

HOUSE No. 984

The Commonwealth of Massachusetts

PRESENTED BY:

Ronald Mariano

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to stranger originated life insurance.

PETITION OF:

NAME:

Ronald Mariano

DISTRICT/ADDRESS:

3rd Norfolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO STRANGER ORIGINATED LIFE INSURANCE.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Chapter 175 of the General Laws, as appearing in the 2006 Official Edition, is
2 hereby amended by inserting after section 123 the following section:-
- 3 123 ½. (a) An insurable interest, with reference to life and disability insurance, is an interest
4 based upon a reasonable expectation of pecuniary advantage through the continued life, health,
5 or bodily safety of another person and consequent loss by reason of that person's death or
6 disability or a substantial interest engendered by love and affection in the case of individuals
7 closely related by blood or law.
- 8 (b) An individual has an unlimited insurable interest in his or her own life, health, and bodily
9 safety and may lawfully take out a policy of insurance on his or her own life, health, or bodily
10 safety and have the policy made payable to whomsoever he or she pleases, regardless of whether
11 the beneficiary designated has an insurable interest.
- 12 (c) Except as provided in section 123A of this chapter an employer has an insurable interest, as
13 referred to in sub-section (a), in the life or physical or mental ability of any of its directors,
14 officers, or employees or the directors, officers, or employees of any of its subsidiaries or any
15 other person whose death or physical or mental disability might cause financial loss to the

16 employer; or, pursuant to any contractual arrangement with any shareholder concerning the
17 reacquisition of shares owned by the shareholder at the time of his or her death or disability, on
18 the life or physical or mental ability of that shareholder for the purpose of carrying out the
19 contractual arrangement; or, pursuant to any contract obligating the employer as part of
20 compensation arrangements or pursuant to a contract obligating the employer as guarantor or
21 surety, on the life of the principal obligor. The trustee of an employer or trustee of a pension,
22 welfare benefit plan, or trust established by an employer providing life, health, disability,
23 retirement, or similar benefits to employees and retired employees of the employer or its
24 affiliates and acting in a fiduciary capacity with respect to those employees, retired employees,
25 or their dependents or beneficiaries has an insurable interest in the lives of employees and retired
26 employees for whom those benefits are to be provided. The employer shall obtain the written
27 consent of the individual being insured.

28 (d) Trusts and special purpose entities, that are used to apply for and initiate the issuance of
29 policies of insurance for investors, where one or more beneficiaries of those trusts or special
30 purpose entities do not have an insurable interest in the life of the insured violate the insurable
31 interest laws and the prohibition against wagering on life.

32 (e) Any device, scheme, or artifice designed to give the appearance of an insurable interest where
33 there is no legitimate insurable interest violates the insurable interest laws.

34 (f) An insurable interest shall be required to exist at the time the contract of life or disability
35 insurance becomes effective, but need not exist at the time the loss occurs.

36 (g) Any contract of life or disability insurance procured or caused to be procured upon another
37 individual is void unless the person applying for the insurance has an insurable interest in the
38 individual insured at the time of the application.

39 (h) Notwithstanding sub sections (a), (f), and (g), a charitable organization that meets the
40 requirements of section 501(c)(3), (c)(6), (c)(8) or (c)(9) of the Internal Revenue Code may
41 effectuate life or disability insurance on an insured who consents to the issuance of that
42 insurance.

43 (i) This section shall not be interpreted to define all instances in which an insurable interest
44 exists.

45 SECTION 2. Section 213 of chapter 175 of the General Laws, as appearing in the 2006 Official
46 Edition, is hereby amended by inserting after the definition of “Accelerated benefits” the
47 following two new definitions:-

48 “Advertisement”, any written, electronic, or printed communication or any
49 communication by means of recorded telephone messages or transmitted on radio, television, the
50 Internet, or similar communications media, including film strips, motion pictures, and videos,
51 published, disseminated, circulated, or placed before the public, directly or indirectly, for the
52 purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequest,
53 or transfer the death benefit or ownership of a life insurance policy or an interest in a life
54 insurance policy pursuant to a viatical settlement contract.

55 “Business of viatical settlements”, an activity involved in, but not limited to, offering to
56 enter into, soliciting, negotiating, procuring, effectuating, monitoring, or tracking of viatical
57 settlement contracts.;

58 and further, by inserting after the definition of “Financing transaction” the following new
59 definition:-

60 “Fraudulent viatical settlement act” includes all of the following:

61 (1) Acts or omissions committed by any person that, for the purpose of depriving another of
62 property or for pecuniary gain, commits or permits its employees or its agents to engage in acts,
63 including, but not limited to, the following:

64 (A) Presenting, causing to be presented, or preparing with knowledge and belief that it will be
65 presented to or by a viatical settlement provider, premium finance lender, viatical settlement
66 broker, insurer, insurance producer, or any other person, false material information, or
67 concealing material information, as part of, in support of, or concerning a fact material to one or
68 more of the following:

- 69 (i) An application for the issuance of a viatical settlement contract or insurance policy.
- 70 (ii) The underwriting of a viatical settlement contract or insurance policy.
- 71 (iii) A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy.
- 72 (iv) Premiums paid on an insurance policy.
- 73 (v) Payments and changes in ownership or beneficiary made in accordance with the terms of a
74 viatical settlement contract or insurance policy.
- 75 (vi) The reinstatement or conversion of an insurance policy.
- 76 (vii) The solicitation, offer to enter into, or effectuation of, a viatical settlement contract or
77 insurance policy.
- 78 (viii) The issuance of written evidence of viatical settlement contracts or insurance.
- 79 (ix) Any application for, or the existence of or any payments related to, a loan secured directly or
80 indirectly by any interest in a life insurance policy.
- 81 (B) Entering into Stranger-Originated Life Insurance (STOLI).
- 82 (C) Employing any device, scheme, or artifice to defraud in the business of viatical settlements.

83 (2) Any of the following that any person does, or permits his or her employees or agents to do, in
84 the furtherance of a fraud, or to prevent the detection of a fraud:

85 (A) Remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of
86 a licensee or other person engaged in the business of viatical settlements.

