

Chapter 81.

Life Insurance Policies And Annuities.

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Subchapter 1.
General Provisions.

23-81-101. Title required.

There shall be a title on the policy briefly describing it.

23-81-102. Scope.

Sections 23-81-101 - 23-81-117, 23-81-120 - 23-81-136, and 23-81-201 - 23-81-213 apply to contracts of life insurance and annuities, other than reinsurance, group life insurance, group annuities, and industrial life insurance; except that § 23-81-114, excluded or restricted coverage; § 23-81-115, limitation of liability; § 23-81-129, incontestability after reinstatement; § 23-81-120, prohibited policy plans; and §§ 23-81-201 - 23-81-213, standard nonforfeiture law, shall also apply to industrial life insurance.

23-81-103. Life insurance - Standard provisions required.

(a) No policy of life insurance, other than credit life, industrial, group, and pure endowments with or without return of premiums or of premiums and interest, shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions required by §§ 23-81-101 and 23-81-104 - 23-81-112.

(b) This section shall not apply to annuity contracts nor to any provision of a life insurance policy, or contract supplemental thereto, relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(c) Any of the provisions or portions thereof not applicable to single premium or term policies shall to that extent not be incorporated therein.

23-81-104. Life insurance - Grace period provision.

(a) There shall be a provision that a grace period of thirty (30) days, or, at the option of the insurer, of one (1) month of not less than thirty (30) days, shall be allowed within which the payment of any premium after the first may be made during which period of grace the policy shall continue in full force.

(b) However, if a claim arises under the policy during that period of grace, the amount of any premium due or overdue may be deducted from the policy proceeds.

23-81-105. Life insurance - Incontestability provision.

There shall be a provision that, except for fraud in the procurement, the policy, exclusive of provisions relating to disability benefits or to additional benefits in the event of death by accident or accidental means, shall be incontestable, except for nonpayment of premiums, after it has been in force during the lifetime of the insured for a period of two (2) years from its date of issue. However, at its option, the insurer may omit from the provision the phrase "except for fraud in the procurement".

23-81-106. Life insurance - Integrity of contract and alteration of contract provisions.

(a) There shall be a provision that the policy, or the policy and the application therefor if a copy of the application is endorsed upon or attached to the policy when issued, shall constitute the entire contract between the parties and that all statements contained in the application shall, in the absence of fraud, be deemed representations and not warranties.

(b) There shall be a provision, at the option of the insurer, that no agent shall have the power or authority to waive, change, or alter any of the terms or conditions of any policy, except that at the option of the insurer the terms or conditions may be changed by an endorsement or rider signed by an authorized officer of the insurer.

23-81-107. Life insurance - Misstatement of age provision.

(a) There shall be a provision that if the age of the insured or of any other person whose age is considered in determining the premium has been misstated, any amount payable or benefit accruing under the policy shall be such as the premium would have purchased at the correct age.

(b) As to overstatement of age the policy may provide, in lieu of the provisions required under subsection (a) of this section, that the insurer will refund any excess of premium collected for the amount of insurance or benefit stated in the policy, as based upon the correct age.

23-81-108. Life insurance - Dividend provision.

(a) There shall be a provision in participating policies that, beginning not later than the end of the third policy year, the insurer shall annually ascertain and apportion the divisible surplus, if any, that will accrue on the policy anniversary or other dividend date specified in the policy provided the policy is in force and all premiums to that date are paid. Except as provided in this section, any dividend becoming payable shall, at the option of the party entitled to elect such option, be either:

(1) Payable in cash; or

(2)(A) Applied to any one (1) of such other dividend options as may be provided by the policy.

(B) If other dividend options are provided, the policy shall further state which option shall be automatically effective if the party has not elected some other option.

(C) If the policy specified a period within which the other dividend option may be elected, the period shall be not less than thirty (30) days following the date on which the dividend is due and payable.

(D) The annually apportioned dividend shall be deemed to be payable in cash within the meaning of subdivision (a)(1) of this section, even though the policy provides that payment of the dividend is to be deferred for a specified period, provided the period does not exceed six (6) years from the date of apportionment and that, if so provided in the policy, interest will be added to the dividend at a specified rate.

(E) If a participating policy provides that the benefit under any paid-up nonforfeiture provision is to be participating, it may provide that any divisible surplus becoming payable or apportioned while the insurance is in force under a nonforfeiture provision shall be applied in the manner set forth in the policy.

(b) "Divisible surplus" as used in subsection (a) of this section, subject, in the case of domestic insurers, to § 23-69-126, means that part of the insurer's total surplus which is determined by the insurer's board of directors to be available for distribution to policyholders. The matters set forth in this subsection need not be contained in the policy.

23-81-109. Life insurance - Adjustment of loan interest rates provision.

(a) Purpose. The purpose of this section is to permit and set guidelines for life insurers to include in life insurance policies issued after June 17, 1981, a provision for periodic adjustment of policy loan interest rates.

(b) Definitions. For purposes of this section the "published monthly average" means:

(1) Moody's Corporate Bond Yield Average - Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto; or

(2) In the event that Moody's Corporate Bond Yield Average - Monthly Average Corporates is no longer published, a substantially similar average, established by regulation issued by the Insurance Commissioner.

(c) Maximum Rate of Interest on Policy Loans.

(1) Policies issued on or after June 17, 1981, shall provide for policy loan interest rates as follows:

(A) A provision permitting a maximum interest rate of not more than eight percent (8%) per annum; or

(B) A provision permitting an adjustable maximum interest rate established from time to time by the life insurer as permitted by law and subject to any applicable usury limitation.

(2) The rate of interest charged on a policy loan made under subdivision (c)(1)(B) of this section shall not exceed the higher of the following:

(A) The published monthly average for the calendar month ending two (2) months before the date on which the rate is determined; or

(B) The rate used to compute the cash surrender values under the policy during the applicable period plus one percent (1%) per annum.

(3) If the maximum rate of interest is determined pursuant to subdivision (c)(1)(B) of this section, the policy shall contain a provision setting forth the frequency at which the rate is to be determined for that policy.

(4) The maximum rate for each policy must be determined at regular intervals at least once every twelve (12) months, but not more frequently than once in any three-month period. At the intervals specified in the policy:

(A) The rate being charged may be increased whenever the increase as determined under subdivision (c)(2) of this section would increase that rate by one-half of one percent ($1/2$ of 1%) or more per annum; and

(B) The rate being charged must be reduced whenever a reduction as determined under subdivision (c)(2) of this section would decrease that rate by one-half of one percent ($1/2$ of 1%) or more per annum.

(5) The life insurer shall:

(A) Notify the policyholder at the time a cash loan is made of the initial rate of interest on the loan;

(B) Notify the policyholder with respect to premium loans of the initial rate of interest on the loan as soon as it is reasonably practical to do so after making the initial loan. Notice need not be given to the policyholder when a further premium loan is added, except as provided in subdivision (c)(5)(C) of this section;

(C) Send to policyholders with loans reasonable advance notice of any increase in the rate; and

(D) Include in the notices required above the substance of the pertinent provisions of subdivisions (c)(1) and (3) of this section.

(6) The loan value of the policy shall be at least equal to the cash surrender value at the end of the then-current policy year, provided that the insurer may deduct, either from the loan value or from the proceeds of the loan, any existing indebtedness not already deducted in determining the cash surrender value including any interest then accrued but not due, any unpaid balance of the premium for the current policy year, and interest on the loan to the end of the current policy year. No policy shall terminate in a policy year as the sole result of change in the interest rate during that policy year, and the life insurer shall maintain coverage during that policy year until the time at which it would otherwise have terminated if there had been no change during that policy year.

(7) The substance of the pertinent provisions of subdivisions (c)(1) and (3) of this section shall be set forth in the policies to which they apply.

(d) Definitions. For purposes of this section:

(1) The rate of interest on policy loans permitted under this section includes the interest rate charged on reinstatement of policy loans for the period during and after any lapse of a policy;

- (2) The term "policy loan" includes any premium loan made under a policy to pay one (1) or more premiums that were not paid to the life insurer as they fell due;
- (3) The term "policyholder" includes the owner of the policy or the person designated to pay premiums as shown on the records of the life insurer; and
- (4) The term "policy" includes certificates issued by a fraternal benefit society and annuity contracts which provide for policy loans.
- (e) Other Provisions. No other provision of law shall apply to policy loan interest rates unless made specifically applicable to the rates.
- (f) Applicability to Existing Policies. The provisions of this section shall not apply to any insurance contract issued before June 17, 1981.

23-81-110. Life insurance - Table of installments provision.

In case the policy provides that the proceeds may be payable in installments which are determinable at issue of the policy, there shall be a table showing the amounts of the guaranteed installments per stated unit.

23-81-111. Life insurance - Reinstatement provision.

There shall be a provision that unless the policy has been surrendered for its cash surrender value or its cash surrender value has been exhausted, or unless the paid-up term insurance, if any, has expired, the policy will be reinstated at any time within three (3) years from the date of premium default upon written application therefor, the production of evidence of insurability satisfactory to the insurer, the payment of all premiums in arrears, and the payment or reinstatement of any other indebtedness to the insurer upon the policy, all with interest at a rate not exceeding six percent (6%) per annum compounded annually.

23-81-112. Life insurance - Payment of premiums provision.

There shall be a provision relative to the payment of premiums.

23-81-113. Life insurance - Payment of claims provision.

- (a) There shall be a provision that when a policy shall become a claim by the death of the insured, settlement shall be made upon receipt of due proof of death and, at the insurer's option, surrender of the policy or proof of the interest of the claimant or both surrender and proof.
- (b) If any insurer shall specify a particular period prior to the expiration of which settlement shall be made, the period shall not exceed two (2) months from the receipt of the proofs.

23-81-114. Life insurance - Excluded or restricted coverage clauses limited.

A clause in any policy of life insurance providing that the policy shall be incontestable after a specified period shall preclude only a contest of the validity of the policy. Such a

cause shall not preclude the assertion at any time of defenses based upon provisions in the policy which exclude or restrict coverage, whether or not the restrictions or exclusions are excepted in the clause.

23-81-115. Life insurance - Limitation of liability.

(a) No policy of life insurance shall be delivered or issued for delivery in this state if it contains any of the following provisions:

(1) A provision for a period shorter than that provided by statute within which an action at law or in equity may be commenced on such a policy;

(2) A provision which excludes or restricts liability for death caused in a certain specified manner or occurring while the insured has a specified status, except that a policy may contain provisions excluding or restricting coverage as specified therein in the event of death under any one (1) or more of the following circumstances:

(A) Death as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces, or of any act or hazard of the war or action, or of service in the military, naval, or air forces or in civilian forces auxiliary thereto, or from any cause while a member of the military, naval, or air forces of any country at war, declared or undeclared, or of any country engaged in the military action;

(B) Death as a result of aviation or any air travel or flight;

(C) Death as a result of a specified hazardous occupation or occupations;

(D) Death while the insured is a resident outside the continental United States and Canada; or

(E) Death within two (2) years from the date of issue of the policy or within two (2) years of the effective date of any increase in the face amount of the policy as a result of suicide, while sane or insane. However, the parts of this subdivision applicable to increases in the face amount of the policy shall only apply to the additional amount.

(b) A policy which contains any exclusion or restriction pursuant to subsection (a) of this section shall also provide that in the event of death under the circumstances to which any exclusion or restriction is applicable, the insurer will pay an amount not less than a reserve determined according to the Insurance Commissioner's reserve valuation method upon the basis of the mortality table and interest rate specified in the policy for the calculation of nonforfeiture benefits, or if the policy provides for no such benefits, computed according to a mortality table and interest rate determined by the insurer and specified in the policy, with adjustment for indebtedness or dividend credit.

(c) This section shall not apply to group life insurance, disability insurance, reinsurance, or annuities, or to any provision in a life insurance policy relating to disability benefits or to additional benefits in the event of death by accident or accidental means.

(d) Nothing contained in this section shall prohibit any provision which, in the opinion of the commissioner, is more favorable to the policyholder than a provision permitted by this section.

23-81-116. Life insurance - Holding of proceeds.

(a) Any life insurer shall have the power to hold under agreement the proceeds of any policy issued by it, upon such terms and restrictions as to revocation by the policyholder

and control by beneficiaries, and with exemptions from the claims of creditors of beneficiaries other than the policyholder as set forth in the policy or as agreed to in writing by the insurer and the policyholder.

(b) Upon maturity of a policy, by death in the event the policyholder has made no such agreement, the insurer shall have the power to hold the proceeds of the policy under an agreement with the beneficiaries.

(c) The insurer shall not be required to segregate the funds so held but may hold them as part of its general assets.

23-81-117. Life insurance - Indebtedness deducted from proceeds.

In determining the amount due under any life insurance policy issued, deduction may be made of:

(1) Any unpaid premiums or installments thereof for the current policy year due under the terms of the policy; and

(2) The amount of principal and accrued interest of any policy loan or other indebtedness against the policy then remaining unpaid.

23-81-118. Life insurance - Refund of certain premiums and payment of proceeds.

(a) Upon the death of an insured, the proceeds payable to the beneficiary under any policy of individual life insurance, delivered or issued for delivery in this state after July 20, 1979, that is in force on a premium-paying basis on the date of death shall include premiums paid for any period beyond the end of the policy month in which death occurred unless the refund of premiums is due some other person pursuant to contract provisions.

(b) When proceeds of any individual policy of life insurance, delivered or issued for delivery in this state, or refunds of premiums on any individual policy of life insurance delivered or issued for delivery in this state after July 20, 1979, are not paid within a reasonable period of time after proof of the death of the insured has been furnished to the insurer, the insurer shall pay interest upon the proceeds or refunds of premiums at the rate of eight percent (8%) per year. For the purpose of this section, a reasonable period of time shall be that period of time sufficient to complete an investigation of the cause of death and to process the necessary claims. In no case shall this period exceed thirty (30) days from the date proof of death of the insured has been furnished to the insurer.

