 viator consents to the viatical settlement contract,  
18 represents that the viator has a full and complete  
19 understanding of the viatical settlement contract, that he  
20 has a full and complete understanding of the benefits of  
21 the life insurance policy, acknowledges that he is entering  
22 into the viatical settlement contract freely and  
23 voluntarily and, for persons with a terminal or chronic

1 illness or condition, acknowledges that the insured has a  
2 terminal or chronic illness and that the terminal or  
3 chronic illness or condition was diagnosed after the life  
4 insurance policy was issued.

5

6 (f) If a viatical settlement broker performs any of  
7 these activities required of the viatical settlement  
8 provider, the provider is deemed to have fulfilled that  
9 requirement of this section.

10

11 (g) All medical information solicited or obtained by  
12 any licensee shall be subject to the applicable provisions  
13 of state law relating to confidentiality of medical  
14 information.

15

16 (h) All viatical settlement contracts entered into in  
17 this state shall provide the viator with an absolute right  
18 to rescind the contract before the earlier of sixty (60)  
19 calendar days after the date upon which the viatical  
20 settlement contract is executed by all parties or thirty  
21 (30) calendar days after the viatical settlement proceeds  
22 have been sent to the viator as provided in subsection (m)  
23 of this section. Rescission by the viator may be



1 conditioned upon the viator both giving notice and repaying  
2 to the viatical settlement provider within the rescission  
3 period all proceeds of the settlement and any premiums,  
4 loans and loan interest paid by or on behalf of the  
5 viatical settlement provider in connection with or as a  
6 consequence of the viatical settlement. If the insured  
7 dies during the rescission period, the viatical settlement  
8 contract shall be deemed to have been rescinded, subject to  
9 repayment to the viatical settlement provider or purchaser  
10 of all viatical settlement proceeds, and any premiums,  
11 loans and loan interest that have been paid by the viatical  
12 settlement provider or purchaser, which shall be paid  
13 within sixty (60) calendar days of the death of the  
14 insured. In the event of any rescission, if the viatical  
15 settlement provider has paid commissions or other  
16 compensation to a viatical settlement broker in connection  
17 with the rescinded transaction, the viatical settlement  
18 broker shall refund all such commissions and compensation  
19 to the viatical settlement provider within five (5)  
20 business days following receipt of written demand from the  
21 viatical settlement provider, which demand shall be  
22 accompanied by either the viator's notice of rescission if  
23 rescinded at the election of the viator, or notice of the

1 death of the insured if rescinded by reason of the death of  
2 the insured within the applicable rescission period.

3

4 (j) The purchaser shall have the right to rescind a  
5 viatical settlement contract within three (3) days after  
6 the disclosures mandated by W.S. 26-51-116(d) and (e) are  
7 received by the purchaser.

8

9 (k) The viatical settlement provider shall instruct  
10 the viator to send the executed documents required to  
11 effect the change in ownership, assignment or change in  
12 beneficiary directly to the independent escrow agent.  
13 Within three (3) business days after the date the escrow  
14 agent receives the document, or from the date the viatical  
15 settlement provider receives the documents, if the viator  
16 erroneously provides the documents directly to the  
17 provider, the provider shall pay or transfer the proceeds  
18 of the viatical settlement into an escrow or trust account  
19 maintained in a state or federally-chartered financial  
20 institution whose deposits are insured by the Federal  
21 Deposit Insurance Corporation. Upon payment of the  
22 settlement proceeds into the escrow account, the escrow  
23 agent shall deliver the original change in ownership,

1 assignment or change in beneficiary forms to the viatical  
2 settlement provider or related provider trust or other  
3 designated representative of the viatical settlement  
4 provider. Upon the escrow agent's receipt of the  
5 acknowledgment of the properly completed transfer of  
6 ownership, assignment or designation of beneficiary from  
7 the insurance company, the escrow agent shall pay the  
8 settlement proceeds to the viator.

9

10 (m) Failure to tender consideration to the viator for  
11 the viatical settlement contract within the time set forth  
12 in the disclosure pursuant to W.S. 26-51-116(a)(vii)  
13 renders the viatical settlement contract voidable by the  
14 viator for lack of consideration until the time  
15 consideration is tendered to and accepted by the viator.  
16 Funds shall be deemed sent by a viatical settlement  
17 provider to a viator as of the date that the escrow agent  
18 either releases funds for wire transfer to the viator or  
19 places a check for delivery to the viator via United States  
20 Postal Service or other nationally recognized delivery  
21 service.

