

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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HOUSE BILL 359*
Committee Substitute Favorable 6/19/01
Committee Substitute #2 Favorable 8/1/01

Short Title: Viatical Settlements Rewrite-AB.

(Public)

Sponsors:

Referred to:

March 1, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO REVISE NORTH CAROLINA'S LAW REGULATING VIATICAL
3 SETTLEMENTS IN ACCORDANCE WITH A MODEL ACT OF THE
4 NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

5 The General Assembly of North Carolina enacts:

6

7 **PART I. INSURANCE LAWS PROVISIONS**

8

9 **SECTION 1.** The title of Article 58 of Chapter 58 of the General Statutes
10 reads as rewritten:

11

"Article 58.

12

~~General Regulations of Business—Life Insurance.~~Life Insurance and Viatical
Settlements."

13

14 **SECTION 2.** Article 58 of Chapter 58 of the General Statutes is amended as
15 follows:

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(1) By designating G.S. 58-58-1 through G.S. 58-58-40 as Part 1 with the heading "General Provisions".

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18 (2) By designating G.S. 58-58-45 through G.S. 58-58-65 as Part 2 with the heading "Financial Provisions".

19

20 (3) By designating G.S. 58-58-70 through G.S. 58-58-120 as Part 3 with the heading "Insurable Interests and Other Rights".

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22 (4) By designating G.S. 58-58-125 through G.S. 58-58-170 as Part 4 with the heading "Miscellaneous Provisions".

23

24 (5) By reserving G.S. 58-58-175 through G.S. 58-58-195 for future codification purposes.

25

26 **SECTION 3.** Article 58 of Chapter 58 of the General Statutes is amended by
27 adding a new Part to read:

28

"Part 5. Viatical Settlements.

1 **"§ 58-58-200. Short title.**

2 This Part may be cited as the Viatical Settlements Act.

3 **"§ 58-58-205. Definitions.**

4 As used in this Article:

5 (1) 'Advertising' means any written, electronic, or printed communication
6 or any communication by means of recorded telephone messages or
7 transmitted on radio, television, the Internet, or similar
8 communications media, including filmstrips, motion pictures, and
9 videos, published, disseminated, circulated, or placed before the
10 public, directly or indirectly, for the purpose of creating an interest in
11 or inducing a person to sell a life insurance policy under a viatical
12 settlement contract.

13 (2) 'Business of viatical settlements' means an activity involved in, but not
14 limited to, the offering, solicitation, negotiation, procurement,
15 effectuation, purchasing, investing, financing, monitoring, tracking,
16 underwriting, selling, transferring, assigning, pledging, hypothecating,
17 or in any other manner, of viatical settlement contracts. 'Business of
18 viatical settlements' does not include an activity involving viatical
19 settlement contracts as investments as regulated by Chapter 78A of the
20 General Statutes.

21 (3) 'Chronically ill' means:

22 a. Being unable to perform at least two activities of daily living
23 (i.e., eating, toileting, transferring, bathing, dressing, or
24 continence);

25 b. Requiring substantial supervision to protect the individual from
26 threats to health and safety due to severe cognitive impairment;
27 or

28 c. Having a level of disability similar to that described in
29 sub-subdivision a. of this subdivision as determined by the
30 Secretary of Health and Human Services.

31 (4) 'Financing entity' means an underwriter, placement agent, lender,
32 purchaser of securities, purchaser of a policy from a viatical settlement
33 provider, credit enhancer, or any entity that has a direct ownership in a
34 policy that is the subject of a viatical settlement contract, but:

35 a. Whose principal activity related to the transaction is providing
36 funds to effect the viatical settlement or purchase of one or
37 more viaticated policies; and

38 b. Who has an agreement in writing with one or more licensed
39 viatical settlement providers to finance the acquisition of
40 viatical settlement contracts.

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

1 (5) 'Fraudulent viatical settlement act' includes:

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

6 1. Presenting, causing to be presented, or preparing with
7 knowledge or belief that it will be presented to or by a
8 viatical settlement provider, viatical settlement broker,
9 viatical settlement purchaser, financing entity, insurer,
10 insurance producer, viator, insured or any other person
11 false material information, or concealing material
12 information, as part of, in support of, or concerning a
13 fact material to one or more of the following:

14 I. An application for the issuance of a viatical
15 settlement contract or insurance policy.

16 II. The underwriting of a viatical settlement contract
17 or insurance policy.

18 III. A claim for payment or benefit under a viatical
19 settlement contract or insurance policy.

20 IV. Premiums paid on an insurance policy.

21 V. Payments and changes in ownership or
22 beneficiary made in accordance with the terms of
23 a viatical settlement contract or insurance policy.