(c) Unearned premiums shall be paid in a lump sum on a date no later than thirty (30) days after the proof of the insured's death has been furnished to the insurer. If not paid within thirty (30) days after proof of the insured's death has been furnished the insurer, interest upon any unpaid proceeds and any unearned premiums shall accrue interest from the date of the insured's death.

(d) Nothing in this section shall be construed to require a refund of premiums on single premium policies.

23-81-119. [Repealed.]

23-81-120. Life insurance - Unnamed beneficiaries prohibited.

(a) No life insurance policy shall be issued or delivered in this state if it provides that on the death of anyone not specifically named therein, the owner or beneficiary of the policy shall receive the payment or granting of anything of value.

(b) This provision shall not be deemed to prohibit the payment to policyholders or beneficiaries of sums representing in whole or in part gains to the insurer from mortality either in general or as resulting from particular classifications of policies. Nor shall it be deemed to prohibit family policies insuring unspecified members of a family or be deemed to prohibit payments to unspecified beneficiaries of a class named by the insured.

23-81-121. Annuity and pure endowment contracts - Standard provisions required.

(a) No annuity or pure endowment contract, other than reversionary annuities, survivorship annuities, or group annuities and except as stated in this section, shall be delivered or issued for delivery in this state unless it contains in substance each of the provisions specified in §§ 23-81-122 - 23-81-127, inclusive. Any of the provisions not applicable to single premium annuities or single premium pure endowment contracts shall not, to that extent, be incorporated therein.

(b) This section shall not apply to contracts for deferred annuities included in, or upon the lives of beneficiaries under, life insurance policies.

23-81-122. Annuity and pure endowment contracts - Grace period provision.

(a) In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that there shall be a period of grace of one (1) month, but not less than thirty (30) days, within which any stipulated payment to the insurer falling due after the first may be made, subject at the option of the insurer to an interest charge thereon at a rate to be specified in the contract but not exceeding six percent (6%) per annum for the number of days of grace elapsing before the payment, during which period of grace the contract shall continue in full force.

(b) However, in case a claim arises under the contract on account of death prior to expiration of the period of grace before the overdue payment to the insurer or the deferred payment of the current contract year, if any, are made, the amount of the payments, with interest on any overdue payments, may be deducted from any amount payable under the contract in settlement.

23-81-123. Annuity and pure endowment contracts - Incontestability provision.

If any statements, other than those relating to age, sex, and identity, are required as a condition to issuing an annuity or pure endowment contract, other than reversionary, survivorship, or group annuity, and subject to § 23-81-125, there shall be a provision that, except for fraud in the procurement, the contract shall be incontestable after it has been in force during the lifetime of the person or of each of the persons as to whom the statements are required, for a period of two (2) years from its date of issue except for nonpayment of stipulated payments to the insurer. At the option of the insurer, the contract may also except any provisions relative to benefits in the event of disability and

any provisions that grant insurance specifically against death by accident or accidental means. Furthermore, at its option, the insurer may omit from the provision the phrase "except for fraud in the procurement".

23-81-124. Annuity and pure endowment contracts - Integrity of contract provision.

In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract shall constitute the entire contract between the parties or, if a copy of the application is endorsed upon or attached to the contract when issued, a provision that the contract and the application shall constitute the entire contract between the parties.

23-81-125. Annuity and pure endowment contracts - Misstatement of age provision.

In an annuity or pure endowment contract, other than reversionary, survivorship, or group annuity, there shall be a provision that if the age of the person or persons upon whose life or lives the contract is made, or of any of them, has been misstated, the amount payable or benefits accruing under the contract shall be such as the stipulated payments to the insurer would have purchased according to the correct age, and that if the insurer shall make or has made any overpayments on account of any misstatement, the amount thereof, with interest at the rate to be specified in the contract but not exceeding six percent (6%) per annum, may be charged against the current or next succeeding payment or payments to be made by the insurer under the contract.

23-81-126. Annuity and pure endowment contracts - Dividend provision.

If an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, is participating, there shall be a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the contract.

23-81-127. Annuity and pure endowment contracts - Reinstatement provision.

In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract may be reinstated at any time within one (1) year from the default in making stipulated payments to the insurer, unless the cash surrender value has been paid, but all overdue stipulated payments and any indebtedness to the insurer on the contract shall be paid or reinstated with interest thereon at a rate to be specified in the contract but not exceeding six percent (6%) per annum payable annually. In cases where applicable, the insurer may also include a requirement of evidence of insurability satisfactory to the insurer.

23-81-128. Reversionary annuities - Standard provisions required.

(a) Except as stated in this section, no contract for a reversionary annuity shall be delivered or issued for delivery in this state unless it contains in substance each of the following provisions:

(1) Any reversionary annuity contract shall contain the provisions specified in §§ 23-81-122 - 23-81-126, except that under § 23-81-122 the insurer may at its option provide for an equitable reduction of the amount of the annuity payments in settlement of an overdue or deferred payment in lieu of providing for deduction of the payments from an amount payable upon settlement under the contract; and

(2) In reversionary annuity contracts there shall be a provision that the contract may be reinstated at any time within three (3) years from the date of default in making stipulated payments to the insurer, upon production of evidence of insurability satisfactory to the insurer, and upon condition that all overdue payments and any indebtedness to the issuer on account of the contract be paid, or, within the limits permitted by the then cash values of the contract, reinstated, with interest as to both payments and indebtedness at a rate to be specified in the contract but not exceeding six percent (6%) per annum compounded annually.

(b) This section shall not apply to group annuities or to annuities included in life insurance policies, and any of the provisions not applicable to single premium annuities shall not to that extent be incorporated therein.

23-81-129. Incontestability of life insurance policy or annuity contract after reinstatement.

The reinstatement of any policy of life insurance or annuity contract delivered or issued for delivery in this state may be contested on account of fraud or misrepresentation of facts material to the reinstatement only for the same period following reinstatement and with the same conditions and exceptions as the policy provides with respect to contestability after original issuance.

23-81-130. Registered life insurance policies and annuity contracts - Deposit of reserves.

(a) A domestic life insurer existing on January 1, 1960, may deposit and shall thereafter maintain on deposit with the Insurance Commissioner securities and assets equal to the legal reserve on its registered life insurance policies and annuity contracts in force under the provisions of § 23-63-601 et seq. The securities and assets shall be held on deposit in trust for the common benefit of all the holders of the policies and contracts.

(b) However, no deposit shall be made or maintained as to industrial life insurance policies.

(c) All securities not negotiable by delivery and deposited by an insurer under this section shall be assigned to the commissioner and his or her successors in office, but the assignments shall be deemed to be conditional only and shall not be recorded unless and until the commissioner has revoked or refused to continue the insurer's certificate of authority or until the commissioner has applied to the court for receivership of the insurer in accordance with either § 23-68-106 or § 23-68-107.

(d) Deposits shall be subject to the applicable provisions of §§ 23-63-901 - 23-63-912, administration of deposits.

23-81-131. Registered life insurance policies and annuity contracts - Certificate.

(a)(1) After making the deposit mentioned in § 23-81-130, the insurer shall not thereafter issue a registered policy life insurance or of endowment, or annuity bond or contract, unless the policy, bond, or contract shall have upon its face a certificate substantially in the following words: "This policy is registered, and approved securities equal in value to the legal reserve hereon are held in trust by the Commissioner of Insurance of the State of Arkansas."

(2) The certificate shall be signed by the Insurance Commissioner and sealed with the seal of his office.

(b) Every insurer making a deposit under § 23-81-130 shall pay the commissioner for each certificate placed on registered policies, annuity bonds, or contracts issued by the insurer after the original or first deposit is made thereunder, a fee of twenty-five cents (25¢), and this fee so received shall be disposed of by the commissioner as follows:

(1) For payment of the annual rent or hire of the safe deposit box or custodial expense as provided for under § 23-63-904;

(2) Payment for the services of a competent and reliable representative of the commissioner, to be appointed by him, who shall have direct charge of the securities and safety box containing them, and through whom and under whose supervision the insurer may have access to its securities for the purposes provided in §§ 23-81-130 - 23-81-136. The sum paid the representative shall not exceed the amount received from registration of policies by the insurer during any one (1) year; and

(3) The balance of the fees shall be paid to or deposited with the Treasurer of State to the credit of the General Fund.

23-81-132. Registered life insurance policies and annuity contracts - Valuation.

(a) The insurer shall prepare and keep such records of all registered policies, bonds, or contracts issued by it and subject to § 23-81-131 as will enable the Insurance Commissioner to compute their value at any time.

(b) Upon proof that any of the policies, bonds, or contracts have been commuted or terminated, the insurer shall commute or cancel them upon its record. Until proof exists, all registered contracts shall be considered in force for the purposes of §§ 23-81-130 - 23-81-136.

(c) The net value of every policy, annuity bond, or contract, according to the standard prescribed by the laws of this state for the valuation of policies of life insurers, when the first premium shall have been paid thereon, less the amount of such liens as the insurer may have against it, not exceeding the value, shall be entered on the record of the policy, annuity bond, or contract at the time the record is made.

(d) On January 1 of each year, or within sixty (60) days thereafter, the insurer shall cause its registered policies, annuity bonds, or contracts to be carefully valued. The actual value of each at the time fixed for the valuation, less such liens as the insurer may have against it, not exceeding the value, shall be entered upon the insurer's record of the policy, bond, or contract.

23-81-133. Registered life insurance policies and annuity contracts - Mutilated or surrendered policies.

The Insurance Commissioner shall cancel mutilated or surrendered policies, annuity bonds, and contracts issued by any insurers subject to § 23-81-130 when surrendered to him for the purpose of cancellation, and certify other like policies, bonds, or contracts when issued in lieu thereof.

23-81-134. Registered life insurance policies and annuity contracts - Maintenance of deposit - Commissioner's duty to issue certificate.

(a) Each insurer that has made the deposit provided for under § 23-81-130 shall make additional deposits from time to time in amounts not less than five thousand dollars (\$5,000) and of such securities as are permitted by §§ 23-63-901 - 23-63-912 to be deposited so that the value of the securities deposited when valued as provided in §§ 23-63-601 et seq. and 23-84-101 - 23-84-111 shall always be equal to the current net value of the currently outstanding registered policies and annuity bonds and contracts issued by the insurer, less such liens as the insurer may have against it, not exceeding the net value. So long as the insurer maintains its deposits at an amount equal to or in excess of the net value of its registered policies, bonds, and contracts, the Insurance Commissioner shall sign and affix his or her seal to the certificates on every policy, annuity bond, or contract presented to him or her for that purpose by the insurer as provided in § 23-81-131.

(b) The obligation to maintain and increase the deposits shall be binding likewise upon any insurer that is a successor in interest to the issuing insurer as to the registered policies, bonds, or contracts.

23-81-135. Registered life insurance policies and annuity contracts - Credit of certain deposits.

A domestic life insurer which has made a deposit as to reserves pursuant to § 23-81-130 and which has also heretofore made a similar deposit with respect to its capital stock under laws heretofore in force may, to the extent that the deposit as to capital stock is comprised of securities and assets eligible for deposit under § 23-63-903, credit the amount of the deposit as to capital upon the amount of deposit required as to such reserves.

23-81-136. Registered life insurance policies and annuity contracts - Deficiency of deposit.

(a) If at any time the value of the securities and assets held on deposit as to a particular insurer under § 23-81-130 is less than the actual value of the registered policies and annuity bonds or contracts issued by the insurer and then in force, the Insurance Commissioner shall not execute the certificate on any additional policies, annuity bonds, or contracts of the insurer until it shall have made good the deficit.

(b) In the event of any deficiency in its deposit, the insurer shall also be subject to the provisions of § 23-63-910(b).

Subchapter 2.
Standard Nonforfeiture Law - Life Insurance.

23-81-201. Title.

This subchapter shall be known as the "Standard Nonforfeiture Law for Life Insurance".

23-81-202. Applicability.

(a) This subchapter shall not apply to any of the following:

- (1) Reinsurance;
 - (2) Group insurance;
 - (3) Pure endowment;
 - (4) Annuity or reversionary annuity contract;
 - (5) A term policy of uniform amount which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty (20) years or less expiring before age seventy-one (71), for which uniform premiums are payable during the entire term of the policy;
 - (6) A term policy of decreasing amount which provides no guaranteed nonforfeiture or endowment benefits, on which each adjusted premium, calculated as specified in §§ 23-81-206 - 23-81-209 is less than the adjusted premium so calculated, on a term policy of uniform amount, or renewal thereof, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty (20) years or less expiring before age seventy-one (71) for which uniform premiums are payable during the entire term of the policy;
 - (7) A policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year, calculated as specified in §§ 23-81-204 - 23-81-209 exceeds two and one-half percent (2 1/2%) of the amount of insurance at the beginning of the same policy year; nor
 - (8) A policy which shall be delivered outside this state through an agent or other representative of the insurer issuing the policy.
- (b) For purposes of determining the applicability of this subchapter, the age at expiry for a joint term life insurance policy shall be the age at expiry of the oldest life.

23-81-203. Nonforfeiture provisions.