22

1           (n)     Contacts with the insured for the purpose of  
2 determining the health status of the insured by the  
3 viatical settlement provider or viatical settlement broker  
4 after the viatical settlement has occurred shall only be  
5 made by the viatical settlement provider or broker licensed  
6 in this state or its authorized representatives and shall  
7 be limited to once every three (3) months for insureds with  
8 a life expectancy of more than one (1) year, and to no more  
9 than once per month for insureds with a life expectancy of  
10 one (1) year or less. The provider or broker shall explain  
11 the procedure for these contacts at the time the viatical  
12 settlement contract is entered into. The limitations set  
13 forth in this subsection shall not apply to any contacts  
14 with an insured for reasons other than determining the  
15 insured's health status. Viatical settlement providers and  
16 viatical settlement brokers shall be responsible for the  
17 actions of their authorized representatives.

18

19           **26-51-119. Prohibited practices.**

20

21           (a)     It is a violation of this article for any person  
22 to enter into a viatical settlement contract at any time  
23 prior to the application or issuance of a policy which is

1 the subject of viatical settlement contract or within a  
2 five (5) year period commencing with the date of issuance  
3 of the insurance policy or certificate unless the viator  
4 certifies to the viatical settlement provider that one (1)  
5 or more of the following conditions have been met within  
6 the five (5) year period:

7

8 (i) The policy was issued upon the viator's  
9 exercise of conversion rights arising out of a group or  
10 individual policy, provided the total of the time covered  
11 under the conversion policy plus the time covered under the  
12 prior policy is at least sixty (60) months. The time  
13 covered under a group policy shall be calculated without  
14 regard to any change in insurance carriers, provided the  
15 coverage has been continuous and under the same group  
16 sponsorship;

17

18 (ii) The viator submits independent evidence to  
19 the viatical settlement provider that one (1) or more of  
20 the following conditions have been met within the five (5)  
21 year period:

22

1                   (A)    The viator or insured is terminally or  
2 chronically ill;

3

4                   (B)    The viator's spouse dies;

5

6                   (C)    The viator divorces his or her spouse;

7

8                   (D)    The viator retires from full-time  
9 employment;

10

11                   (E)    The viator becomes physically or  
12 mentally disabled and a physician determines that the  
13 disability prevents the viator from maintaining full-time  
14 employment; or

15

16                   (F)    A final order, judgment or decree is  
17 entered by a court of competent jurisdiction, on the  
18 application of a creditor of the viator, adjudicating the  
19 viator bankrupt or insolvent, or approving a petition  
20 seeking reorganization of the viator or appointing a  
21 receiver, trustee or liquidator to all or a substantial  
22 part of the viator's assets; or

23

1           (iii)       The viator enters into a viatical  
2 settlement contract more than two (2) years after the date  
3 of issuance of a policy and, with respect to the policy, at  
4 all times prior to the date that is two (2) years after  
5 policy issuance, the following conditions are met:

6  
7           (A)       Policy premiums have been funded  
8 exclusively with unencumbered assets, including an interest  
9 in the life insurance policy being financed only to the  
10 extent of its net cash surrender value, provided by, or  
11 fully recourse liability incurred by, the insured or a  
12 person described in W.S. 26-51-102(a)(xiv)(B)(V);

13  
14           (B)       There is no agreement or understanding  
15 with any other person to guarantee any such liability or to  
16 purchase, or stand ready to purchase, the policy, including  
17 through an assumption or forgiveness of the loan; and

18  
19           (C)       Neither the insured nor the policy has  
20 been evaluated for settlement.

21  
22           (b)       Copies of the independent evidence described in  
23 paragraph (a)(ii) of this section and documents required by

1 W.S. 26-51-118(a) shall be submitted to the insurer when  
2 the viatical settlement provider or other party entering  
3 into a viatical settlement contract with a viator submits a  
4 request to the insurer for verification of coverage. The  
5 copies shall be accompanied by a letter of attestation from  
6 the viatical settlement provider that the copies are true  
7 and correct copies of the documents received by the  
8 viatical settlement provider.

9

10 (c) If the viatical settlement provider submits to the  
11 insurer a copy of the owner or insured's certification  
12 described in and the independent evidence required by  
13 paragraph (a)(ii) of this section when the provider submits  
14 a request to the insurer to effect the transfer of the  
15 policy or certificate to the viatical settlement provider,  
16 the copy shall be deemed to conclusively establish that the  
17 viatical settlement contract satisfies the requirements of  
18 this section and the insurer shall timely respond to the  
19 request.