24 VI. The reinstatement or conversion of an insurance
25 policy.

26 VII. In the solicitation, offer, effectuation, or sale of a
27 viatical settlement contract or insurance policy.

28 VIII. The issuance of written evidence of viatical
29 settlement contract or insurance.

30 IX. A financing transaction.

31 2. Employing any device, scheme, or artifice to defraud
32 related to viaticated policies.

33 b. In the furtherance of a fraud or to prevent the detection of a
34 fraud, any person commits or permits the person's employees or
35 agents to:

36 1. Remove, conceal, alter, destroy, or sequester from the
37 Commissioner the assets or records of a licensee or other
38 person engaged in the business of viatical settlements;

39 2. Misrepresent or conceal the financial condition of a
40 licensee, financing entity, insurer, or other person;

41 3. Transact the business of viatical settlements in violation
42 of laws requiring a license, certificate of authority, or

- 1 other legal authority for the transaction of the business of
2 viatical settlements; or
3 4. File with the Commissioner or the insurance regulator of
4 another jurisdiction a document containing false
5 information or otherwise conceal information about a
6 material fact from the Commissioner.
7 c. Embezzlement, theft, misappropriation, or conversion of
8 monies, funds, premiums, credits, or other property of a viatical
9 settlement provider, insurer, insured, viator, insurance policy
10 owner, or any other person engaged in the business of viatical
11 settlements or insurance; or
12 d. Attempting to commit, assisting, aiding, or abetting in the
13 commission of, or conspiracy to commit the acts or omissions
14 specified in this subdivision.
15 (6) 'Policy' means an individual or group life insurance policy, group life
16 insurance certificate, group life insurance contract, or any other
17 arrangement of life insurance affecting the rights of a resident of this
18 State or bearing a reasonable relation to this State, regardless of
19 whether delivered or issued for delivery in this State.
20 (7) 'Related provider trust' means a titling trust or other trust established
21 by a licensed viatical settlement provider or a financing entity for the
22 sole purpose of holding the ownership or beneficial interest in
23 purchased policies in connection with a financing transaction.
24 (8) 'Special purpose entity' means a corporation, partnership, trust, limited
25 liability company, or other similar entity formed solely to provide
26 either directly or indirectly access to institutional capital markets for a
27 financing entity or licensed viatical settlement provider.
28 (9) 'Terminally ill' means having an illness or sickness that can reasonably
29 be expected to result in death in 24 months or fewer.
30 (10) 'Viatical settlement broker' or 'broker' means a person that on behalf of
31 a viator and for a fee, commission, or other valuable consideration
32 offers or attempts to negotiate viatical settlement contracts between a
33 viator and one or more viatical settlement providers. The term does not
34 include an attorney, certified public accountant, or a financial planner
35 accredited by a nationally recognized accreditation agency who is
36 retained to represent the viator and whose compensation is not paid
37 directly or indirectly by the viatical settlement provider or purchaser.
38 (11) 'Viatical settlement contract' means a written agreement establishing
39 the terms under which compensation or anything of value will be paid,
40 which compensation or value is less than the expected death benefit of
41 the policy, in return for the viator's assignment, transfer, sale, devise,
42 or bequest of the death benefit or ownership of any portion of the

1 policy. A viatical settlement contract also includes a contract for a loan
2 or other financing transaction with a viator secured primarily by a
3 policy, other than a loan by a life insurance company under the terms
4 of the life insurance contract, or a loan secured by the cash value of a
5 policy. A viatical settlement contract includes an agreement with a
6 viator to transfer ownership or change the beneficiary designation at a
7 later date regardless of the date that compensation is paid to the viator.

8 (12) 'Viatical settlement provider' or 'provider' means a person, other than a
9 viator, that enters into or effectuates a viatical settlement contract.

