

SB 284

FILED

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OFFICE WEST VIRGINIA

**WEST VIRGINIA LEGISLATURE**

**SEVENTY-NINTH LEGISLATURE**

**REGULAR SESSION, 2009**

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**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**Senate Bill No. 284**

(SENATORS MINARD AND KESSLER, *original sponsors*)

[Passed April 7, 2009; in effect ninety days from passage.]

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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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FOR

**Senate Bill No. 284**

(SENATORS MINARD AND KESSLER, *original sponsors*)

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AN ACT to amend and reenact §33-13C-3 and §33-13C-16 of the Code of West Virginia, 1931, as amended, all relating to viatical settlements; adding alternative means for satisfying financial requirements for the licensing of viatical settlement providers and brokers; and making criminal provisions applicable to any person violating the Viatical Settlements Act.

*Be it enacted by the Legislature of West Virginia:*

That §33-13C-3 and §33-13C-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

**ARTICLE 13C. VIATICAL SETTLEMENTS ACT.**

**§33-13C-3. License and bond requirements.**

1 (a) (1) A person may not operate as a viatical settlement  
2 provider or viatical settlement broker without first  
3 obtaining a license from the commissioner.

4 (2) (A) An insurance producer who is authorized to sell  
5 life insurance in this state pursuant to a resident or  
6 nonresident license issued in accordance with the provi-  
7 sions of article twelve of this chapter may operate as a  
8 viatical settlement broker without obtaining a license  
9 pursuant to this section if the viatical settlement activities  
10 of the producer are incidental to the producer's insurance  
11 business activities.

12 (B) The insurer that issued the policy being viaticated  
13 is not responsible for any act or omission of a viatical  
14 settlement broker or viatical settlement provider arising  
15 out of or in connection with the viatical settlement  
16 transaction, unless the insurer receives compensation for  
17 the placement of a viatical settlement contract from the  
18 viatical settlement provider or viatical settlement broker  
19 in connection with the viatical settlement contract.

20 (3) A person licensed as an attorney, certified public  
21 accountant or financial planner accredited by a nationally  
22 recognized accreditation agency who is retained to  
23 represent the viator, whose compensation is not paid  
24 directly or indirectly by the viatical settlement provider,  
25 may negotiate viatical settlement contracts on behalf of  
26 the viator without having to obtain a license as a viatical  
27 settlement broker.

28 (b) Application for a viatical settlement provider or  
29 viatical settlement broker license and for renewals of the  
30 licenses shall be made in the manner prescribed by the  
31 commissioner and shall be accompanied by fees estab-  
32 lished in legislative rules, including emergency rules,  
33 promulgated by the commissioner.

34 (c) The commissioner has the authority, at any time, to  
35 require the applicant to fully disclose the identity of all  
36 stockholders, partners, officers, members and employees  
37 and the commissioner may, in the exercise of the commis-  
38 sioner's discretion, refuse to issue a license in the name of  
39 a legal entity if not satisfied that any officer, employee,  
40 stockholder, partner or member of the entity who may  
41 materially influence the applicant's conduct meets the  
42 standards of this article.

43 (d) The commissioner shall make an investigation of  
44 each applicant and issue a license if the commissioner  
45 finds that the applicant:

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

48 (2) Is competent and trustworthy and acts in good faith  
49 in the capacity of a licensee;

50 (3) Has a good business reputation and is qualified by  
51 experience, training or education as a viatical settlement  
52 provider or broker;

53 (4) Has demonstrated evidence of financial responsibil-  
54 ity, in a format prescribed by the commissioner, by  
55 possessing a minimum equity of not less than \$250,000 in  
56 cash or cash equivalents reflected in the applicant's  
57 audited financial statements or through a surety bond  
58 executed and issued by an insurer authorized to issue  
59 surety bonds in this state in the amount of \$250,000:  
60 *Provided*, That the commissioner may permit an applicant  
61 for a broker's license to demonstrate evidence of financial  
62 responsibility through a policy of insurance covering legal  
63 liability resulting from erroneous acts or failure to act in  
64 their capacity as a viatical settlement broker and inuring  
65 to the benefit of any aggrieved party as the result of any  
66 single occurrence in the sum of not less than \$100,000 and  
67 \$300,000 in the aggregate for all occurrences within one

68 year. Any surety bond issued pursuant to this subdivision  
69 shall be in the favor of this state and shall specifically  
70 authorize recovery by the commissioner on behalf of any  
71 person in this state who sustained damages as the result of  
72 erroneous acts, failure to act, conviction of fraud or  
73 conviction of unfair practices by the viatical settlement  
74 provider or viatical settlement broker. The commissioner  
75 shall accept, as evidence of financial responsibility, proof  
76 that financial instruments in accordance with the require-  
77 ments in this paragraph have been filed with a state in  
78 which the applicant is licensed as a viatical settlement  
79 provider or viatical settlement broker. The commissioner  
80 may ask for evidence of financial responsibility at any  
81 time he or she considers it necessary.