20

21 (d) No insurer may, as a condition of responding to a  
22 request for verification of coverage or effecting the  
23 transfer of a policy pursuant to a viatical settlement



1 contract, require that the viator, insured, viatical  
2 settlement provider or viatical settlement broker sign any  
3 form, disclosure, consent or waiver form that has not been  
4 expressly approved by the commissioner for use in  
5 connection with viatical settlement contracts in this  
6 state.

7

8 (e) Upon receipt of a properly completed request for  
9 change of ownership or beneficiary of a policy, the insurer  
10 shall respond in writing within thirty (30) calendar days  
11 with written acknowledgement confirming that the change has  
12 been effected or specifying the reasons why the requested  
13 change cannot be processed. The insurer shall not  
14 unreasonably delay effecting change of ownership or  
15 beneficiary and shall not otherwise seek to interfere with  
16 any viatical settlement contract lawfully entered into in  
17 this state.

18

19 (f) No person providing premium financing shall  
20 receive any proceeds, fees or other consideration from the  
21 policy or owner of the policy that is in addition to the  
22 amounts required to pay the principal, interest and any  
23 other reasonable costs or expenses in type and amount

1 incurred by the lender or borrower in connection with the  
2 premium finance agreement, except for the event of a  
3 default, unless either the default on such loan or transfer  
4 of the policy in connection with such default occurs  
5 pursuant to an agreement or understanding with any other  
6 person for the purpose of evading regulation under this  
7 article. Any payment, charges, fees or other amounts  
8 received by a person providing premium financing in  
9 violation of this subsection shall be remitted to the  
10 original owner of the policy or to his estate if he is not  
11 living at the time of the determination of overpayment.

12

13 (g) No person shall issue, solicit, market or  
14 otherwise promote the purchase of an insurance policy for  
15 the purpose of or with an emphasis on settling the policy.

16

17 **26-51-120. Prohibited practices and conflicts of**  
18 **interest.**

19

20 (a) With respect to any viatical settlement contract  
21 or insurance policy, no viatical settlement broker  
22 knowingly shall solicit an offer from, effectuate a  
23 viatical settlement with or make a sale to any viatical

1 settlement provider, viatical settlement purchaser,  
2 viatical settlement investment agent, financing entity or  
3 related provider trust that is controlling, controlled by,  
4 or under common control with such viatical settlement  
5 broker.

6

7 (b) With respect to any viatical settlement contract  
8 or insurance policy, no viatical settlement provider  
9 knowingly may enter into a viatical settlement contract  
10 with a viator, if, in connection with such viatical  
11 settlement contract, anything of value will be paid to a  
12 viatical settlement broker that is controlling, controlled  
13 by or under common control with such viatical settlement  
14 provider or the viatical settlement purchaser, viatical  
15 settlement investment agent, financing entity or related  
16 provider trust that is involved in such viatical settlement  
17 contract.

18

19 (c) A violation of subsection (a) or (b) of this  
20 section shall be deemed a fraudulent viatical settlement  
21 act.

22

1           (d) No viatical settlement provider shall enter into a  
2 viatical settlement contract unless the viatical settlement  
3 promotional, advertising and marketing materials, as may be  
4 prescribed by regulation, have been filed with the  
5 commissioner. In no event shall any marketing materials  
6 expressly reference that the insurance is "free" for any  
7 period of time. The inclusion of any reference in the  
8 marketing materials that would cause a viator to reasonably  
9 believe that the insurance is free for any period of time  
10 shall be considered a violation of this article.

11

12           (e) No life insurance producer, insurance company,  
13 viatical settlement broker, viatical settlement provider or  
14 viatical settlement investment agent shall make any  
15 statement or representation to the applicant or  
16 policyholder in connection with the sale or financing of a  
17 life insurance policy to the effect that the insurance is  
18 free or without cost to the policyholder for any period of  
19 time unless provided in the policy.

20

21           **26-51-121. Advertising for viatical settlements and**  
22 **viatical settlements purchase agreements.**

23

1           (a)       The purpose of this section is to provide  
2 prospective viators and viatical settlement purchasers with  
3 clear and unambiguous statements in the advertisement of  
4 viatical settlements and to assure the clear, truthful and  
5 adequate disclosure of the benefits, risks, limitations and  
6 exclusions of any viatical settlement contract or viatical  
7 settlement purchase agreement bought or sold. This purpose  
8 is intended to be accomplished by the establishment of  
9 guidelines and standards of permissible and impermissible  
10 conduct in the advertising of viatical settlements to  
11 assure that product descriptions are presented in a manner  
12 that prevents unfair, deceptive or misleading advertising  
13 and is conducive to accurate presentation and description  
14 of viatical settlements through the advertising media and  
15 material used by viatical settlement licensees.