(a) In the case of policies issued on and after the operative date as defined in § 23-81-213(a), no policy of life insurance, except as stated in § 23-81-202, shall be delivered or issued for delivery in this state unless it shall contain in substance the following provisions, or corresponding provisions which in the opinion of the Insurance Commissioner are at least as favorable to the defaulting or surrendering policyholder as are the minimum requirements specified herein and are essentially in compliance with § 23-81-212:

- (1) In the event of default in any premium payment, the insurer will grant, upon proper request not later than sixty (60) days after the due date of the premium in default, a paid-

up nonforfeiture benefit on a plan stipulated in the policy, effective as of the due date, of such amount as may be specified. In lieu of the stipulated paid-up nonforfeiture benefit, the insurer may substitute, upon proper request not later than sixty (60) days after the due date of the premium in default, an actuarially equivalent alternative paid-up nonforfeiture benefit which provides a greater amount or longer period of death benefits or, if applicable, a greater amount or earlier payment of endowment benefits.

(2) Upon surrender of the policy within sixty (60) days after the due date of any premium payment in default after premiums have been paid for at least three (3) full years in the case of ordinary insurance or five (5) full years in the case of industrial insurance, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be specified;

(3) A specified paid-up nonforfeiture benefit shall become effective as specified in the policy unless the person entitled to make such election elects another available option not later than sixty (60) days after the due date of the premium in default;

(4) If the policy shall have become paid-up by completion of all premium payments or if it is continued under any paid-up nonforfeiture benefit which became effective on or after the third policy anniversary in the case of ordinary insurance or the fifth policy anniversary in the case of industrial insurance, the insurer will pay, upon surrender of the policy within thirty (30) days after any policy anniversary, a cash surrender value of the amount as may be specified;

(5) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, a statement of the mortality table, interest rate, and method used in calculating cash surrender values and the paid-up nonforfeiture benefits available under the policy. In the case of all other policies, a statement of the mortality table and interest rate used in calculating the cash surrender values and the paid-up nonforfeiture benefits available under the policy, together with a table showing the cash surrender value, if any, and paid-up nonforfeiture benefit, if any, available under the policy on each policy anniversary either during the first twenty (20) policy years or during the term of the policy, whichever is shorter. The values and benefits shall be calculated upon the assumption that there are no dividends or paid-up additions credited to the policy and that there is no indebtedness to the insurer on the policy; and

(6) A statement that the cash surrender values and the paid-up nonforfeiture benefits available under the policy are not less than the minimum values and benefits required by or pursuant to the insurance law of the state in which the policy is delivered; an explanation of the manner in which the cash surrender values and the paid-up nonforfeiture benefits are altered by the existence of any paid-up additions credited to the policy or any indebtedness to the insurer on the policy; if a detailed statement of the method of computation of the values and benefits shown in the policy is not stated therein, a statement that the method of computation has been filed with the insurance supervisory official of the state in which the policy is delivered; and a statement of the method to be used in calculating the cash surrender value and paid-up nonforfeiture benefit available under the policy on any policy anniversary beyond the last anniversary for which the values and benefits are consecutively shown in the policy.

(b) Any of the provisions or portions thereof of subsection (a) of this section not applicable by reason of the plan of insurance may, to the extent inapplicable, be omitted from the policy.

(c) The insurer shall reserve the right to defer the payment of any cash surrender value for a period of six (6) months after demand therefor with surrender of the policy.

23-81-204. Cash surrender value.

(a) Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary, whether or not required by § 23-81-203, shall be an amount not less than the excess, if any, of the present value, on such anniversary, of the future guaranteed benefits which would have been provided for by the policy, including any existing paid-up additions, if there had been no default, over the sum of:

(1) The then present value of the adjusted premiums as defined in §§ 23-81-206 - 23-81-209 corresponding to premiums which would have fallen due on and after such anniversary; and

(2) The amount of any indebtedness to the insurer on the policy.

(b) However, for any policy issued on or after the operative date of § 23-81-207 as defined therein, which provides supplemental life insurance or annuity benefits at the option of the insured and for an identifiable additional premium by rider or supplemental policy provision, the cash surrender value as defined in the section for an otherwise similar policy issued at the same age without such rider or supplemental policy provision and the cash surrender value as defined in the section for a policy which provides only the benefits otherwise provided by the rider or supplemental policy provision.

(c) For any family policy issued on or after the operative date of § 23-81-207 as defined therein, which defines a primary insured and provides term insurance on the life of the spouse of the primary insured expiring before the spouse's age seventy-one (71), the cash surrender value referred to in subsection (a) of this section shall be an amount not less than the sum of the cash surrender value as defined in the section for an otherwise similar policy issued at the same age without such term insurance on the life of the spouse and the cash surrender value as defined in the section for a policy which provides only the benefits otherwise provided by such term insurance on the life of the spouse.

(d) Any cash surrender value available within thirty (30) days after any policy anniversary under any policy paid-up by completion of all premium payments or any policy continued under any paid-up nonforfeiture benefit, whether or not required by § 23-81-203, shall be an amount not less than the present value, on such anniversary, of the future guaranteed benefits provided for by the policy, including any existing paid-up additions, decreased by any indebtedness to the insurer on the policy.

23-81-205. Certain paid-up benefits.

Any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment due on any policy anniversary shall be such that its present value as of the anniversary shall be at least equal to the cash surrender value then provided for by the policy or, if none is provided for, that cash surrender value which would have been

required by this subchapter in the absence of the condition that premiums shall have been paid for at least a specified period.

23-81-206. Calculation of adjusted premiums and present values issued before operative date of § 23-81-213(d).

(a)(1) This section shall not apply to policies issued on or after the operative date of § 23-81-213(d) as defined therein. Except as provided in subsection (c) of this section, the adjusted premiums for any policy shall be calculated on an annual basis and shall be the uniform percentage of the respective premiums specified in the policy for each policy year, excluding amounts stated in the policy as extra premiums to cover impairments or special hazards, that the present value, at the date of issue of the policy of all adjusted premiums shall be equal to the sum of:

(A) The then present value of the future guaranteed benefits provided for by the policy;

(B) Two percent (2%) of the amount of insurance, if the insurance is uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy;

(C) Forty percent (40%) of the adjusted premium for the first policy year; and

(D) Twenty-five percent (25%) of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less.

(2) However, in applying the percentages specified in subdivisions (a)(1)(C) and (D) of this section, no adjusted premium shall be deemed to exceed four percent (4%) of the amount of insurance or level amount equivalent thereto.

(3) The date of issue of a policy for the purpose of this subchapter shall be the date as of which the rated age of the insured is determined.

(b)(1) In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent level amount thereof for the purpose of this subchapter shall be deemed to be the level amount of insurance provided by an otherwise similar policy, containing the same endowment benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the inception of the insurance as the benefits under the policy.

(2) However, in the case of a policy providing an amount of insurance varying with the duration of the policy, the equivalent uniform amount thereof for the purpose of the preceding subsection (a) of this section shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy.

(3) However, in the case of a policy for a varying amount of insurance issued on the life of a child under age ten (10), the equivalent uniform amount may be computed as though the amount of insurance provided by the policy prior to the attainment of age ten (10) was the amount provided by the policy at age ten (10).

(c)(1) The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to:

(A) The adjusted premiums for an otherwise similar policy issued at the same age without the term insurance benefits, increased, during the period for which premiums for the term insurance benefits, are payable; by

(B) The adjusted premiums for the term insurance.

(2) Subdivisions (c)(1)(A) and (B) of this section shall be calculated separately and as specified in subsections (a) and (b) of this section except that, for the purposes of subdivisions (1)(B), (C) and (D) of subsection (a) of this section, the amount of insurance or equivalent uniform amount of insurance used in the calculation of the adjusted premiums referred to in subdivision (1)(B) of this subsection shall be equal to the excess of the corresponding amount determined for the entire policy over the amount used in the calculation of the adjusted premiums in subdivision (1)(A) of this subsection.

(d)(1) Except as otherwise provided in §§ 23-81-207 and 23-81-208, all adjusted premiums and present values referred to in this subchapter shall for all policies of ordinary insurance be calculated on the basis of the Insurance Commissioner's 1941 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three (3) years younger than the actual age of the insured, and the calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half percent (3 1/2%) per annum, specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits.

(2) However, in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than one hundred thirty percent (130%) of the rates of mortality according to the applicable table.

(3) Further, for insurance issued on a substandard basis, the calculation of any adjusted premiums and present values may be based on another table of mortality as may be specified by the insurer and approved by the commissioner.

23-81-207. Calculation of adjusted premiums and present values - Ordinary policies issued on or after operative date of § 23-81-213(b).

(a) In the case of ordinary policies issued on or after the operative date of § 23-81-213(b) as defined therein, all adjusted premiums and present values referred to in this subchapter shall be calculated on the basis of the Insurance Commissioner's 1958 Standard Ordinary Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits.

(b) The rate of interest shall not exceed three and one-half percent (3 1/2%) per annum except that a rate of interest not exceeding five and one-half percent (5 1/2%) per annum may be used for policies issued on or after March 18, 1977, except that for any single premium whole life or endowment insurance policy, a rate of interest not exceeding six and one-half percent (6 1/2%) per annum may be used.

(c) For any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than six (6) years younger than the actual age of the insured.

(d) However, in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1958 Extended Term Insurance Table.

(e) Further, for insurance issued on a substandard basis, the calculation of any adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

(f) This section shall not apply to ordinary policies issued on or after the operative date of § 23-81-213(d).

23-81-208. Calculation of adjusted premiums and present values - Industrial policies issued on or after operative date of § 23-81-213(c).

(a) In the case of industrial policies issued on or after the operative date of § 23-81-213(c) as defined therein, all adjusted premiums and present values referred to in this subchapter shall be calculated on the basis of the Insurance Commissioner's 1961 Standard Industrial Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up nonforfeiture benefits.

(b) However, the rate of interest shall not exceed three and one-half percent (3 1/2%) per annum, except that a rate of interest not exceeding five and one-half percent (5 1/2%) per annum may be used for policies issued on or after March 18, 1977, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half percent (6 1/2%) per annum may be used.

(c) However, in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1961 Industrial Extended Term Insurance Table.

(d) Further, for insurance issued on a substandard basis, the calculations of any adjusted premiums and present values may be based on such other table of mortality as may be specified by the insurer and approved by the commissioner.

(e) This section shall not apply to industrial policies issued on or after the operative date of § 23-81-213(d) as defined therein.

23-81-209. Calculation of adjusted premiums and present values - All policies issued on or after operative date of § 23-81-213(d).

(a)(1) This section shall apply to all policies issued on or after the operative date of § 23-81-213(d) as defined therein.

(2) Except as provided in subsection (g) of this section, the adjusted premiums for any policy shall be calculated on an annual basis and shall be the uniform percentage of the respective premiums specified in the policy for each policy year, excluding:

(A) Amounts payable as extra premiums to cover impairments or special hazards; and

(B) Any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the date of issue of the policy, of all adjusted premiums shall be equal to the sum of:

- (i) The then-present value of the future guaranteed benefits provided for by the policy;
- (ii) One percent (1%) of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years; and
- (iii) One hundred twenty-five percent (125%) of the nonforfeiture net level premium as defined herein.

(3) However, in applying the percentage specified in subdivision (a)(2)(B)(iii) of this section, no nonforfeiture net level premium shall be deemed to exceed four percent (4%) of either the amount of insurance, if the insurance is uniform in amount or the average amount of insurance at the beginning of each of the first ten (10) policy years.

(4) The date of issue of a policy for the purpose of this subchapter shall be the date as of which the rate age of the insured is determined.

(b) The nonforfeiture net level premium shall be equal to the present value, at the date of issue of the policy, of the guaranteed benefits provided for by the policy divided by the present value, at the date of issue of the policy, of an annuity of one (1) per annum, payable on the date of issue of the policy and on each anniversary of the policy on which a premium falls due.

(c) In the case of policies which cause on a basis guaranteed in the policy unscheduled changes in benefits or premiums, or which provide an option for changes in benefits or premiums other than a change to a new policy, the adjusted premiums and present values shall initially be calculated on the assumption that future benefits and premiums do not change from those stipulated at the date of issue of the policy. At the time of any change in the benefits or premiums, the future adjusted premiums, nonforfeiture net level premiums, and present values shall be recalculated on the assumption that future benefits and premiums do not change from those stipulated by the policy immediately after the change.

(d) Except as otherwise provided in subsection (g) of this section, the recalculated future adjusted premiums for any policy shall be a uniform percentage of the respective future premiums specified in the policy for each policy year, excluding amounts payable as extra premiums to cover impairments and special hazards, and also excluding any uniform annual contract charge or policy fee specified in the policy in a statement of the method to be used in calculating the cash surrender values and paid-up nonforfeiture benefits, that the present value, at the time of change to the newly defined benefits or premiums, of all future adjusted premiums shall be equal to the excess of:

- (1) The sum of the then-present value of the then-future guaranteed benefits provided for by the policy and the additional expense allowance, if any; over
- (2) The then-cash surrender value, if any, or present value of any paid-up nonforfeiture benefit under the policy.

(e) The additional expense allowance, at the time of the change to the newly defined benefits or premiums, shall be the sum of:

- (1) One percent (1%) of the excess, if positive, of the average amount of insurance at the beginning of each of the first ten (10) policy years subsequent to the change over the average amount of insurance prior to the change at the beginning of each of the first ten (10) policy years subsequent to the time of the most recent previous change, or, if there has been no previous change, the date of issue of the policy; and

(2) One hundred twenty-five percent (125%) of the increase, if positive, in the nonforfeiture net level premium.

(f) The recalculated nonforfeiture net level premium shall be equal to the result obtained by dividing subdivisions (d)(1) and (2) of this section where:

(1) Subdivision (d)(2) of this section equals the sum of:

(A) The nonforfeiture net level premium applicable prior to the change multiplied by the present value of an annuity of one (1) per annum payable on each anniversary of the policy on or subsequent to the date of the change on which a premium would have fallen due had the change not occurred; and

(B) The present value of the increase in future guaranteed benefits provided by the policy;

(2) Subdivision (d)(2) of this section equals the present value of an annuity of one (1) per annum payable on each anniversary of the policy on or subsequent to the date of change on which a premium falls due.