10 Viatical settlement provider does not include:

11 a. A bank, savings bank, savings and loan association, credit
12 union, or other licensed lending institution that takes an
13 assignment of a life insurance policy as collateral for a loan;

14 b. The issuer of a life insurance policy providing accelerated
15 benefits under rules adopted by the Commissioner and under
16 the contract;

17 c. An authorized or eligible insurer that provides stop-loss
18 coverage to a viatical settlement provider, purchaser, financing
19 entity, special purpose entity, or related provider trust;

20 d. A natural person who enters into or effectuates no more than
21 one agreement in a calendar year for the transfer of life
22 insurance policies for any value less than the expected death
23 benefit;

24 e. A financing entity;

25 f. A special purpose entity;

26 g. A related provider trust;

27 h. A viatical settlement purchaser; or

28 i. An accredited investor or qualified institutional buyer as
29 defined respectively in Regulation D, Rule 501 or Rule 144A of
30 the Federal Securities Act of 1933, as amended, and who
31 purchases a viaticated policy from a viatical settlement
32 provider.

33 (13) 'Viatical settlement purchase agreement' or 'purchase agreement'
34 means an agreement, entered into by a viatical settlement purchaser, to
35 which the viator is not a party, to purchase a life insurance policy or an
36 interest in a life insurance policy, that is entered into for the purpose of
37 deriving an economic benefit.

38 (14) 'Viatical settlement purchaser' or 'purchaser' means a person who gives
39 a sum of money as consideration for a life insurance policy or an
40 interest in the death benefits of a life insurance policy or a person who
41 owns or acquires or is entitled to a beneficial interest in a trust that
42 owns a viatical settlement contract or is the beneficiary of a life

1 insurance policy that has been or will be the subject of a viatical
2 settlement contract for the purpose of deriving an economic benefit.
3 'Viatical settlement purchaser' does not include:

4 a. A licensee under this Part;

5 b. An accredited investor or qualified institutional buyer as
6 defined respectively in Regulation D, Rule 501 or Rule 144A of
7 the Federal Securities Act of 1933, as amended;

8 c. A financing entity;

9 d. A special purpose entity; or

10 e. A related provider trust.

11 (15) 'Viaticated policy' means a policy that has been acquired by a viatical
12 settlement provider under a viatical settlement contract.

13 (16) 'Viator' means the owner of a policy or a certificate holder under a
14 group policy who enters or seeks to enter into a viatical settlement
15 contract. For the purposes of this Part, a viator shall not be limited to
16 an owner of a life insurance policy or a certificate holder under a group
17 policy insuring the life of an individual with a terminal or chronic
18 illness or condition except where specifically addressed. 'Viator' does
19 not include:

20 a. A licensee under this Part;

21 b. An accredited investor or qualified institutional buyer as
22 defined respectively in Regulation D, Rule 501 or Rule 144A of
23 the Federal Securities Act of 1933, as amended;

24 c. A financing entity;

25 d. A special purpose entity; or

26 e. A related provider trust.

27 **"§ 58-58-210. License requirements.**

28 (a) No person shall operate as a provider or broker without first obtaining a
29 license from the insurance regulator of the state of residence of the viator. If there is
30 more than one viator on a single policy and the viators are residents of different states,
31 the viatical settlement shall be governed by the law of the state in which the viator
32 having the largest percentage ownership resides or, if the viators hold equal ownership,
33 the state of residence of one viator agreed upon in writing by all viators.

34 (b) Application for a provider or broker license shall be made to the
35 Commissioner by the applicant on a form prescribed by the Commissioner, and these
36 applications shall be accompanied by a fee of one hundred dollars (\$100.00).

37 (c) Licenses may be renewed from year to year on the anniversary date upon
38 payment of the annual renewal fee of one hundred dollars (\$100.00). Failure to pay the
39 fees by the renewal date results in expiration of the license.

40 (d) The applicant shall provide information on forms required by the
41 Commissioner. The Commissioner may require the applicant to fully disclose the
42 identity of all stockholders, partners, officers, members, and employees; and the

1 Commissioner may refuse to issue a license in the name of a legal entity if not satisfied
2 that any officer, employee, stockholder, partner, or member of the legal entity who may
3 materially influence the applicant's conduct meets the standards of this Part.

4 (e) A license issued to a legal entity authorizes all partners, officers, members,
5 and designated employees to act as providers or brokers, as applicable, under the
6 license; and all those persons shall be named in the application and any supplements to
7 the application.

