Sponsored by:
Assemblyman  GARY S. SCHAER
District 36 (Bergen, Essex and Passaic)

SYNOPSIS
Prohibits stranger-originated life insurance contracts.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel

AN ACT concerning certain life insurance contracts and amending and supplementing P.L.2005, c.229.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 2 of P.L.2005, c.229 (C.17B:30B-2) is amended to read as follows:
2. As used in this act:
   “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.
   “Business of viatical settlements” means an activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating of, or in any other manner involving, viatical settlement contracts.
   “Chronically ill” means:
   (1) Being unable to perform at least two activities of daily living, including, but not limited, to eating, toileting, transferring, bathing, dressing or continence;
   (2) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or
(3) Having a level of disability similar to that described in paragraph (1) of this subsection as determined by the United States Secretary of Health and Human Services.

“Commissioner” means the Commissioner of Banking and Insurance.

“Department” means the Department of Banking and Insurance.

“Financing entity” means:

(1) an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy from a viatical settlement provider, credit enhancer, or any entity that has a direct ownership in a policy that is the subject of a viatical settlement contract but:

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

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

(2) “Financing entity” does not include a non-accredited investor or purchaser of a policy from a viatical settlement provider.

“Fraudulent viatical settlement act” means and includes:

(1) Acts or omissions 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 its employees or its 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, life insurance producer, financing entity, insurer 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) The solicitation, offer, effectuation or sale of a settlement contract or insurance policy;

      (viii) The issuance of written evidence of a viatical settlement contract or insurance policy; or

      (ix) A financing transaction;

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

(2) 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 viatical settlement provider 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 concealing information about a material fact from the commissioner;

(3) Embezzlement, theft, misappropriation or conversion of monies, 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;

(4) 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, where the viator or the viator's agent intended to defraud the policy's issuer. For the purposes of this paragraph, “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; [or]

(5) Entering into stranger-originated life insurance as defined in this section; or

(6) Attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.


“Person” means a natural person or a legal entity, including, but not limited to, an individual, partnership, limited liability partnership, limited liability company, association, trust or corporation.

“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.

“Premium finance loan” means a loan made primarily for the purpose of making premium payments on a life insurance policy, which loan is secured by an interest in that life insurance policy.

“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 viaticated 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.

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

“Stranger-originated life insurance” or “STOLI” means an act, practice or arrangement to initiate the issuance of a policy in this State for the benefit of a third-party investor who, at the time of policy inception, has no insurable interest under the laws of this State, in the life of the insured. STOLI practices include but are not limited to cases in which a policy 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 himself, herself, or itself, and
where, at the time of policy inception, there exists an arrangement or agreement, to transfer, directly or
indirectly, the ownership of that policy or the policy benefits to a third party. Trusts that are created to give the
appearance of insurable interest and that are used to initiate policies for investors violate insurable interest
laws and the prohibition against wagering on life. STOLI arrangements shall not include otherwise lawful
viatical settlement contracts as permitted by P.L.2005, c.229 (C.17B:30B-1 et seq.) or those practices set forth
in paragraph (2) of the definition of viatical settlement contract set forth in this section.

“Terminally ill” means having an illness or sickness that can reasonably be expected to result in death in 24
months or less.

“Viatical settlement contract” means:

(1) a written agreement between a viatical settlement provider and a viator 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 policy, in return for the viator's assignment, transfer, sale, devise or bequest of the death
benefit or ownership of any portion of the policy. A viatical settlement contract also includes a contract for a
loan or other financing transaction with a viator secured primarily by an individual or group life insurance
policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a
loan secured by the cash value of a policy. A viatical settlement contract includes:

(a) the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that
owns an individual or group life insurance policy if the trust or other entity was formed or availed of for the
principal purpose of acquiring a life insurance policy which is owned by a person residing in this State;

(b) a premium finance loan made for a policy on or before the date of issuance of the policy and pursuant
to which loan one or more of the following conditions apply:

(i) The loan proceeds are not used solely to pay premiums for the policy and any costs or expenses
incurred by the lender or the borrower in connection with the financing;

(ii) The owner receives on the date of the premium finance loan a guarantee of the future life settlement
value of the policy;

(iii) The owner agrees on the date of the premium finance loan to sell the policy or any portion of the
policy's death benefit on any date following the issuance of the policy, not including an agreement to sell the
policy in the event of a default, provided that the default is not pursuant to an agreement or understanding
with any other person for the purpose of evading regulation under this act; or

(iv) 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.