(g) Notwithstanding any other provisions of this section to the contrary, in the case of a policy issued on a substandard basis which provides reduced graded amounts of insurance so that, in each policy year, the policy has the same tabular mortality cost as an otherwise similar policy issued on the standard basis which provides higher uniform amounts of insurance, adjusted premiums and present values for the substandard policy may be calculated as if it were issued to provide higher uniform amounts of insurance on the standard basis.

(h)(1) All adjusted premiums and present values referred to in this subchapter shall:

(A) For all policies of ordinary insurance, be calculated on the basis of the Insurance Commissioner's 1980 Standard Ordinary Mortality Table or at the election of the insurer for any one or more specified plans of life insurance, the commissioner's 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors;

(B) For all policies of industrial insurance, be calculated on the basis of the commissioner's 1961 Standard Industrial Mortality Table; and

(C) For all policies issued in a particular calendar year, be calculated on the basis of a rate of interest not exceeding the nonforfeiture interest rate as defined in this section, for policies issued in that calendar year.

(2) However:

(A) At the option of the insurer, calculations for all policies issued in a particular calendar year may be made on the basis of a rate of interest not exceeding the nonforfeiture interest rate, as defined in this subchapter, for policies issued in the immediately preceding calendar year;

(B) Under any paid-up nonforfeiture benefit, including any paid-up dividend additions, any cash surrender value available whether or not required by § 23-81-203 shall be calculated on the basis of the mortality table and rate of interest used in determining the amount of such paid-up nonforfeiture benefit and paid-up dividend additions, if any;

(C) An insurer may calculate the amount of any guaranteed paid-up nonforfeiture benefit including any paid-up additions under the policy on the basis of an interest rate no lower than that specified in the policy for calculating cash surrender values;

(D) In calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a nonforfeiture benefit, the rates of mortality assumed may be not more than those shown in the commissioner's 1980 Extended Term Insurance

Table for policies of ordinary insurance and not more than the commissioner's 1961 Industrial Extended Terms Insurance Table for policies of industrial insurance;

(E) For insurance issued on a substandard basis, the calculation of any adjusted premiums and present values may be based on appropriate modifications of the aforementioned tables;

(F) Any ordinary mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulation promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the commissioner's 1980 Standard Ordinary Mortality Table with or without Ten-Year Select Mortality Factors or for the commissioner's 1980 Extended Term Insurance Table;

(G) Any industrial mortality tables, adopted after 1980 by the National Association of Insurance Commissioners, that are approved by regulations promulgated by the commissioner for use in determining the minimum nonforfeiture standard may be substituted for the commissioner's 1961 Standard Industrial Mortality Table or the commissioner's 1961 Industrial Extended Term Insurance Table;

(H) The nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred twenty-five percent (125%) of the calendar year statutory valuation interest rate for the policy as defined in this subchapter, rounded to the nearest one-quarter of one percent ($1/4$ of 1%); and

(I) Notwithstanding any other provision in this code to the contrary, any refiling of nonforfeiture values or their methods of computation for any previously approved policy form which involves only a change in the interest rate or mortality table used to compute nonforfeiture values shall not require refiling of any other provisions of that policy form.

23-81-210. Calculation of future adjusted premiums.

(a) In the case of any plan of life insurance which provides for future premium determination, the amounts of which are to be determined by the insurer based on then estimates of future experience, or in the case of any plan of life insurance which is of such a nature that minimum values cannot be determined by the methods described in §§ 23-81-203 - 23-81-209:

(1) The Insurance Commissioner must be satisfied that the benefits provided under the plan are substantially as favorable to policyholders and insureds as the minimum benefits otherwise required by §§ 23-81-203 - 23-81-209;

(2) The commissioner must be satisfied that the benefits and the pattern of premiums of that plan are not such as to mislead prospective policyholders or insureds;

(3) The cash surrender values and paid-up nonforfeiture benefits provided by the plan must not be less than the minimum values and benefits required for the plan computed by a method consistent with the principles of this subchapter, as determined by regulations promulgated by the commissioner.

(b) Notwithstanding any other provision in the laws of the state, any policy, contract, or certificate providing life insurance under any plan must be affirmatively approved by the commissioner before it can be marketed, issued, delivered, or used in this state.

23-81-211. Calculation of certain cash surrender values and nonforfeiture benefits in event of default.

- (a) Any cash surrender value and any paid-up nonforfeiture benefit, available under the policy in the event of default in a premium payment due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary.
- (b) All values referred to in §§ 23-81-204 - 23-81-209 may be calculated upon the assumption that any death benefit is payable at the end of the policy year of death.
- (c) The net value of any paid-up additions, other than paid-up term additions, shall be not less than the amounts used to provide the additions.
- (d) Notwithstanding the provisions of § 23-81-204, additional benefits are payable:
 - (1) In the event of death or dismemberment by accident or accidental means;
 - (2) In the event of total and permanent disability;
 - (3) As reversionary annuity or deferred benefits;
 - (4) As term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this subchapter would not apply;
 - (5) As term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if the term insurance expires before the child's age is twenty-six (26) years, is uniform in amount after the child's age is one (1) year, and has not become paid-up by reason of the death of a parent of the child; and
 - (6) As other policy benefits additional to life insurance and endowment benefits, and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this subchapter, and no additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

23-81-212. Calculation of cash surrender value in event of default.

- (a) This section, in addition to all other applicable sections of this subchapter, shall apply to all policies issued on or after January 1, 1985.
- (b) Any cash surrender value available under the policy in the event of default in a premium payment due on any policy anniversary shall be in an amount which does not differ by more than two-tenths of one percent ($2/10$ of 1%) of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years, from the sum of:
 - (1) The greater of zero (0) and the basic cash value specified in subsection (c) of this section; and
 - (2) The present value of any existing paid-up additions, less the amount of any indebtedness to the company under the policy.
- (c) The basic cash value shall be equal to the present value, on the anniversary, of the future guaranteed benefits which would have been provided for by the policy, excluding any existing paid-up additions and before deduction of any indebtedness to the insurer, if there had been no default, less the then-present value of the nonforfeiture factors, as defined in subsection (d) of this section, corresponding to premiums which would have fallen due on and after the anniversary. However, the effects on the basic cash value of supplemental life insurance or annuity benefits or of family coverage, as described in §

23-81-204, shall be the same as are the effects specified in that section on the cash surrender values defined therein.

(d) The nonforfeiture factor for each policy year shall be an amount equal to a percentage of the adjusted premium for the policy year, as defined in § 23-81-209. Except as is required by subsection (e) of this section, the percentage must be:

(1) The same percentage for each policy year between the second policy anniversary and the later of the fifth policy anniversary and the first policy anniversary at which there is available under the policy a cash surrender value in an amount, before including any paid-up additions and before deducting any indebtedness, of at least two-tenths of one percent (2/10 of 1%) of either the amount of insurance, if the insurance is uniform in amount, or the average amount of insurance at the beginning of each of the first ten (10) policy years; and

(2) Such that no percentage after the later of the two (2) policy anniversaries specified in subdivision (d)(1) of this section, and no percentage may apply to fewer than five (5) consecutive policy years.

(e) Provided, no basic cash value may be less than the value which would be obtained if the adjusted premiums for the policy, as defined in § 23-81-209, were substituted for the nonforfeiture factors in the calculation of the basic cash value.

(f) All adjusted premiums and present values referred to in this section for a particular policy shall be calculated on the same mortality and interest bases as are used in demonstrating the policy's compliance with the other sections of this subchapter. The cash surrender values referred to in this section shall include any endowment benefits provided for by the policy.

(g) Any cash surrender value available other than in the event of default in a premium payment due on a policy anniversary, and the amount of any paid-up nonforfeiture benefit available under the policy in the event of default in a premium payment shall be determined in manners consistent with the manners specified for determining the analogous minimum amounts in §§ 23-81-203 - 23-81-205, 23-81-209, and 23-81-211. The amounts of any cash surrender values and of any paid-up nonforfeiture benefits granted in connection with additional benefits such as those listed in § 23-81-211(d) shall conform with the principles of this section.

23-81-213. Effective dates.

(a) After January 1, 1960, any insurer may file with the Insurance Commissioner a written notice of its election to comply after a specified date before January 1, 1961. After the filing of the notice and then upon the specified date, which shall be the operative date for the insurer, this subsection shall become operative with respect to the policies thereafter issued by such insurer. If an insurer makes no election, the operative date of this subsection for the insurer shall be January 1, 1961.

(b) After March 16, 1961, any insurer may file with the commissioner a written notice of its election to comply after a specified date before January 1, 1966. After the filing of the notice and then upon the specified date, which shall be the operative date for the insurer, this subsection shall become operative with respect to the policies thereafter issued by the insurer. If an insurer makes no election, the operative date of this subsection for the insurer shall be January 1, 1966.

(c) After January 1, 1960, any insurer may file with the commissioner a written notice of its election to comply after a specified date before January 1, 1969. After the filing of the notice and then upon the specified date, which shall be the operative date for the insurer, this subsection shall become operative with respect to the policies thereafter issued by such insurer. If an insurer makes no election, the operative date of this subsection for the insurer shall be January 1, 1969.

(d) After January 1, 1982, any insurer may file with the commissioner a written notice of its election to comply after a specified date before January 1, 1989. After the filing of the notice and then upon the specified date, which shall be the operative date for the insurer, this subsection shall become operative with respect to the policies thereafter issued by the insurer. If an insurer makes no election, the operative date of this subsection for the insurer shall be January 1, 1989.

(e) After January 1, 1982, any insurer may file with the commissioner a written notice of its election to comply after a specified date before January 1, 1985. After the filing of the notice and then upon the specified date, which shall be the operative date for the insurer, this subsection shall become operative with respect to the policies thereafter issued by the insurer. If any insurer makes no election, the operative date of this subsection shall be January 1, 1985.

Subchapter 3.

Standard Nonforfeiture Law - Individual Deferred Annuities.

23-81-301. Title.

This subchapter shall be known as the "Standard Nonforfeiture Law for Individual Deferred Annuities".

23-81-302. Applicability.

This subchapter shall not apply to any reinsurance, group annuity purchased under a retirement plan or plan of deferred compensation established or maintained by an employer, including a partnership or sole proprietorship, or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under § 408 of the Internal Revenue Code, as now or hereafter amended, premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the insurer issuing the contract.

23-81-303. Nonforfeiture requirements.

(a) In the case of contracts issued on or after the operative date of this subchapter as defined in § 23-81-312, no contract of annuity, except as stated in § 23-81-302, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions or corresponding provisions, which in the opinion of the Insurance

Commissioner are at least as favorable to the contract-holder, upon cessation of payment of considerations under the contract:

- (1) That upon cessation of payment of considerations under a contract, the insurer will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in §§ 23-81-305 - 23-81-308 and 23-81-310;
 - (2) If a contract provides for a lump sum settlement at maturity or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the insurer will pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount as is specified in §§ 23-81-305, 23-81-306, 23-81-308, and 23-81-310. The insurer shall reserve the right to defer the payment of the cash surrender benefit for a period of six (6) months after demand therefor with surrender of the contract;
 - (3) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender, or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of the benefits;
 - (4) A statement that any paid-up annuity, cash surrender, or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the insurer to the contract, any indebtedness to the insurer on the contract, or any prior withdrawals from or partial surrenders of the contract.
- (b) Notwithstanding the requirements of this section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two (2) full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from consideration paid prior to the period would be less than twenty dollars (\$20.00) monthly, the insurer may at its option terminate the contract by payment in cash of the then-present value of the portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by the payment shall be relieved of any further obligation under the contract.

23-81-304. Minimum values.

- (a) The minimum values as specified in §§ 23-81-305 - 23-81-308 and 23-81-310 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this subchapter.
- (b)(1)(A) With respect to contracts providing for flexible considerations, the minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of one and one-half percent (1.5%) per annum of percentages of the net considerations paid prior to the time, decreased by the sum of:
 - (i) Any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of one and one-half percent (1.5%) per annum; and
 - (ii) The amount of any indebtedness to the insurer on the contract, including interest due and accrued and increased by any existing additional amounts credited by the insurer to the contract.

(B) The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount not less than zero (0) and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars (\$30.00) and less a collection charge of one dollar and twenty-five cents (\$1.25) per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five percent (65%) of the net consideration for the first contract year and eighty-seven and one-half percent (87 1/2%) of the net considerations for the second and later contract years.

Notwithstanding the provisions of this subdivision, the percentage shall be sixty-five percent (65%) of the portion of the total net consideration for any renewal contract year that exceeds by not more than two (2) multiplied by the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five percent (65%).

(2) With respect to contracts providing for fixed scheduled considerations, minimum nonforfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations that are paid annually, with two (2) exceptions:

(A) The portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five percent (65%) of the net consideration for the first contract year plus twenty-two and one-half percent (22 1/2%) of the excess of the net considerations for the first contract year over the lesser of the net considerations for the second and third contract years; and

(B) The annual contract charge shall be the lesser of thirty dollars (\$30.00) or ten percent (10%) of the gross annual consideration.

(3) With respect to contracts providing for a single consideration, minimum nonforfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum nonforfeiture amount shall be equal to ninety percent (90%), and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars (\$75.00).

23-81-305. Computation of present value.

(a) Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at least equal to the minimum nonforfeiture amount on that date.

(b) The present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

23-81-306. Calculation of cash surrender values.

(a) For contracts which provide cash surrender benefits, the cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals

from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one percent (1%) higher than the interest rate specified in the contract for accumulating the net considerations to determine the maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the insurer to the contract.

(b) In no event shall any cash surrender benefit be less than the minimum nonforfeiture amount at that time.

(c) The death benefit under the contracts shall be at least equal to the cash surrender benefit.