8 (f) Upon the filing of an application and the payment of the license fee, the
9 Commissioner shall investigate each applicant and issue a license if the Commissioner
10 finds that the applicant:

11 (1) If a provider, has provided a detailed plan of operation.

12 (2) Is competent and trustworthy and intends to act in good faith in the
13 capacity involved by the license applied for.

14 (3) Has a good business reputation and has had experience, training, or
15 education so as to be qualified in the business for which the license is
16 applied.

17 (4) If a legal entity, provides a certificate of good standing from the state
18 of its domicile.

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

24 (h) A provider or broker shall provide to the Commissioner new or revised
25 information about officers, ten percent (10%) or more stockholders, partners, directors,
26 members, or designated employees within 20 days after the change.

27 **"§ 58-58-215. License revocation and denial.**

28 The Commissioner may suspend, revoke, or refuse to issue or renew the license of a
29 provider or broker if the Commissioner finds that:

30 (1) There was any material misrepresentation in the application for the
31 license;

32 (2) The licensee or any officer, partner, member, or key management
33 personnel has been convicted of fraudulent or dishonest practices, is
34 subject to a final administrative action, or is otherwise shown to be
35 untrustworthy or incompetent;

36 (3) The provider demonstrates a pattern of unreasonable payments to
37 viators;

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

- 1 (5) The provider has entered into any viatical settlement contract that has
2 not been approved pursuant to this Part;
3 (6) The provider has failed to honor contractual obligations set out in a
4 viatical settlement contract;
5 (7) The licensee no longer meets the requirements for initial licensure;
6 (8) The provider has assigned, transferred, or pledged a viaticated policy
7 to a person other than a provider licensed in this State, viatical
8 settlement purchaser, an accredited investor, or qualified institutional
9 buyer as defined respectively in Regulation D, Rule 501 or Rule 144A
10 of the Federal Securities Act of 1933, as amended, financing entity,
11 special purpose entity, or related provider trust; or
12 (9) The licensee or any officer, partner, member, or key management
13 personnel has violated any provision of this Part.

14 **"§ 58-58-220. Approval of viatical settlement contracts and disclosure statements.**

15 A person shall not use a contract or provide to a viator a disclosure statement form in
16 this State unless filed with and approved by the Commissioner. The Commissioner shall
17 disapprove a contract form or disclosure statement form if, in the Commissioner's
18 opinion, the contract or provisions contained therein are unreasonable, contrary to the
19 interests of the public, or otherwise misleading or unfair to the viator. The
20 Commissioner may also require the submission of advertising material.

21 **"§ 58-58-225. Reporting requirements and privacy.**

22 (a) Each licensee shall file with the Commissioner on or before June 1 of each
23 year an annual statement containing such information as the Commissioner prescribes
24 by administrative rule.

25 (b) Except as otherwise allowed or required by law, a provider, broker, insurance
26 company, insurance producer, information bureau, rating agency or company, or any
27 other person with actual knowledge of an insured's identity shall not disclose that
28 identity as an insured, or the insured's financial or medical information, to any other
29 person unless the disclosure:

- 30 (1) Is necessary to effect a viatical settlement between the viator and a
31 provider and the viator and insured have provided prior written
32 consent to the disclosure;
33 (2) Is provided in response to an investigation or examination by the
34 Commissioner or any other governmental officer or agency or pursuant
35 to the requirements of G.S. 58-58-270;
36 (3) Is a term of or condition to the transfer of a policy by one provider to
37 another provider;
38 (4) Is necessary to permit a financing entity, related provider trust, or
39 special purpose entity to finance the purchase of policies by a provider
40 and the viator and insured have provided prior written consent to the
41 disclosure;

1 (5) Is necessary to allow the provider or broker or its authorized
2 representatives to make contacts for the purpose of determining health
3 status; or

4 (6) Is required to purchase stop-loss coverage.

5 **"§ 58-58-230. Examinations.**

6 (a) The Commissioner may conduct an examination of a licensee as often as the
7 Commissioner considers appropriate.

8 (b) An examination under this Part shall be conducted in accordance with the
9 Examination Law.

10 (c) In lieu of an examination of any foreign or alien person licensed under this
11 Part, the Commissioner may accept an examination report on the licensee prepared by
12 the appropriate viatical settlement regulator for the licensee's state of domicile or port-
13 of-entry state.

