60A.957 DEFINITIONS.

Subdivision 1. **Terms.** For purposes of sections 60A.957 to 60A.9585, the terms defined in this section have the meanings given them.

Subd. 2. **Advertising.** "Advertising" means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including film strips, motion pictures, and videos, published, disseminated, circulated, or placed directly before the public in this state, for the purpose of creating an interest in or inducing a person to purchase or sell, assign, devise, bequeath, or transfer the death benefit or ownership of a life insurance policy pursuant to a viatical settlement contract.

Subd. 3. **Business of viatical settlements.** "Business of viatical settlements" means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating, or in any other manner acquiring an interest in a life insurance policy by means of a viatical settlement contract.

Subd. 4. **Chronically ill.** "Chronically ill" means:

(1) being unable to perform at least two activities of daily living (for example, eating, toileting, transferring, bathing, dressing, or continence);

(2) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

(3) having a level of disability similar to that described in clause (1) as determined by the United States Secretary of Health and Human Services.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 6. **Financing entity.** "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but:

(1) whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies; and

(2) who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts.

Financing entity does not include a nonaccredited investor or a viatical settlement purchaser.

Subd. 7. **Fraudulent viatical settlement act.** "Fraudulent viatical settlement act" includes:

(a) acts or omissions committed by any person who, knowingly and with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in acts including:

(1) presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, viatical settlement investment agent, financing entity, insurer, insurance producer, or any other person, false material

information, or concealing material information, as part of, in support of, or concerning a fact material to one or more of the following:

(i) an application for the issuance of a viatical settlement contract or insurance policy;

(ii) the underwriting of a viatical settlement contract or insurance policy;

(iii) a claim for payment or benefit pursuant to a viatical settlement contract or insurance policy;

(iv) premiums paid on an insurance policy or as a result of a viatical settlement purchase agreement;

(v) payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract, viatical settlement purchase agreement, or insurance policy;

(vi) the reinstatement or conversion of an insurance policy;

(vii) the solicitation, offer, effectuation, or sale of a viatical settlement contract, insurance policy, or viatical settlement purchase agreement;

(viii) the issuance of written evidence of viatical settlement contract, viatical settlement purchase agreement, or insurance; or

(ix) a financing transaction; and

(2) employing any plan, financial structure, device, scheme, or artifice to defraud related to viaticated policies;

(b) acts or omissions in the furtherance of a fraud or to prevent the detection of a fraud committed by any person, its employees, or its agents, to:

(1) remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;

(2) misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;

(3) transact the business of viatical settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of viatical settlements; or

(4) file with the commissioner or the equivalent chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceal information about a material fact from the commissioner;

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

(d) attempt to commit, assist, aid, or abet in the commission of, or conspiracy to commit, the acts or omissions specified in this subdivision.

Subd. 8. **Life insurance producer.** "Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority for life insurance pursuant to chapter 60K.

Subd. 9. **Person.** "Person" means a natural person or a legal entity, including, without limitation, an individual, partnership, limited liability company, association, trust, or corporation.

Subd. 10. **Policy.** "Policy" means an individual or group policy, group certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

Subd. 11. **Related provider trust.** "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.

Subd. 12. **Special purpose entity.** "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets:

(1) for a financing entity or licensed viatical settlement provider; or

(2) in connection with a transaction in which:

(i) the securities in the special purpose entity are acquired by the viator or by "qualified institutional buyers" as defined in Rule 144 promulgated under the Securities Act of 1933, as amended; or

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

Subd. 13. **Terminally ill.** "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in 24 months or less.

Subd. 14. **Viatical settlement broker.** "Viatical settlement broker" means a person, including a life insurance producer as provided in section 60A.9572, who, working exclusively on behalf of a viator and for a fee, commission, or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or one or more viatical settlement brokers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator. Viatical settlement broker does not include an attorney, certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.

Subd. 15. **Viatical settlement contract.** (a) "Viatical settlement contract" means a written agreement between a viator and a viatical settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the viator's present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. Viatical settlement contract also includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such a policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of a person residing in this state.