23-81-307. Calculation of paid-up annuity benefits.

(a) For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity. The present value shall be calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value and increased by any existing additional amounts credited by the insurer to the contract.

(b) For contracts which do not provide any death benefits prior to the commencement of any annuity payments, the present values shall be calculated on the basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit.

(c) However, in no event shall the present value of a paid-up annuity benefit be less than the minimum nonforfeiture amount at that time.

23-81-308. Maturity date.

(a) For the purpose of determining the benefits calculated under §§ 23-81-306 and 23-81-307, in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract. This date shall not be deemed to be later than the anniversary of the contract next following the annuitant's seventieth birthday or the tenth anniversary of the contract, whichever is later.

(b) This section does not apply to annuities funding funeral and related expenses.

23-81-309. Disclosure of limited death benefits.

Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum nonforfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

23-81-310. Inclusion of lapse of time considerations.

Any paid-up annuity, cash surrender, or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of considerations under the contract occurs.

23-81-311. Proration of values - Additional benefits.

(a) For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum nonforfeiture benefits, if any, for the life insurance portion shall be computed as if each portion were a separate contract.

(b)(1) Notwithstanding the provisions of §§ 23-81-305 - 23-81-308 and 23-81-310, additional benefits payable:

(A) In the event of total and permanent disability;

(B) As reversionary annuity or deferred reversionary annuity benefits; or

(C) As other policy benefits additional to life insurance, endowment, and annuity benefits, and considerations for all the additional benefits; shall be disregarded in ascertaining the minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits that may be required by this subchapter.

(2) The inclusion of additional benefits shall not be required in any paid-up benefit, unless the additional benefits separately would require minimum nonforfeiture amounts, paid-up annuity, cash surrender, and death benefits.

23-81-312. Operative date.

(a) After June 17, 1981, any insurer may file with the Insurance Commissioner a written notice of its election to comply with the provisions of this subchapter after a specified date before January 1, 1983.

(b) After the filing of the notice, then upon the specified date, which shall be the operative date of this subchapter for the insurer, this subchapter shall become operative with respect to annuity contracts thereafter issued by the insurer.

(c) If an insurer makes no election, the operative date of this subchapter for the insurer shall be January 1, 1983.

Subchapter 4.
Variable Contracts.

23-81-401. Exceptions from Arkansas Insurance Code.

- (a) Except for §§ 23-81-122, 23-81-127, and 23-81-128 in the case of a variable annuity contract and §§ 23-81-104, 23-81-109 - 23-81-111, and 23-81-201 - 23-81-213 in the case of a variable life insurance policy and except for § 23-83-109 in the case of group variable life insurance, and except as otherwise provided in this subchapter, all pertinent provisions of the Arkansas Insurance Code, § 23-60-101 et seq., as amended, shall apply to separate accounts and contracts relating thereto. Any group or individual variable life insurance contract or annuity contract delivered or issued for delivery in this state shall contain grace, reinstatement, and nonforfeiture provisions appropriate to the contract.
- (b) The reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guaranteed.

23-81-402. Provisions for allocation of income.

A domestic life insurance company may establish one (1) or more separate accounts and may allocate thereto amounts including, without limitation, proceeds applied under optional modes of settlement or under dividend options to provide for life insurance or annuities, and benefits incidental thereto, payable in fixed or variable amounts, or subject to a market value adjustment as provided in rules and regulations adopted by the Insurance Commissioner, subject to the following:

- (1) The income, gains, and losses, realized or unrealized, from assets allocated to a separate account shall be credited to or charged against the account without regard to other income, gains, or losses of the company or to any other separate account of the company;
- (2) Except as may be provided with respect to reserves for guaranteed benefits and funds referred to in subdivision (3) of this section, amounts allocated to any separate account and accumulations thereon may be invested and reinvested without regard to any requirements or limitations prescribed by the laws of this state governing the investments of life insurance companies. The investments in the separate accounts shall not be considered when applying the investment limitations otherwise applicable to the investments of the company;
- (3) Except with the approval of the commissioner and under such conditions as to investments and other matters as he may prescribe which shall recognize the guaranteed nature of the benefits provided, reserves for benefits guaranteed as to dollar amount and duration and funds guaranteed as to principal amount or stated rate of interest shall not be maintained in a separate account;
- (4) Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value on the date of valuation, with the exception of separate accounts supporting modified guaranteed annuities which shall be valued as provided in such rules and regulations as the commissioner shall adopt, or, if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to such separate account. However, unless approved by the commissioner, the portion of any of the assets of the separate account equal to the company's reserve liability with regard to the guaranteed benefits and funds referred to in subdivision (3) of this section shall be valued in accordance with the rules otherwise applicable to the company's assets;

- (5) Amounts allocated to a separate account in the exercise of the power granted by this subchapter shall be owned by the company. The company shall not be, nor hold itself out to be, a trustee with respect to the amounts. If and to the extent so provided under the applicable contracts, that portion of the assets of any such separate account equal to the reserves and other contract liabilities with respect to the account shall not be chargeable with liabilities arising out of any other business the company may conduct; provided, however, that in no event shall the assets in a separate account for support of modified guaranteed annuity contracts subject to a market adjustment as hereinabove provided be immune from liabilities arising out of any other business the company conducts;
- (6) No sale, exchange, or other transfer of assets may be made by a company between any of its separate accounts or between any other investment account and one (1) or more of its separate accounts unless, in case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless such transfer, whether into or from a separate account, is made by a transfer of cash or by a transfer of securities having a readily determinable market value, provided that the transfer of securities is approved by the commissioner. The commissioner may approve other transfers among accounts if, in his opinion, the transfers would not be inequitable; and
- (7) To the extent the company deems it necessary to comply with any applicable federal or state laws, the company, with respect to any separate account, including, without limitation, any separate account which is a management investment company or a unit investment trust, may provide for persons having an interest therein appropriate voting and other rights and special procedures for the conduct of the business of the account, including, without limitation, special rights and procedures relating to investment policy, investment advisory services, selection of independent public accountants, and the selection of a committee, the members of which need not be otherwise affiliated with the company, to manage the business of the account.

23-81-403. Contract provisions required.

- (a) Any contract providing benefits payable in variable amounts delivered or issued for delivery in this state shall contain a statement of the essential features of the procedures to be followed by the insurance company in determining the dollar amount of the variable benefits.
- (b) Any contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that the dollar amount will so vary and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis.

23-81-404. Licensure requirements for delivery of contracts.

- (a) No company shall deliver or issue for delivery within this state variable contracts unless it is licensed or organized to do a life insurance or annuity business in this state and unless the Insurance Commissioner is satisfied that its condition or method of operation in connection with the issuance of such contracts will not render its operation hazardous to the public or its policyholders in this state.

- (b)(1) In this connection, the commissioner shall consider among other things:
- (A) The history and financial condition of the company;
 - (B) The character, responsibility, and fitness of the officers and directors of the company; and
 - (C) The law and regulation under which the company is authorized in the state of domicile to issue variable contracts. The state of entry of an alien company shall be deemed its place of domicile for this purpose.
- (2) If the company is a subsidiary of an admitted life insurance company or affiliated with such company through common management or ownership, it may be deemed by the commissioner to have met the provisions of this section if either it or the parent or the affiliated company meets the requirements of this subsection.

23-81-405. Insurance Commissioner's authority to regulate.

Notwithstanding any other provision of law, the Insurance Commissioner shall have sole authority to regulate the issuance and sale of variable contracts and to issue such reasonable rules and regulations as may be appropriate to carry out the purposes and provisions of this subchapter.

Subchapter 5.

Viatical Settlements Act. [Repealed effective January 1, 2004.]

23-81-501. Short title. [Repealed effective January 1, 2004.]

This subchapter may be cited as the "Viatical Settlements Act".

23-81-502. Definitions. [Repealed effective January 1, 2004.]

A. "Activities of daily living" for purposes of this subchapter include each of the following:

- (1) Eating;
- (2) Toileting;
- (3) Transferring;
- (4) Bathing;
- (5) Dressing; and
- (6) Continence.

B. "Chronically ill individual":

- (1) Means any individual who has been certified by a licensed health care practitioner as:
 - (a) Being unable to perform without substantial assistance from another individual at least two (2) activities of daily living for a period of at least ninety (90) days due to a loss of functional capacity;
 - (b) Having a level of disability similar to the level of disability described in subdivision (1) above; or
 - (c) Requiring substantial supervision to protect such individual from threats to health and safety due to severe cognitive impairment.

(2) Shall not include any individual otherwise meeting the requirements of the preceding subdivision (B)(1) unless within the preceding twelve (12) month period a licensed health care practitioner has certified that such individual meets such requirements.

C. "Commissioner" or "Insurance Commissioner" means the Insurance Commissioner of the State of Arkansas.

D. "Department" means the State Insurance Department.

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

F. "Regulation" means any rule or regulation promulgated by the Insurance Commissioner unless the context requires otherwise.

G. "Terminally ill individual" means an individual who has been certified by a physician as having an illness or physical condition that can reasonably be expected to result in death in twenty-four (24) months or less after the date of certification.

H. "Viatical settlement broker" means an individual, partnership, corporation or other entity who or which for another and for a fee, commission or other valuable consideration, offers or advertises the availability of viatical settlements, introduces viators to viatical settlement providers, or offers or attempts to negotiate viatical settlements between a viator and one (1) or more viatical settlement providers. "Viatical settlement broker" does not include an attorney, accountant or financial planner retained to represent the viator whose compensation is not paid by the viatical settlement provider.

I. "Viatical settlement contract" means a written agreement entered into between a viatical settlement provider and a person owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person who is terminally or chronically ill. The agreement shall establish the terms under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyowner's assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

J. "Viatical settlement provider":

(1) means any person regularly engaged in the trade or business of purchasing or taking assignments of life insurance contracts on the lives of insureds who are terminally or chronically ill as defined in this subchapter if:

(a) Such person is licensed for such purpose with respect to insureds described as terminally or chronically ill in the state in which the insured resides; or

(b) Such person meets the requirements of § 23-81-508 and § 23-81-509 of this subchapter and of any companion regulation promulgated by the commissioner in compliance with the provisions of this subchapter, in the case of an insured who resides in a state not requiring licensure of such persons as described in subdivision (1) above; and

(2) Means any person that enters into an agreement, with a person who owns a life insurance policy or who is covered under a group policy insuring the life of a person who has a catastrophic or life threatening illness or condition, under the terms of which the viatical settlement provider pays compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyowner's assignment, transfer, sale, devise or bequest of the death

benefit or ownership of the insurance policy or certificate to the viatical settlement provider; and

(3) Does not include:

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

(b) The issuer of a life insurance policy providing accelerated benefits under Arkansas Rule and Regulation 60, "Accelerated Benefits Provisions in Life Insurance Policies" promulgated by the Insurance Commissioner; or

(c) Any natural person who enters into no more than one (1) agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit.

K. "Viator" means the owner of a life insurance policy insuring the life of a person with a terminal or chronic illness or condition or the certificate holder who enters into an agreement under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

23-81-503. License requirements. [Repealed effective January 1, 2004.]

A. No individual, partnership, corporation, or other entity may act as a viatical settlement provider or enter into or solicit a viatical settlement contract without first having obtained a license from the Insurance Commissioner.

B. Application for a viatical settlement provider license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application shall be accompanied by a fee of one hundred dollars (\$100), which shall be deposited into the State Insurance Department Trust Fund pursuant to § 23-61-701 et seq.

C. Licenses may be renewed from year to year on or by July 1 of each year upon payment of the annual renewal fee of one hundred dollars (\$100). Failure to pay the fee as this subchapter requires shall result in automatic revocation of the license.

D.(1) The applicant shall provide the information that the commissioner may require on forms prepared by the commissioner. The commissioner shall have authority at any time to require the applicant to disclose fully the identity of all stockholders, partners, officers, directors and employees.

(2) The commissioner may in his or her discretion refuse to issue a license in the name of any firm, partnership, or corporation if he or she is not satisfied that any officer, director, employee, stockholder, or partner thereof who may materially influence the applicant's conduct or actions, meets the standards of this subchapter.

E. A license as a viatical settlement provider issued to a partnership, corporation, or other entity authorizes all members, officers, directors, and designated employees to act as viatical settlement providers under the license, so long as the persons are named in the application or in any subsequent supplements, amendments, or addendums to the application on the commissioner's records.

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

- (1) Has provided a detailed plan of operation; and
- (2) Is competent and trustworthy and intends to act in good faith in the capacity involved in the license applied for; and
- (3) Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied for; and
- (4) If a corporation, is a corporation incorporated under and authorized by the laws of this state or is a foreign corporation authorized to transact business in this state and is in good standing according to the records of the Secretary of State if and as applicable; and
- (5) If a partnership, is a partnership organized under the laws of this state or is a non-resident partnership authorized to transact business in this state.

G.(1) The commissioner shall not issue any license to any nonresident applicant unless:

(a) A written designation of an Arkansas resident as agent for service of process is filed and maintained with the commissioner; and

(b) The applicant has filed with the commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the registered agent and that the applicant submits to the jurisdiction of this state.

(2) On and before January 1, 2003, all registered viatical settlement providers shall replace the commissioner as agent on department records, and shall file with the commissioner a designation of an Arkansas resident as an agent for service of legal process, and the commissioner shall maintain a listing in conformity with § 23-63-301 et seq.

23-81-504. License revocation. [Repealed effective January 1, 2004.]

A. The commissioner shall have the right to suspend, revoke or refuse to renew the license of any viatical settlement provider if the commissioner finds that:

- (1) There was any misrepresentation in the application for the license;
- (2) The holder of the license has been guilty of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent to act as a viatical settlement provider;
- (3) The licensee demonstrates a pattern of unreasonable payments to policyowners;
- (4) The licensee has been convicted of a felony or any misdemeanor of which criminal fraud is an element; or
- (5) The licensee has violated any of the provisions of this subchapter.