14 (d) When making an examination under this Part, the Commissioner may retain
15 attorneys, appraisers, independent actuaries, independent certified public accountants, or
16 other professionals and specialists as examiners, the reasonable cost of which shall be
17 borne by the licensee that is the subject of the examination.

18 **"§ 58-58-235. Record retention requirements.**

19 (a) A person licensed under this Part shall retain copies for five years of all:

20 (1) Proposed, offered, or executed contracts, purchase agreements,
21 underwriting documents, policy forms, and applications from the date
22 of the proposal, offer, or execution of the contract or purchase
23 agreement, whichever is later.

24 (2) Checks, drafts, or other evidence and documentation related to the
25 payment, transfer, deposit, or release of funds from the date of the
26 transaction.

27 (3) Other records and documents related to the requirements of this Part.

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

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

35 **"§ 58-58-240. Investigative authority of the Commissioner.**

36 The Commissioner may investigate suspected fraudulent viatical settlement acts and
37 persons engaged in the business of viatical settlements.

38 **"§ 58-58-245. Disclosure.**

39 (a) With each application for a viatical settlement, the provider or broker shall
40 provide the viator with at least the following disclosures no later than the time the
41 application for the contract is signed by all parties. The disclosures shall be provided in

1 a separate document that is signed by the viator and the provider or broker and shall
2 provide the following information:

- 3 (1) There are possible alternatives to contracts including any accelerated
4 death benefits or policy loans offered under the viator's policy.
- 5 (2) Some or all of the proceeds of the viatical settlement may be taxable
6 under federal income tax and state franchise and income taxes, and
7 assistance should be sought from a professional tax advisor.
- 8 (3) Proceeds of the viatical settlement could be subject to the claims of
9 creditors.
- 10 (4) Receipt of the proceeds of a viatical settlement may adversely affect
11 the viator's eligibility for Medicaid or other government benefits or
12 entitlements, and advice should be obtained from the appropriate
13 government agencies.
- 14 (5) The viator has the right to rescind a contract for 15 days after the
15 receipt of the viatical settlement proceeds by the viator, as provided in
16 G.S. 58-58-250(h). If the insured dies during the rescission period, the
17 settlement contract shall be deemed to have been rescinded, subject to
18 repayment of all viatical settlement proceeds and any premiums, loans,
19 and loan interest to the provider or purchaser.
- 20 (6) Funds will be sent to the viator within three business days after the
21 provider has received the insurer or group administrator's
22 acknowledgment that ownership of the policy or interest in the
23 certificate has been transferred and the beneficiary has been
24 designated.
- 25 (7) Entering into a contract may cause other rights or benefits, including
26 conversion rights and waiver of premium benefits that may exist under
27 the policy, to be forfeited by the viator. Assistance should be sought
28 from a financial adviser.
- 29 (8) Disclosure to a viator shall include distribution of a brochure
30 describing the process of viatical settlements. The NAIC's form for the
31 brochure shall be used unless the Commissioner develops one.
- 32 (9) The disclosure document shall contain the following language: 'All
33 medical, financial, or personal information solicited or obtained by a
34 provider or broker about an insured, including the insured's identity or
35 the identity of family members, a spouse or a significant other may be
36 disclosed as necessary to effect the viatical settlement between the
37 viator and the provider. If you are asked to provide this information,
38 you will be asked to consent to the disclosure. The information may be
39 provided to someone who buys the policy or provides funds for the
40 purchase. You may be asked to renew your permission to share
41 information every two years.'

1 (10) The insured may be contacted by either the provider or broker or its
2 authorized representative for the purpose of determining the insured's
3 health status. This contact is limited to once every three months if the
4 insured has a life expectancy of more than one year, and no more than
5 once per month if the insured has a life expectancy of one year or less.

6 (b) A provider shall provide the viator with at least the following disclosures no
7 later than the date the contract is signed by all parties. The disclosures shall be
8 conspicuously displayed in the contract or in a separate document signed by the viator
9 and the provider or broker, and provide the following information:

10 (1) State the affiliation, if any, between the provider and the issuer of the
11 insurance policy to be viaticated.

12 (2) The document shall include the name, address, and telephone number
13 of the provider.

