

**HOUSE . . . . . No. 5346**

---

---

*The Commonwealth of Massachusetts*

---

HOUSE OF REPRESENTATIVES, March 2, 1998.

The committee on Ways and Means, to whom was referred the Bill to regulate viatical settlements agreements, (House, No. 4794), reports that the same ought to pass, with an amendment substituting therefor the accompanying bill (House, No. 5346).

For the committee,

PAUL R. HALEY.

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Eight.

### AN ACT TO REGULATE VIATICAL SETTLEMENTS.

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

1 Chapter 175 of the General Laws is hereby amended by  
2 inserting immediately after section 208, as appearing in the 1992  
3 Official Edition, the following fourteen sections:—

4 Section 209. Sections two hundred and nine through two hun-  
5 dred and nine M may be cited as the Viatical Settlements Act.

6 Section 209A. Definitions.

7 The following words, as used in sections two hundred and nine  
8 through two hundred and nine M, inclusive, unless the context  
9 otherwise requires or a different meaning is specifically pre-  
10 scribed, shall have the following meanings:

11 “Accelerated benefits” means a policy provision allowing full  
12 or partial payment of the death benefit before the death of the  
13 insured based on the physical condition of the insured.

14 “Catastrophic condition” means medical conditions reasonably  
15 expected to result in death within thirty-six months, whether or  
16 not medical treatment is provided, such condition having been  
17 certified to by a physician, including but not limited to metasta-  
18 sized cancers, renal failure in persons not candidates for trans-  
19 plants, heart and/or lung disease in persons not candidates for  
20 transplants, and Acquired Immune Deficiency Syndrome (AIDS).

21 “Commissioner” means the Commissioner of Insurance.

22 “Financing entity” means: (1) any Person who is not an indi-  
23 vidual who is an underwriter, placement agent, lender, purchaser  
24 of securities, purchaser of a policy or certificate from a viatical  
25 settlement provider or viatical loan provider, credit enhancer,  
26 or any Person who may be a party to a viatical settlement or a

27 viatical loan, (2) that has a direct ownership or security interest in  
28 any policy or certificate which is the subject of a viatical settle-  
29 ment contract or viatical loan contract, but (3) whose sole activity  
30 related to the transaction is providing funds to effect the viatical  
31 settlement or viatical loan and (4) who has an agreement in  
32 writing with a duly licensed viatical settlement provider or viatical  
33 loan provider to act as a participant in a financing transaction.

34 "Financing transaction" means any transaction in compliance  
35 with federal and state securities laws in which a duly licensed  
36 viatical settlement provider or viatical loan provider or financing  
37 entity obtains financing for viatical settlement contracts, viatical  
38 loan contracts, viaticated policies or interests therein including,  
39 without limitation, any secured or unsecured financing, any secu-  
40 ritzation transaction or any securities offering either registered or  
41 exempt from registration under federal and state securities law.

42 "Insured" means an individual who is the subject of a life insur-  
43 ance policy or group life insurance contract. For the purposes of  
44 this Act, it is the insured's privacy which shall be protected,  
45 regardless of whether the insured is also the policy owner or cer-  
46 tificate holder.

47 "Person" means any natural or artificial entity, including but  
48 not limited to, individuals, partnerships, associations, trusts or  
49 corporations.

50 "Viatical loan borrower" (hereinafter also referred to as the  
51 borrower) means the owner of a life insurance policy or the cer-  
52 tificate holder under a group life insurance contract insuring the  
53 life of a person with a catastrophic, life-threatening or chronic ill-  
54 ness or condition who enters into a viatical loan contract with a  
55 viatical loan provider.

56 "Viatical loan broker" means a Person that, on behalf of a viat-  
57 ical loan borrower and for a fee, commission, or other valuable  
58 consideration, offers or attempts to negotiate viatical loan con-  
59 tracts between a viatical loan borrower and one or more viatical  
60 loan providers. Irrespective of the manner in which the viatical  
61 loan broker is compensated, a viatical loan broker is deemed  
62 to represent only the viatical loan borrower and owes a fiduciary  
63 duty to the viatical loan borrower to act according to the  
64 borrower's instructions and in the best interest of the borrower.