B. Before the commissioner shall deny a license application or suspend, revoke or refuse to renew the license of a viatical settlement provider, the commissioner shall conduct a hearing in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

23-81-505. Approval of viatical settlements contract. [Repealed effective January 1, 2004.]

No viatical settlement provider may use any viatical settlement contract in this state unless it has been filed with and approved by the commissioner. Any viatical settlement contract form filed with the commissioner shall be deemed approved if it has not been disapproved within sixty (60) days of the filing. The commissioner shall disapprove a viatical settlement contract form if, in the commissioner's opinion, the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the policyowner.

23-81-506. Reporting requirements. [Repealed effective January 1, 2004.]

Each licensee shall file with the commissioner on or before March 1 of each year an annual statement containing such information as the commissioner by rule may prescribe.

23-81-507. Examination. [Repealed effective January 1, 2004.]

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

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

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

23-81-508. Disclosure. [Repealed effective January 1, 2004.]

A viatical settlement provider shall disclose the following information to the viator no later than the date the viatical settlement contract is signed by all parties:

A. Possible alternatives to viatical settlement contracts for persons with terminal or chronic illnesses, including, but not limited to, accelerated benefits offered by the issuer of the life insurance policy;

B. The fact that some or all of the proceeds of the viatical settlement may be taxable, and that assistance should be sought from a personal tax advisor;

C. The fact that the viatical settlement could be subject to the claims of creditors;

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

E. The policyowner's right to rescind a viatical settlement contract within thirty (30) days of the date it is executed by all parties or fifteen (15) days of the receipt of the viatical

settlement proceeds by the viator, whichever is less, as provided in § 23-81-509(C) of this subchapter; and

F. The date by which the funds will be available to the viator and the source of the funds.

23-81-509. General rules. [Repealed effective January 1, 2004.]

A. A viatical settlement provider entering into a viatical settlement contract with any person with a terminal or chronic illness or condition shall first obtain:

(1) A written statement from a licensed attending physician that the person is of sound mind and under no constraint or undue influence; and

(2) A witnessed document in which the person:

(a) Consents to the viatical settlement contract;

(b) Acknowledges the terminal or chronic illness;

(c) Represents that he or she has a full and complete understanding of the viatical settlement contract;

(d) Acknowledges that he or she has a full and complete understanding of the benefits of the life insurance policy;

(e) Authorizes release of his or her medical records; and

(f) Acknowledges that he or she has entered into the viatical settlement contract freely and voluntarily.

B. All medical information solicited or obtained by any licensee shall be subject to the applicable provision of state law relating to confidentiality of medical information.

C. All viatical settlement contracts entered into in this state shall contain an unconditional refund provision of at least thirty (30) days from the date of the contract, or fifteen (15) days of the receipt of the viatical settlement proceeds, whichever is less.

D. Immediately upon receipt from the viator of documents to effect the transfer of the insurance policy, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a bank approved by the commissioner, pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent shall be required to transfer the proceeds due to the viator immediately upon receipt of acknowledgment of the transfer from the insurer.

E. Failure to tender the viatical settlement by the date disclosed to the viator renders the contract null and void.

23-81-510. Authority to promulgate standards. [Repealed effective January 1, 2004.]

The commissioner shall have the authority to:

A. Promulgate regulations implementing this subchapter; and

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

C. Establish appropriate licensing requirements and fees for agents and brokers; and

D. Require a bond.

23-81-511. Unfair trade practices. [Repealed effective January 1, 2004.]

A violation of this subchapter shall be deemed or considered an unfair trade practice under § 23-66-201 et seq., as appropriate, and subject to the penalties contained in that subchapter, including § 23-66-210 and § 23-66-211.

23-81-512. Effective date. [Repealed effective January 1, 2004.]

This subchapter shall apply to all new viatical settlement contracts solicited, sold, issued, issued for delivery, or to be performed in this state on and after January 1, 1998. Further, no person shall act as or hold himself out to be a viatical settlement provider, broker or agent in this state or solicit or sell viatical settlement contracts issued, issued for delivery or to be performed in this state unless first licensed or registered in this state pursuant to this subchapter and is otherwise acting in conformity with this subchapter.

Subchapter 6.

Viatical Settlements Act. [Effective January 1, 2004.]

23-81-601. Title. [Effective January 1, 2004.]

This subchapter may be cited as the "Viatical Settlements Act".

23-81-602. Definitions. [Effective January 1, 2004.]

As used in this subchapter:

(1)(A) "Advertising" means any written, electronic, or printed communication that is directly or indirectly published, disseminated, circulated, or placed before the public for the purpose of creating an interest in or inducing a person to sell a life insurance policy under a viatical settlement contract.

(B) "Advertising" includes any communication by means of film strip, motion picture, or video, and any message recorded by telephone or transmitted on radio, television, the Internet, or similar communications media;

(2) "Business of viatical settlements" means an activity involved in the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating or in any other manner of viatical settlement contracts or purchase agreements;

(3) "Chronically ill" means:

(A) Being unable to perform at least two (2) activities of daily living, such as eating, toileting, transferring, bathing, dressing, or continence;

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

(C) Having a level of disability similar to that described in subdivision (3)(A) of this section, as determined by the Secretary of Health and Human Services;

(4)(A) "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:

- (i) Whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one (1) or more viaticated policies; and
- (ii) Who has an agreement in writing with one (1) or more licensed viatical settlement providers to finance the acquisition of a viatical settlement contract.

(B) "Financing entity" does not include a nonaccredited investor or viatical settlement purchaser;

(5) "Fraudulent viatical settlement act" means:

(A) Acts or omissions committed by any person who, knowingly or with the intent to defraud and 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:

(i) Presenting, causing to be presented, preparing, or concealing false material information with knowledge or belief that the information will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, financing entity, insurer, insurance producer, or any other person, as part of, in support of, or concerning a fact material to one (1) or more of the following:

- (a) An application for the issuance of a viatical settlement contract or insurance policy;
- (b) The underwriting of a viatical settlement contract or insurance policy;
- (c) A claim for payment or benefit under a viatical settlement contract or insurance policy;
- (d) Premiums paid on an insurance policy;
- (e) Payments and changes in ownership or beneficiary made under the terms of a viatical settlement contract or insurance policy;
- (f) The reinstatement or conversion of an insurance policy;
- (g) The solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy;
- (h) The issuance of written evidence of viatical settlement contract or insurance policy; or
- (i) A financing transaction; or

(ii) Employing any device, scheme, or artifice to defraud related to viaticated policies;

(B) In the furtherance of a fraud or to prevent the detection of a fraud, committing or permitting its employees or its agents to:

(i) Remove, conceal, alter, destroy, or sequester from the Insurance Commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;

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

(iii) 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

(iv) File with the commissioner or the chief insurance regulatory official of another jurisdiction, a document containing false information or otherwise conceals information about a material fact from the commissioner;

(C) Embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner, or any other person engaged in the business of viatical settlements or insurance;

(D)(i) Recklessly entering into, brokering, or otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, when the viator or the viator's agent intended to defraud the policy's issuer.

(ii) For purposes of this subdivision (5)(D), "recklessly" means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, the disregard of which involves a gross deviation from acceptable standards of conduct; or

(E) Attempting to commit, assisting, aiding, or abetting in the commission of or conspiracy to commit the acts or omissions specified in this subdivision (5);

(6) "Person" means a natural person or a legal entity including an individual, partnership, limited liability company, association, trust, or corporation;

(7) "Policy" means an individual or group policy, group certificate, contract, or arrangement of life insurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state;

(8)(A) "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.

(B) The trust shall have a written agreement with the licensed viatical settlement provider under which:

(i) The provider is responsible for ensuring compliance with all statutory and regulatory requirements; and

(ii) 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;

(9) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide either direct or indirect access to institutional capital markets for a financing entity or licensed viatical settlement provider;

(10) "Terminally ill" means having an illness or sickness that is reasonably expected to result in death in twenty-four (24) months or less;

(11)(A) "Viatical settlement broker" means a person that 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 (1) or more viatical settlement providers.

(B) Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator.

(C) "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;

(12)(A) "Viatical settlement contract" means a written agreement establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance.

(B) "Viatical settlement contract" includes a contract for a loan or other financing transaction with a viator under subdivision (12)(A) of this section, other than a loan by a life insurance company under the terms of the life insurance contract or a loan secured by the cash value of a policy.

(C) "Viatical settlement contract" includes an agreement with a viator to transfer ownership or change the beneficiary designation at a later date, regardless of the date that compensation is paid to the viator;

(13)(A) "Viatical settlement provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract.

(B) "Viatical settlement provider" does not include:

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

(ii) The issuer of a life insurance policy providing accelerated benefits under State Insurance Department Rule 60, "Accelerated Benefits In Life Insurance Policies", and under the contract;

(iii) An authorized or eligible insurer that provides stop-loss coverage to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;

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

(v) A financing entity;

(vi) A special purpose entity;

(vii) A related provider trust;

(viii) A viatical settlement purchaser; or

(ix) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended, who purchases a viaticated policy from a viatical settlement provider;

(14)(A) "Viatical settlement purchaser" means a person who, for the purpose of deriving an economic benefit:

(i) Gives a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy;

(ii) Owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract; or

(iii) Is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract.

- (B) "Viatical settlement purchaser" does not include:
- (i) A licensee under this subchapter;
 - (ii) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended;
 - (iii) A financing entity;
 - (iv) A special purpose entity; or
 - (v) A related provider trust;
- (15) "Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider under a viatical settlement contract; and
- (16)(A) "Viator" means the owner of a life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract.
- (B) "Viator" does not include:
- (i) A licensee under this subchapter;
 - (ii) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended;
 - (iii) A financing entity;
 - (iv) A special purpose entity; or
 - (v) A related provider trust.

23-81-603. License requirements. [Effective January 1, 2004.]

- (a)(1) A person who is not licensed by the State Insurance Department to sell life or disability policies in Arkansas shall not operate as a viatical settlement provider or viatical settlement broker unless the person obtains a license from the insurance commissioner of the state of residence of the viator.
- (2)(A) If there is more than one (1) viator on a single policy and the viators are residents of different states, the viatical settlement shall be governed by the law of the state in which the viator having the largest percentage of ownership resides.
- (B) If the viators hold equal ownership, the viatical settlement shall be governed by the law of the state of residence of one (1) viator agreed upon in writing by all viators.
- (b) Application for a viatical settlement provider or viatical settlement broker license shall be made to the Insurance Commissioner by the applicant on a form prescribed by the commissioner, and these applications shall be accompanied by the fees specified in State Insurance Department Rule 57, "Insurance Department Administrative and Regulatory Fees".
- (c)(1) Licenses may be renewed from year to year on the anniversary date upon payment of the annual renewal fees specified in State Insurance Department Rule 57, "Insurance Department Administrative and Regulatory Fees".
- (2) Failure to pay the fees by the renewal date results in expiration of the license.
- (d)(1) The applicant shall provide information on forms required by the commissioner.
- (2) The commissioner may, at any time, require the applicant to fully disclose the identity of all stockholders, partners, officers, members, and employees.
- (3) The commissioner may refuse to issue a license in the name of a legal entity if the commissioner is not satisfied that any officer, employee, stockholder, partner, or member who may materially influence the applicant's conduct meets the standards under this subchapter.

(e)(1) A license issued under this subchapter to a legal entity authorizes all partners, officers, members, and designated employees to act as viatical settlement providers or viatical settlement brokers.

(2) Each person under subdivision (e)(1) of this section who is licensed as a viatical settlement provider or viatical settlement broker shall be named in the application and any supplements to the application.

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

(1) If a viatical settlement provider, has provided a detailed plan of operation;

(2) Is competent and trustworthy and intends to act in good faith in the capacity required by the license for which the applicant has applied;

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

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

(5) If a viatical settlement provider or viatical settlement broker, has provided an anti-fraud plan that meets the requirements of § 23-81-612(g).

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

(h) Each viatical settlement provider or viatical settlement broker shall provide to the commissioner new or revised information about officers, ten percent (10%) or more stockholders, partners, directors, members, or designated employees within thirty (30) days of the change.

23-81-604. License revocation and denial. [Effective January 1, 2004.]

(a) The Insurance Commissioner may suspend, revoke, or refuse to issue or renew the license of a viatical settlement provider or viatical settlement broker if the commissioner finds that:

(1) The applicant or licensee made a material misrepresentation in the application for the license;

(2) The licensee or any officer, partner, member, or key management personnel has pleaded guilty or nolo contendere to, or is found guilty of, fraudulent or dishonest practices and is subject to a final administrative action or is otherwise shown to be untrustworthy or incompetent;

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

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

- (5) The viatical settlement provider has entered into any viatical settlement contract that has not been approved under this subchapter;
 - (6) The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;
 - (7) The licensee no longer meets the requirements for initial licensure;
 - (8) The viatical settlement provider has assigned, transferred, or pledged a viaticated policy to:
 - (A) A person other than a viatical settlement provider licensed in this state;
 - (B) A viatical settlement purchaser;
 - (C) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended;
 - (D) A financing entity;
 - (E) A special purpose entity; or
 - (F) A related provider trust; or
 - (9) The licensee or any officer, partner, member, or key management personnel has violated any provision of this subchapter.
- (b) If the commissioner denies a license application or suspends, revokes, or refuses to renew the license of a viatical settlement provider or viatical settlement broker, the commissioner shall conduct a hearing under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

23-81-605. Approval of viatical settlement contracts and disclosure statements.
[Effective January 1, 2004.]