(2) A viatical settlement contract does not mean or include [a written agreement between a viator and a
person having an insurable interest in the insured's life. A viatical settlement contract shall not include any
accelerated benefit pursuant to the terms of a life insurance policy issued in accordance with Title 17B of the
New Jersey Statutes];

(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) a premium finance loan, as defined in this section, or any loan made by a licensed financial institution, provided that neither default on that loan nor the transfer of the policy in connection with that default is made pursuant to an agreement or understanding with any other person for the purpose of evading regulation under P.L.2005, c.229 (C.17B:30B-1 et seq.):

(c) a collateral assignment of a life insurance policy by an owner;

(d) a loan made by a lender, so long as that loan is not described in paragraph (1)(b) of this definition and is not otherwise within the definition of viatical settlement contract;

(e) an agreement by which all of the parties satisfy one of the following conditions:
   (i) they are closely related to the insured by blood or law;
   (ii) they have a lawful substantial economic interest in the continued life, health and bodily safety of the person insured; or
   (iii) they are trusts established primarily for the benefit of those parties.

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

(g) a bona fide business succession planning arrangement:
   (i) between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders;
   (ii) between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners;
   (iii) between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;

(h) 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

(i) any other contract, transaction, or arrangement that the commissioner determines is not of the type intended to be regulated by P.L.2005, c.229 (C.17B:30B-1 et seq.).

“Viatical settlement provider” means a person, other than a viator, that 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 pursuant to regulations prescribed by the commissioner and pursuant to the policy;

(3) An authorized or eligible insurer that provides stop loss coverage to a viatical settlement provider, 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; or

“Viaticated policy” means a life insurance policy or certificate that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

“Viator” means the owner of a 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 policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. If there is more than one viator on a single policy and the viators are residents of different states, the transaction shall be governed by the law of the state in which the viator having the largest percentage of ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all viators. Viator shall not include:

1. A viatical settlement provider licensed under this act;
3. A financing entity;
4. A special purpose entity; or
5. A related provider trust.

2. Section 10 of P.L.2005, c.229 (C.17B:30B-10) is amended to read as follows:

10. a. It is a violation of this act for any person to enter into a viatical settlement contract at any time prior to the date of issuance of a life insurance policy or within a two-year period commencing with the date of issuance of the insurance policy unless the viator certifies to the viatical settlement provider that one 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 life insurance policy, so long as the total amount of time covered under the conversion policy plus the time covered under the prior policy is at least 24 months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;
2. The viator submits independent evidence to the viatical settlement provider that within the two-year period: (a) the viator or insured was terminally ill or chronically ill; or (b) the viator or insured disposed of his ownership interests in a closely held corporation pursuant to a buyout or other similar agreement in effect at the time the insurance policy was initially issued; or (c) both.

b. Copies of the independent evidence described in paragraph (2) of subsection a. of this section and documents required by subsection a. of section 9 of this act shall be submitted to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage. 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 subsection a. of this section when the provider submits a request to the insurer to effect the transfer of the policy 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.

(cf: P.L.2005, c.229, s.10)

3. Section 11 of P.L.2005, c.229 (C.17B:30B-11) is amended to read as follows:

11. The purpose of this section is to provide prospective viators with clear and unambiguous statements in the advertisement of viatical settlement contracts and to assure the clear, truthful and adequate disclosure of the benefits, risks, limitations and exclusions of any viatical settlement contract. This purpose is intended to be accomplished by the establishment of guidelines and standards of permissible and impermissible conduct in the advertising of viatical settlement contracts to assure that product descriptions are presented in a manner that prevents unfair, deceptive or misleading advertising and is conducive to accurate presentation and description of viatical settlements through the advertising media and material used by licensees under this act.

a. 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. Where disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

b. Every viatical settlement provider 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. All advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the viatical settlement provider licensee, as well as the individual who created or presented the advertisement. A system of control shall include regular, routine notification, at least once a year, to life insurance producers and others authorized by the viatical settlement provider who disseminates advertisements, of the requirements and procedures for approval prior to the use of any advertisements not furnished by the viatical settlement provider.

c. Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract, product or service shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the 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. Certain advertisements are deemed false and misleading on their face and are prohibited. False and misleading advertisements include, but are not limited to, the following representations:

(1) “Guaranteed,” “fully secured,” “100 percent secured,” “fully insured,” “secure,” “safe,” “backed by rated insurance companies,” “backed by federal law,” “backed by state law,” or “state guaranty funds,” or similar representations;
(2) “No risk,” “minimal risk,” “low risk,” “no speculation,” “no fluctuation,” or similar representations;

(3) “Qualified or approved for individual retirement accounts (IRAs), Roth IRAs, 401(k) plans, simplified employee pensions [(SEP)] (SEPs), 403(b) plans, Keogh plans, [TSA] tax-sheltered annuities (TSAs), other retirement account rollovers,” “tax deferred,” or similar representations;

(4) Utilization of the word “guaranteed” to describe the fixed return, annual return, principal, earnings, profits, investment, or similar representations;

(5) “No sales charges or fees” or similar representations; and

(6) “High yield,” “superior return,” “excellent return,” “high return,” “quick profit,” or similar representations;

(7) Purported favorable representations or testimonials about the benefits of viatical settlement contracts taken out of context from newspapers, trade papers, journals, radio and television programs, and all other forms of print and electronic media.

e. 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.

(1) 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 consequence. The fact that the viatical settlement contract offered is made available for inspection prior to 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.

(2) 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.

(3) An advertisement shall not represent that premium payments will not be required to be paid on the life insurance policy that is the subject of a viatical settlement contract in order to maintain that policy, unless that is the fact.

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

(5) 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. 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) Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the viatical settlement contract, product or service advertised, if any, and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, the viatical settlement provider licensee makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.
(a) 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.

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

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

f. An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

g. An advertisement shall not disparage insurers, viatical settlement providers, life insurance producers, policies, services or methods of marketing.

h. The name of the 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. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.

i. An advertisement shall not use a trade name, group designation, name of the parent company of a licensee, name of a particular division of the licensee, service mark, slogan, symbol or other device or reference without disclosing the name of the licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the licensee, or to create the impression that a company other than the licensee would have any responsibility for the financial obligation under a viatical settlement contract.

j. 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 appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

k. An advertisement may state that a licensee is licensed in the state where the advertisement appears so long as it does not exaggerate that fact or suggest or imply that competing licensees may not be so licensed. The advertisement may ask the audience to consult the licensee’s website or contact the department to find out if the state requires licensing and, if so, whether the viatical settlement provider, or life insurance producer is licensed.

l. 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 forms are recommended or endorsed by any government entity.
m. The name of the actual licensee shall be stated in all of its advertisements. 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.

n. An advertisement shall not directly or indirectly create the impression that any division or agency of the State or of the federal government endorses, approves or favors:

(1) Any viatical settlement provider 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.

o. If the advertiser emphasizes the speed with which the viatication will occur, the advertising shall disclose the average time from the date of the completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

p. 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 months.

q. An advertisement by a viatical settlement provider shall not, directly or indirectly, market, advertise, solicit, or otherwise promote the purchase of a new life insurance policy for the sole purpose of, or with a primary emphasis on, settling the policy.

(cf: P.L.2005, c.229, s.11)

4. (New section) In addition to other questions an insurance carrier may lawfully pose to a life insurance applicant, insurance carriers may inquire in the application for insurance whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing.

a. If the premium finance loan provides funds which can be used for a purpose other than paying for the premiums, costs, and expenses associated with obtaining and maintaining the life insurance policy and loan, the application may be rejected as a prohibited practice under P.L.2005, c.229 (C.17B:30B-1 et seq.).

b. If the financing does not violate subsection a. of this section or violate the insurer's lawful underwriting guidelines, the insurer may not reject a life insurance application solely because the premiums will be financed. The insurance carrier may make disclosures to the applicant, either on the application or an amendment to the application to be completed no later than the delivery of the policy, including, but not limited to, the following:

“If you have entered into a loan arrangement where the policy is used as collateral, and the policy changes ownership at some point in the future in satisfaction of the loan, the following may be true:

(1) A change of ownership could lead to a stranger owning an interest in the insured's life.
(2) A change of ownership could in the future limit your ability to purchase insurance on the insured's life because there is a limit to how much coverage insurers will issue on a life.
(3) You should consult a professional adviser since a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan.”

c. In addition to the disclosures in subsection b. of this section, the insurance carrier may require the following certifications from the applicant or the insured:

“(1) I have not entered into any agreement or arrangement under which I have agreed to make a future sale of this insurance policy.