87 (B) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or
88 other person.

89 (C) Transact the business of viatical settlements in violation of laws requiring a license,
90 certificate of authority, or other legal authority for the transaction of the business of viatical
91 settlements.

92 (D) File with the commissioner or the chief insurance regulatory official of another jurisdiction a
93 document containing false information or otherwise concealing information about a material fact
94 from the commissioner.

95 (E) Engage in embezzlement, theft, misappropriation, or conversion of moneys, funds,
96 premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator,
97 insurance policy owner, or any other person engaged in the business of viatical settlements or
98 insurance.

99 (F) Enter into, broker, or otherwise deal in a viatical settlement contract, the subject of which is a
100 life insurance policy that was obtained by presenting false information concerning any fact
101 material to the policy or by concealing, for the purpose of misleading another, information
102 requested concerning any fact material to the policy, where the viator or the viator's agent
103 intended to defraud the policy's issuer.

104 (G) Attempt to commit, assist, aid, or abet in the commission of, or conspiracy to commit the
105 acts or omissions specified in this sub-section.

106 (H) Misrepresent the state of residence of a viator to be a state or jurisdiction that does not have a
107 law substantially similar to this act for the purpose of evading or avoiding the provisions of this
108 act.;

109 and further, by inserting after the definition of “Insured” the following four new definitions:-

110 “Life expectancy”, the arithmetic mean of the number of months the insured under the
111 life insurance policy to be settled can be expected to live as determined by a life expectancy
112 company considering medical records and appropriate experiential data.

113 “Life insurance producer”, any person licensed in this state as a resident or nonresident
114 insurance agent who has received qualification or authority for life insurance coverage or a life
115 line of coverage pursuant to this chapter;

116 “Net death benefit”, the amount of the life insurance policy or certificate to be settled less
117 any outstanding debts or liens.

118 “Patient identifying information”, an insured’s address, telephone number, facsimile
119 number, electronic mail address, photograph or likeness, employer, employment status, social
120 security number, or any other information that is likely to lead to the identification of the
121 insured.;

122 and further, by inserting after the definition of “Person” the following seven new definitions:-

123 “Policy”, an individual or group policy, group certificate, contract, or arrangement of life
124 insurance owned by a resident of this state, regardless of whether delivered or issued for delivery
125 in this state.

126 “Premium finance loan” is a loan made primarily for the purpose of making premium
127 payments on a life insurance policy, which loan is secured by an interest in such life insurance
128 policy.

129 “Purchaser”, a person who pays compensation or anything of value as consideration for a
130 beneficial interest in a trust which is vested with, or for the assignment, transfer, or sale of, an
131 ownership or other interest in a life insurance policy or a certificate issued pursuant to a group
132 life insurance policy which has been the subject of a viatical settlement contract.

133 “Related provider trust”, a titling trust or other trust established by a licensed viatical
134 settlement provider or a financing entity for the sole purpose of holding the ownership or
135 beneficial interest in purchased policies in connection with a financing transaction. In order to
136 qualify as a related provider trust, the trust must have a written agreement with the licensed
137 viatical settlement provider under which the licensed viatical settlement provider is responsible
138 for ensuring compliance with all statutory and regulatory requirements and under which the trust
139 agrees to make all records and files relating to viatical settlement transactions available to the
140 Division of Insurance as if those records and files were maintained directly by the licensed
141 viatical settlement provider.

142 “Special purpose entity”, a corporation, partnership, trust, limited liability company, or
143 other legal entity whose securities pay a fixed rate of return commensurate with established
144 asset-backed capital markets, or has been formed solely to provide either directly or indirectly
145 access to institutional capital markets:

146 (1) For a financing entity or viatical settlement provider.

147 (2) In connection with a transaction in which the securities in the special purpose entity are
148 acquired by the viator or by a “qualified institutional buyer” as defined in Rule 144 promulgated
149 under the federal Securities Act of 1933, as amended.

150 “Stranger-originated life insurance” or “STOLI” is an act, practice, or arrangement to
151 initiate the issuance of a life insurance policy in this state for the benefit of a third-party investor

152 who, at the time of policy origination, has no insurable interest, under the laws of this state, in
153 the life of the insured. STOLI practices include, but are not limited to, cases in which life
154 insurance is purchased with resources or guarantees from or through a person or entity, that, at
155 the time of policy inception, could not lawfully initiate the policy himself, herself, or itself, and
156 where, at the time of inception, there is an arrangement or agreement, to directly or indirectly
157 transfer the ownership of the policy or the policy benefits to a third party. Trusts that are created
158 to give the appearance of insurable interest and that are used to initiate policies for investors
159 violate insurable interest laws and the prohibition against wagering on life. STOLI arrangements
160 do not include otherwise lawful viatical settlement contracts as defined below.

161 “Terminally ill”, having an illness or sickness that can reasonably be expected to result in
162 death in 24 months or less.;

163 and further, by striking the definitions of “Viatical settlement contract” and “Viatical settlement
164 provider” and replacing them with the following two definitions:-

165 “Viatical settlement contract”, a written agreement entered into between a viatical
166 settlement provider and a viator. The agreement shall establish the terms under which the viatical
167 settlement provider will pay compensation or anything of value, which compensation or value is
168 less than the expected death benefit of the insurance policy or certificate, in return for the
169 viator’s assignment, transfer, sale, devise or bequest of the death benefit or ownership of all or a
170 portion of the insurance policy or certificate of insurance for compensation, provided, however,
171 that the minimum value for a viatical settlement contract shall be greater than a cash surrender
172 value or accelerated death benefit available at the time of an application for a viatical settlement
173 contract. “Viatical settlement contract” also includes the transfer for compensation or value of
174 ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other

175 entity was formed or availed of for the principal purpose of acquiring one or more life insurance
176 contracts, which life insurance contract insures the life of a person residing in this state.

