

17B:30A-1 to 17B:30A-10

LEGISLATIVE HISTORY CHECK

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LAWS OF: 1999 **CHAPTER:** 211

NJSA: 17B:30A-1 to 17B:30A-10 (Viatical settlements)

BILL NO: S1515 (Substituted for A2712)

SPONSOR(S): Martin

DATE INTRODUCED: November 23, 1998

COMMITTEE: **ASSEMBLY:** ---

SENATE: Commerce

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** June 17, 1999

SENATE: May 10, 1999

DATE OF APPROVAL: September 17, 1999

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: Senate Committee Substitute
(Amendments during passage denoted by superscript numbers)

SCS for S1515

SPONSORS STATEMENT: No

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

S1515

SPONSORS STATEMENT: (Begins on page 8 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

ACS for A2712

SPONSORS STATEMENT: No

COMMITTEE STATEMENT:

ASSEMBLY: [Yes](#)
Identical to Senate Statement for S1515

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

A2712

SPONSORS STATEMENT: (Begins on page 8 of original bill) [Yes](#)
Bill and Sponsors Statement identical to S1515

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

[GOVERNOR'S PRESS RELEASE ON SIGNING:](#) [Yes](#)

FOLLOWING WERE PRINTED:

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HEARINGS: No

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P.L. 1999, CHAPTER 211, *approved September 17, 1999*
Senate Committee Substitute for
Senate, No. 1515

1 **AN ACT** concerning life insurance viatical settlements.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. As used in this act:

7 "Commissioner" means the Commissioner of Banking and
8 Insurance.

9 "Financing entity" means an underwriter, placement agent, lender,
10 purchaser of securities, purchaser of a policy or certificate from a
11 viatical settlement provider, credit enhancer, or any person who may
12 be a party to a viatical settlement contract and who has a direct
13 ownership in a policy or certificate that is the subject of a viatical
14 settlement contract but whose sole activity related to the transaction
15 is providing funds to effect the viatical settlement and who has an
16 agreement in writing with a licensed viatical settlement provider to act
17 as a participant in a financing transaction.

18 "Financing transaction" means a transaction in which a licensed
19 viatical settlement provider or a financing entity obtains financing for
20 viatical settlement contracts, viaticated policies or interests therein
21 including, without limitation, any secured or unsecured financing, any
22 securitization transaction or any securities offering either registered or
23 exempt from registration under federal and State securities law, or any
24 direct purchase of interests in a policy or certificate, if the financing
25 transaction complies with federal and State securities law.

26 "Viatical settlement broker" means a person who on behalf of a
27 viator and for a fee, commission or other valuable consideration, offers
28 or attempts to negotiate viatical settlements between a viator and one
29 or more viatical settlement providers. Irrespective of the manner in
30 which the viatical settlement broker is compensated, a viatical
31 settlement broker is deemed to represent only the viator and owes a
32 fiduciary duty to the viator to act according to the viator's instructions
33 and in the best interest of the viator. The term does not include an
34 attorney, accountant or financial planner retained to represent the
35 viator whose compensation is paid directly by or at the direction of the
36 viator.

37 "Viatical settlement contract" means a written agreement entered
38 into between a viatical settlement provider and a viator. The
39 agreement shall establish the terms under which the viatical settlement

1 provider will pay compensation or anything of value, which
2 compensation or value is less than the expected death benefit of the
3 insurance policy or certificate, in return for the viator's assignment,
4 transfer, sale, devise or bequest of the death benefit or ownership of
5 all or a portion of the insurance policy or certificate of insurance to the
6 viatical settlement provider. A viatical settlement contract also
7 includes a contract for a loan or other financial transaction secured
8 primarily by an individual or group life insurance policy, other than a
9 loan by a life insurance company pursuant to the terms of the life
10 insurance contract, or a loan secured by the cash value of a policy.

11 "Viatical settlement provider" means a person, other than a viator,
12 who enters into a viatical settlement contract. Viatical settlement
13 provider also means a person who obtains financing from a financing
14 entity for the purchase, acquisition, transfer or other assignment of one
15 or more viatical settlement contracts, viaticated policies or interests
16 therein, or otherwise sells, assigns, transfers, pledges, hypothecates or
17 otherwise disposes of one or more viatical settlement contracts,
18 viaticated policies or interests therein. Viatical settlement provider
19 does not include:

20 (1) A bank, savings bank, savings and loan association, credit
21 union or other licensed lending institution that takes an assignment of
22 a life insurance policy as collateral for a loan;

23 (2) The issuer of a life insurance policy providing accelerated
24 benefits pursuant to N.J.A.C.11:4-30.1 et seq. and pursuant to the
25 policy; or

26 (3) A natural person who enters into no more than one agreement
27 in a calendar year for the transfer of life insurance policies for any
28 value less than the expected death benefit.

29 "Viatical settlement representative" means a person who is an
30 authorized agent of a licensed viatical settlement provider or viatical
31 settlement broker, as applicable, who acts or aids in any manner in the
32 solicitation of a viatical settlement. Viatical settlement representative
33 shall not include:

34 (1) An attorney, an accountant, a financial planner or any person
35 exercising a power of attorney granted by a viator; or

36 (2) Any person who is retained to represent a viator and whose
37 compensation is paid by or at the direction of the viator, regardless of
38 whether the viatical settlement is consummated.

39 A viatical settlement representative shall represent only the viatical
40 settlement provider or viatical settlement broker.

41 "Viaticated policy" means a life insurance policy or certificate that
42 has been acquired by a viatical settlement provider pursuant to a
43 viatical settlement contract.

44 "Viator" means the owner of a life insurance policy or a certificate
45 holder under a group policy insuring the life of an individual, who has
46 a catastrophic, life-threatening or chronic illness or condition and who

1 enters or seeks to enter into a viatical settlement contract.

2

3 2. a. A person shall not operate as a viatical settlement provider,
4 viatical settlement representative or viatical settlement broker without
5 first having obtained a license from the commissioner.

6 b. Application for a viatical settlement provider, viatical settlement
7 representative or viatical settlement broker license shall be made to the
8 commissioner by the applicant on a form prescribed by the
9 commissioner, and the application shall be accompanied by a fee, the
10 amount of which shall be set by the commissioner by regulation.

11 c. Licenses may be renewed from year to year on the anniversary
12 date upon payment of the annual renewal fee in an amount set by the
13 commissioner by regulation. Failure to pay the fee by the renewal date
14 shall result in expiration of the license.

15 d. The applicant shall provide information on forms required by
16 the commissioner. The commissioner shall have authority, at any time,
17 to require the applicant to fully disclose the identity of all
18 stockholders, partners, officers, members and employees, and the
19 commissioner may refuse to issue a license in the name of a legal entity
20 if not satisfied that any officer, employee, stockholder, partner or
21 member thereof who may materially influence the applicant's conduct
22 meets the standards of this act.

23 e. A license issued to a legal entity authorizes all members,
24 officers and designated employees to act as viatical settlement
25 providers, viatical settlement brokers or viatical settlement
26 representatives, as applicable, under the license, and all those persons
27 shall be named in the application and any supplements to the
28 application.

29 f. Upon the filing of an application and the payment of the license
30 fee, the commissioner shall make an investigation of each applicant
31 and issue a license if the commissioner finds that the applicant:

32 (1) Has provided a detailed plan of operation;

33 (2) Is competent and trustworthy and intends to act in good faith
34 in the capacity of the license applied for;

35 (3) Has a good business reputation and has had experience,
36 training or education so as to be qualified in the business for which the
37 license is applied for; and

38 (4) If a legal entity, provides a certificate of good standing from
39 the state of its domicile.

40 g. The commissioner shall not issue a license to a nonresident
41 applicant unless a written designation of an agent for service of
42 process is filed and maintained with the commissioner, or the applicant
43 has filed with the commissioner the applicant's written irrevocable
44 consent that any action against the applicant may be commenced
45 against the applicant by service of process on the commissioner.