65 "Viatical loan broker" does not include an attorney, accountant or

66 financial planner retained to represent the borrower whose com-  
67 pensation is paid directly by or at the direction of the borrower  
68 regardless of whether the viatical loan is completed.

69 “Viatical loan contract” means a written agreement through  
70 which a person owning a life insurance policy or who owns or is  
71 covered under a group policy insuring the life of a person who has  
72 a catastrophic, life-threatening or chronic illness or condition  
73 secures a loan from a viatical loan provider by using the policy as  
74 collateral. The secured loan is an amount less than the face value  
75 of the policy, with the difference between the loan principal and  
76 the face value of the policy being used to pay, among other things,  
77 the accrued loan interest. Upon repayment of the viatical loan, the  
78 viatical loan provider’s collateral interest in the policy terminates  
79 and the security interest is released to the original policyholder, or  
80 his or her designee. Viatical loans do not include loans taken  
81 against the cash value of a life insurance policy for the purpose of  
82 paying premiums due.

83 “Viatical loan provider” means a Person, other than a viatical  
84 loan borrower, that enters into a viatical loan contract. “Viatical  
85 loan provider” does not include:

86 (1) any natural person who enters into no more than one loan  
87 agreement in a calendar year for any value less than the expected  
88 death benefit; or

89 (2) a family member or friend, who is not in the business of  
90 providing or obtaining viatical loans, who enters into a loan agree-  
91 ment for any value less than the expected death benefit.

92 “Viatical loan representative” means any Person who is an  
93 authorized agent of a duly licensed viatical loan provider or viat-  
94 ical loan broker and who acts or assists in any manner in the solici-  
95 tation of a viatical loan on behalf of such viatical loan provider or  
96 viatical loan broker, as applicable. “Viatical loan representative”  
97 does not include:

98 (1) An attorney, an accountant, an investment or financial  
99 planner or any person exercising a power of attorney granted by a  
100 viatical loan borrower; or

101 (2) Any person who is retained to represent a viatical loan bor-  
102 rower and whose compensation is paid by or at the discretion of  
103 the viatical loan borrower regardless of whether the viatical loan  
104 transaction is completed; or

105 (3) A credit union, trade union, not-for-profit entity, or an  
106 employer or association that makes information about viatical  
107 loans available to its employees or members unless such informa-  
108 tion is distributed in exchange for financial consideration. A viat-  
109 ical loan representative is deemed to represent only the viatical  
110 loan provider or viatical loan broker, as applicable.

111 “Viatical settlement broker” means a Person that, on behalf of a  
112 viator and for a fee, commission, or other valuable consideration,  
113 offers or attempts to negotiate viatical settlements between a  
114 viator and one or more viatical settlement providers. Irrespective  
115 of the manner in which the viatical settlement broker is compen-  
116 sated, a viatical settlement broker is deemed to represent only the  
117 viator and owes a fiduciary duty to the viator to act according to  
118 the viator’s instructions and in the best interest of the viator.  
119 “Viatical settlement broker” does not include an attorney, account-  
120 ant or financial planner retained to represent the viator whose  
121 compensation is paid directly by or at the direction of the viator  
122 regardless of whether the viatical settlement is completed.

123 “Viatical settlement contract” means a written agreement  
124 entered into between a viatical settlement provider and a viator.  
125 The agreement shall establish the terms under which the viatical  
126 settlement provider will pay compensation or anything of value,  
127 which compensation or value is less than the expected death ben-  
128 efit of the insurance policy or certificate, in return for the viator’s  
129 assignment, transfer, sale, devise or bequest of the death benefit or  
130 ownership of all or a portion of the insurance policy or certificate  
131 of insurance to the viatical settlement provider.