(2) My loan arrangement for this policy provides funds sufficient to pay for some or all of the premiums, costs, and expenses associated with obtaining and maintaining my life insurance policy, but I have not entered into any agreement by which I am to receive consideration in exchange for procuring this policy.

(3) The borrower has an insurable interest in the insured.”

5. (New section) No person providing premium financing shall receive any proceeds, fees, or other consideration from the policy or owner of the policy that are in addition to the amounts required to pay principal, interest, and any reasonable costs or expenses incurred by the lender or borrower in connection with the premium finance agreement, except for the event of a default, unless either the default on the loan or transfer of the policy occurs pursuant to an agreement or understanding with any other person for the purpose of evading regulation under P.L.2005, c.229 (C.17B:30B-1 et seq.).

6. (New section) An insurer shall not:

a. Engage in any transaction, act, or practice that restricts, limits, or impairs the lawful transfer of ownership, change of beneficiary, or assignment of a policy.

b. Make any false or misleading statement for the purpose of dissuading an owner or insured from a lawful viatical settlement contract.

7. This act shall take effect immediately.

STATEMENT

This bill amends and supplements the “Viatical Settlements Act,” P.L.2005, c.229 (C.17B:30B-1 et seq.), to address concerns regarding stranger-originated life insurance, or “STOLI,” as it is sometimes called. STOLI is a practice in which a life insurance policy is purchased for the benefit of a third party who, at the time of policy issuance, has no insurable interest in the life of the insured. Insurable interest, under long standing law, generally requires that a person applying for a life insurance policy have an interest in the continued life of the insured. This is most often because the insured is a blood relative or because an economic relationship exists between the parties.

Since it has long been illegal and void as a wager on human life to seek to obtain insurance on a stranger, modern STOLI schemes have endeavored to hide the offensive ownership of the policy from insurers at inception and from viatical settlement companies when the policy is sought to be sold. STOLI transactions also often include acts of fraud in the application for new insurance, such as the applicant misrepresenting their net worth or the amount of in-force insurance they have. STOLI 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 themselves and where, at the time of inception, there is an arrangement, verbal or written, to directly or indirectly transfer the ownership of the policy or policy benefits to a third party.

Not only are STOLI schemes harmful because they circumvent insurable interest laws, they can also limit an insured’s ability to purchase life insurance later if he has used up his capacity for insurance on the STOLI arrangement.

This bill defines STOLI and classifies it as a fraudulent act within the context of the “Viatical Settlements Act,” which regulates viatical settlement arrangements and practices in New Jersey. A viatical settlement is the sale or transfer of an existing life insurance policy while the owner or insured is still alive, for a value less than the expected death benefit. A viatical settlement contract may include a contract for a loan or other financing transaction. Viatical settlement contracts, while involving the sale of a policy to a third party that lacks insurable interest, are not STOLI because, by law, the insurable interest requirement is only applicable at the time of policy issuance and cannot be applied to the later assignment of a policy to a third party.

Specifically, the bill provides a definition of stranger-originated life insurance and explicitly states that stranger-originated life insurance is not a viatical settlement contract. The bill prohibits trust-initiated STOLI by prohibiting the assignment of the ownership or beneficiary interest in a trust or other entity that owns such a policy prior to, or for two years after, the issuance of a policy, if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance policies. It also prohibits establishing trusts created to give the appearance of insurable interest and that are used to initiate policies for investors. The bill also prohibits premium finance loans prior to or for two years after the issuance of a policy where certain terms of the loan are indicative that the loan is being used to manufacture a STOLI policy, including the pre-arranged sale of the policy through the loan, a guarantee of the viatical value of the policy or a loan which grossly exceeds the premiums and other costs of the policy. The bill prohibits pre-arranged sales of new life insurance by prohibiting any agreement to sell a policy at any time prior to, or within two years after issuance of a new policy, regardless of when the policy is to be transferred, and ensures that lenders of premium finance loans do not take ownership of the policy through the loan terms. The bill also prohibits licensees from soliciting or marketing new life insurance for the sole purpose of settling the policy.

Finally, the bill provides new measures to detect STOLI and prevent STOLI, and provides new consumer protections against STOLI. It authorizes life insurers to ask certain questions in applications for new life insurance policies which will evoke responses evidencing attempts at accomplishing stranger-originated life insurance and also allows insurers to advise applicants who are seeking premium financing of certain risks associated with premium financing to help protect against STOLI.