46 h. A viatical settlement provider, viatical settlement representative

1 or viatical settlement broker transacting business in this State prior to
2 the effective date of this act may continue to do so pending approval
3 or disapproval of the provider, representative or broker's application
4 for a license as long as the application is filed with the commissioner
5 on or before the 180th day after the effective date of this act.

6
7 3. a. The commissioner may suspend, revoke or refuse to renew
8 the license of a viatical settlement provider, viatical settlement
9 representative or viatical settlement broker if the commissioner finds
10 that:

11 (1) There was any material misrepresentation in the application for
12 the license;

13 (2) The licensee or any officer, partner, member or key
14 management personnel has been convicted of fraudulent or dishonest
15 practices, is subject to a final administrative action or is otherwise
16 shown to be untrustworthy or incompetent;

17 (3) The viatical settlement provider demonstrates a pattern of
18 unreasonable payments to viators;

19 (4) The licensee has been found guilty of, or has pleaded guilty or
20 nolo contendere to, any felony, or to a misdemeanor involving fraud
21 or moral turpitude, regardless of whether a judgment of conviction has
22 been entered by the court;

23 (5) The viatical settlement provider has entered into any viatical
24 settlement contract that has not been approved pursuant to this act;

25 (6) The viatical settlement provider has failed to honor contractual
26 obligations set out in a viatical settlement contract;

27 (7) The licensee no longer meets the requirements for initial
28 licensure;

29 (8) The viatical settlement provider has assigned, transferred or
30 pledged a viaticated policy to a person other than a viatical settlement
31 provider licensed in this State or a financing entity; or

32 (9) The licensee has violated any provision of this act.

33 b. Before the commissioner shall deny a license application or
34 suspend, revoke or refuse to renew the license of a viatical settlement
35 provider, viatical settlement broker or viatical settlement
36 representative, the commissioner shall conduct a hearing.

37
38 4. A person shall not use a viatical settlement contract or provide
39 to a viator a disclosure statement form in this State unless filed with
40 and approved by the commissioner. The commissioner shall disapprove
41 a viatical settlement contract or disclosure statement form if, in the
42 commissioner's opinion, the contract or provisions contained therein
43 are unreasonable, contrary to the interests of the public, or otherwise
44 misleading or unfair to the viator.

45
46 5. a. Each licensee shall file with the commissioner on or before

1 March 1 of each year an annual statement containing that information
2 which the commissioner by regulation may prescribe.

3 b. Except as otherwise allowed or required by law, a viatical
4 settlement provider, viatical settlement representative, viatical
5 settlement broker, insurance company, insurance agent, insurance
6 broker, information bureau, rating agency or company, or any other
7 person with actual knowledge of a viator's identity, shall not disclose
8 that identity as a viator to any other person unless the disclosure:

9 (1) Is necessary to effect a viatical settlement between the viator
10 and a viatical settlement provider and the viator has provided prior
11 written consent to the disclosure;

12 (2) Is provided in response to an investigation by the commissioner
13 or any other governmental officer or agency; or

14 (3) Is a term of or condition to the transfer of a viaticated policy
15 by one viatical settlement provider to another viatical settlement
16 provider.

17

18 6. a. The commissioner may, when he determines it reasonably
19 necessary to protect the interests of the public, examine the business
20 and affairs of any licensee or applicant for a license under this act. The
21 commissioner shall have the authority to order any licensee or
22 applicant to produce any records, books, files or other information
23 reasonably necessary to ascertain whether or not the licensee or
24 applicant is acting, or has acted in violation of the law or otherwise
25 contrary to the interests of the public. The expenses incurred in
26 conducting any examination shall be paid by the licensee or applicant.

27 b. Names and individual identification data for all viators shall be
28 considered private and confidential information and shall not be
29 disclosed by the commissioner, unless required by law.

30 c. Records of all transactions of viatical settlement contracts shall
31 be maintained by the viatical settlement provider and shall be available
32 to the commissioner for inspection during reasonable business hours.
33 A viatical settlement provider shall maintain records of each viatical
34 settlement for five years after the death of the insured.

35

36 7. a. A viatical settlement provider, viatical settlement
37 representative or viatical settlement broker shall disclose the following
38 information to the viator no later than the time of application:

39 (1) Possible alternatives to viatical settlement contracts for
40 individuals with catastrophic, life threatening or chronic illnesses or
41 conditions, including any accelerated death benefits offered under the
42 viator's life insurance policy;

43 (2) Some or all of the proceeds of the viatical settlement may be
44 free from federal income tax and from state franchise and income
45 taxes, and that assistance should be sought from a professional tax
46 advisor;

1 (3) Proceeds of the viatical settlement could be subject to the
2 claims of creditors;

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

7 (5) The viator's right to rescind a viatical settlement contract 15
8 calendar days after the receipt of the viatical settlement proceeds by
9 the viator, as provided in subsection c. of section 8 of this act;

10 (6) Funds will be sent to the viator within two business days after
11 the viatical settlement provider has received the insurer or group
12 administrator's acknowledgment that ownership of the policy or
13 interest in the certificate has been transferred and the beneficiary has
14 been designated pursuant to the viatical settlement contract; and

15 (7) Entering into a viatical settlement contract may cause other
16 rights or benefits, including conversion rights and waiver of premium
17 benefits that may exist under the policy or certificate, to be forfeited
18 by the viator and that assistance should be sought from a financial
19 adviser.

20 b. A viatical settlement provider shall disclose the following
21 information to the viator prior to the date the viatical settlement
22 contract is signed by all parties:

23 (1) The affiliation, if any, between the viatical settlement provider
24 and the issuer of an insurance policy to be viaticated;

25 (2) If an insurance policy to be viaticated has been issued as a joint
26 policy or involves family riders or any coverage of a life other than the
27 insured under the policy to be viaticated, the viator shall be informed
28 of the possible loss of coverage on the other lives and be advised to
29 consult with his insurance producer or the company issuing the policy
30 for advice on the proposed viatication; and

31 (3) The dollar amount of the current death benefit payable to the
32 viatical settlement provider under the policy or certificate. The viatical
33 settlement provider shall also disclose the availability of any additional
34 guaranteed insurance benefits, the dollar amount of any accidental
35 death and dismemberment benefits under the policy or certificate and
36 the viatical settlement provider's interest in those benefits.

37

38 8. a. A viatical settlement provider entering into a viatical
39 settlement contract shall first obtain:

40 (1) If the viator is the insured, a written statement from a licensed
41 attending physician that the viator is of sound mind and under no
42 constraint or undue influence to enter into a viatical settlement
43 contract;

44 (2) A witnessed document in which the viator consents to the
45 viatical settlement contract, acknowledges that the insured has a
46 catastrophic, life threatening or chronic illness or condition, represents

1 that the viator has a full and complete understanding of the viatical
2 settlement contract, that he has a full and complete understanding of
3 the benefits of the life insurance policy and acknowledges that he has
4 entered into the viatical settlement contract freely and voluntarily; and

5 (3) A document in which the insured consents to the release of his
6 medical records to a viatical settlement provider or viatical settlement
7 broker.

8 b. All medical information solicited or obtained by any licensee
9 shall be confidential.

10 c. All viatical settlement contracts entered into in this State shall
11 provide the viator with an unconditional right to rescind the contract
12 for at least 15 calendar days from the receipt of the viatical settlement
13 proceeds. If the insured dies during the rescission period, the viatical
14 settlement contract shall be deemed to have been rescinded, subject to
15 repayment to the viatical settlement provider of all viatical settlement
16 proceeds.