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

(1) the viator or the insured receives on the date of the premium finance loan a guarantee of a future viatical settlement value of the policy; or

(2) the viator or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.

(c) Viatical settlement contract does not include:

(1) a policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms;

(2) loan proceeds that are used solely to pay:

(i) premiums for the policy; and

(ii) the costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third-party collateral provider fees and expenses, including fees payable to letter of credit issuers;

(3) a loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of a policy by the lender, provided that neither the default itself nor the transfer of the policy in connection with the default is pursuant to an agreement or understanding with any other person for the purposes of evading regulation under sections 60A.957 to 60A.9585;

(4) a loan made by a lender that does not violate chapter 59A, provided that the premium finance loan is not described in clause (3);

(5) an agreement where all the parties (i) are closely related to the insured by blood or law or (ii) have a lawful substantial economic interest in the continued life, health, and bodily safety of the person insured, or are trusts established primarily for the benefit of the parties;

(6) any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;

(7) a bona fide business succession planning arrangement:

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

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

(iii) between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;

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

(9) any other contract, transaction, or arrangement exempted from the definition of viatical settlement contract by the commissioner based on a determination that the contract, transaction, or arrangement is not of the type intended to be regulated by sections 60A.957 to 60A.9585.

Subd. 16. **Viatical settlement investment agent.** (a) "Viatical settlement investment agent" means a person who is an appointed or contracted agent of a licensed viatical settlement provider who solicits or arranges the funding for the purchase of a viatical settlement by a viatical settlement purchaser and who is acting on behalf of a viatical settlement provider.

(b) A viatical settlement investment agent shall not have any contact directly or indirectly with the viator or insured or have knowledge of the identity of the viator or insured.

(c) A viatical settlement investment agent is deemed to represent the viatical settlement provider of whom the viatical settlement investment agent is an appointed or contracted agent.

Subd. 17. **Viatical settlement provider.** (a) "Viatical settlement provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract with a viator resident in this state.

(b) Viatical settlement provider does not include:

(1) a bank, savings bank, savings and loan association, credit union, or other licensed lending institution;

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

(3) the issuer of the life insurance policy;

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

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

(6) a financing entity;

(7) a special purpose entity;

(8) a related provider trust;

(9) a viatical settlement purchaser; or

(10) any other person that the commissioner determines is not the type of person intended to be covered by the definition of viatical settlement provider.

Subd. 18. **Viatical settlement purchase agreement.** "Viatical settlement purchase agreement" means a contract or agreement, entered into by a viatical settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or an interest in a life insurance policy, that is entered into for the purpose of deriving an economic benefit.

Subd. 19. **Viatical settlement purchaser.** (a) "Viatical settlement purchaser" means a person who provides a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that

owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit.

(b) Viatical settlement purchaser does not include:

(1) a licensee under sections 60A.957 to 60A.9585;

(2) an accredited investor or qualified institutional buyer as defined, respectively, in Rule 501(a) or Rule 144A promulgated under the federal Securities Act of 1933, as amended;

(3) a financing entity;

(4) a special purpose entity; or

(5) a related provider trust.

Subd. 20. **Viaticated policy.** "Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

Subd. 21. **Viator.** (a) "Viator" means the owner of a life insurance policy or a certificate holder under a group policy that resides in this state and enters or seeks to enter into a viatical settlement contract. For purposes of sections 60A.957 to 60A.9585, a viator shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one viator on a single policy and the viators are residents of different states, the transaction is governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all the viators.

(b) Viator does not include:

(1) a licensee under sections 60A.957 to 60A.9585, including a life insurance producer acting as a viatical settlement broker pursuant to sections 60A.957 to 60A.9585;

(2) a qualified institutional buyer as defined in Rule 144A promulgated under the federal Securities Act of 1933, as amended;

(3) a financing entity;

(4) a special purpose entity; or

(5) a related provider trust.

History: *2009 c 62 s 2*