14 (3) A broker shall disclose to a prospective viator the amount and method
15 of calculating the broker's compensation. The term 'compensation'
16 includes anything of value paid or given to a broker for the placement
17 of a policy.

18 (4) If an insurance policy to be viaticated has been issued as a joint policy
19 or involves family riders or any coverage of a life other than the
20 insured under the policy to be viaticated, the viator shall be informed
21 of the possible loss of coverage on the other lives under the policy and
22 shall be advised to consult with his or her insurance producer or the
23 insurer issuing the policy for advice on the proposed viatical
24 settlement.

25 (5) State the dollar amount of the current death benefit payable to the
26 provider under the policy. If known, the provider shall also disclose
27 the availability of any additional guaranteed insurance benefits, the
28 dollar amount of any accidental death and dismemberment benefits
29 under the policy, and the provider's interest in those benefits.

30 (6) State the name, business address, and telephone number of the
31 independent third-party escrow agent and the fact that the viator or
32 owner may inspect or receive copies of the relevant escrow or trust
33 agreements or documents.

34 (c) If the provider transfers ownership or changes the beneficiary of the
35 insurance policy, the provider shall communicate the change in ownership or
36 beneficiary to the insured within 20 days after the change.

37 "**§ 58-58-250. General rules.**

38 (a) A provider entering into a contract shall first obtain:

39 (1) If the viator is the insured, a written statement from a licensed
40 attending physician that the viator is of sound mind and under no
41 constraint or undue influence to enter into a contract.

1 (2) A document in which the insured consents to the release of his or her
2 medical records to a provider or broker and, if the policy being
3 viaticated has been in effect for less than five years, to the insurance
4 company that issued the policy covering the life of the insured.

5 (b) Within 20 days after a viator executes documents necessary to transfer any
6 rights under a policy or within 20 days after entering any agreement, option, promise, or
7 any other form of understanding, expressed or implied, to viaticate the policy, the
8 provider shall give written notice to the insurer that issued that policy that the policy has
9 or will become a viaticated policy. The notice shall be accompanied by the documents
10 required by subsection (c) of this section.

11 (c) If the policy being viaticated has been in effect for less than five years, the
12 viatical provider shall deliver a copy of the medical release required under subdivision
13 (a)(2) of this section, a copy of the viator's application for the contract, the notice
14 required under subsection (b) of this section, and a request for verification of coverage
15 to the insurer that issued the policy that is the subject of the viatical settlement. The
16 NAIC's form for verification shall be used unless the Commissioner develops standards
17 for verification.

18 (d) The insurer shall respond to a request for verification of coverage submitted
19 on an approved form by a provider within 30 days after the date the request is received
20 and shall indicate whether, based on the medical evidence and documents provided, the
21 insurer intends to pursue an investigation at this time regarding the validity of the
22 policy.

23 (e) Before or at the time of execution of the contract, the provider shall obtain a
24 witnessed document in which the viator consents to the contract, represents that the
25 viator has a full and complete understanding of the contract, that he or she has a full and
26 complete understanding of the benefits of the policy, acknowledges that he or she is
27 entering into the contract freely and voluntarily and, for persons with a terminal or
28 chronic illness or condition, acknowledges that the insured has a terminal or chronic
29 illness or condition and that the terminal or chronic illness or condition was first
30 diagnosed after the policy was issued.

31 (f) If a broker performs any of these activities required of the provider, the
32 provider is deemed to have fulfilled the requirements of this section.

33 (g) All medical information solicited or obtained by any licensee is subject to the
34 applicable provisions of federal and North Carolina law relating to confidentiality of
35 medical information.

36 (h) All contracts entered into in this State shall provide the viator with an
37 unconditional right to rescind the contract for at least 15 days after the receipt of the
38 viatical settlement proceeds. If the insured dies during the rescission period, the contract
39 shall be deemed to have been rescinded, subject to repayment to the provider or
40 purchaser of all viatical settlement proceeds, and any premiums, loans, and loan interest
41 that have been paid by the provider or purchaser.