17 d. Immediately upon the viatical settlement provider's receipt of
18 documents to effect the transfer of the insurance policy, the viatical
19 settlement provider shall pay the proceeds of the viatical settlement to
20 an escrow or trust account in a state or federally chartered financial
21 institution whose deposits are insured by the Federal Deposit
22 Insurance Corporation (FDIC). The account shall be managed by a
23 trustee or escrow agent independent of the parties to the contract. The
24 trustee or escrow agent shall transfer the proceeds to the viator
25 immediately upon the viatical settlement provider's receipt of
26 acknowledgment of the transfer of the insurance policy or interest
27 therein.

28 e. Failure to tender consideration to the viator for the viatical
29 settlement contract within the time disclosed pursuant to paragraph (6)
30 of subsection a. of section 7 of this act renders the viatical settlement
31 contract voidable by the viator for lack of consideration until
32 consideration is tendered to and accepted by the viator.

33 f. Contacts with the insured for the purpose of determining the
34 health status of the insured after the viatical settlement has occurred
35 shall only be made by the viatical settlement provider or broker
36 licensed in this State and shall be limited to once every three months
37 for insureds with a life expectancy of more than one year, and to no
38 more than one per month for insureds with a life expectancy of one
39 year or less. The viatical settlement provider or broker shall explain
40 the procedure for these contacts at the time the viatical settlement
41 contract is entered into. The limitations set forth in this subsection
42 shall not apply to any contacts with an insured under a viaticated
43 policy for reasons other than determining the insured's health status.
44

45 9. The commissioner shall have the authority to:

46 a. Promulgate regulations implementing the provisions of this act;

1 b. Establish standards for evaluating reasonableness of payments
2 under viatical settlement contracts. This authority includes, but is not
3 limited to, regulation of discount rates used to determine the amount
4 paid in exchange for assignment, transfer, sale, devise or bequest of a
5 benefit under a life insurance policy or interest therein;

6 c. Establish appropriate licensing requirements, fees and standards
7 for continued licensure for viatical settlement providers,
8 representatives and brokers;

9 d. Require a bond or other mechanism for financial accountability
10 for viatical settlement providers; and

11 e. Adopt rules governing the relationship and responsibilities of
12 both insurers and viatical settlement providers, brokers and
13 representatives during the viatication of a life insurance policy or
14 certificate.

15

16 10. A violation of this act shall be considered an unfair practice
17 pursuant to N.J.S.17B:30-1 et seq. and shall be subject to the penalties
18 contained in N.J.S.17B:30-17.

19

20 11. Section 9 of this act shall take effect immediately and the
21 remainder shall take effect on the 180th day after enactment.

22

23

24

25

26 _____
27 Provides for regulation of viatical settlement contracts and providers,
brokers and representatives.

SENATE COMMERCE COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, No. 1515**

STATE OF NEW JERSEY

DATED: JANUARY 21, 1999

The Senate Commerce Committee reports favorably Senate Committee Substitute for Senate Bill No. 1515.

This bill, a Senate Committee Substitute for Senate Bill No. 1515, regulates viatical settlement contracts and the business of providing viatical settlements--the sale of life insurance policies by those who have a catastrophic, life threatening or chronic illness or condition and who are in need of money.

The bill requires any person involved in the business of viatical settlements to be licensed by the Commissioner of Banking and Insurance as a viatical settlement provider, broker or representative and to renew the license on an annual basis. The bill sets forth the procedure for licensure and information to be supplied and requires the commissioner to investigate each applicant and issue a license if the applicant has a detailed plan of operation, is competent and trustworthy, has a good business reputation and has experience, training or education to be qualified in the business. The commissioner may, after a hearing, suspend, revoke or refuse to renew the license of a viatical settlement provider, broker or representative if the commissioner finds that: there was any misrepresentation in the application for the license; the licensee or other officer, partner, member or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action or is shown to be untrustworthy or incompetent; the viatical settlement provider demonstrates a pattern of unreasonable payments to viators; the licensee has been found guilty of fraud; the viatical settlement provider has entered into a viatical settlement contract that has not been approved by the commissioner; the viatical settlement provider has failed to honor a viatical settlement contract; the licensee no longer meets the requirements for initial licensure; the viatical settlement provider has assigned or transferred a viatical policy to a person other than a viatical settlement provider licensed in this State or a financing entity; or the licensee has violated any provision of this bill.

The bill requires every viatical settlement contract used in this State to be in writing and requires every viatical settlement contract

and disclosure statement therefor to be filed with and approved by the commissioner. The commissioner shall disapprove a viatical settlement contract or disclosure statement form if the contract or provisions are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. A viatical settlement contract must provide that the viator may rescind the viatical settlement within 15 calendar days of the receipt of the viatical settlement proceeds and that, immediately upon receipt from the viator of documents to effect the transfer of the insurance policy, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account in a State or federally chartered financial institution, pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent shall transfer the proceeds to the viator immediately upon receipt of acknowledgment of the transfer. If the viator dies during the rescission period, the viatical settlement contract is rescinded and the viatical settlement proceeds must be repaid to the viatical settlement provider.

Under the bill, a viatical settlement provider, broker or representative is required to make certain disclosures to the viator, including, but not limited to the following: possible alternatives to a viatical settlement contract, such as accelerated benefits offered by the issuer of the life insurance policy; the tax implications of a viatical settlement; the fact that a viatical settlement could be subject to the claims of creditors; the implications of a viatical settlement with respect to eligibility for Medicaid or other government benefits or entitlements; the policyholder's right to rescind a viatical settlement contract within 15 calendar days of receipt of the proceeds of a settlement; that funds will be sent to the viator within two business days of acknowledgment of transfer of the policy; and implications on policy rights and benefits. A viatical settlement provider shall disclose any affiliation between the provider and the issuer of the policy; any loss of coverage on the lives other than the viator; and the dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. In addition, the viatical settlement provider is required to obtain: a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence; a witnessed document in which the person consents to the viatical settlement contract and makes certain other acknowledgments regarding the person's illness, awareness of the contract contents, and the voluntary nature of the person's entry into the viatical settlement contract; and a written release of the viator's medical records.

Any violation of the provisions of this bill is considered an unfair trade practice under N.J.S.17B:30-1 et seq.

Under the bill, a "viatical settlement provider" does not include a financial institution which takes assignment of a life insurance policy as collateral for a loan; an issuer of a life insurance policy providing accelerated benefits in accordance with the terms of the policy; or a

natural person who enters into not more than one viatical settlement contract per year. A "viatical settlement representative" does not include an attorney, accountant, financial planner or any person exercising a power of attorney granted by a viator, or a person retained to represent the viator whose compensation is paid solely by the viator and without regard to whether a viatical settlement is consummated. A "viatical settlement broker" does not include an attorney, accountant or financial planner retained to represent the viator and whose compensation is paid directly by or at the direction of the viator.

As reported by the committee, this bill is identical to the Assembly Committee Substitute for Assembly Bill No. 2712.

SENATE, No. 1515

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED NOVEMBER 23, 1998

Sponsored by:

Senator ROBERT J. MARTIN

District 26 (Essex, Morris and Passaic)

SYNOPSIS

Regulates viatical agreements and the business of providing life insurance viatical settlements.

CURRENT VERSION OF TEXT

As introduced.



S1515 MARTIN

2

1 **AN ACT** concerning life insurance viatical settlements.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. As used in this act:

7 "Commissioner" means the Commissioner of Banking and
8 Insurance.

9 "Viatical settlement" or "settlement" means an agreement entered
10 into between a viatical settlement company and a viator. The
11 agreement shall establish the terms under which the viatical
12 settlement company will pay compensation or anything of value,
13 which compensation or value is less than the expected death benefit
14 of the insurance policy, in return for the viator's assignment, transfer,
15 sale, devise or bequest of the death benefit or ownership of the
16 insurance policy to the viatical settlement company.