177 (1) A “Viatical settlement contract” includes a premium finance loan made for a policy on or
178 before the date of issuance of the policy where one or more of the following conditions apply:

179 (A) The loan proceeds are not used solely to pay premiums for the policy and any costs or
180 expenses incurred by the lender or the borrower in connection with the financing.

181 (B) The viator receives on the date of the premium finance loan a guarantee of the future viatical
182 settlement value of the policy.

183 (C) The viator agrees on the date of the premium finance loan to sell the policy or any portion of
184 the policy’s death benefit on any date following the issuance of the policy, not including an
185 agreement to sell the policy in the event of a default, provided that the default is not pursuant to
186 an agreement or understanding with any other person for the purpose of evading regulation under
187 this act.

188 (2) “Viatical settlement contract” does not include any of the following:

189 (A) A policy loan by a life insurance company pursuant to the terms of the life insurance policy
190 or accelerated death provisions contained in the life insurance policy, whether issued with the
191 original policy or as a rider.

192 (B) A premium finance loan, as defined herein, or any loan made by a bank or other licensed
193 financial institution, provided that neither default on such loan nor the transfer of the policy in
194 connection with such default is pursuant to an agreement or understanding with any other person
195 for the purpose of evading regulation under this act.

196 (C) A collateral assignment of a life insurance policy by a viator.

197 (D) A loan made by a lender that does not violate chapter 255C, provided such loan is not
198 described in paragraph (1), and is not otherwise within the definition of viatical settlement
199 contract.

200 (E) An agreement where all of the parties satisfy one of the following conditions:

201 (i) They are closely related to the insured by blood or law.

202 (ii) They have a lawful substantial economic interest in the continued life, health, and bodily
203 safety of the person insured.

204 (iii) They are trusts established primarily for the benefit of those parties.

205 (F) Any designation, consent, or agreement by an insured who is an employee of an employer in
206 connection with the purchase by the employer, or by a trust established by the employer of life
207 insurance on the life of the employee.

208 (G) A bona fide business succession planning arrangement:

209 (i) Between one or more shareholders in a corporation or between a corporation and one or more
210 of its shareholders or one or more trust established by its shareholders.

211 (ii) Between one or more partners in a partnership or between a partnership and one or more of
212 its partners or one or more trust established by its partners.

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

215 (H) An agreement entered into by a service recipient, or a trust established by the service
216 recipient, and a service provider, or a trust established by the service provider, who performs
217 significant services for the service recipient's trade or business.

218 (I) Any other contract, transaction, or arrangement from the definition of "viatical settlement
219 contract" that the commissioner determines is not of the type intended to be regulated by this act.

220 “Viatical settlement provider” a person, other than a viator, who enters into a viatical
221 settlement contract, or who obtains financing from a financing entity for the purchase,
222 acquisition, transfer or other assignment of one or more viatical settlement contracts, viaticated
223 policies or interests therein or who otherwise sells, assigns, transfers, pledges, hypothecates or
224 otherwise disposes of one or more viatical settlement contracts, viaticated policies or interests
225 therein. A viatical settlement provider does not include:

- 226 (1) a bank, savings bank, savings and loan association, credit union or other licensed lending
227 institution which takes an assignment of a life insurance policy as collateral for a loan;
- 228 (2) the issuer of a life insurance policy providing accelerated benefits and pursuant to the
229 contract;
- 230 (3) a natural person who enters into not more than one agreement in a calendar year for the
231 transfer of life insurance policies for any value less than the expected death benefit;
- 232 (4) a family member or friend who is not in the business of providing or obtaining viatical
233 settlements, who enters into a viatical settlement agreement for any value less than the expected
234 death benefit; or
- 235 (5) a financing entity.
- 236 (6) a purchaser.
- 237 (7) Any authorized or eligible insurer that provides stop loss coverage to a viatical settlement
238 provider, purchaser, financing entity, special purpose entity, or related provider trust.
- 239 (8) A financing entity.
- 240 (9) A related provider trust.
- 241 (10) A viatical settlement broker.

242 (11) An accredited investor or qualified institutional buyer as defined respectively in Regulation
243 D, Rule 501 or Rule 144A of the federal Securities Act of 1933, as amended, who purchases a
244 viatical settlement policy from a viatical settlement provider.;

245 and further, by striking the definition of “Viator” and replacing it with the following new
246 definition:-

247 “Viator”, the owner of a life insurance policy or a certificate holder under a group policy
248 insuring the life of an individual with a catastrophic, life-threatening or chronic illness or
249 condition who enters or seeks to enter into a viatical settlement contract. For the purposes of this
250 article, an owner shall not be limited to an owner of a life insurance policy or a certificate holder
251 under a group policy that insures the life of an individual with a terminal illness or condition
252 except where specifically addressed. The term “viator” does not include any of the following:

253 (1) Any viatical settlement provider or other licensee under this act.

254 (2) A qualified institutional buyer as defined in Rule 144A of the federal Securities Act of 1933,
255 as amended.

256 (3) A financing entity.

257 (4) A special purpose entity.

258 (5) A related provider trust.

259 SECTION 3. Chapter 175 of the General Laws, as appearing in the 2006 Official Edition, is
260 hereby amended by striking section 214 in its entirety and replacing with the following:-

261 214. (a) This section applies to any person entering into, brokering, or soliciting viatical
262 settlements pursuant to sections 212 to 223.

263 (b) (1) Except as provided in subparagraph (B), no person may enter into, broker, or solicit
264 viatical settlements pursuant to sections 212 to 223, unless that person has been licensed by the

265 commissioner under this section. The person shall file an application for a license in the form
266 prescribed by the commissioner, and the application shall be accompanied by a fee established
267 by the commissioner. The license fees for a viatical settlement provider license shall be
268 reasonable, and the license and renewal fees for a viatical settlement broker shall not exceed the
269 license and renewal fees established for an insurance producer who is acting as a viatical
270 settlement broker. The applicant shall provide any information the commissioner may require.
271 The commissioner may issue a license, or deny the application if, in his or her discretion, it is
272 determined that it is contrary to the interests of the public to issue a license to the applicant. The
273 reasons for a denial shall be set forth in writing.