16

17           (b)       This section shall apply to any advertising of  
18 viatical settlement contracts, viatical purchase agreements  
19 or related products or services intended for dissemination  
20 in this state, including Internet advertising viewed by  
21 persons located in this state.       Where disclosure  
22 requirements are established pursuant to federal  
23 regulation, this section shall be interpreted so as to

1 minimize or eliminate conflict with federal regulation  
2 wherever possible.

3

4 (c) Every viatical settlement licensee shall establish  
5 and at all times maintain a system of control over the  
6 content, form and method of dissemination of all  
7 advertisements of its contracts, products and services.  
8 All advertisements, regardless of by whom written, created,  
9 designed or presented, shall be the responsibility of the  
10 viatical settlement licensees, as well as the individual  
11 who created or presented the advertisement. A system of  
12 control shall include regular routine notification, at  
13 least once a year, to agents and others authorized by the  
14 viatical settlement licensee who disseminate advertisements  
15 of the requirements and procedures for approval prior to  
16 the use of any advertisements not furnished by the viatical  
17 settlement licensee.

18

19 (d) Advertisements shall be truthful and not  
20 misleading in fact or by implication. The form and content  
21 of an advertisement of a viatical settlement contract or  
22 viatical settlement purchase agreement, product or service  
23 shall be sufficiently complete and clear so as to avoid

1 deception. It shall not have the capacity or tendency to  
2 mislead or deceive. Whether an advertisement has the  
3 capacity or tendency to mislead or deceive shall be  
4 determined by the commissioner from the overall impression  
5 that the advertisement may be reasonably expected to create  
6 upon a person of average education or intelligence within  
7 the segment of the public to which it is directed.

8  
9 (e) Certain viatical settlement advertisements are  
10 deemed false and misleading on their face and are  
11 prohibited. False and misleading viatical settlement  
12 advertisements include, but are not limited to, the  
13 following representations:

14  
15 (i) "Guaranteed," "fully secured," "100 percent  
16 secured," "fully insured," "secure," "safe," "backed by  
17 rated insurance companies," "backed by federal law,"  
18 "backed by state law," or "state guaranty funds," or  
19 similar representations;

20  
21 (ii) "No risk," "minimal risk," "low risk," "no  
22 speculation," "no fluctuation," or similar representations;

23

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

6

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

10

11           (v)     "No sales charges or fees" or similar  
12 representations;

13

14           (vi)     "High yield," "superior return," "excellent  
15 return," "high return," "quick profit," or similar  
16 representations; and

17

18           (vii)    Purported favorable representations or  
19 testimonials about the benefits of viatical settlement  
20 contracts or viatical settlement purchase agreements as an  
21 investment, taken out of context from newspapers, trade  
22 papers, journals, radio and television programs, and all  
23 other forms of print and electronic media.



1

2 (f) The information required to be disclosed under  
3 this section shall not be minimized, rendered obscure, or  
4 presented in an ambiguous fashion or intermingled with the  
5 text of the advertisement so as to be confusing or  
6 misleading and shall conform with the following:

7

8 (i) An advertisement shall not omit material  
9 information or use words, phrases, statements, references  
10 or illustrations if the omission or use has the capacity,  
11 tendency or effect of misleading or deceiving viators,  
12 purchasers or prospective purchasers as to the nature or  
13 extent of any benefit, loss covered, premium payable, or  
14 state or federal tax consequence. The fact that the  
15 viatical settlement contract or viatical settlement  
16 purchase agreement offered is made available for inspection  
17 prior to consummation of the sale, or an offer is made to  
18 refund the payment if the viator is not satisfied or that  
19 the viatical settlement contract or viatical settlement  
20 purchase agreement includes a "free look" period that  
21 satisfies or exceeds legal requirements, does not remedy  
22 misleading statements;

23

1           (ii) An advertisement shall not use the name or  
2 title of a life insurance company or a life insurance  
3 policy unless the advertisement has been approved by the  
4 insurer;

5

6           (iii) An advertisement shall not represent that  
7 premium payments will not be required to be paid on the  
8 life insurance policy that is the subject of a viatical  
9 settlement contract or viatical settlement purchase  
10 agreement in order to maintain that policy, unless that is  
11 the fact;

12

13           (iv) An advertisement shall not state or imply  
14 that interest charged on an accelerated death benefit or a  
15 policy loan is unfair, inequitable or in any manner an  
16 incorrect or improper practice;