17 "Viatical settlement broker" or "broker" means an individual,
18 partnership, corporation or other entity who or which for another and
19 for a fee, commission, or other valuable consideration, offers or
20 advertises the availability of viatical settlements, introduces viators
21 to viatical settlement companies, or offers or attempts to
22 negotiate viatical settlements between a viator and one or more
23 viatical settlement companies. "Viatical settlement broker" does not
24 include an attorney, accountant or a person acting under a power of
25 attorney from the viator, retained to represent the viator whose
26 compensation is paid solely by the viator and without regard to
27 whether a viatical settlement is effected.

28 "Viatical settlement company" or "company" means an individual,
29 partnership, corporation or other entity that enters into an agreement
30 with a person owning a life insurance policy insuring the life of
31 a person who has a catastrophic or life threatening illness or
32 condition, under the terms of which the viatical settlement company
33 pays compensation or anything of value, which compensation or value
34 is less than the expected death benefit of the insurance policy, in
35 return for the policyowner's assignment, transfer, sale, devise or
36 bequest of the death benefit or ownership of the insurance policy
37 to the viatical settlement company. "Viatical settlement company"
38 does not include:

39 (1) any bank, savings bank, savings and loan association, credit
40 union or other licensed lending institution which takes an assignment
41 of a life insurance policy as collateral for a loan; or

42 (2) the issuer of a life insurance policy which makes a policy loan,
43 permits surrender of the policy or pays other policy benefits, including
44 accelerated benefits pursuant to N.J.A.C.11:4-30.1 et seq., in
45 accordance with the terms of the policy; or

46 (3) a friend or family member of the policyowner or of the insured

1 who enters into three or fewer agreements for the transfer of life
2 insurance policies for any value less than the expected death benefit.

3 "Viator" means the owner of a life insurance policy insuring the
4 life of a person who has a catastrophic or life threatening illness or
5 condition, who enters into an agreement under which the viatical
6 settlement company will pay compensation or anything of value,
7 which compensation or value is less than the expected death benefit
8 of the insurance policy, in return for the viator's assignment, transfer,
9 sale, devise or bequest of the death benefit or ownership of the
10 insurance policy to the viatical settlement company. "Viator" may
11 also include a person insured under a group life insurance policy who
12 is not prohibited from assigning his or her rights or benefits and
13 who assigns those rights or benefits by a viatical settlement.

14

15 2. a. No individual, partnership, corporation or other entity may
16 act as a viatical settlement company or broker or enter into or
17 solicit a viatical settlement without first having obtained a license from
18 the commissioner, in accordance with procedures established by
19 regulation.

20 b. Application for a viatical settlement company or broker license
21 shall be made to the commissioner by the applicant on a form
22 prescribed by the commissioner, and the application shall be
23 accompanied by a fee, the amount of which shall be set by the
24 commissioner by regulation.

25 c. Licenses may be renewed from year to year upon payment of
26 of the annual renewal fee in an amount set by the commissioner by
27 regulation. Failure to pay the fee within the terms prescribed shall
28 result in the automatic revocation of the license.

29 d. The applicant shall provide the information the commissioner
30 requires on forms prescribed by the commissioner. The
31 commissioner may, at any time, require the applicant to disclose
32 fully the identity of all stockholders, partners, officers, employees,
33 agents and brokers, except the applicant shall not have to disclose the
34 identity of stockholders owning fewer than five percent of the shares
35 of a viatical settlement company whose shares are publicly traded.
36 The commissioner may, in the exercise of discretion, refuse to issue a
37 license in the name of any firm, partnership or corporation if not
38 satisfied that any officer, employee, stockholder, partner, agent or
39 broker thereof who may materially influence the applicant's conduct
40 meets the standards of this act.

41 e. A license issued to a partnership, corporation or other entity
42 authorizes all members, officers and designated employees to act
43 on behalf of viatical settlement companies or brokers under the
44 license, and all those persons shall be named in the application
45 and any supplements to the application.

46 f. Upon the filing of an application and the payment of the license

1 fee, the commissioner shall make an investigation of each applicant
2 and shall issue a license if he finds that the applicant:

3 (1) Has provided a detailed plan of operation;

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

6 (3) Has a good business reputation and has experience, training or
7 education so as to be qualified in the business, for which the license
8 is applied for; and

9 (4) If a corporation, is a corporation incorporated under the laws
10 of this State or a foreign corporation authorized to transact business
11 in this State.

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

19

20 3. The commissioner may, after a hearing, suspend, revoke or
21 refuse to issue or renew the license of any viatical settlement
22 company or broker if the commissioner finds that:

23 (1) There was any misrepresentation in the application for the
24 license;

25 (2) The holder of the license has been guilty of fraudulent or
26 dishonest practices, is subject to a final administrative action or is
27 otherwise shown to be untrustworthy or incompetent to act as a
28 viatical settlement provider;

29 (3) The licensee demonstrates a pattern of unreasonable payments
30 to policy owners;

31 (4) The licensee has been convicted of a crime in which criminal
32 fraud is an element; or

33 (5) The licensee has violated any provision of this act.

34

35 4. a. No viatical settlement company shall use any agreement for
36 a viatical settlement in this State unless it is in writing and has been
37 filed with, and approved by, the commissioner. The commissioner shall
38 disapprove a viatical settlement form if, in the commissioner's
39 discretion, the contract or provisions contained therein are contrary
40 to the interests of the public, or otherwise misleading or unfair to
41 the viator.

42 b. The commissioner shall not approve any viatical settlement form
43 unless it contains the following provisions:

44 (1) the viator may rescind the viatical settlement within fifteen days
45 of the receipt of viatical settlement proceeds; and

46 (2) immediately upon receipt from the viator of documents to

1 effect the transfer of the insurance policy, the viatical settlement
2 company shall pay the proceeds of the settlement to an escrow or
3 trust account managed by a trustee or escrow agent in a State or
4 federally chartered bank approved by the commissioner, pending
5 acknowledgment of the transfer by the issuer of the policy. The trustee
6 or escrow agent shall transfer the proceeds due to the viator
7 immediately upon receipt of acknowledgment of the transfer by the
8 insurer.

9

10 5. a. The application for a viatical settlement shall contain a
11 notice, prominently displayed, to read as follows:

12 "Receipt of payment pursuant to a viatical settlement may affect
13 eligibility for public assistance programs such as medical assistance
14 (Medicaid), family assistance, supplementary Social Security income
15 and AIDS drug assistance programs and may be taxable. Prior to
16 applying for a viatical settlement, policyowners should consult with
17 the appropriate social services agency concerning how receipt will
18 affect the eligibility of the recipient and the recipient's spouse or
19 dependents, and with a qualified tax adviser."

20 b. Upon receipt of an application for a viatical settlement and
21 prior to the date the viatical settlement contract is signed by all
22 parties, the viatical settlement company shall disclose the following
23 information to the viator:

24 (1) Possible alternatives to viatical settlement contracts for persons
25 with catastrophic or life threatening illnesses, including, but not
26 limited to, accelerated benefits offered by the issuer of the life
27 insurance policy;

28 (2) The fact that some or all of the proceeds of the viatical
29 settlement may be taxable, and that assistance should be sought from
30 a personal tax advisor;

31 (3) The fact that the viatical settlement could be subject to the
32 claims of creditors;

33 (4) The fact that receipt of a viatical settlement may adversely
34 effect the recipient's eligibility for Medicaid or other government
35 benefits or entitlements, and that advice should be obtained from the
36 appropriate agencies;

37 (5) The policy owner's right, pursuant to subsection b. of section
38 4 of this act, to rescind a viatical settlement contract within 15 days of
39 the receipt of the viatical settlement proceeds, by the viator;

40 (6) The date by which the funds will be available to the viator and
41 the source of the funds;

42 (7) the identity of any person who will receive any fee or
43 compensation from the viatical settlement company with respect to the
44 viatical settlement and the amount and terms of that compensation.