274 (A) An individual acting as a viatical settlement broker under this section shall complete at least
275 15 hours of continuing education related to viatical settlements and viatical settlement
276 transactions, as required and approved by the commissioner, prior to operating as a viatical
277 settlement broker. This requirement shall not apply to a life insurance producer who qualifies
278 under subparagraph (D).

279 (B) A person licensed as an attorney, certified public accountant, or financial planner accredited
280 by a nationally recognized accreditation agency, who is retained to represent the viator, and
281 whose compensation is not paid directly or indirectly by the viatical settlement provider or
282 purchaser, may negotiate a viatical settlement contract on behalf of the viator without having to
283 obtain a license as a viatical settlement broker.

284 (C) A person licensed to act as a viatical settlement broker or viatical settlement provider as of
285 December 31, 2010, shall be deemed qualified for licensure as a viatical settlement broker or
286 viatical settlement provider, and shall be subject to all the provisions of this article as if such
287 person were originally licensed as a viatical settlement broker or viatical settlement provider.

288 (D) (i) A life insurance producer who has been duly licensed as a life agent for at least one year
289 or as a licensed nonresident producer in this state for one year shall be deemed to meet the
290 licensing requirements of this section and shall be permitted to operate as a viatical settlement
291 broker.

292 (ii) Not later than 10 days from the first day of operating as a viatical settlement broker, the life
293 insurance producer shall notify the commissioner that he or she is acting as a viatical settlement
294 broker, on a form prescribed by the commissioner, and shall pay any applicable fee to be
295 determined by the commissioner. Notification shall include an acknowledgment by the life
296 insurance producer that he or she will operate as a viatical settlement broker in accordance with
297 this act.

298 (iii) The insurer that issued the policy that is the subject of a viatical settlement contract shall not
299 be responsible for any act or omission of a viatical settlement broker or viatical settlement
300 provider arising out of, or in connection with, the viatical settlement transaction, unless the
301 insurer receives compensation for the replacement of the viatical settlement contract for the
302 viatical settlement provider or viatical settlement broker.

303 (E) The commissioner shall review the examination for the licensing of life insurance agents and
304 may recommend any changes to the examination to the department's curriculum committee in
305 order to carry out the purposes of sections 212 to 223.

306 (2) Each licensee shall owe and pay in advance to the commissioner an annual renewal fee in an
307 amount and form as prescribed by the commissioner.

308 (3) Any licensee that intends to discontinue transacting viatical settlements in this state shall so
309 notify the commissioner, and shall surrender its license.

310 (c) Viatical settlements licensees shall be required to provide any applicant for a viatical
311 settlement contract, at the time of application for the viatical settlement contract, all of the
312 following disclosures in writing and signed by the viator, in at least 12-point type:

313 (1) That there are possible alternatives to viatical settlements, including, but not limited to,
314 accelerated benefits options that may be offered by the life insurer.

315 (2) The fact that some or all of the proceeds of a viatical settlement may be taxable and that
316 assistance should be sought from a professional tax adviser.

317 (3) Consequences for interruption of public assistance as provided by information provided by
318 the state department of transitional assistance and the state department of social services.

319 (4) That the proceeds from a viatical settlement could be subject to the claims of creditors.

320 (5) That entering into a viatical settlement contract may cause other rights or benefits, including
321 conversion rights and waiver of premium benefits that may exist under the policy or certificate of
322 a group policy to be forfeited by the viator and that assistance should be sought from a
323 professional financial adviser.

324 (6) That a change in ownership of the settled policy could limit the insured's ability to purchase
325 insurance in the future on the insured's life because there is a limit to how much coverage
326 insurers will issue on one life.

327 (7) That the viator has a right to rescind a viatical settlement contract within 30 days of the date
328 it is executed by all parties and the viator has received all required disclosures, or 15 days from
329 receipt by the viator of the proceeds of the settlement, whichever is sooner. Rescission, if
330 exercised by the viator, is effective only if both notice of rescission is given and the viator repays
331 all proceeds and any premiums, loans, and loan interest paid on account of the viatical settlement
332 provider within the rescission period. If the insured dies during the rescission period, the contract

333 shall be deemed to have been rescinded subject to repayment by the viator or the viator's estate
334 of all proceeds and any premiums, loans, and loan interest to the viatical settlement provider.

335 (8) That proceeds will be sent to the viator within three business days after the viatical settlement
336 provider has received the insurer or group administrator's acknowledgment that ownership of the
337 policy or the interest in the certificate has been transferred and the beneficiary has been
338 designated in accordance with the terms of the viatical settlement contract.

339 (9) The date by which the funds will be available to the viator and the transmitter of the funds.

340 (10) The disclosure document shall include the following language:

341 "All medical, financial, or personal information solicited or obtained by a viatical settlement
342 provider or viatical settlement broker about an insured, including the insured's identity or the
343 identity of family members, a spouse, or a significant other may be disclosed as necessary to
344 effect the viatical settlement contract between the viator and viatical settlement provider. If you
345 are asked to provide this information, you will be asked to consent to the disclosure. The
346 information may be provided to someone who buys the policy or provides funds for the
347 purchase. You may be asked to renew your permission to share information every two years."

348 (11) That the insured may be contacted by either the viatical settlement provider or the viatical
349 settlement broker or its authorized representative for the purpose of determining the insured's
350 health status or to verify the insured's address. This contact is limited to once every three months
351 if the insured has a life expectancy of more than one year, and no more than once per month if
352 the insured has a life expectancy of one year or less.

353 (12) Any affiliations or contractual relations between the viatical settlement provider and the
354 viatical settlement broker, and the affiliation, if any, between the viatical settlement provider and
355 the issuer of the policy to be settled.

356 (13) That a viatical settlement broker represents exclusively the viator, and not the insurer or the
357 viatical settlement provider or any other person, and owes a fiduciary duty to the viator,
358 including a duty to act according to the viator's instructions and in the best interest of the viator.

359 (14) The name, business address, and telephone number of the viatical settlement broker.