82 (5) If a legal entity has provided a certificate of good  
83 standing from the state of its domicile; and

84 (6) Has provided an antifraud plan that meets the  
85 requirements of subsection (g), section fourteen of this  
86 article.

87 (e) The commissioner may not issue a license to a  
88 nonresident applicant unless the applicant files with the  
89 commissioner either a written designation of an agent for  
90 service of process or the applicant's written irrevocable  
91 consent that any action against the applicant may be  
92 commenced against the applicant by service of process on  
93 the commissioner.

94 (f) A viatical settlement provider or viatical settlement  
95 broker shall provide to the commissioner new or revised  
96 information about officers, ten percent or more stockhold-  
97 ers, partners, directors, members or designated employees  
98 within thirty days of the change.

99 (g) An individual licensed as a viatical settlement  
100 broker shall complete on a biennial basis fifteen hours of  
101 training related to viatical settlements and viatical

102 settlement transactions as required by the commissioner.  
103 A life insurance producer operating as a viatical settle-  
104 ment broker pursuant to subdivision (2), subsection (a) of  
105 this section is not subject to the requirements of this  
106 subsection. Any person failing to meet the requirements  
107 of this subsection is subject to the penalties imposed by  
108 the commissioner.

**§33-13C-16. Criminal penalties.**

1 (a) A person convicted of a fraudulent viatical settle-  
2 ment act is guilty of a felony and, upon conviction thereof,  
3 shall be sentenced as follows:

4 (1) Imprisonment in a state correctional facility for not  
5 more than twenty years or payment of a fine of not more  
6 than \$100,000, or both, if the value of the viatical settle-  
7 ment contract is more than \$35,000;

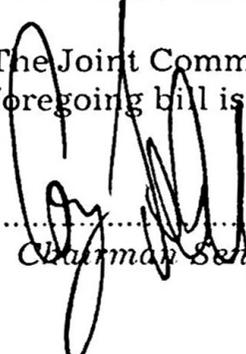
8 (2) Imprisonment in a state correctional facility for not  
9 more than ten years or to payment of a fine of not more  
10 than \$20,000, or both, if the value of the viatical settle-  
11 ment contract is more than \$2,500, but not more than  
12 \$35,000;

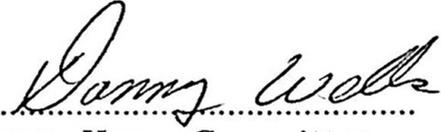
13 (3) Imprisonment in a state correctional facility for not  
14 more than five years or payment of a fine of not more than  
15 \$10,000, or both, if the value of the viatical settlement  
16 contract is more than \$500, but not more than \$2,500.

17 (b) Any person who violates any other provision of this  
18 article is guilty of a misdemeanor and, upon conviction  
19 thereof, shall be fined not more than \$1,000 or confined in  
20 jail not more than one year, or both fined and confined.

Enr. Com. Sub. for S. B. No. 284] 6

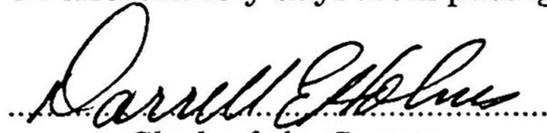
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

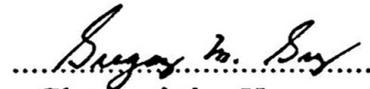
  
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Chairman Senate Committee

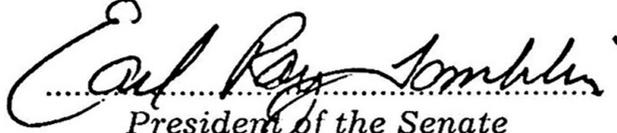
  
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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker House of Delegates

The within is approved this the 20<sup>th</sup>  
Day of April, 2009.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 16 2009

Time 10:10am