45

46 6. a. A viatical settlement company entering into a viatical

1 settlement with any viator shall first obtain:

2 (1) a written statement from a licensed attending physician that the
3 person subject to the viatical settlement is of sound mind and under no
4 constraint or undue influence; and

5 (2) a witnessed document in which the person subject to the
6 viatical settlement consents to the viatical settlement agreement,
7 acknowledges the catastrophic or life threatening illness, represents
8 that he has a full and complete understanding of the viatical settlement
9 contract, that he has a full and complete understanding of the benefits
10 of the life insurance policy, releases his medical records, and
11 acknowledges that he has entered into the viatical settlement contract
12 freely and voluntarily.

13 b. All medical information solicited or obtained by any licensee
14 shall be kept confidential.

15 c. Viatical settlement companies and brokers licensed hereunder
16 shall not:

17 (1) discriminate in the availability of viatical settlements on the
18 basis of race, age, sex, national origin, creed, religion, occupation,
19 marital or family status, or discriminate between viators with
20 dependents and those without;

21 (2) pay or offer to pay any finder's fee, commission or other
22 compensation to any viator's physician, attorney, accountant or other
23 person providing medical, legal or financial planning services to the
24 viator, or to any other person acting as an agent of the viator with
25 respect to the viatical settlement;

26 (3) enter into any viatical settlement in which payments of
27 proceeds are made in installments, unless the viatical settlement
28 company has been licensed to act in this State as an insurance
29 company or bank, or unless it effects the purchase through an annuity
30 or similar financial instrument issued by an insurance company
31 licensed to do business in this State or a bank;

32 (4) disclose medical, financial or other personal information
33 obtained from the viator to any other person or entity without the
34 viator's specific written consent;

35 (5) condition the consideration of applications on any exclusive
36 dealing between the viator and the viatical settlement company or
37 broker;

38 (6) engage in any other acts determined by the commissioner to
39 be unfair and deceptive acts or practices.

40 d. Viatical settlement brokers shall not, without the written
41 agreement of the viator obtained prior to performing any services
42 in connection with a viatical settlement, seek or obtain any
43 compensation from a viator. In the absence of a written agreement
44 making the broker the viator's agent, viatical settlement brokers shall
45 be presumed to be agents of viatical settlement companies.

46 e. Viatical settlement companies shall not enter into any agreement

1 or communication with any other viatical settlement company with
2 respect to the terms to be offered to a viator, except that a viatical
3 settlement company may assign that settlement or insurance policy
4 only to another viatical settlement company licensed pursuant to this
5 act.

6
7 7. No policy of group life insurance issued or delivered in this
8 State which permits assignment of a covered person's rights shall
9 restrict the covered person from making assignments other than by
10 gift.

11
12 8. a. When it is reasonably necessary to protect the interests of the
13 public, the commissioner may examine the business and affairs of any
14 licensee or applicant for a viatical settlement company or broker
15 license. The commissioner shall have the authority to order any
16 licensee or applicant to produce any records, books, files or other
17 information reasonably necessary to ascertain whether or not the
18 licensee or applicant is acting or has acted in violation of the law or
19 otherwise contrary to the interests of the public. The expenses
20 incurred in conducting any examination shall be paid by the licensee
21 or applicant.

22 b. Names and individual identification data for all viators shall be
23 considered private and confidential information and shall not be
24 disclosed by the commissioner, unless required by law.

25 c. Records of all transactions of viatical settlement contracts shall
26 be maintained by the licensee and shall be available to the
27 commissioner for inspection during reasonable business hours.

28
29 9. Each licensee shall file an annual statement with the
30 commissioner on or before a date set by the commissioner and
31 containing the information required by the commissioner by regulation.

32
33 10. The commissioner shall have the authority to:

34 a. Promulgate regulations implementing the provisions of this act;
35 and

36 b. Establish standards for evaluating reasonableness of payments
37 under viatical settlement contracts. This authority includes, but is
38 not limited to, regulation of discount rates used to determine the
39 amount paid in exchange for assignment, transfer, sale, devise or
40 bequest of a benefit under a life insurance policy.

41
42 11. A violation of this act shall be considered an unfair trade
43 practice under N.J.S.17B:30-1 et seq. and shall be subject to the
44 penalties contained in that act.

45
46 12. Section 10 of this act shall take effect immediately and the

1 remainder of this act shall take effect on the 180th day after
2 enactment.

3

4

STATEMENT

5

6 This bill regulates viatical settlement agreements and the business
7 of providing viatical settlements--the sale of life insurance policies by
8 those who are dying and in need of money. The bill requires any
9 person involved in more than three viatical settlements in the period of
10 a year to be licensed by the Commissioner of Banking and Insurance
11 and to renew the license on an annual basis. The bill sets forth the
12 procedure for licensure and information to be supplied and requires the
13 commissioner to investigate each applicant and issue a license if the
14 applicant satisfies the requirements set forth in the bill. The bill
15 prohibits the use of any viatical settlement contract that has not been
16 filed with and approved by the commissioner.

17 Under the bill, a viatical settlement provider is required to make
18 certain disclosures to the viator (policyholder), including, but not
19 limited to the following: possible alternatives to a viatical settlement
20 contract, such as accelerated benefits offered by the issuer of the life
21 insurance policy; the tax implications of a viatical settlement; the fact
22 that a viatical settlement could be subject to the claims of creditors;
23 the implications of a viatical settlement with respect to eligibility for
24 Medicaid or other government benefits or entitlements; the
25 policyholder's right to rescind a viatical settlement contract within a
26 certain number of days of receipt of the proceeds of a settlement; and
27 the date by which funds from the settlement will be available to the
28 viator and the source of those funds. In addition, if the viator is a
29 person with a catastrophic or life threatening illness, the viatical
30 settlement provider is required to obtain: a written statement from a
31 licensed attending physician that the person (policyholder) is of sound
32 mind and under no constraint or undue influence; and a witnessed
33 document in which the person consents to the viatical settlement
34 contract and makes certain other acknowledgments regarding the
35 person's illness, awareness of the contract contents, and the voluntary
36 nature of the person's entry into the viatical settlement contract.

37 The bill requires a viatical settlement provider, immediately upon
38 receipt of documents from the viator to effect the transfer of the
39 insurance policy, to pay the proceeds of the viatical settlement into an
40 escrow or trust account managed by a trustee or escrow agent of a
41 bank approved by the commissioner pending acknowledgment of the
42 transfer by the issuer of the policy. Once the transfer of the policy has
43 been acknowledged, the trustee or escrow agent is required to transfer
44 the proceeds in the account to the viator immediately.

45 Any violation of the provisions of this act is considered an unfair
46 trade practice under N.J.S.17B:30-1 et seq.

ASSEMBLY BANKING AND INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 2712

STATE OF NEW JERSEY

DATED: JANUARY 21, 1999

The Assembly Banking and Insurance Committee reports favorably Assembly Committee Substitute for Assembly Bill No. 2712.

This bill, Assembly Committee Substitute for Assembly Bill No. 2712, regulates viatical settlement contracts and the business of providing viatical settlements--the sale of life insurance policies by those who have a catastrophic, life threatening or chronic illness or condition and who are in need of money.

The bill requires any person involved in the business of viatical settlements to be licensed by the Commissioner of Banking and Insurance as a viatical settlement provider, broker or representative and to renew the license on an annual basis. The bill sets forth the procedure for licensure and information to be supplied and requires the commissioner to investigate each applicant and issue a license if the applicant has a detailed plan of operation, is competent and trustworthy, has a good business reputation and has experience, training or education to be qualified in the business. The commissioner may, after a hearing, suspend, revoke or refuse to renew the license of a viatical settlement provider, broker or representative if the commissioner finds that: there was any misrepresentation in the application for the license; the licensee or other officer, partner, member or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action or is shown to be untrustworthy or incompetent; the viatical settlement provider demonstrates a pattern of unreasonable payments to viators; the licensee has been found guilty of fraud; the viatical settlement provider has entered into a viatical settlement contract that has not been approved by the commissioner; the viatical settlement provider has failed to honor a viatical settlement contract; the licensee no longer meets the requirements for initial licensure; the viatical settlement provider has assigned or transferred a viatical policy to a person other than a viatical settlement provider licensed in this State or a financing entity; or the licensee has violated any provision of this bill.