17

18           (v) The words "free," "no cost," "without cost,"  
19 "no additional cost," "at no extra cost," or words of  
20 similar import shall not be used with respect to any  
21 benefit or service unless true. An advertisement may  
22 specify the charge for a benefit or a service or may state

1 that a charge is included in the payment or use other  
2 appropriate language;

3

4 (vi) Testimonials, appraisals or analysis used in  
5 advertisements must be genuine, represent the current  
6 opinion of the author, be applicable to the viatical  
7 settlement contract or viatical settlement purchase  
8 agreement, product or service advertised, if any, and be  
9 accurately reproduced with sufficient completeness to avoid  
10 misleading or deceiving prospective viators or purchasers  
11 as to the nature or scope of the testimonials, appraisal,  
12 analysis or endorsement. In using testimonials,  
13 appraisals or analysis, a licensee under this article makes  
14 as its own all the statements contained therein, and the  
15 statements are subject to the following provisions:

16

17 (A) If the individual making a testimonial,  
18 appraisal, analysis or an endorsement has a financial  
19 interest in the party making use of the testimonial,  
20 appraisal, analysis or endorsement, either directly or  
21 through a related entity as a stockholder, director,  
22 officer, employee or otherwise, or receives any benefit  
23 directly or indirectly other than required union scale

1 wages, that fact shall be prominently disclosed in the  
2 advertisement;

3

4 (B) An advertisement shall not state or  
5 imply that a viatical settlement contract or viatical  
6 settlement purchase agreement, benefit or service has been  
7 approved or endorsed by a group of individuals, society,  
8 association or other organization unless that is the fact  
9 and unless any relationship between an organization and the  
10 viatical settlement licensee is disclosed. If the entity  
11 making the endorsement or testimonial is owned, controlled  
12 or managed by the viatical settlement licensee, or receives  
13 any payment or other consideration from the viatical  
14 settlement licensee for making an endorsement or  
15 testimonial, that fact shall be disclosed in the  
16 advertisement;

17

18 (C) When an endorsement refers to benefits  
19 received under a viatical settlement contract or viatical  
20 settlement purchase agreement all pertinent information  
21 shall be retained for a period of five (5) years after its  
22 use.

23

1           (g)    An advertisement shall not contain statistical  
2 information unless it accurately reflects recent and  
3 relevant facts. The source of all statistics used in an  
4 advertisement shall be identified.

5

6           (h)    An advertisement shall not disparage insurers,  
7 viatical settlement providers, viatical settlement brokers,  
8 viatical settlement investment agents, insurance producers,  
9 policies, services or methods of marketing.

10

11           **\*\*\* Staff note: There is probably a first amendment**  
12 **issue with subsection (h) - if the statement is true but**  
13 **disparaging the advertisement should not be prohibited. \*\*\***

14

15           (j)    The name of the viatical settlement licensee shall  
16 be clearly identified in all advertisements about the  
17 licensee or its viatical settlement contract or viatical  
18 settlement purchase agreements, products or services, and  
19 if any specific viatical settlement contract or viatical  
20 settlement purchase agreement is advertised, the viatical  
21 settlement contract or viatical settlement purchase  
22 agreement shall be identified either by form number or some  
23 other appropriate description. If an application is part

1 of the advertisement, the name of the viatical settlement  
2 provider shall be shown on the application.

3

4 (k) An advertisement shall not use a trade name, group  
5 designation, name of the parent company of a viatical  
6 settlement licensee, name of a particular division of the  
7 viatical settlement licensee, service mark, slogan, symbol  
8 or other device or reference without disclosing the name of  
9 the viatical settlement licensee, if the advertisement  
10 would have the capacity or tendency to mislead or deceive  
11 as to the true identity of the viatical settlement  
12 licensee, or to create the impression that a company other  
13 than the viatical settlement licensee would have any  
14 responsibility for the financial obligation under a  
15 viatical settlement contract or viatical settlement  
16 purchase agreement.

17

18 (m) An advertisement shall not use any combination of  
19 words, symbols or physical materials that by their content,  
20 phraseology, shape, color or other characteristics are so  
21 similar to a combination of words, symbols or physical  
22 materials used by a government program or agency or  
23 otherwise appear to be of such a nature that they tend to

1 mislead prospective viators or purchasers into believing  
2 that the solicitation is in some manner connected with a  
3 government program or agency.

4

5       (n)     An advertisement may state that a viatical  
6 settlement licensee is licensed in the state where the  
7 advertisement appears, provided it does not exaggerate that  
8 fact or suggest or imply that competing viatical settlement  
9 licensee may not be so licensed. The advertisement may ask  
10 the audience to consult the licensee's web site or contact  
11 the department of insurance to determine if the state  
12 requires licensing and, if so, whether the viatical  
13 settlement provider, viatical settlement broker or viatical  
14 settlement investment agent is licensed.