- (a) A person shall not use a viatical settlement contract form or provide to a viator a disclosure statement form in this state unless the form has been filed with and approved by the Insurance Commissioner.
- (b)(1) The commissioner shall refuse to approve a viatical settlement contract form or disclosure statement form if the commissioner determines that the form contains provisions that are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator.
- (2) The commissioner, by rule or regulation, may require the submission of advertising material related to the sale of viatical settlement contracts.

23-81-606. Reporting requirements and privacy. [Effective January 1, 2004.]

- (a) Each licensee shall file with the Insurance Commissioner on or before March 1 of each year an annual statement containing information as the commissioner prescribes by regulation.
- (b) Except as otherwise allowed or required by law, no viatical settlement provider, viatical settlement broker, insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall disclose to any other person an insured's identity as an insured, or the insured's financial or medical information, unless the disclosure:
 - (1) Is necessary to effect a viatical settlement between the viator and a viatical settlement provider, and the viator and insured have provided prior written consent to the disclosure;

- (2) Is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency under § 23-81-612(c);
- (3) Is a term of or condition to the transfer of a policy by one (1) viatical settlement provider to another viatical settlement provider;
- (4) Is necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies by a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;
- (5) Is necessary to allow the viatical settlement provider or viatical settlement broker or their authorized representatives to make contacts for the purpose of determining health status; or
- (6) Is required to purchase stop-loss coverage.

23-81-607. Examination or investigations. [Effective January 1, 2004.]

(a) Authority, Scope, and Scheduling of Examinations.

(1) The Insurance Commissioner may conduct an examination under this subchapter of a licensee as often as the Insurance Commissioner in his or her sole discretion deems appropriate.

(2) For purposes of completing an examination of a licensee under this subchapter, the Insurance Commissioner may examine or investigate any person, or the business of any person if necessary or material, in the sole discretion of the Insurance Commissioner to complete the examination of the licensee.

(3) In lieu of an examination under this subchapter of any foreign or alien licensee licensed in this state, the Insurance Commissioner may accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state.

(b) Record Retention Requirements.

(1) A person required to be licensed by this subchapter shall for five (5) years retain copies of any:

(A) Proposed, offered, or executed contract, purchase agreement, underwriting document, policy form, and application from the date of the proposal, offer, or execution of the contract or purchase agreement, whichever is later;

(B) Check, draft, or other evidence and documentation related to the payment, transfer, deposit, or release of funds from the date of the transaction; and

(C) Any other record and documents related to the requirements of this subchapter.

(2) This section does not relieve a person of the obligation to produce these documents to the Insurance Commissioner after the retention period has expired if the person has retained the documents.

(3) Records required to be retained by this section must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

(c) Conduct of Examinations.

(1)(A) Upon determining that an examination should be conducted, the Insurance Commissioner shall issue an examination warrant appointing one (1) or more examiners to perform the examination and instructing them as to the scope of the examination.

(B) In conducting the examination, the examiner shall observe those guidelines and procedures in the Examiners' Handbook adopted by the National Association of Insurance Commissioners.

(C) The Insurance Commissioner may also employ other guidelines or procedures as he or she may deem appropriate.

(2)(A) Each licensee or person from whom information is sought, its officers, directors, and agents shall provide to the examiners timely, convenient, and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs of the licensee being examined.

(B) The officers, directors, employees, and agents of the licensee or person shall facilitate the examination and aid in the examination to the extent that it is within their power to do so.

(C) The refusal of a licensee, by its officers, directors, employees, or agents to submit to examination or to comply with any reasonable written request of the Insurance Commissioner shall be grounds for suspension, refusal, or nonrenewal of any license or authority held by the licensee to engage in the viatical settlement business or other business subject to the Insurance Commissioner's jurisdiction.

(D) Any proceedings for the suspension, revocation, or refusal to issue or renew any license or authority shall be conducted under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(3)(A) The Insurance Commissioner shall have the power to issue subpoenas, to administer oaths, and to examine under oath any person as to any matter pertinent to the examination.

(B) Upon the failure or refusal of a person to obey a subpoena, the Insurance Commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence.

(C) The failure to obey the court order shall be punishable as contempt of court.

(4) When making an examination under this subchapter, the Insurance Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which shall be paid by the licensee that is the subject of the examination.

(5)(A) This subchapter does not limit the Insurance Commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action under the insurance laws of this state.

(B) Findings of fact and conclusions made as the result of any examination shall be prima facie evidence in any legal or regulatory action.

(6) This subchapter does not limit the Insurance Commissioner's authority to use or to make public any final or preliminary examination report, any examiner or licensee workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the Insurance Commissioner may deem appropriate.

(d) Examination Reports.

(1) Examination reports shall be composed of only facts appearing upon the books, records, or other documents of the licensee, its agents or other persons examined, or as

ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and those conclusions and recommendations as the examiners find reasonably warranted from the facts.

(2)(A) No later than sixty (60) days following completion of the examination, the examiner in charge shall file with the Insurance Commissioner a verified written report of examination under oath.

(B) Upon receipt of the verified report, the Insurance Commissioner shall transmit the report to the examinee, with a notice affording the examinee a reasonable opportunity of not more than thirty (30) days from the date the Insurance Commissioner causes the report to be transmitted to make a written submission or rebuttal with respect to any matters contained in the examination report.

(3) If the Insurance Commissioner determines that regulatory action is appropriate as a result of an examination, he or she may initiate any proceedings or actions provided by law.

(e) Confidentiality of Examination Information.

(1) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the Insurance Commissioner unless required by law.

(2)(A)(i) Except as otherwise provided in this subchapter or by the law of another state or jurisdiction that is substantially similar to this subchapter, all examination reports, working papers, recorded information, documents, and copies thereof produced by, obtained by, or disclosed to the Insurance Commissioner or any other person in the course of an examination made under this subchapter, or in the course of analysis or investigation by the Insurance Commissioner of the financial condition or market conduct of a licensee, shall be confidential and privileged.

(ii) Information under subdivision (e)(2)(A)(i) of this section shall not be subject to disclosure under the Freedom of Information Act of 1967, § 25-19-101 et seq., or §§ 25-15-201 - 25-15-209 of the Arkansas Administrative Procedure Act, § 25-15-201 et seq., shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.

(B) The Insurance Commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of his or her official duties.

(3) Documents, materials, or other information, including all working papers and copies thereof, in the possession or control of the National Association of Insurance Commissioners and its affiliates and subsidiaries shall be confidential and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if they are:

(A) Created, produced, or obtained by or disclosed to the association and its affiliates or subsidiaries in the course of assisting an examination made under this subchapter, or assisting a commissioner in the analysis or investigation of the financial condition or market conduct of a licensee; or

(B) Disclosed to the association and its affiliates or subsidiaries under subdivision (e)(4) of this section by a commissioner.

(4) Neither the Insurance Commissioner nor any person that received the documents, material, or other information under this section while acting under the authority of the

Insurance Commissioner, including the National Association of Insurance Commissioners and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials, or information subject to subdivision (e)(1) of this section.

(5) In order to assist in the performance of the Insurance Commissioner's duties, the Insurance Commissioner:

(A) May share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subdivision (e)(1) of this section, with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal, and international law enforcement authorities, if the recipient of the information agrees to maintain the confidentiality and privileged status of the document, material, communication, or other information;

(B)(i) May receive documents, materials, communications, or information, including otherwise confidential and privileged documents, materials, or information from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions.

(ii) The Insurance Commissioner shall maintain as confidential or privileged any document, material, or information received with notice or with the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information; and

(C) May enter into agreements governing, sharing, and use of information consistent with this subsection.

(6) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Insurance Commissioner under this section or as a result of sharing as authorized in subdivision (e)(4) of this section.

(7) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this state.

(8) This subchapter does not prohibit the Insurance Commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the commissioner of any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time or to the National Association of Insurance Commissioners, if the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this subchapter.

(f) Conflict of Interest.

(1)(A) An examiner may not be appointed by the Insurance Commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this subchapter.

(B) However, this section does not automatically preclude an examiner from being:

(i) A viator;

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

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

(2) Notwithstanding subdivision (f)(1) of this section, the Insurance Commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this subchapter.

(g) Cost of Examinations. Each person or organization examined under this subchapter shall pay to the State Insurance Department those expenses and costs authorized under § 23-61-206.

(h) Immunity from Liability.

(1) No cause of action shall arise nor shall any liability be imposed against the Insurance Commissioner, the Insurance Commissioner's authorized representative, or any examiner appointed by the Insurance Commissioner for any statement made or conduct performed in good faith while implementing this subchapter.

(2)(A) No cause of action shall arise, nor shall any liability be imposed against any person for communicating or delivering information or data to the Insurance Commissioner or the Insurance Commissioner's authorized representative, or appointed examiner under an examination made under this subchapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.

(B) This subdivision (h)(2) does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in subdivisions (h)(1) and (h)(2)(A) of this section.

(3)(A) A person identified in subdivisions (h)(1) or (2) of this section shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of the implementation of this subchapter and the party bringing the action was not substantially justified in doing so.

(B) For purposes of this subdivision (h)(3), a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(i) Investigative Authority of the Commissioner. The Insurance Commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.

23-81-608. Disclosure. [Effective January 1, 2004.]

(a)(1) With each application for a viatical settlement, a viatical settlement provider or viatical settlement broker shall provide the viator with a minimum of the disclosures under subdivision (a)(2) of this section no later than the time the application for the viatical settlement contract is signed by all parties.

(2) The disclosures shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker, and shall inform the viator that:

(A) There are possible alternatives to viatical settlement contracts, including any accelerated death benefits or policy loans offered under the viator's life insurance policy;

- (B) Some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and that the viator should seek assistance from a professional tax advisor;
- (C) Proceeds of the viatical settlement could be subject to the claims of creditors;
- (D) Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements and that the viator should obtain advice from the appropriate government agencies;
- (E)(i) The viator has the right to rescind a viatical settlement contract for fifteen (15) calendar days after the receipt of the viatical settlement proceeds by the viator, as provided in § 23-81-609(c).
- (ii) If the insured dies during the rescission period, the settlement contract shall be deemed to have been rescinded, subject to repayment of all viatical settlement proceeds and any premiums, loans, and loan interest to the viatical settlement provider or purchaser;
- (F) Funds will be sent to the viator within three (3) business days after the viatical settlement provider has received the insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated;
- (G) Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator and that the viator should seek assistance from a financial adviser;
- (H)(i) Disclosure to a viator shall include distribution of a brochure describing the process of viatical settlements.
- (ii) The National Association of Insurance Commissioners' form for the brochure shall be used unless one is developed by the Insurance Commissioner;
- (I) The disclosure document shall contain the following language: "All medical, financial, or personal information solicited or obtained by a viatical settlement provider or viatical settlement broker about an insured, including the insured's identity or the identity of family members, a spouse, or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."; and
- (J)(i) The insured may be contacted by either the viatical settlement provider or broker or its authorized representative for the purpose of determining the insured's health status.
- (ii) This contact is limited to once every three (3) months if the insured has a life expectancy of greater than one (1) year, and no more than one (1) time per month if the insured has a life expectancy of one (1) year or less.
- (b)(1) A viatical settlement provider shall provide the viator with a minimum of the disclosures in subdivision (b)(2) of this section no later than the date the viatical settlement contract is signed by all parties.
- (2) The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and the viatical settlement provider or viatical settlement broker and shall provide the following information:

- (A) The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated;
- (B) The name, address, and telephone number of the viatical settlement provider;
- (C) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement;
- (D)(i) The dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate.
(ii) If known, the viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the viatical settlement provider's interest in those benefits; and
- (E) The name, business address, and telephone number of the independent third party escrow agent and the fact that the viator or owner may inspect or receive copies of the relevant escrow, trust agreements, or documents.
- (c) If the provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate the change in ownership or beneficiary to the insured within twenty (20) days after the change.

23-81-609. General rules. [Effective January 1, 2004.]

- (a)(1) If the viator is the insured, a viatical settlement provider entering into a viatical settlement contract shall first obtain:
 - (A) A written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract; and
 - (B) A document in which the insured consents to the release of his or her medical records to a viatical settlement provider, viatical settlement broker, and the insurance company that issued the life insurance policy covering the life of the insured.
- (2)(A) Within twenty (20) days after a viator executes documents necessary to transfer any rights under an insurance policy or within twenty (20) days of entering any agreement, option, promise, or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy.
 - (B) The notice shall be accompanied by the documents required by subdivision (a)(3) of this section.
- (3)(A) The viatical provider shall deliver a copy of the medical release required under subdivision (a)(1)(B) of this section, a copy of the viator's application for the viatical settlement contract, the notice required under subdivision (a)(2) of this section, and a request for verification of coverage to the insurer that issued the life policy that is the subject of the viatical transaction.
 - (B) The National Association of Insurance Commissioners' form for verification shall be used unless the Insurance Commissioner adopts different standards for verification.

(4) The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider within thirty (30) calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract.

(5)(A) No later than the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain a witnessed document in which the viator:

(i) Consents to the viatical settlement contract;

(ii) Represents that he or she has a complete understanding of the viatical settlement contract;

(iii) Represents that he or she has a complete understanding of the benefits of the life insurance policy; and

(iv) Acknowledges that he or she is entering into the viatical settlement contract freely and voluntarily.

(B) If the insured has a terminal or chronic illness or condition, in addition to obtaining the information required under subdivision (5)(A) of this section, the viatical settlement provider shall obtain a witnessed document in which the viator acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.

(6) If a viatical settlement broker performs any of these activities required of the viatical settlement provider, the provider is deemed to have fulfilled the requirements of this section.

(b) Any medical information solicited or obtained by a licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information.

