

2012 Kansas Statutes

40-5002. Same; definitions. As used in this act, the following words and phrases shall have the meanings ascribed to them in this section:

(a) "Advertising" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the internet or similar communications media, including film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to sell a life insurance policy pursuant to a viatical settlement contract.

(b) "Business of viatical settlements" means an activity involved in, but not limited to, offering, soliciting, negotiating, procuring, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging or hypothecating any viatical settlement contract.

(c) "Chronically ill" means:

(1) Being unable to perform at least two activities of daily living including eating, toileting, transferring, bathing, dressing, continence or such other activity as determined by rules and regulations adopted by the commissioner; or

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

(d) "Commissioner" means the commissioner of insurance.

(e) "Financing entity" means any 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 which is the subject of a viatical settlement contract, but:

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

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

Financing entity shall not include any nonaccredited investor or viatical settlement purchaser.

(f) "Fraudulent viatical settlement act" means and includes:

(1) Any act or omission committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits such person's employees or agents to engage in acts including:

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

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

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

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

(iv) premiums paid on an insurance policy;

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

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

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

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

(ix) a financing transaction.

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

(2) any act done or committed in the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits its employees or its agents to:

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

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

(C) 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

(D) 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;

(3) commit embezzlement, theft, misappropriation or conversion of moneys, funds, premiums, credits or other property of a viatical settlement provider, insurer, insured, viator, insurance policy owner or any other person engaged in the business of viatical settlements or insurance; or

(4) recklessly enter into, broker or otherwise deal 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, where the viator or the viator's agent intended to defraud the policy's issuer. "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, such disregard involving a gross deviation from acceptable standards of conduct;

(5) stranger-originated life insurance; or

(6) attempt to commit, assist, aid or abet in the commission of, or conspiracy to commit any act or omission specified in this subsection; or

(7) fail to disclose to the insurer when requested by the insurer that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insurer or any authorized representative of such insurer in connection with the issuance of the policy.

(g) "NAIC" means the national association of insurance commissioners.

(h) "Person" means a natural person or a legal entity, including, but not limited to, an individual, partnership, limited liability company, association, trust or corporation.

(i) "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.

(j) "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement

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

(k) "Special purpose entity" means any corporation, partnership, trust, limited liability company or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets for a financing entity or licensed viatical settlement provider.

(l) "Stranger-originated life insurance" means an act, practice or arrangement to initiate a life insurance policy for the benefit of a third party investor who, at the time of policy origination, has no insurable interest in the insured under K.S.A. 40-450, and amendments thereto. Stranger-originated life insurance practices include, but are not limited to, cases in which life insurance is purchased with resources or guarantees from or through a person or entity who, at the time of policy inception, could not lawfully initiate the policy, and where, at the time of policy inception, there is an arrangement or agreement to directly or indirectly transfer the ownership of the policy or the policy benefits, or both, to a third party. Any trust that is created to give the appearance of insurable interest, and is used to initiate one or more policies for investors, violates K.S.A. 40-450, and amendments thereto, and the prohibition against wagering on human life. Stranger-originated life insurance arrangements do not include those practices set forth in paragraph (3) of subsection (o).

(m) "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in 24 months or less.

(n) "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 or more viatical settlement providers. 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. The term 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.

(o) (1) "Viatical settlement contract" means a written agreement between a viator and a viatical settlement provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the viator's present or future assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance, except that the minimum value for a viatical settlement contract shall be greater than the cash surrender value or accelerated death benefit available at the time of an application for a viatical settlement contract.

(2) Viatical settlement contract also includes:

(A) The transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of a person residing in this state.

(B) A written agreement for a loan or other lending transaction, secured primarily by an individual or group life insurance policy, or a premium finance loan made for a policy on or before the date of issuance of the policy, where:

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

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

(3) Viatical settlement contract does not include:

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

(B) Loan proceeds that are used solely to pay:

(i) Premiums for the policy; and

(ii) any costs or expenses incurred by the lender or the borrower in connection with the financing.

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

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

(E) A loan made by a lender that does not violate the Kansas insurance premium finance company act, K.S.A. 40-2601 et seq., and acts amendatory thereof or supplemental thereto, unless the premium finance loan is described in subparagraph (B) of paragraph (2).

(F) An agreement where all the parties:

(i) Are closely related to the insured by blood or law; or

(ii) have a lawful substantial economic interest in the continued life, health and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties;

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

(H) a bona fide business succession planning arrangement between one or more:

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

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

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

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

(j) any other contract, transaction or arrangement exempted from the definition of viatical settlement contract by the commissioner based on a determination that the contract, transaction or arrangement is not of the type intended to be regulated by this act.

(p) "Viatical settlement provider" means a person, other than a viator, who enters into or effectuates a viatical settlement contract. Viatical settlement provider does not include:

(1) 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;

(2) the issuer of a life insurance policy providing accelerated benefits under K.S.A. 40-401, and amendments thereto, and pursuant to the contract;

(3) 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;

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

(5) a financing entity;

(6) a special purpose entity;

(7) a related provider trust;

(8) a viatical settlement purchaser; or

(9) an accredited investor or qualified institutional buyer as such term is defined respectively in regulation D, rule 501 or rule 144A of the federal securities act of 1933, as in effect upon the effective date of this act, and who purchases a viaticated policy from a viatical settlement provider.

(q) "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. For the purposes of this act, a viator shall not be limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. Viator shall not include:

(1) A licensee under this act;

(2) a qualified institutional buyer as such term is defined in rule 144A of the federal securities act of 1933, as in effect upon the effective date of this act;

(3) a financing entity;

(4) a special purpose entity; or

(5) a related provider trust.

(r) "Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

(s) "Viatical settlement purchaser" means a person who gives a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit. Viatical settlement purchaser shall not include:

(1) A licensee under this act;

(2) an accredited investor or qualified institutional buyer as such term is defined respectively in regulation D, rule 501 or rule 144A of the federal securities act of 1933, as in effect upon the effective date of this act;

(3) a financing entity;

(4) a special purpose entity; or

(5) a related provider trust.

History: L. 2002, ch. 158, § 2; L. 2008, ch. 96, § 5; July 1.