132 “Viatical settlement provider” means a Person, other than a  
133 viator, who enters into a viatical settlement contract. “Viatical  
134 settlement provider” also means a Person that obtains financing  
135 from a financing entity for the purchase, acquisition, transfer or  
136 other assignment of one or more viatical settlement contracts,  
137 viaticated policies or interests therein or otherwise sells, assigns,  
138 transfers, pledges, hypothecates or otherwise disposes of one or  
139 more viatical settlement contracts, viaticated policies or interests  
140 therein. “Viatical settlement provider” does not include:

141 (1) Any bank, savings bank, savings and loan association,  
142 credit union or other licensed lending institution which takes an  
143 assignment of a life insurance policy as collateral for a loan;

144 (2) The issuer of a life insurance policy providing accelerated  
145 benefits and pursuant to the contract; or

146 (3) Any natural person who enters into no more than one agree-  
147 ment in a calendar year for the transfer of life insurance policies  
148 for any value less than the expected death benefit.

149 “Viatical settlement representative” means any Person who is  
150 an authorized agent of a duly licensed viatical settlement provider  
151 or viatical settlement broker, as applicable, and who acts or assists  
152 in any manner in the solicitation of a viatical settlement on behalf  
153 of such viatical settlement provider or viatical settlement broker.  
154 “Viatical settlement representative” shall not include:

155 (1) An attorney, an accountant, an investment or financial  
156 planner or any person exercising a power of attorney granted by  
157 a viator; or

158 (2) Any person who is retained to represent a viator and whose  
159 compensation is paid by or at the discretion of the viator regard-  
160 less of whether the viatical settlement transaction is completed; or

161 (3) A credit union, trade union, not-for-profit entity, or an  
162 employer or association that makes information about viatical  
163 settlements available to its employees or members unless such  
164 information is distributed in exchange for financial consideration.  
165 A viatical settlement representative is deemed to represent only  
166 the viatical settlement provider or viatical settlement broker, as  
167 applicable.

168 “Viaticated policy” means any life insurance policy or certifi-  
169 cate that has been the subject of a completed viatical settlement  
170 contract or viatical loan contract.

171 “Viator” means the owner of a life insurance policy or a certifi-  
172 cate holder under a group policy insuring the life of an individual  
173 with a catastrophic, life-threatening or chronic illness or condition  
174 who enters or seeks to enter into a viatical settlement contract.

175 Section 209B. License Requirements.

176 No Person may act as a viatical settlement or loan provider, or  
177 as a viatical settlement or loan broker, without first having  
178 obtained a license from the commissioner. A viatical settlement or  
179 loan representative may act under the authority of the license of  
180 the viatical settlement or loan provider or broker which appoints  
181 said representative. The appointment of a viatical settlement or  
182 loan representative must be registered with the commissioner, on a

183 form prescribed by the commissioner, by the appointing viatical  
184 settlement or loan provider or broker. Application for a viatical  
185 settlement or loan provider license, or viatical settlement or loan  
186 broker license shall be made to the commissioner by the applicant  
187 on a form prescribed by the commissioner, and the application  
188 shall be accompanied by a fee in an amount equal to the fee pre-  
189 scribed for each license or renewal thereof to an insurance agent  
190 of any company under section one hundred and sixty-three, as  
191 determined annually by the commissioner of administration under  
192 the provision of section three B of chapter seven. Licenses may be  
193 renewed from year to year on the anniversary date upon payment  
194 of the annual renewal fee in an amount equal to the fee for  
195 renewal of each license to an insurance agent of any company  
196 under section one hundred and sixty-three, as determined annually  
197 by the commissioner of administration under the provision of sec-  
198 tion three B of chapter seven. Failure to pay the fee within the  
199 terms prescribed shall result in the expiration of the license.

200 The applicant shall provide such information as the commis-  
201 sioner may require on forms prescribed by the commissioner. The  
202 commissioner shall have authority, at any time, to require the  
203 applicant to fully disclose the identity of all stockholders, part-  
204 ners, members, officers and employees, and the commissioner  
205 may, in the exercise of discretion, refuse to issue a license in the  
206 name of any firm, partnership or corporation if not satisfied that  
207 any officer, employee, stockholder, member, or partner thereof  
208 who may materially influence the applicant's conduct meets the  
209 standards of this Act.