15

16       (o)     An advertisement shall not create the impression  
17 that the viatical settlement provider, its financial  
18 condition or status, the payment of its claims or the  
19 merits, desirability, or advisability of its viatical  
20 settlement contracts or viatical settlement purchase  
21 agreement forms are recommended or endorsed by any  
22 government entity.

23

1           (p) The name of the actual licensee shall be stated in  
2 all of its advertisements. An advertisement shall not use a  
3 trade name, any group designation, name of any affiliate or  
4 controlling entity of the licensee, service mark, slogan,  
5 symbol or other device in a manner that would have the  
6 capacity or tendency to mislead or deceive as to the true  
7 identity of the actual licensee or create the false  
8 impression that an affiliate or controlling entity would  
9 have any responsibility for the financial obligation of the  
10 licensee.

11

12           (q) An advertisement shall not directly or indirectly  
13 create the impression that any division or agency of the  
14 state or of the United States government endorses, approves  
15 or favors:

16

17           (i) Any viatical settlement licensee or its  
18 business practices or methods of operation;

19

20           (ii) The merits, desirability or advisability of  
21 any viatical settlement contract or viatical settlement  
22 purchase agreement;

23



1           (iii)     Any viatical settlement contract or  
2 viatical settlement purchase agreement; or

3  
4           (iv)     Any life insurance policy or life insurance  
5 company.

6  
7           (r)     If the advertiser emphasizes the speed with which  
8 the viatication will occur, the advertising must disclose  
9 the average time frame from completed application to the  
10 date of offer and from acceptance of the offer to receipt  
11 of the funds by the viator.

12  
13          (s)     If the advertising emphasizes the dollar amounts  
14 available to viators, the advertising shall disclose the  
15 average purchase price as a percent of face value obtained  
16 by viators contracting with the licensee during the past  
17 six (6) months.

18  
19           **26-51-122.   Fraudulent viatical settlement acts;  
20 interference and participation of convicted felons  
21 prohibited.**

22

1           (a) A person shall not commit a fraudulent viatical  
2 settlement act.

3

4           (b) A person shall not knowingly or intentionally  
5 interfere with the enforcement of the provisions of this  
6 article or investigations of suspected or actual violations  
7 of this article.

8

9           (c) A person in the business of viatical settlements  
10 shall not knowingly or intentionally permit any person  
11 convicted of a felony involving dishonesty or breach of  
12 trust to participate in the business of viatical  
13 settlements.

14

15           **26-51-123. Fraud warning required.**

16

17           (a) Viatical settlements contracts and purchase  
18 agreement forms and applications for viatical settlements,  
19 regardless of the form of transmission, shall contain the  
20 following statement or a substantially similar statement:  
21 "Any person who knowingly presents false information in an  
22 application for insurance or viatical settlement contracts  
23 or viatical settlement purchase agreement is guilty of a

1 crime and may be subject to fines and confinement in  
2 prison.”

3

4 (b) The lack of a statement as required in subsection  
5 (a) of this section does not constitute a defense in any  
6 prosecution for a fraudulent viatical settlement act.

7

8 **26-51-124. Mandatory reporting of fraudulent viatical**  
9 **settlement acts.**

10

11 (a) Any person engaged in the business of viatical  
12 settlements having knowledge or a reasonable suspicion that  
13 a fraudulent viatical settlement act is being, will be or  
14 has been committed shall provide to the commissioner such  
15 information as required by, and in a manner prescribed by,  
16 the commissioner.

17

18 (b) Any other person having knowledge or a reasonable  
19 belief that a fraudulent viatical settlement act is being,  
20 will be or has been committed may provide to the  
21 commissioner the information required by, and in a manner  
22 prescribed by, the commissioner.

23

1           **26-51-125. Immunity from liability.**

2

3           (a) No civil liability shall be imposed on and no  
4 cause of action shall arise from a person's furnishing  
5 information concerning suspected, anticipated or completed  
6 fraudulent viatical settlement acts or suspected or  
7 completed fraudulent insurance acts, if the information is  
8 provided to or received from:

9

10           (i) The commissioner or the commissioner's  
11 employees, agents or representatives;

12

13           (ii) Federal, state or local law enforcement or  
14 regulatory officials or their employees, agents or  
15 representatives;

16

17           (iii) A person involved in the prevention and  
18 detection of fraudulent viatical settlement acts or that  
19 person's agents, employees or representatives;

20

21           (iv) The National Association of Insurance  
22 Commissioners (NAIC), National Association of Securities  
23 Dealers (NASD), the North American Securities

1 Administrators Association (NASAA), or their employees,  
2 agents or representatives, or other regulatory body  
3 overseeing life insurance, viatical settlements, securities  
4 or investment fraud; or

5

6 (v) The life insurer that issued the life  
7 insurance policy covering the life of the insured.