360 (d) The viatical settlement broker shall provide the viator and the insured with at least all of the
361 following disclosures in writing prior to the signing of the viatical settlement contract by all
362 parties. The disclosures shall be clearly displayed in the viatical settlement contract or in a
363 separate document signed by the viator:

364 (1) The name, business address, and telephone number of the viatical settlement broker.

365 (2) A full, complete, and accurate description of all of the offers, counteroffers, acceptances, and
366 rejections relating to the proposed viatical settlement contract.

367 (3) A disclosure of any affiliations or contractual arrangements between the viatical settlement
368 broker and any person making an offer in connection with the proposed viatical settlement
369 contract.

370 (4) A complete reconciliation of the gross offer or bid by the viatical settlement provider to the
371 net amount of proceeds or value to be received by the viator. For the purpose of this section,
372 gross offer or bid shall mean the total amount or value offered by the viatical settlement provider
373 for the purchase of one or more life insurance policies, inclusive of commissions and fees.

374 (5) All estimates of the life expectancy of the insured which are obtained by the licensee in
375 connection with the viatical settlement, unless such disclosure would violate any Massachusetts
376 or federal privacy laws.

377 (6) The commissioner may consider any failure to provide the disclosures or rights described in
378 this section as a basis for suspending or revoking a viatical settlement broker's or viatical
379 settlement provider's license pursuant to section 218 of this chapter.

380 (e) All medical information solicited or obtained by any person soliciting or entering into a
381 viatical settlement is subject to the provisions of chapter 175I of the general laws, concerning
382 confidentiality of medical information.

383 (f) Except as otherwise allowed or required by law, a viatical settlement provider, viatical
384 settlement broker, insurance company, insurance producer, information bureau, rating agency, or
385 company, or any other person with actual knowledge of an insured's identity, shall not disclose
386 the identity of an insured or information that there is a reasonable basis to believe that could be
387 used to identify the insured or the insured's financial or medical information to any other person
388 unless the disclosure is one of the following:

389 (1) It is necessary to effect a viatical settlement contract between the viator and a viatical
390 settlement provider and the viator and insured have provided prior written consent to the
391 disclosure.

392 (2) It is necessary to effectuate the sale of viatical settlement contracts, or interests therein, as
393 investments, provided the sale is conducted in accordance with applicable state and federal
394 securities law and provided further that the viator and the insured have both provided prior
395 written consent to the disclosure.

396 (3) It is provided in response to an investigation or examination by the commissioner or any
397 other governmental officer or agency or any other provision of law.

398 (4) It is a term or condition to the transfer of a policy by one viatical settlement provider to
399 another viatical settlement provider, in which case the receiving viatical settlement provider shall
400 be required to comply with the confidentiality requirements of chapter 175I of the general laws.

401 (5) It is necessary to allow the viatical settlement provider or viatical settlement broker or their
402 authorized representatives to make contacts for the purpose of determining health status. For the
403 purposes of this section, the term “authorized representative” shall not include any person who
404 has or may have any financial interest in the settlement contract other than a viatical settlement
405 provider, licensed viatical settlement broker; further, a viatical settlement provider or viatical
406 settlement broker shall require its authorized representative to agree in writing to adhere to the
407 privacy provisions of this act.

408 (6) It is required to purchase stop loss coverage.

409 (g) In addition to other questions an insurance carrier may lawfully pose to a life insurance
410 applicant, insurance carriers may inquire in the application for insurance whether the proposed
411 viator intends to pay premiums with the assistance of financing from a lender that will use the
412 policy as collateral to support the financing.

413 (1) If the premium finance loan provides funds which can be used for a purpose other than
414 paying for the premiums, costs, and expenses associated with obtaining and maintaining the life
415 insurance policy and loan, the application may be rejected as a prohibited practice under this act.

416 (2) If the financing does not violate paragraph (1) or violate the insurer’s lawful underwriting
417 guidelines, the insurer may not reject life insurance application solely because the premiums will
418 be financed. The insurance carrier may make disclosures to the applicant, either on the
419 application or an amendment to the application to be completed no later than the delivery of the
420 policy, including, but not limited to, the following:

421 “If you have entered into a loan arrangement where the policy is used as collateral, and the
422 policy changes ownership at some point in the future in satisfaction of the loan, the following
423 may be true:

424 “(A) A change of ownership could lead to a stranger owning an interest in the insured’s life.

425 “(B) A change of ownership could in the future limit your ability to purchase insurance on the
426 insured’s life because there is a limit to how much coverage insurers will issue on a life.

427 “(C) You should consult a professional adviser since a change in ownership in satisfaction of the
428 loan may result in tax consequences to the viator, depending on the structure of the loan.”

429 (3) In addition to the disclosures in paragraph (2), the insurance carrier may require the following
430 certifications from the applicant or the insured:

431 “(A) I have not entered into any agreement or arrangement under which I have agreed to make a
432 future sale of this life insurance policy.”

433 “(B) My loan arrangement for this policy provides funds sufficient to pay for some or all of the
434 premiums, costs, and expenses associated with obtaining and maintaining my life insurance
435 policy, but I have not entered into any agreement by which I am to receive consideration in
436 exchange for procuring this policy.”

437 “(C) The borrower has an insurable interest in the insured.”

438 (h) Life insurers shall provide individual life insurance policyholders with a statement informing
439 them that if they are considering making changes in the status of their policy, they should consult
440 with a licensed insurance or financial advisor. Such statement may accompany or be included in
441 notices or mailings otherwise provided to such policyholders.

442 (i) The commissioner may adopt rules and regulations reasonably necessary to govern viatical
443 settlements and transactions.

444 (j) The commissioner may, whenever he or she deems it reasonably necessary to protect the
445 interests of the public, examine the business and affairs of any licensee or applicant for a license.
446 The commissioner shall have the authority to order any licensee or applicant to produce any
447 records, books, files, or other information as is reasonably necessary to ascertain whether or not
448 the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the
449 interests of the public. The expenses incurred in conducting any examination shall be paid by the
450 licensee or applicant.