The bill requires every viatical settlement contract used in this State to be in writing and requires every viatical settlement contract

and disclosure statement therefor to be filed with and approved by the commissioner. The commissioner shall disapprove a viatical settlement contract or disclosure statement form if the contract or provisions are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. A viatical settlement contract must provide that the viator may rescind the viatical settlement within 15 calendar days of the receipt of the viatical settlement proceeds and that, immediately upon receipt from the viator of documents to effect the transfer of the insurance policy, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account in a State or federally chartered financial institution, pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent shall transfer the proceeds to the viator immediately upon receipt of acknowledgment of the transfer. If the viator dies during the rescission period, the viatical settlement contract is rescinded and the viatical settlement proceeds must be repaid to the viatical settlement provider.

Under the bill, a viatical settlement provider, broker or representative is required to make certain disclosures to the viator, including, but not limited to the following: possible alternatives to a viatical settlement contract, such as accelerated benefits offered by the issuer of the life insurance policy; the tax implications of a viatical settlement; the fact that a viatical settlement could be subject to the claims of creditors; the implications of a viatical settlement with respect to eligibility for Medicaid or other government benefits or entitlements; the policyholder's right to rescind a viatical settlement contract within 15 calendar days of receipt of the proceeds of a settlement; that funds will be sent to the viator within two business days of acknowledgment of transfer of the policy; and implications on policy rights and benefits. A viatical settlement provider shall disclose any affiliation between the provider and the issuer of the policy; any loss of coverage on the lives other than the viator; and the dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. In addition, the viatical settlement provider is required to obtain: a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence; a witnessed document in which the person consents to the viatical settlement contract and makes certain other acknowledgments regarding the person's illness, awareness of the contract contents, and the voluntary nature of the person's entry into the viatical settlement contract; and a written release of the viator's medical records.

Any violation of the provisions of this bill is considered an unfair trade practice under N.J.S.17B:30-1 et seq.

Under the bill, a "viatical settlement provider" does not include a financial institution which takes assignment of a life insurance policy as collateral for a loan; an issuer of a life insurance policy providing accelerated benefits in accordance with the terms of the policy; or a

natural person who enters into not more than one viatical settlement contract per year.. A "viatical settlement representative" does not include an attorney, accountant, financial planner or any person exercising a power of attorney granted by a viator, or a person retained to represent the viator whose compensation is paid solely by the viator and without regard to whether a viatical settlement is consummated. A "viatical settlement broker" does not include an attorney, accountant or financial planner retained to represent the viator and whose compensation is paid directly by or at the direction of the viator.

As reported by the committee, this bill is identical to Senate Committee Substitute for Senate Bill No. 1515.

ASSEMBLY, No. 2712

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED DECEMBER 10, 1998

Sponsored by:

Assemblywoman CAROL J. MURPHY

District 26 (Essex, Morris and Passaic)

SYNOPSIS

Regulates viatical agreements and the business of providing life insurance viatical settlements.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning life insurance viatical settlements.

2

3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

5

6 1. As used in this act:

7 "Commissioner" means the Commissioner of Banking and
8 Insurance.

9 "Viatical settlement" or "settlement" means an agreement entered
10 into between a viatical settlement company and a viator. The
11 agreement shall establish the terms under which the viatical
12 settlement company will pay compensation or anything of value,
13 which compensation or value is less than the expected death benefit
14 of the insurance policy, in return for the viator's assignment, transfer,
15 sale, devise or bequest of the death benefit or ownership of the
16 insurance policy to the viatical settlement company.

17 "Viatical settlement broker" or "broker" means an individual,
18 partnership, corporation or other entity who or which for another and
19 for a fee, commission, or other valuable consideration, offers or
20 advertises the availability of viatical settlements, introduces viators
21 to viatical settlement companies, or offers or attempts to
22 negotiate viatical settlements between a viator and one or more
23 viatical settlement companies. "Viatical settlement broker" does not
24 include an attorney, accountant or a person acting under a power of
25 attorney from the viator, retained to represent the viator whose
26 compensation is paid solely by the viator and without regard to
27 whether a viatical settlement is effected.

28 "Viatical settlement company" or "company" means an individual,
29 partnership, corporation or other entity that enters into an agreement
30 with a person owning a life insurance policy insuring the life of
31 a person who has a catastrophic or life threatening illness or
32 condition, under the terms of which the viatical settlement company
33 pays compensation or anything of value, which compensation or value
34 is less than the expected death benefit of the insurance policy, in
35 return for the policyowner's assignment, transfer, sale, devise or
36 bequest of the death benefit or ownership of the insurance policy
37 to the viatical settlement company. "Viatical settlement company"
38 does not include:

39 (1) any bank, savings bank, savings and loan association, credit
40 union or other licensed lending institution which takes an assignment
41 of a life insurance policy as collateral for a loan; or

42 (2) the issuer of a life insurance policy which makes a policy loan,
43 permits surrender of the policy or pays other policy benefits, including
44 accelerated benefits pursuant to N.J.A.C.11:4-30.1 et seq., in
45 accordance with the terms of the policy; or

46 (3) a friend or family member of the policyowner or of the insured

1 who enters into three or fewer agreements for the transfer of life
2 insurance policies for any value less than the expected death benefit.

3 "Viator" means the owner of a life insurance policy insuring the
4 life of a person who has a catastrophic or life threatening illness or
5 condition, who enters into an agreement under which the viatical
6 settlement company will pay compensation or anything of value,
7 which compensation or value is less than the expected death benefit
8 of the insurance policy, in return for the viator's assignment, transfer,
9 sale, devise or bequest of the death benefit or ownership of the
10 insurance policy to the viatical settlement company. "Viator" may
11 also include a person insured under a group life insurance policy who
12 is not prohibited from assigning his or her rights or benefits and
13 who assigns those rights or benefits by a viatical settlement.

14

15 2. a. No individual, partnership, corporation or other entity may
16 act as a viatical settlement company or broker or enter into or
17 solicit a viatical settlement without first having obtained a license from
18 the commissioner, in accordance with procedures established by
19 regulation.

20 b. Application for a viatical settlement company or broker license
21 shall be made to the commissioner by the applicant on a form
22 prescribed by the commissioner, and the application shall be
23 accompanied by a fee, the amount of which shall be set by the
24 commissioner by regulation.

25 c. Licenses may be renewed from year to year upon payment of
26 of the annual renewal fee in an amount set by the commissioner by
27 regulation. Failure to pay the fee within the terms prescribed shall
28 result in the automatic revocation of the license.

29 d. The applicant shall provide the information the commissioner
30 requires on forms prescribed by the commissioner. The
31 commissioner may, at any time, require the applicant to disclose
32 fully the identity of all stockholders, partners, officers, employees,
33 agents and brokers, except the applicant shall not have to disclose the
34 identity of stockholders owning fewer than five percent of the shares
35 of a viatical settlement company whose shares are publicly traded.
36 The commissioner may, in the exercise of discretion, refuse to issue a
37 license in the name of any firm, partnership or corporation if not
38 satisfied that any officer, employee, stockholder, partner, agent or
39 broker thereof who may materially influence the applicant's conduct
40 meets the standards of this act.

41 e. A license issued to a partnership, corporation or other entity
42 authorizes all members, officers and designated employees to act
43 on behalf of viatical settlement companies or brokers under the
44 license, and all those persons shall be named in the application
45 and any supplements to the application.