8

9 (b) Subsection (a) of this section shall not apply to  
10 statements made with actual malice. In an action brought  
11 against a person for filing a report or furnishing other  
12 information concerning a fraudulent viatical settlement  
13 act, the party bringing the action shall plead specifically  
14 any allegation that subsection (a) of this section does not  
15 apply because the person filing the report or furnishing  
16 the information did so with actual malice.

17

18 (c) A person furnishing information as identified in  
19 subsection (a) of this section shall be entitled to an  
20 award of attorney's fees and costs if he is the prevailing  
21 party in a civil cause of action for libel, slander or any  
22 other relevant tort arising out of activities in carrying  
23 out the provisions of this article and the party bringing

1 the action was not substantially justified in doing so.  
2 For purposes of this section a proceeding is "substantially  
3 justified" if it had a reasonable basis in law or fact at  
4 the time that it was initiated. However, such an award  
5 does not apply to any person furnishing information  
6 concerning his own fraudulent viatical settlement acts.

7

8 (d) This section does not abrogate or modify common  
9 law or statutory privileges or immunities enjoyed by a  
10 person described in subsection (a) of this section.

11

12 **26-51-126. Confidentiality.**

13

14 (a) The documents and evidence provided pursuant to  
15 this article or obtained by the commissioner in an  
16 investigation of suspected or actual fraudulent viatical  
17 settlement acts shall be privileged and confidential and  
18 shall not be a public record and shall not be subject to  
19 discovery or subpoena in a civil or criminal action.

20

21 (b) Subsection (a) of this section does not prohibit  
22 release by the commissioner of documents and evidence

1 obtained in an investigation of suspected or actual  
2 fraudulent viatical settlement acts:

3

4 (i) In administrative or judicial proceedings to  
5 enforce laws administered by the commissioner;

6

7 (ii) To federal, state or local law enforcement  
8 or regulatory agencies, to an organization established for  
9 the purpose of detecting and preventing fraudulent viatical  
10 settlement acts or to the NAIC; or

11

12 (iii) At the discretion of the commissioner, to a  
13 person in the business of viatical settlements that is  
14 aggrieved by a fraudulent viatical settlement act.

15

16 (c) Release of documents and evidence under subsection  
17 (b) of this section does not abrogate or modify the  
18 privilege granted in subsection (a) of this section.

19

20 **26-51-127. Other law enforcement or regulatory**  
21 **authority.**

22

23 (a) Nothing in this article shall:

1

2 (i) Preempt the authority or relieve the duty of  
3 other law enforcement or regulatory agencies to  
4 investigate, examine and prosecute suspected violations of  
5 law;

6

7 (ii) Prevent or prohibit a person from disclosing  
8 voluntarily information concerning viatical settlement  
9 fraud to a law enforcement or regulatory agency other than  
10 the department; or

11

12 (iii) Limit the powers granted elsewhere by the  
13 laws of this state to the commissioner or an insurance  
14 fraud unit to investigate and examine possible violations  
15 of law and to take appropriate action against wrongdoers.

16

17 **26-51-128. Viatical settlement antifraud initiatives.**

18

19 (a) Viatical settlement providers and viatical  
20 settlement brokers shall have in place antifraud  
21 initiatives reasonably calculated to detect, prosecute and  
22 prevent fraudulent viatical settlement acts. At the  
23 discretion of the commissioner, the commissioner may order,



1 or a licensee may request and the commissioner may grant,  
2 such modifications of the following required initiatives as  
3 necessary to ensure an effective antifraud program. The  
4 modifications may be more or less restrictive than the  
5 required initiatives so long as the modifications may  
6 reasonably be expected to accomplish the purpose of this  
7 section.