451 (k) The commissioner may investigate the conduct of any licensee, its officers, employees,
452 agents, or any other person involved in the business of the licensee, or any applicant for a
453 license, whenever the commissioner has reason to believe that the licensee or applicant for a
454 license may have acted, or may be acting, in violation of the law, or otherwise contrary to the
455 interests of the public. The commissioner may initiate an investigation on his or her own, or upon
456 a complaint filed by any other person.

457 (l) The commissioner may issue orders to licensees whenever he or she determines that it is
458 reasonably necessary to ensure or obtain compliance with this section, or chapter 220A. This
459 authority includes, but is not limited to, orders directing a licensee to cease and desist in any
460 practice that is in violation of this section, or chapter 220A, or otherwise contrary to the interests
461 of the public. Any licensee to which an order pursuant to this sub-section is issued may, within
462 15 days of receipt of that order, request a hearing at which the licensee may challenge the order.

463 (m) The commissioner may, after notice and a hearing at which it is determined that a licensee
464 has violated this section or chapter 220A or any order issued pursuant to this section, order the
465 licensee to pay a monetary penalty of up to ten thousand dollars (\$10,000), which may be
466 recovered in a civil action. Any hearing conducted pursuant to this section shall be in accordance

467 with section 11A ½ of chapter 30A of the general laws, except that the hearing may be
468 conducted by administrative law judges or appointed by the commissioner, and the
469 commissioner shall have the powers granted therein.

470 (n) Each licensed viatical settlement provider shall file with the commissioner on or before
471 March 1 of each year an annual statement in the form prescribed by the commissioner. The
472 information that the commissioner may require in the annual statement shall include, but not be
473 limited to, the total number, aggregate face amount, and viatical settlement proceeds of policies
474 settled during the immediately preceding calendar year, together with a breakdown of the
475 information by policy issue year. The annual statement shall also include the names of the
476 insurance companies whose policies have been settled and the viatical settlement brokers that
477 have settled those policies, and that information shall be received in confidence within the
478 meaning of chapter 66 and chapter 66A of the general laws and exempt from disclosure. The
479 annual statement shall not include individual transaction data regarding the business of viatical
480 settlements or information that there is a reasonable basis to believe could be used to identify the
481 viator or the insured.

482 (o) No person who is not a resident of the commonwealth may receive or maintain a license
483 unless a written designation of an agent for service of process is filed and maintained with the
484 commissioner. The provisions of section 151 of this chapter shall apply to viatical settlement
485 licensees as if they were foreign insurers, their license a certificate of authority, and the viatical
486 settlement a policy, and the commissioner may modify the agreement set forth in section 151 of
487 this chapter accordingly.

488 (p) No person licensed pursuant to this section shall engage in any false or misleading
489 advertising, solicitation, or practice. In no case shall a viatical settlement broker or viatical

490 settlement provider, directly or indirectly, market, advertise, solicit, or otherwise promote the
491 purchase of a new policy for the sole purpose of or with a primary emphasis on settling the
492 policy or use the words “free,” “no cost,” or words of similar import in the marketing,
493 advertising, soliciting, or otherwise promoting of the purchase of a policy. The provisions of
494 section 176D and section 181 of this chapter shall apply to viatical settlement licensees as if they
495 were insurers, their license a certificate of authority or producer’s license, and the viatical
496 settlements a policy, and the commissioner shall liberally construe these provisions so as to
497 protect the interests of the public.

498 (q) Records of all consummated transactions and viatical settlement contracts shall be maintained
499 by the viatical settlement provider for three years after the death of the insured and shall be
500 available to the commissioner for inspection during reasonable business hours.

501 (r) A violation of this section is a misdemeanor.

502 SECTION 4. Chapter 175 of the General Laws, as appearing in the 2006 Official Edition, is
503 hereby amended by inserting after section 220 the following new section:-

504 220A. (a) A viatical settlement provider entering into a viatical settlement contract with any
505 viator of a policy, wherein the insured is terminally ill, shall first obtain the following:

506 (1) If the viator is the insured, a written statement from a licensed attending physician that the
507 viator is of sound mind and under no constraint or undue influence to enter into a settlement
508 contract.

509 (2) A document in which the insured consents to the release of his or her medical records to a
510 viatical settlement provider, viatical settlement broker, or insurance producer and, if the policy
511 was issued less than two years from the date of application for a settlement contract, to the
512 insurance company that issued the policy.

513 (b) The insurer shall respond to a request for verification of coverage submitted by a viatical
514 settlement provider, viatical settlement broker, or life insurance producer not later than 30
515 calendar days of the date the request is received. The request for verification of coverage must be
516 made on a form approved by the commissioner. The insurer shall complete and issue the
517 verification of coverage or indicate in which respects it is unable to respond. In its response, the
518 insurer shall indicate whether, based on the medical evidence and documents provided, the
519 insurer intends to pursue an investigation at this time regarding the validity of the insurance
520 contract.

521 (c) Before or at the time of execution of the settlement contract, the viatical settlement provider
522 shall obtain a witnessed document in which the viator consents to the settlement contract,
523 represents that the viator has a full and complete understanding of the settlement contract and a
524 full and complete understanding of the benefits of the policy, acknowledges that the viator is
525 entering into the settlement contract freely and voluntarily, and, for persons with a terminal
526 illness or condition, acknowledges that the insured has a terminal illness and that the terminal
527 illness or condition was diagnosed after the policy was issued.

528 (d) The insurer shall not unreasonably delay effecting change of ownership or beneficiary with
529 any viatical settlement contract lawfully entered into in this state or with a resident of this state.

530 (e) If a viatical settlement broker or life insurance producer performs any of these activities
531 required of the viatical settlement provider, the viatical settlement provider is deemed to have
532 fulfilled the requirements of this section.

533 (f) If a viatical settlement broker performs those verification of coverage activities required of
534 the viatical settlement provider, the viatical settlement provider is deemed to have fulfilled the
535 requirements of this section.