210 Applicants for licenses and licensees seeking renewal of a  
211 license shall be required to demonstrate that they have had  
212 sufficient education and training to be qualified to act as viatical  
213 settlement or loan providers or viatical settlement or loan brokers.  
214 The commissioner may promulgate regulations regarding the stan-  
215 dards of education and training necessary to obtain and renew a  
216 license, and the procedure for meeting those standards.

217 A license issued to a partnership, corporation, limited liability  
218 company, or other entity authorizes all members, officers and des-  
219 ignated employees to act as viatical settlement or loan providers,  
220 viatical settlement or loan brokers, or viatical settlement or loan  
221 representatives, as applicable, under the license, and all those

222 persons must be named in the application and any supplements to  
223 the application.

224 Upon the filing of an application and the payment of the license  
225 fee, the commissioner shall make an investigation of each appli-  
226 cant and may issue a license if the commissioner finds that the  
227 applicant:

228 (1) Has provided a detailed plan of operation; and

229 (2) Is suitable, competent and trustworthy and intends to act in  
230 good faith in the capacity involved by the license applied for; and

231 (3) Has a good business reputation so as to be qualified in the  
232 business for which the license is applied for; and has met the stan-  
233 dards of education and training established by the commissioner  
234 pursuant to this Act; and

235 (4) If a legal entity, provides a certificate of good standing from  
236 its state of domicile.

237 The commissioner shall not issue any license to any non-  
238 resident applicant, unless a written designation of an agent for  
239 service of process is filed and maintained with the commissioner  
240 or the applicant has filed with the commissioner the applicant's  
241 written irrevocable consent that any action against the applicant  
242 may be commenced against the applicant by service of process on  
243 the commissioner.

244 Section 209C. License Revocation.

245 The commissioner shall have the right to suspend, revoke, or  
246 refuse to renew the license of any viatical settlement or loan  
247 provider or viatical settlement or loan broker if the commissioner  
248 finds that:

249 (1) There was any material misrepresentation in the application  
250 for the license;

251 (2) The holder of the license has been guilty of fraudulent or  
252 dishonest practices, is subject to a final administrative action or is  
253 otherwise shown to be untrustworthy or incompetent to act as  
254 a viatical settlement or loan provider or viatical settlement or  
255 loan broker;

256 (3) The viatical settlement or loan provider demonstrates a  
257 pattern of unreasonable payments to viators or borrowers; or

258 (4) The licensee has been found guilty of, or has pleaded guilty  
259 or nolo contendere to, a felony, or a misdemeanor involving fraud  
260 or moral turpitude;

261 (5) The viatical settlement or loan provider or broker has  
262 entered into viatical settlement or loan contracts that have not  
263 been approved pursuant to this Act;

264 (6) The viatical settlement or loan provider or broker has failed  
265 to honor contractual obligations set out in viatical settlement or  
266 loan contracts;

267 (7) The licensee no longer meets the requirements for initial  
268 licensure;

269 (8) The viatical settlement or loan provider has assigned or  
270 pledged a viaticated policy to a Person other than to a duly  
271 licensed viatical settlement or loan provider or a financing entity;  
272 or

273 (9) The licensee has violated any of the provisions of this Act.

274 Before the commissioner shall deny a license application or  
275 revoke or refuse to renew the license of a viatical settlement or  
276 loan provider or a viatical settlement or loan broker, the commis-  
277 sioner shall conduct a hearing in accordance with MGL c. 30A.  
278 The commissioner shall also have the right to suspend a license  
279 for up to thirty days following the issuance of a cease and desist  
280 order demanding the licensee show cause within said thirty days  
281 why such license should not be revoked or non-renewed.

282 Section 209D. Approval of Viatical Settlements and Loans  
283 Contracts.

284 No Person may use any viatical settlement or loan contract in  
285 this state or provide a viator or borrower a disclosure statement  
286 form unless it has been filed with and approved by the commis-  
287 sioner. Any viatical settlement or loan contract form or disclosure  
288 form filed with the commissioner shall be deemed approved if it  
289 has not been disapproved within sixty (60) days of the filing.  
290 The commissioner shall disapprove a viatical settlement or loan  
291 contract form if, in the commissioner's opinion, the contract or  
292 provisions contained therein are unreasonable, contrary to the  
293 interests of the public, or otherwise misleading or unfair to the  
294 viator or borrower.