8

9 (b) Antifraud initiatives shall include:

10

11 (i) Fraud investigators, who may be viatical  
12 settlement provider or viatical settlement broker employees  
13 or independent contractors; and

14

15 (ii) An antifraud plan, which shall be submitted  
16 to the commissioner. The antifraud plan shall include, but  
17 not be limited to:

18

19 (A) A description of the procedures for  
20 detecting and investigating possible fraudulent viatical  
21 settlement acts and procedures for resolving material  
22 inconsistencies between medical records and insurance  
23 applications;

1

2 (B) A description of the procedures for  
3 reporting possible fraudulent viatical settlement acts to  
4 the commissioner;

5

6 (C) A description of the plan for antifraud  
7 education and training of underwriters and other personnel;  
8 and

9

10 (D) A description or chart outlining the  
11 organizational arrangement of the antifraud personnel who  
12 are responsible for the investigation and reporting of  
13 possible fraudulent viatical settlement acts and  
14 investigating unresolved material inconsistencies between  
15 medical records and insurance applications.

16

17 (c) Antifraud plans submitted to the commissioner  
18 shall be privileged and confidential and shall not be a  
19 public record and shall not be subject to discovery or  
20 subpoena in a civil or criminal action.

21

22 **26-51-129. Injunctions; civil remedies; cease and**  
23 **desist.**

1

2           (a) In addition to the penalties and other enforcement  
3 provisions of this article, if any person violates this  
4 article or any regulation implementing this article, the  
5 commissioner may seek an injunction in a court of competent  
6 jurisdiction and may apply for temporary and permanent  
7 orders that the commissioner determines are necessary to  
8 restrain the person from committing the violation.

9

10           (b) Any person damaged by the acts of a person in  
11 violation of this article may bring a civil action against  
12 the person committing the violation in a court of competent  
13 jurisdiction.

14

15           (c) A violation of this article attendant to the  
16 execution of a viatical settlement purchase agreement  
17 renders the viatical settlement purchase agreement voidable  
18 and subject to rescission by the viatical settlement  
19 purchaser, upon return of the policy received to the  
20 viatical settlement provider. Suit for rescission may be  
21 brought in a court of competent jurisdiction or where the  
22 alleged violator resides or has a principal place of  
23 business or where the alleged violation occurred.

1

2 (d) In addition to the penalties and other enforcement  
3 provisions of this article, any person who violates this  
4 article is subject to civil penalties as provided in W.S.  
5 26-1-107. Imposition of civil penalties shall be pursuant  
6 to an order of the commissioner issued under W.S. 26-2-111  
7 and 26-2-112. The commissioner's order may require a  
8 person found to be in violation of this article to make  
9 restitution to persons aggrieved by violations of this  
10 article.

11

12 (e) A person convicted of a violation of this article  
13 by a court of competent jurisdiction is guilty of a  
14 misdemeanor punishable as provided in W.S. 6-10-103. A  
15 person convicted of a violation of this article shall be  
16 ordered to pay restitution to persons aggrieved by the  
17 violation of this article. Restitution shall be ordered in  
18 addition to a fine or imprisonment, but not in lieu of a  
19 fine or imprisonment.

20

21 (f) Except for a fraudulent viatical settlement act  
22 committed by a viator, the enforcement provisions and  
23 penalties of this section shall not apply to a viator.

1

2           **26-51-130. Unfair trade practices.**

3

4 A violation of this article, including the commission of a  
5 fraudulent viatical settlement act, shall be considered an  
6 unfair trade practice under W.S. 26-13-101 through 26-13-  
7 202 subject to the penalties contained in that act.

8

9           **26-51-131. Authority to promulgate regulations.**

10

11           (a) The commissioner shall have the authority to:

12

13                   (i) Promulgate regulations implementing this  
14 article;

15

16                   (ii) Establish standards for evaluating  
17 reasonableness of payments under viatical settlement  
18 contracts for persons who are terminally or chronically  
19 ill. This authority includes, but is not limited to,  
20 regulation of discount rates used to determine the amount  
21 paid in exchange for assignment, transfer, sale, devise or  
22 bequest of a benefit under a life insurance policy insuring  
23 the life of a person who is chronically or terminally ill;

1

2           (iii)           Establish       appropriate       licensing  
3 requirements, fees and standards for continued licensure  
4 for viatical settlement providers, brokers and viatical  
5 settlement investment agents;

6

7           (iv)       Require a bond or other mechanism for  
8 financial accountability for viatical settlement providers  
9 and brokers; and

10

11           (v)   Adopt rules governing the relationships and  
12 responsibilities of both insurers and viatical settlement  
13 providers, viatical settlement brokers and viatical  
14 settlement investment agents during the viatication of a  
15 life insurance policy or certificate.

16

17           **26-51-132. Severability.**

18

19 If any portion of this article or any amendments thereto,  
20 or its applicability to any person or circumstance is held  
21 invalid by a court, the remainder of this article or its  
22 applicability to other persons or circumstances shall not  
23 be affected.

1

2

**Section 2.** This act is effective July 1, 2009.

3

4

(END)