46 f. Upon the filing of an application and the payment of the license

1 fee, the commissioner shall make an investigation of each applicant
2 and shall issue a license if he finds that the applicant:

3 (1) Has provided a detailed plan of operation;

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

6 (3) Has a good business reputation and has experience, training or
7 education so as to be qualified in the business, for which the license
8 is applied for; and

9 (4) If a corporation, is a corporation incorporated under the laws
10 of this State or a foreign corporation authorized to transact business
11 in this State.

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

19

20 3. The commissioner may, after a hearing, suspend, revoke or
21 refuse to issue or renew the license of any viatical settlement
22 company or broker if the commissioner finds that:

23 (1) There was any misrepresentation in the application for the
24 license;

25 (2) The holder of the license has been guilty of fraudulent or
26 dishonest practices, is subject to a final administrative action or is
27 otherwise shown to be untrustworthy or incompetent to act as a
28 viatical settlement provider;

29 (3) The licensee demonstrates a pattern of unreasonable payments
30 to policy owners;

31 (4) The licensee has been convicted of a crime in which criminal
32 fraud is an element; or

33 (5) The licensee has violated any provision of this act.

34

35 4. a. No viatical settlement company shall use any agreement for
36 a viatical settlement in this State unless it is in writing and has been
37 filed with, and approved by, the commissioner. The commissioner shall
38 disapprove a viatical settlement form if, in the commissioner's
39 discretion, the contract or provisions contained therein are contrary
40 to the interests of the public, or otherwise misleading or unfair to
41 the viator.

42 b. The commissioner shall not approve any viatical settlement form
43 unless it contains the following provisions:

44 (1) the viator may rescind the viatical settlement within fifteen days
45 of the receipt of viatical settlement proceeds; and

46 (2) immediately upon receipt from the viator of documents to

1 effect the transfer of the insurance policy, the viatical settlement
2 company shall pay the proceeds of the settlement to an escrow or
3 trust account managed by a trustee or escrow agent in a State or
4 federally chartered bank approved by the commissioner, pending
5 acknowledgment of the transfer by the issuer of the policy. The trustee
6 or escrow agent shall transfer the proceeds due to the viator
7 immediately upon receipt of acknowledgment of the transfer by the
8 insurer.

9

10 5. a. The application for a viatical settlement shall contain a
11 notice, prominently displayed, to read as follows:

12 "Receipt of payment pursuant to a viatical settlement may affect
13 eligibility for public assistance programs such as medical assistance
14 (Medicaid), family assistance, supplementary Social Security income
15 and AIDS drug assistance programs and may be taxable. Prior to
16 applying for a viatical settlement, policyowners should consult with
17 the appropriate social services agency concerning how receipt will
18 affect the eligibility of the recipient and the recipient's spouse or
19 dependents, and with a qualified tax adviser."

20 b. Upon receipt of an application for a viatical settlement and
21 prior to the date the viatical settlement contract is signed by all
22 parties, the viatical settlement company shall disclose the following
23 information to the viator:

24 (1) Possible alternatives to viatical settlement contracts for persons
25 with catastrophic or life threatening illnesses, including, but not
26 limited to, accelerated benefits offered by the issuer of the life
27 insurance policy;

28 (2) The fact that some or all of the proceeds of the viatical
29 settlement may be taxable, and that assistance should be sought from
30 a personal tax advisor;

31 (3) The fact that the viatical settlement could be subject to the
32 claims of creditors;

33 (4) The fact that receipt of a viatical settlement may adversely
34 effect the recipient's eligibility for Medicaid or other government
35 benefits or entitlements, and that advice should be obtained from the
36 appropriate agencies;

37 (5) The policy owner's right, pursuant to subsection b. of section
38 4 of this act, to rescind a viatical settlement contract within 15 days of
39 the receipt of the viatical settlement proceeds, by the viator;

40 (6) The date by which the funds will be available to the viator and
41 the source of the funds;

42 (7) the identity of any person who will receive any fee or
43 compensation from the viatical settlement company with respect to the
44 viatical settlement and the amount and terms of that compensation.

45

46 6. a. A viatical settlement company entering into a viatical

1 settlement with any viator shall first obtain:

2 (1) a written statement from a licensed attending physician that the
3 person subject to the viatical settlement is of sound mind and under no
4 constraint or undue influence; and

5 (2) a witnessed document in which the person subject to the
6 viatical settlement consents to the viatical settlement agreement,
7 acknowledges the catastrophic or life threatening illness, represents
8 that he has a full and complete understanding of the viatical settlement
9 contract, that he has a full and complete understanding of the benefits
10 of the life insurance policy, releases his medical records, and
11 acknowledges that he has entered into the viatical settlement contract
12 freely and voluntarily.

13 b. All medical information solicited or obtained by any licensee
14 shall be kept confidential.

15 c. Viatical settlement companies and brokers licensed hereunder
16 shall not:

17 (1) discriminate in the availability of viatical settlements on the
18 basis of race, age, sex, national origin, creed, religion, occupation,
19 marital or family status, or discriminate between viators with
20 dependents and those without;

21 (2) pay or offer to pay any finder's fee, commission or other
22 compensation to any viator's physician, attorney, accountant or other
23 person providing medical, legal or financial planning services to the
24 viator, or to any other person acting as an agent of the viator with
25 respect to the viatical settlement;

26 (3) enter into any viatical settlement in which payments of
27 proceeds are made in installments, unless the viatical settlement
28 company has been licensed to act in this State as an insurance
29 company or bank, or unless it effects the purchase through an annuity
30 or similar financial instrument issued by an insurance company
31 licensed to do business in this State or a bank;

32 (4) disclose medical, financial or other personal information
33 obtained from the viator to any other person or entity without the
34 viator's specific written consent;

35 (5) condition the consideration of applications on any exclusive
36 dealing between the viator and the viatical settlement company or
37 broker;

38 (6) engage in any other acts determined by the commissioner to
39 be unfair and deceptive acts or practices.

40 d. Viatical settlement brokers shall not, without the written
41 agreement of the viator obtained prior to performing any services
42 in connection with a viatical settlement, seek or obtain any
43 compensation from a viator. In the absence of a written agreement
44 making the broker the viator's agent, viatical settlement brokers shall
45 be presumed to be agents of viatical settlement companies.

46 e. Viatical settlement companies shall not enter into any agreement

1 or communication with any other viatical settlement company with
2 respect to the terms to be offered to a viator, except that a viatical
3 settlement company may assign that settlement or insurance policy
4 only to another viatical settlement company licensed pursuant to this
5 act.

6
7 7. No policy of group life insurance issued or delivered in this
8 State which permits assignment of a covered person's rights shall
9 restrict the covered person from making assignments other than by
10 gift.

11
12 8. a. When it is reasonably necessary to protect the interests of the
13 public, the commissioner may examine the business and affairs of any
14 licensee or applicant for a viatical settlement company or broker
15 license. The commissioner shall have the authority to order any
16 licensee or applicant to produce any records, books, files or other
17 information reasonably necessary to ascertain whether or not the
18 licensee or applicant is acting or has acted in violation of the law or
19 otherwise contrary to the interests of the public. The expenses
20 incurred in conducting any examination shall be paid by the licensee
21 or applicant.

22 b. Names and individual identification data for all viators shall be
23 considered private and confidential information and shall not be
24 disclosed by the commissioner, unless required by law.

25 c. Records of all transactions of viatical settlement contracts shall
26 be maintained by the licensee and shall be available to the
27 commissioner for inspection during reasonable business hours.

28
29 9. Each licensee shall file an annual statement with the
30 commissioner on or before a date set by the commissioner and
31 containing the information required by the commissioner by regulation.

32
33 10. The commissioner shall have the authority to:

34 a. Promulgate regulations implementing the provisions of this act;
35 and

36 b. Establish standards for evaluating reasonableness of payments
37 under viatical settlement contracts. This authority includes, but is
38 not limited to, regulation of discount rates used to determine the
39 amount paid in exchange for assignment, transfer, sale, devise or
40 bequest of a benefit under a life insurance policy.