536 (g) Within 20 days after a viator executes the viatical settlement contract, the viatical settlement
537 provider shall give written notice to the insurer that issued that insurance policy that the policy
538 has become subject to a viatical settlement contract. The notice shall be accompanied by the
539 documents required under the definition of “Fraudulent viatical settlement act” provided in
540 section 214 of this chapter.

541 (h) All medical information solicited or obtained by any licensee shall be subject to the
542 applicable provision of state law relating to confidentiality of medical information, if not
543 otherwise provided in this act.

544 (i) All viatical settlement contracts entered into in this state shall provide that the viator may
545 rescind the contract on or before 30 days after the date it is executed by all parties thereto, and
546 the viator has received all required disclosures, or 15 days from receipt by the viator of the full
547 payment of the proceeds as specified below, whichever is sooner. Rescission, if exercised by the
548 viator, is effective only if both notice of the rescission is given, and the viator repays all proceeds
549 and any premiums, loans, and loan interest paid on account of the viatical settlement provider
550 within the rescission period. If the insured dies during the rescission period, the contract shall be
551 deemed to have been rescinded subject to repayment by the viator or the viator’s estate of all
552 proceeds and any premiums, loans, and loan interest to the viatical settlement provider.

553 (j) Within three business days after receipt from the viator of documents to effect the transfer of
554 the insurance policy, the viatical settlement provider shall pay the proceeds of the settlement to
555 an escrow or trust account managed by a trustee or escrow agent in a state or federally chartered
556 financial institution pending acknowledgment of the transfer by the issuer of the policy. The
557 trustee or escrow agent shall be required to transfer the proceeds due to the viator within three
558 business days of acknowledgment of the transfer from the insurer.

559 (k) Failure to tender the viatical settlement contract proceeds to the viator by the date disclosed
560 to the viator renders the contract voidable by the viator for lack of consideration until the time
561 the proceeds are tendered to and accepted by the viator. A failure to give written notice of the
562 right of rescission hereunder shall toll the right of rescission until 30 days after the written notice
563 of the right of rescission has been given.

564 (l) Any fee paid by a viatical settlement provider, party, individual, or an viator to a viatical
565 settlement broker in exchange for services provided to the viator pertaining to a viatical
566 settlement contract shall be computed as a percentage of the offer obtained, not the face value of
567 the policy. Nothing in this section shall be construed as prohibiting a viatical settlement broker
568 from reducing such viatical settlement broker's fee below this percentage if the viatical
569 settlement broker so chooses.

570 (m) The viatical settlement broker shall disclose to the viator anything of value paid or given to a
571 viatical settlement broker, which relates to a viatical settlement contract.

572 (n) No person at any time prior to, or at the time of, the application for, or issuance of, a policy,
573 or during a two-year period commencing with the date of issuance of the policy, shall enter into a
574 viatical settlement regardless of the date the compensation is to be provided and regardless of the
575 date the assignment, transfer, sale, devise, bequest, or surrender of the policy is to occur.

576 (1) This prohibition shall not apply if the viator certifies to the viatical settlement provider that
577 the policy was issued upon the viator's exercise of conversion rights arising out of a group or
578 individual policy, provided the total of the time covered under the conversion policy plus the
579 time covered under the prior policy is at least 24 months. The time covered under a group policy
580 must be calculated without regard to a change in insurance carriers, provided the coverage has
581 been continuous and under the same group sponsorship.

582 (2) This prohibition shall not apply if the viator submits independent evidence to the viatical
583 settlement provider that one or more of the following conditions have been met within the two-
584 year period:

585 (A) The viator or insured is terminally ill.

586 (B) The viator or insured disposes of his or her ownership interests in a closely held corporation,
587 pursuant to the terms of a buyout or other similar agreement in effect at the time the insurance
588 policy was initially issued.

589 (C) The viator's spouse dies.

590 (D) The viator divorces his or her spouse.

591 (E) The viator retires from full-time employment.

592 (F) The viator becomes physically or mentally disabled and a physician determines that the
593 disability prevents the viator from maintaining full-time employment.

594 (G) A final order, judgment, or decree is entered by a court of competent jurisdiction, on the
595 application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving
596 a petition seeking reorganization of the viator or appointing a receiver, trustee, or liquidator to all
597 or a substantial part of the viator's assets.

598 (3) (A) Copies of the independent evidence required by paragraph (2) shall be submitted to the
599 insurer when the viatical settlement provider submits a request to the insurer for verification of
600 coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement
601 provider that the copies are true and correct copies of the documents received by the viatical
602 settlement provider. Nothing in this section shall prohibit an insurer from exercising its right to
603 contest the validity of any policy.

604 (B) If the viatical settlement provider submits to the insurer a copy of independent evidence
605 provided for in subparagraph (A) of paragraph (2) when the viatical settlement provider submits
606 a request to the insurer to effect the transfer of the policy to the viatical settlement provider, the
607 copy shall be deemed to establish that the settlement contract satisfies the requirements of this
608 section.

609 (4) This prohibition shall apply only to policies issued on or after the effective date of this
610 section.

611 (o) An insurer shall not:

612 (1) Engage in any transaction, act, or practice that restricts, limits, or impairs the lawful transfer
613 of ownership, change of beneficiary, or assignment of a policy.

614 (2) Make any false or misleading statement for the purpose of dissuading a viator or insured from
615 a lawful viatical settlement contract.

616 (p) No person providing premium financing shall receive any proceeds, fees, or other
617 consideration from the policy or viator of the policy that are in addition to the amounts required
618 to pay principal, interest, and any reasonable costs or expenses incurred by the lender or
619 borrower in connection with the premium finance agreement, except for the event of a default,
620 unless either the default on the loan or transfer of the policy occurs pursuant to an agreement or
621 understanding with any other person for the purpose of evading regulation under this act.

622 (q) If there is more than one viator on a single policy, and the viators are residents of different
623 states, the viatical settlement contract shall be governed by the law of the state in which the
624 viator having the largest percentage ownership resides or, if the viators hold equal ownership, the
625 state of residence of one viator agreed upon in writing by all of the viators. The law of the state

626 of the insured shall govern in the event that equal viators fail to agree in writing upon a state of
627 residence for jurisdictional purposes.