295 Section 209E. Reporting Requirements.

296 Each viatical settlement or loan provider shall file with the  
297 commissioner on or before March 1 of each year an annual state-  
298 ment containing such information as the commissioner may  
299 prescribe by regulation.

300 Section 209F. Examination.

301 The commissioner may, when the commissioner deems it rea-  
302 sonably necessary to protect the interests of the public, examine  
303 the business and affairs of any licensee or applicant for a license.  
304 The commissioner shall have the authority to order any licensee or  
305 applicant to produce any records, books, files or other information  
306 reasonably necessary to ascertain whether or not the licensee or  
307 applicant is acting or has acted in violation of the law or otherwise  
308 contrary to the interests of the public. The expenses incurred  
309 in conducting any examination shall be paid by the licensee or  
310 applicant.

311 Names, individual identification data, and descriptions of the  
312 particular catastrophic, life-threatening or chronic illness(es) or  
313 condition(s) for all insureds shall be considered private and confi-  
314 dential information and shall not be disclosed by the commis-  
315 sioner, unless required by law. Records of all transactions of  
316 viatical settlement or loan contracts shall be maintained by the  
317 viatical settlement or loan provider and shall be available to the  
318 commissioner for inspection during reasonable business hours.  
319 A viatical settlement or loan provider shall maintain records of  
320 each viatical settlement or loan until five (5) years after the death  
321 of the insured.

322 Section 209G. Disclosures.

323 A. A viatical settlement or loan provider, viatical settlement or  
324 loan broker, or viatical settlement or loan representative shall dis-  
325 close in writing the following information to the viator or viatical  
326 loan borrower no later than the time of application:

327 1. Possible alternatives to viatical settlement or loan contracts  
328 for persons with catastrophic, life-threatening or chronic illnesses  
329 or conditions, including, but not limited to, any accelerated bene-  
330 fits offered under the viator's or borrower's life insurance policy;

331 2. The fact that some or all of the proceeds of the viatical settle-  
332 ment may be taxable, and that assistance should be sought from a  
333 personal tax advisor;

334 3. The fact that the viatical settlement or loan could be subject  
335 to the claims of creditors;

336 4. The fact that receipt of a viatical settlement or loan may  
337 adversely affect the recipient's eligibility for Medicaid or other  
338 government benefits or entitlements, and that advice should be  
339 obtained from the appropriate agencies;

340 5. The viator's or borrower's right to rescind a viatical settle-  
341 ment or loan contract within fifteen (15) days of the receipt of the  
342 viatical settlement or loan proceeds by the viator or borrower, as  
343 provided in Section 209H; and

344 6. The procedure for contacts with the insured for the purpose  
345 of determining the health status of the insured after the viatical  
346 settlement or loan has occurred, and the fact that health moni-  
347 toring contacts will be limited to once every three (3) months for  
348 insureds with a life expectancy of not less than one year and to no  
349 more than one per month for insureds with a life expectancy of  
350 one year or less.

351 7. For viatical settlements, that the funds will be sent to the  
352 viator within two (2) business days after the viatical settlement  
353 provider has received the insurer's or group administrator's  
354 acknowledgment that ownership of the policy or interest in the  
355 certificate has been transferred and the beneficiary has been desig-  
356 nated pursuant to the viatical settlement contract. For viatical  
357 loans, that the funds will be available to be drawn on at the bor-  
358 rower's request within two (2) business days after the viatical loan  
359 provider has received the insurer's or group administrator's  
360 acknowledgment verifying that the absolute assignment and  
361 beneficiary of the policy or interest in the certificate have been  
362 changed pursuant to the viatical loan contract.

363 8. Entering into a viatical settlement or loan contract may cause  
364 other rights or benefits, including, but not limited to, conversion  
365 rights and waiver of premium benefits which may exist under the  
366 policy or certificate, to be forfeited by the viator or viatical loan  
367 borrower, and assistance should be sought from a financial  
368 adviser.