41
42 11. A violation of this act shall be considered an unfair trade
43 practice under N.J.S.17B:30-1 et seq. and shall be subject to the
44 penalties contained in that act.

45
46 12. Section 10 of this act shall take effect immediately and the

1 remainder of this act shall take effect on the 180th day after
2 enactment.

3

4

STATEMENT

5

6 This bill regulates viatical settlement agreements and the business
7 of providing viatical settlements--the sale of life insurance policies by
8 those who are dying and in need of money. The bill requires any
9 person involved in more than three viatical settlements in the period of
10 a year to be licensed by the Commissioner of Banking and Insurance
11 and to renew the license on an annual basis. The bill sets forth the
12 procedure for licensure and information to be supplied and requires the
13 commissioner to investigate each applicant and issue a license if the
14 applicant satisfies the requirements set forth in the bill. The bill
15 prohibits the use of any viatical settlement contract that has not been
16 filed with and approved by the commissioner.

17 Under the bill, a viatical settlement provider is required to make
18 certain disclosures to the viator (policyholder), including, but not
19 limited to the following: possible alternatives to a viatical settlement
20 contract, such as accelerated benefits offered by the issuer of the life
21 insurance policy; the tax implications of a viatical settlement; the fact
22 that a viatical settlement could be subject to the claims of creditors;
23 the implications of a viatical settlement with respect to eligibility for
24 Medicaid or other government benefits or entitlements; the
25 policyholder's right to rescind a viatical settlement contract within a
26 certain number of days of receipt of the proceeds of a settlement; and
27 the date by which funds from the settlement will be available to the
28 viator and the source of those funds. In addition, if the viator is a
29 person with a catastrophic or life threatening illness, the viatical
30 settlement provider is required to obtain: a written statement from a
31 licensed attending physician that the person (policyholder) is of sound
32 mind and under no constraint or undue influence; and a witnessed
33 document in which the person consents to the viatical settlement
34 contract and makes certain other acknowledgments regarding the
35 person's illness, awareness of the contract contents, and the voluntary
36 nature of the person's entry into the viatical settlement contract.

37 The bill requires a viatical settlement provider, immediately upon
38 receipt of documents from the viator to effect the transfer of the
39 insurance policy, to pay the proceeds of the viatical settlement into an
40 escrow or trust account managed by a trustee or escrow agent of a
41 bank approved by the commissioner pending acknowledgment of the
42 transfer by the issuer of the policy. Once the transfer of the policy has
43 been acknowledged, the trustee or escrow agent is required to transfer
44 the proceeds in the account to the viator immediately.

45 Any violation of the provisions of this act is considered an unfair
46 trade practice under N.J.S.17B:30-1 et seq.

Office of the Governor
NEWS RELEASE

CONTACT: Gene Herman
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RELEASE: September 17, 1999

Gov. Christie Whitman today signed the following pieces of legislation:

S-947, sponsored by Senators William L. Gormley (R-Atlantic) and Wayne R. Bryant (D-Camden/Gloucester) and Assembly Members Kenneth C. LeFevre (R-Atlantic) and Tom Smith (R-Monmouth), adds the violation of a domestic violence restraining order to the list of aggravating factors for a jury to consider in the penalty phase of a murder case. The state's murder statute sets forth a list of aggravating factors, including that the murder was committed in an outrageously or wantonly vile manner, involved an aggravated assault, or was committed in the course of a robbery, burglary, sexual assault or other specified serious offense. A murder charge only may be tried as a death penalty case if the prosecutor gives notice to the defense near to the time of indictment that one or more of the statutory aggravating factors are present. Before a jury in such a case can consider imposing the death penalty, it must find that the state proved beyond a reasonable doubt at least one of the aggravating factors.

S-1388, sponsored by Senator Martha W. Bark (R-Atlantic/Burlington/Camden) and Assembly Member Francis L. Bodine (R-Atlantic/Burlington/Camden), amends the Long Term Tax Exemption Law to permit the assignment of long term tax abatements from urban renewal entities to owners in fee simple. Owners in fee simple own their housing units, which are not a part of a condominium. The law allows urban renewal entities, which are non-profit corporations established to rehabilitate urban housing for resale to qualified individuals, to receive such abatements for improvements made to urban housing developments. Previous law expressly permitted owners of condominium units to sell their property along with tax abatements.

S-1959, sponsored by Senator Robert E. Littell (R-Sussex/Hunterdon/Morris) and Assembly Members Guy R. Gregg (R-Sussex/Hunterdon/Morris) and E. Scott Garrett (R-Sussex/Hunterdon/Morris), appropriates \$5 million to the Department of Environmental Protection from the Natural Resources Bond Act of 1980 for a grant to Hopatcong Borough for a clean water project. The grant will be used to install sewers for residents that reside near Lake Hopatcong. The \$5 million grant is the state's share of the project, which is projected to cost \$20 million. The appropriation will leverage \$8.7 million in federal funds.

S-1515, sponsored by Senator Robert J. Martin (R-Essex/Morris/Passaic) and Assembly Members Carol J. Murphy (R-Essex/Morris/Passaic) and Neil M. Cohen (D-Union), authorizes the regulation of viatical agreements by the Commissioner of Banking and Insurance. A viatical agreement is an agreement to sell a life insurance policy by a person who typically is ill and in immediate need of money. The bill is intended to protect particularly vulnerable persons from aggressive or fraudulent business tactics. The bill requires licensure as a viatical settlement provider for any person who is involved in three or more agreements in the period of one year.

The regulatory aspects of the bill include permitting alterations to viatical agreements, tax implications, rights of rescission, and Medicaid issues. The viatical agreement must contain several consumer protection provisions as set forth in the bill. Among other things, the viatical settlement provider must disclose to consumers possible alternatives to the contract, the need for professional tax advice, the effect of receiving a lump sum of money on pending claims by creditors, and the person's eligibility for government benefits.

The Commissioner of Banking and Insurance is given broad discretion to suspend, revoke or refuse to review licenses. Licensees are required to file annual statements containing information that the Commissioner may require by regulation. The Commissioner has the right to examine the business activities of any licensee.

S-673, sponsored by Senator Peter A. Inverso (R-Mercer/Middlesex), implements a series of recommendations made by the Supreme Court Committee on the Tax Court to amend the laws dealing with property tax appeals and certain Tax Court matters. The amendments are primarily procedural in nature and are designed to increase uniformity, efficiency and flexibility in key areas of the administration of property tax appeals, such as filing deadlines, the Freeze Act and tax payment requirement. The Freeze Act freezes the property assessment for three years when a taxpayer is successful in a tax appeal. The bill also contains several technical amendments, such as incorporating gender neutral language and updating references to judicial bodies and governmental entities.

S-1977 provides for continuity of legal representation through the Office of the Public Defender (OPD) for children and indigent parents in child abuse and termination of parental proceedings. The bill specifically directs that, where practicable, the same attorney will represent a parent or child in each of these types of matters. The continuity is intended to increase the overall effectiveness and efficiency of the legal system in its handling of termination of parental rights cases. The state's recently enacted Adoption and Safe Families Act (AFSA) provided the framework for continuity of legal representation by granting the OPD the authority to represent parents and children in termination of parental rights matters. Prior to AFSA, the OPD was statutorily authorized to provide legal counsel in abuse and neglect matters, but not termination matters. In such termination matters, the courts appointed pro-bono counsel to represent indigent parents and children. The bill was sponsored by Senators William L. Gormley (R-Atlantic) and Edward T. O'Connor, Jr. (D-Hudson) and Assembly Members Richard H. Bagger (R-Middlesex/Morris/Somerset/Union) and Rose Marie Heck (R-Bergen).