628 (r) A viatical settlement provider from this state who enters into a viatical settlement contract
629 with a viator who is a resident of another state that has enacted statutes or adopted regulations
630 governing viatical settlement contracts shall be governed in the effectuation of that viatical
631 settlement contract by the statutes and regulations of the viator's state of residence. If the state in
632 which the viator is a resident has not enacted statutes or regulations governing viatical settlement
633 contracts, the viatical settlement provider shall give the viator notice that neither state regulates
634 the transaction upon which he or she is entering. For transactions in those states, however, the
635 viatical settlement provider is to maintain all records required if the transactions were executed
636 in the state of residence. The forms used in those states need not be approved by the department.

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

640 (t) It is a fraudulent viatical settlement act and a violation of this section for any person to do any
641 of the following, or any of the acts listed as a "Fraudulent viatical settlement act" as provided in
642 section 214 of this chapter.

643 (1) Enter into a viatical settlement contract if a person knows or reasonably should have known
644 that the life insurance policy was obtained by means of a false, deceptive, or misleading
645 application for such policy.

646 (2) Engage in any transaction, practice, or course of business if a person knows or reasonably
647 should have known that the intent was to avoid the notice requirements of this section.

648 (3) Engage in any fraudulent act or practice in connection with any transaction relating to any
649 settlement involving a viator who is a resident of this state.

650 (4) Fail to provide the disclosures or file the required reports with the commissioner as required
651 by this act.

652 (5) Issue, solicit, or market, the purchase of a new life insurance policy for the purpose of, or
653 with a primary emphasis on, settling the policy.

654 (6) Enter into a premium finance agreement with any person or agency, or any person affiliated
655 with a person or agency that is prohibited under sub-section (p).

656 (7) With respect to any settlement contract or insurance policy and a viatical settlement broker,
657 knowingly solicit an offer from, effectuate a viatical settlement contract with, or make a sale to
658 any viatical settlement provider, financing entity, or related provider trust that is controlling,
659 controlled by, or under common control with a viatical settlement broker, unless the relationship
660 has been fully disclosed to the viator.

661 (8) With respect to any viatical settlement contract or insurance policy and a viatical settlement
662 provider, knowingly enter into a viatical settlement contract with an viator, if, in connection with
663 a viatical settlement contract, anything of value will be paid to a viatical settlement broker that is
664 controlling, controlled by, or under common control with a viatical settlement provider or the
665 financing entity, or related provider trust that is involved in a settlement contract, unless the
666 relationship has been fully disclosed to the viator.

667 (9) With respect to a viatical settlement provider, enter into a viatical settlement contract unless
668 the viatical settlement promotional, advertising, and marketing materials, as may be prescribed
669 by regulation, have been filed with the commissioner. In no event shall any marketing materials
670 expressly reference that the insurance is “free” for any period of time. The inclusion of any

671 reference in the marketing materials that would cause a viator to reasonably believe that the
672 insurance is free for any period of time shall be considered a violation of this act; or with respect
673 to any life insurance producer, insurance company, viatical settlement broker, or viatical
674 settlement provider make any statement or representation to the applicant or policyholder in
675 connection with the sale or financing of a life insurance policy to the effect that the insurance is
676 free or without cost to the policyholder for any period of time unless provided in the policy.

677 (u) Viatical settlement contracts and applications for viatical settlement contracts, regardless of
678 the form of transmission, shall contain the following statement or a substantially similar
679 statement:

680 “Any person who knowingly presents false information in an application for insurance or for a
681 viatical settlement contract may be subject to criminal or civil liability.”

682 (1) The lack of a statement as required by this sub-section does not constitute a defense in any
683 prosecution for a fraudulent viatical settlement act.

684 (2) This act shall not:

685 (A) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to
686 investigate, examine, and prosecute suspected violations of law.

687 (B) Preempt, supersede, or limit any provision of any state securities law or any rule, order, or
688 notice issued thereunder.

689 (C) Prevent or prohibit a person from disclosing voluntarily information concerning viatical
690 settlement fraud to a law enforcement or regulatory agency other than the insurance department.

691 (D) Limit the powers granted elsewhere by the laws of this state to the commissioner or an
692 insurance fraud unit to investigate and examine possible violations of law and to take appropriate
693 action against wrongdoers.

694 (v) A viatical settlement provider lawfully transacting business in this state prior to the effective
695 date of this act may continue to do so, pending approval or disapproval of that person's
696 application for a license as long as the application is filed with the commissioner not later than
697 30 days after publication by the commissioner of an application form and instructions for
698 licensure of viatical settlement providers. If the publication of the application form and
699 instructions is prior to the effective date of this chapter, then the filing of the application shall not
700 be later than 30 days after the effective date of this act. During the time that an application is
701 pending with the commissioner, the applicant may use any form of viatical settlement contract
702 that has been filed with the commissioner pending approval thereof, provided that such form is
703 otherwise in compliance with the provisions of this act. Any person transacting business in this
704 state under this provision shall be obligated to comply with all other requirements of this act. A
705 person who has lawfully acted as a viatical settlement broker and negotiated viatical settlement
706 contracts between any viator residing in this state and one or more viatical settlement providers
707 for at least one year immediately prior to the effective date of this act may continue to do so
708 pending approval or disapproval of that person's application for a license, as long as the
709 application is filed with the commissioner not later than 30 days after publication by the
710 commissioner of an application form and instructions for licensure of viatical settlement brokers.
711 If the publication of the application form and instructions is prior to the effective date of this
712 chapter, then the filing of the application shall not be later than 30 days after the effective date of
713 this act. Any person transacting business in this state under this provision shall be obligated to
714 comply with all other requirements of this act.

715 SECTION 5. This act shall apply to all viatical settlement contracts entered into after July 1,
716 2010. This act shall apply to any transaction involving any life insurance policy in effect, or
717 entered into, on or after the operative date of this act.