369 B. A viatical settlement provider or viatical loan provider shall  
370 disclose the following information to the viator or viatical loan  
371 borrower at least two (2) business days prior to the date the viat-  
372 ical settlement or loan contract is signed by all parties:

373 1. The affiliation, if any, between the viatical settlement or loan  
374 provider and the issuer of an insurance policy which is the subject  
375 of the viatical settlement or loan.

376 2. If an insurance policy which may be the subject of the  
377 viatical settlement or loan has been issued as a joint policy or  
378 involves family riders or any coverage of a life other than the

379 insured under the policy to be viaticated, the viator or viatical loan  
380 borrower must be informed of the possible loss of coverage on the  
381 other lives and be advised to consult with the company issuing the  
382 policy for advice.

383 3. The dollar amount of the current death benefit payable under  
384 the policy or certificate. The viatical settlement or loan provider  
385 shall also disclose the availability of any additional guaranteed  
386 insurance benefits, the dollar amount of any accidental death and  
387 dismemberment benefits under such policy or certificate and the  
388 viatical settlement or loan provider's interest in those benefits.

389 Section 209H. General Rules.

390 A viatical settlement or loan provider entering into a viatical  
391 settlement or loan contract with a viator or viatical loan borrower  
392 shall first obtain:

393 (1) If the viator or viatical loan borrower is the insured, a  
394 written statement from a licensed attending physician that the  
395 viator or borrower is of sound mind and under no constraint or  
396 undue influence to enter into the contract; and

397 (2) A witnessed document in which the viator or viatical loan  
398 borrower consents to the viatical settlement or loan contract,  
399 acknowledges that the insured has a catastrophic, life-threatening  
400 or chronic illness or condition, represents that the viator or bor-  
401 rower has a full and complete understanding of the viatical settle-  
402 ment or loan contract, that the viator or borrower has a full and  
403 complete understanding of the benefits of the life insurance  
404 policy, and that the viator or borrower has entered the viatical set-  
405 tlement or loan contract freely and voluntarily; and

406 (3) A document in which the insured consents to the release of  
407 his or her medical records to a viatical settlement or loan provider  
408 or broker.

409 All medical information solicited or obtained by any licensee or  
410 any financing entity shall be subject to the applicable provision of  
411 state law relating to confidentiality of medical information.  
412 Patient Identifying Information of the person insured under the  
413 policy to be the subject of a viatical settlement or loan shall not be  
414 divulged without obtaining the express, written consent of  
415 the insured in each instance of disclosure. Patient Identifying  
416 Information means an insured's name, address(es), telephone  
417 number(s), facsimile number(s), electronic mail address(es).

418 photograph or likeness, employer, employment status, social  
419 security number, or any other information which is likely to lead  
420 to the identification of the insured. Viatical settlement or loan  
421 providers, brokers, or representatives shall obtain from any person  
422 or entity who is provided with Patient Identifying Information a  
423 signed affirmation that such person or entity shall not further dis-  
424 close any Patient Identifying Information without the express,  
425 written consent of the insured in each instance of disclosure.

426 Notwithstanding the above, Patient Identifying Information  
427 may be disclosed to purchasers of or investors in a policy after  
428 they have signed a contract or agreement to purchase a policy.  
429 Such purchasers or investors shall be bound by the provisions of  
430 section two hundred nine H.

431 All viatical settlement and loan contracts entered into in this  
432 state shall provide the viator or viatical loan borrower with an  
433 unconditional right to rescind the contract for fifteen (15) days  
434 from the receipt of the viatical settlement or loan proceeds. If the  
435 insured dies during the rescission period, the viatical settlement or  
436 loan contract shall be deemed to have been rescinded, subject to  
437 repayment to the viatical settlement or loan provider of any viat-  
438 ical settlement or loan proceeds, if repaid within ninety (90) days.