(c)(1) All viatical settlement contracts entered into in this state shall provide the viator with an unconditional right to rescind the contract for at least fifteen (15) calendar days from the receipt of the viatical settlement proceeds.

(2) If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or purchaser of all viatical settlement proceeds, and any premiums, loans, and loan interest that have been paid by the viatical settlement provider or purchaser.

(d)(1) The viatical settlement provider shall instruct the viator to send the executed documents required to effect a change in ownership, assignment, or change in beneficiary directly to the independent escrow agent.

(2)(A) Within three (3) business days after the date the escrow agent receives the document, or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the provider, the provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

(B) Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment, or change in beneficiary forms to the viatical settlement provider or to the related provider trust.

(C) Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or change in designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator.

(e) Failure to tender consideration to the viator for the viatical settlement contract within the time specified under § 23-81-608(a)(2)(F) renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator.

(f)(1) Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred:

(A) Shall only be made by the viatical settlement provider or broker licensed in this state or by its authorized representatives; and

(B) Shall be limited to one (1) time every three (3) months for insureds with a life expectancy of more than one (1) year, and to no more than one (1) time per month for insureds with a life expectancy of one (1) year or less.

(2) The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into.

(3) The limitations in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status.

(4) Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.

23-81-610. Prohibited practices. [Effective January 1, 2004.]

(a) It is a violation of this subchapter for any person to enter into a viatical settlement contract within a two-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one (1) or more of the following conditions have been met within the two-year period:

(1) The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy if the total of the time covered under the conversion policy plus the time covered under the prior policy is at least twenty-four (24) months.

(2) The time covered under a group policy shall be calculated without regard to any change in insurance carriers if the coverage has been continuous and under the same group sponsorship;

(3) The viator is a charitable organization exempt from taxation under 26 U.S.C. § 501 (c)(3);

(4) The viator is not a natural person, but is a corporation, limited liability company, partnership, or similar entity;

(5) The viator submits independent evidence to the viatical settlement provider that one (1) or more of the following conditions have been met within the two-year period:

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

(B) The viator's spouse dies;

(C) The viator divorces his or her spouse;

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

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

(F) The viator was the insured's employer at the time the policy or certificate was issued and the employment relationship terminated;

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

(H) The viator experiences a significant decrease in income that is unexpected and that impairs the viator's reasonable ability to pay the policy premium; or

(I) The viator or insured disposes of his or her ownership interests in a closely held corporation.

(b)(1) Copies of the independent evidence described in subdivision (a)(5) of this section and documents required by § 23-81-609(a) shall be submitted to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage.

(2) The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

(c) If the viatical settlement provider submits to the insurer a copy of the owner or insured's certification described in subdivision (a)(5) of this section when the provider submits a request to the insurer to transfer the policy or certificate to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this section, and the insurer shall timely respond to the request.

23-81-611. Advertising for viatical settlements. [Effective January 1, 2004.]

(a)(1) This section shall apply to any advertising of viatical settlement contracts, or related products or services intended for dissemination in this state, including Internet advertising viewed by persons located in this state.

(2) Where disclosure requirements are established under federal law or regulation, this section shall be interpreted to minimize or eliminate the conflict wherever possible.

(b)(1)(A) Every viatical settlement licensee shall establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products, and services.

(B) A system of control shall include regular routine notification, at least one (1) time a year, to agents and others authorized by the viatical settlement licensee who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the viatical settlement licensee.

(2) All advertisements under this subchapter, regardless of by whom they were written, created, designed, or presented, shall be the responsibility of the viatical settlement licensee as well as the individual who created or presented the advertisement.

(c)(1) Advertisements shall be truthful and shall not mislead in fact or by implication.

(2) The form and content of an advertisement of a viatical settlement contract shall be sufficiently complete and clear so as to avoid deception.

(3)(A) The advertisement shall not have the capacity or tendency to mislead or deceive.

(B) Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Insurance Commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

(d)(1) The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(2)(A) An advertisement shall not omit material information or use words, phrases, statements, references, or illustrations if the omission or use has the capacity, tendency, or effect of misleading or deceiving viators as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax effect.

(B) The fact that the viatical settlement contract offered is made available for inspection before consummation of the sale or an offer is made to refund the payment if the viator is not satisfied or that the viatical settlement contract includes a "free look" period that satisfies or exceeds legal requirements does not remedy misleading statements.

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

(4) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable, or is in any manner an incorrect or improper practice.

(5)(A) The words "free", "no cost", "without cost", "no additional cost", "at no extra cost", or words of similar import shall not be used with respect to any benefit or service unless true.

(B) An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

(6)(A) Testimonials, appraisals, or analysis used in advertisements shall be genuine, shall represent the current opinion of the author, shall be applicable to any viatical settlement contract product or service advertised, and shall be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisals, analysis, or endorsement.

(B) In using testimonials, appraisals, or analysis, the viatical settlement licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.

(C) If the individual making a testimonial, appraisal, analysis, or an endorsement has a financial interest in the viatical settlement provider or related entity as a stockholder, director, officer, employee, or otherwise or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(D)(i) An advertisement shall not state or imply that a viatical settlement contract benefit or service has been approved or endorsed by a group of individuals, society, association, or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement licensee is disclosed.

(ii) If the entity making the endorsement or testimonial is owned, controlled, or managed by the viatical settlement licensee or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(E) When an endorsement refers to benefits received under a viatical settlement contract, all pertinent information shall be retained by the viatical settlement licensee for a period of five (5) years after its use.

- (e)(1) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts.
- (2) The source of all statistics used in an advertisement shall be identified.
- (f) An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement brokers, insurance producers, policies, services, or methods of marketing.
- (g)(1) The name of the viatical settlement licensee shall be clearly identified in all advertisements about the licensee or its viatical settlement contract, products, or services, and if any specific viatical settlement contract is advertised, the viatical settlement contract shall be identified either by form number or some other appropriate description.
- (2) If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.
- (h) An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol, or other device or reference without disclosing the name of the viatical settlement licensee if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee or to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a viatical settlement contract.
- (i) An advertisement shall not use any combination of words, symbols, or physical materials that by their content, phraseology, shape, color, or other characteristics are so similar to a combination of words, symbols, or physical materials used by a government program or agency or otherwise would tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.
- (j)(1) An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears if it does not exaggerate that fact or suggest or imply that competing viatical settlement licensees may not be so licensed.
- (2) The advertisement may request the audience to consult the licensee's website or contact the department of insurance for the licensee's state to find out if the state requires licensing and, if so, whether the viatical settlement provider or viatical settlement broker is licensed.
- (k) An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its viatical settlement contracts are recommended or endorsed by any government entity.
- (l)(1) The name of the actual licensee shall be stated in all of its advertisements.
- (2) An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol, or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.
- (m) An advertisement shall not directly or indirectly create the impression that any division or agency of the State of Arkansas or of the United States Government endorses, approves, or favors:
- (1) Any viatical settlement licensee or its business practices or methods of operation;

- (2) The merits, desirability, or advisability of any viatical settlement contract;
- (3) Any viatical settlement contract; or
- (4) Any life insurance policy or life insurance company.
- (n) If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.
- (o) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six (6) months.

23-81-612. Fraud prevention and control. [Effective January 1, 2004.]

(a) Fraudulent Viatical Settlement Acts - Interference and Participation of Felons Prohibited.

- (1) A person shall not commit a fraudulent viatical settlement act.
- (2) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this subchapter or an investigation of suspected or actual violations of this subchapter.
- (3) A person in the business of viatical settlements shall not knowingly or intentionally permit any person to participate in the business of viatical settlements who has pleaded guilty or nolo contendere to, or been found guilty of, a felony involving dishonesty or breach of trust.

(b) Fraud Warning Required.

- (1) Viatical settlement contracts and applications for viatical settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

"Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison."

- (2) The failure to include the statement under subdivision (b)(1) of this section does not constitute a defense in a prosecution for a fraudulent viatical settlement act.

(c) Mandatory Reporting of Fraudulent Viatical Settlement Acts.

- (1) Any person engaged in the business of viatical settlements having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed shall provide to the Insurance Commissioner the information required by, and in a manner prescribed by, the commissioner.
- (2) Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(d) Immunity from Liability.

- (1) No civil liability shall be imposed on and no cause of action shall arise from a person furnishing information concerning suspected, anticipated, or completed fraudulent viatical settlement acts or suspected or completed fraudulent insurance acts if the information is provided to or received from:
 - (A) The commissioner or the commissioner's employees, agents, or representatives;

(B) Federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;

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

(D) The National Association of Insurance Commissioners; National Association of Securities Dealers; the North American Securities Administrators Association; or their employees, agents, or representatives, or other regulatory body overseeing life insurance, viatical settlements, securities, or investment fraud; or

(E) The life insurer that issued the life insurance policy covering the life of the insured.

(2)(A) Subdivision (d)(1) of this section shall not apply to statements made with actual malice.

(B) In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act or a fraudulent insurance act, the party bringing the action shall specifically plead any allegation that subdivision (d)(1) of this section does not apply because the person filing the report or furnishing the information did so with actual malice.

(3)(A) A person identified in subdivision (d)(1) of this section shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of activities in implementing this subchapter and the party bringing the action was not substantially justified in doing so.

(B) For purposes of this subdivision (d)(3), a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(4) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in subdivision (d)(1) of this section.

(e) Confidentiality.

(1) The documents and evidence provided under subsection (d) of this section or obtained by the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and confidential, shall not be a public record, and shall not be subject to discovery or subpoena in a civil or criminal action.

(2) Subdivision (e)(1) of this section does not prohibit the release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:

(A) In administrative or judicial proceedings to enforce laws administered by the commissioner;

(B) To federal, state, or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts, or to the National Association of Insurance Commissioners; or

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

(3) Release of documents and evidence under subdivision (e)(2) of this section does not abrogate or modify the privilege granted in subdivision (e)(1) of this section.

(f) Other Law Enforcement or Regulatory Authority.

This subchapter does not:

(1) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law;

- (2) Prevent or prohibit a person from voluntarily disclosing information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the State Insurance Department; or
- (3) Limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action.
- (g) Viatical Settlement Antifraud Initiatives.
- (1)(A) Viatical settlement providers and viatical settlement brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent viatical settlement acts.
- (B) At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, modifications of the following required initiatives as necessary to ensure an effective antifraud program.
- (C) The modifications may be more or less restrictive than the required initiatives under subdivision (g)(1) of this section if the modifications may reasonably be expected to accomplish the purpose of this section.
- (2) Antifraud initiatives shall include:
- (A) Fraud investigators, who may be viatical settlement provider or viatical settlement broker employees or independent contractors; and
- (B)(i) An antifraud plan, which shall be submitted to the commissioner.
- (ii) The antifraud plan shall include, but not be limited to:
- (a) A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;
- (b) A description of the procedures for reporting possible fraudulent viatical settlement acts to the commissioner;
- (c) A description of the plan for antifraud education and training of underwriters and other personnel; and
- (d) A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.
- (3) Antifraud plans submitted to the commissioner shall be privileged and confidential, shall not be a public record, and shall not be subject to discovery or subpoena in a civil or criminal action.

23-81-613. Injunctions - Civil remedies - Cease and desist orders. [Effective January 1, 2004.]

- (a) In addition to the penalties and other enforcement provisions of this subchapter, the Insurance Commissioner may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders to restrain the person from committing the violation.
- (b) Any person damaged by the acts of a person violating this subchapter may bring a civil action in a court of competent jurisdiction against the person committing the violation.

(c) The commissioner may issue, in accordance with §§ 23-66-209 - 23-66-213 of the Trade Practices Act, § 23-66-201 et seq., a cease and desist order upon a person that violates any provision of this subchapter, any regulation or order adopted by the commissioner under this subchapter, or any written agreement entered into with the commissioner under this subchapter.

(d)(1) When the commissioner finds that an activity in violation of this subchapter presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings.

(2) The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for ninety (90) days.

(3) If the commissioner begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective, absent a countermanding order by a court of competent jurisdiction under the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e)(1) In addition to the penalties and other enforcement provisions of this subchapter, any person who violates this subchapter is subject to civil penalties under § 23-66-210.

(2) The commissioner shall impose civil penalties by order under §§ 23-66-209 - 23-66-213 of the Trade Practices Act, § 23-66-201 et seq.

(3) The commissioner's order may require a person found to be in violation of this subchapter to make restitution to persons aggrieved by violations of this subchapter.

(f)(1) A person who is found guilty of, or pleads guilty or nolo contendere to, a violation of this subchapter shall be guilty of a Class D felony.

(2) A person who is found guilty of, or pleads guilty or nolo contendere to, a fraudulent viatical settlement act shall be ordered to pay restitution to persons aggrieved by the violation of the fraudulent viatical settlement act.

(3) Restitution may be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment.

23-81-614. Unfair trade practices. [Effective January 1, 2004.]

A violation of this subchapter shall be considered an unfair trade practice under §§ 23-66-209 - 23-66-213 of the Trade Practices Act, § 23-66-201 et seq., and shall be subject to the penalties contained therein.

23-81-615. Authority to promulgate regulations. [Effective January 1, 2004.]

The Insurance Commissioner may:

(1) Promulgate regulations implementing this subchapter;

(2)(A) Establish standards for evaluating reasonableness of payments under viatical settlement contracts for persons who are terminally or chronically ill.

(B) This authority includes the regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy;

(3) Establish appropriate licensing requirements, fees, and standards for continued licensure for viatical settlement providers and viatical settlement brokers;

- (4) Require a bond or other mechanism for financial accountability for viatical settlement providers and brokers; and
- (5) Adopt rules governing the relationship and responsibilities of both insurers and viatical settlement providers and viatical settlement brokers during the viatication of a life insurance policy or certificate.