439 Immediately upon receipt from the viator or viatical loan bor-  
440 rower of documents to effect the transfer or assignment of the  
441 insurance policy, the viatical settlement or loan provider shall pay  
442 the proceeds of the settlement or loan to an escrow or trust  
443 account in a state or federally chartered financial institution,  
444 pending acknowledgment of the transfer or assignment by the  
445 issuer of the policy. Immediately upon receipt of confirmation by  
446 the viatical settlement provider or viatical loan provider that the  
447 insurer has acknowledged the transfer or assignment of the policy,  
448 the trustee or escrow agent shall be required to transfer to the  
449 viator or viatical loan borrower: (1) all of the proceeds due if to be  
450 made in a lump sum payment; or (2) the first installment if pro-  
451 ceeds due are to be made in installment payments pursuant to the  
452 viatical settlement or loan contract.

453 Failure to tender consideration to the viator or viatical loan bor-  
454 rower for the viatical settlement or loan contract by the date dis-  
455 closed pursuant to Section 209G.A.7 renders the viatical  
456 settlement or loan contract voidable by the viator or borrower for

457 lack of consideration until such time as consideration is tendered  
458 to and accepted by the viator or borrower.

459     Contacts for the purpose of determining the health status of the  
460 insured by the viatical settlement or loan provider or broker after  
461 the viatical settlement or loan has occurred shall be limited to  
462 once every three (3) months for insureds with a life expectancy of  
463 more than one year, and to no more than one per month for  
464 insureds with a life expectancy of one year or less. The limitations  
465 set forth in this subsection shall not apply to any contacts with an  
466 insured under a viaticated policy for reasons other than deter-  
467 mining the insured's health status.

468     Viatical settlement or loan providers, viatical settlement or loan  
469 brokers, and viatical settlement or loan representatives are pro-  
470 hibited from paying any commission or finder's fee to any Person  
471 that is providing or has previously provided care or services to  
472 the insured under an insurance policy which is to be viaticated,  
473 including but not limited to any medical or mental health provider,  
474 social services provider, attorney, accountant, financial adviser or  
475 planner, investment adviser or planner, or any other Person who  
476 has a demonstrable conflict of interest in collecting a finder's fee.

477     Section 209I. Authority to Promulgate Standards.

478     The commissioner shall have the authority to:

479     A. Promulgate regulations implementing this Act; and

480     B. Establish standards for evaluating reasonableness of pay-  
481 ments under viatical settlement or loan contracts. This authority  
482 includes but is not limited to, regulation of discount rates used to  
483 determine the amount paid in exchange for assignments, transfer,  
484 sale, devise, or bequest of a benefit under a life insurance policy;  
485 and

486     C. Establish appropriate licensing requirements, fees, and  
487 standards for viatical settlement and loan providers, brokers, and  
488 representatives; and

489     D. Require a bond or other mechanism for financial account-  
490 ability of viatical settlement or loan providers and establish the  
491 amount thereof.

492     E. Adopt rules governing the relationship and responsibilities  
493 of insurers and viatical settlement and loan providers and brokers  
494 during the viatication of a life insurance policy or certificate.

495 Section 209J. Unfair Trade Practices.

496 A violation of this Act shall be considered an unfair trade prac-  
497 tice under Chapter 176D of the General Laws, subject to the  
498 penalties contained in that act.

499 Section 209K. Consumer Information and Complaints.

500 Within the Office of Consumer Affairs and Business  
501 Regulation, the Director of Consumer Affairs and Business  
502 Regulation shall establish a procedure for consumers involved in  
503 the viatical settlement and loan process to report problems and  
504 complaints about viatical settlement or loan providers or brokers.  
505 Upon inquiry, consumers shall also be able to obtain information  
506 as to whether a complaint has been lodged against a particular  
507 viatical settlement or loan provider or broker. The Director of  
508 Consumer Affairs and Business Regulation shall share informa-  
509 tion about consumer complaints with the commissioner in order  
510 for the commissioner to investigate possible misconduct by  
511 licensees and enforce the provisions of sections two hundred and  
512 nine through two hundred and nine M.

513 Section 209L. Severability.

514 If any provision of this Act or the application of this Act to any  
515 Person or circumstances is found to be invalid, the validity of the  
516 remainder of this Act and the applicability of such provision  
517 to other Persons or circumstances shall not be affected.

518 Section 209M. Effective Date.

519 This act shall take effect ninety (90) days from the date  
520 of signing.