1 (i) The provider shall instruct the viator to send the executed documents required
2 to effect the change in ownership, assignment, or change in beneficiary directly to the
3 independent escrow agent. Within three business days after the date the escrow agent
4 receives the documents, or from the date the provider receives the documents, if the
5 viator erroneously provides the documents directly to the provider, the provider shall
6 pay or transfer the proceeds of the viatical settlement into an escrow or trust account
7 maintained in a state or federally chartered financial institution, the deposits of which
8 are insured by the Federal Deposit Insurance Corporation (FDIC) or any successor
9 entity. Upon payment of the settlement proceeds into the escrow account, the escrow
10 agent shall deliver the original change in ownership, assignment, or change in
11 beneficiary forms to the provider or related provider trust. Upon the escrow agent's
12 receipt of the acknowledgment of the properly completed transfer of ownership,
13 assignment, or designation of beneficiary from the insurance company, the escrow agent
14 shall pay the settlement proceeds to the viator.

15 (j) Failure to tender consideration to the viator for the contract within the time
16 required under G.S. 58-58-245(a)(6) renders the contract voidable by the viator for lack
17 of consideration until the time consideration is tendered to and accepted by the viator.

18 (k) Contacts with the insured for the purpose of determining the health status of
19 the insured by the provider or broker after the viatical settlement has occurred shall only
20 be made by the provider or broker licensed in this State or its authorized representatives
21 and shall be limited to once every three months for insureds with a life expectancy of
22 more than one year, and to no more than once per month for insureds with a life
23 expectancy of one year or less. The provider or broker shall explain the procedure for
24 these contacts at the time the contract is entered into. The limitations set forth in this
25 subsection shall not apply to any contacts with an insured for reasons other than
26 determining the insured's health status. Providers and brokers shall be responsible for
27 the actions of their authorized representatives.

28 (l) Every related provider trust shall have a written agreement with the licensed
29 viatical settlement provider under which the licensed viatical settlement provider is
30 responsible for ensuring compliance with all statutory and regulatory requirements and
31 under which the trust agrees to make all records and files related to viatical settlement
32 transactions available to the Commissioner as if those records and files were maintained
33 directly by the licensed viatical settlement provider.

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

38 **"§ 58-58-255. Prohibited practices.**

39 (a) It is a violation of this Part for any person to enter into a contract within a
40 two-year period commencing with the date of issuance of the policy unless the viator
41 certifies to the provider that one or more of the following conditions have been met
42 within the two-year period:

1 (1) The policy was issued upon the viator's exercise of conversion rights
2 arising out of a policy, provided the total time covered under the
3 conversion policy plus the time covered under the prior policy is at
4 least 24 months, or the contestability and suicide time periods have
5 been waived by the insurer. The time covered under a group policy
6 shall be calculated without regard to any change in insurance carriers,
7 provided the coverage has been continuous and under the same group
8 sponsorship.

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

11 (3) The viator is not a natural person (e.g., the owner is a corporation,
12 limited liability company, partnership, etc.).

13 (4) The viator submits independent evidence to the provider that one or
14 more of the following conditions have been met within the two-year
15 period:

16 a. The viator or insured is terminally or chronically ill.

17 b. The viator's spouse dies.

18 c. The viator divorces his or her spouse.

19 d. The viator retires from full-time employment.

20 e. The viator becomes physically or mentally disabled and a
21 physician determines that the disability prevents the viator from
22 maintaining full-time employment.

23 f. The viator was the insured's employer at the time the policy was
24 issued and the employment relationship terminated.

25 g. A final order, judgment, or decree is entered by a court of
26 competent jurisdiction, on the application of a creditor of the
27 viator, adjudicating the viator bankrupt or insolvent, or
28 approving a petition seeking reorganization of the viator or
29 appointing a receiver, trustee, or liquidator to all or a substantial
30 part of the viator's assets.

31 h. The viator experiences a significant decrease in income that is
32 unexpected and that impairs the viator's reasonable ability to
33 pay the policy premium.

34 i. The viator or insured disposes of his or her ownership interests
35 in a closely held corporation.

36 (b) Copies of the independent evidence described in subdivision (a)(4) of this
37 section and documents required by G.S. 58-58-250(a) shall be submitted to the insurer
38 when the provider submits a request to the insurer for verification of coverage. The
39 copies shall be accompanied by a letter of attestation from the provider that the copies
40 are true and correct copies of the documents received by the provider.

41 (c) If the provider submits to the insurer a copy of the owner or insured's
42 certification described in subdivision (a)(4) and subsection (b) of this section when the

1 provider submits a request to the insurer to effect the transfer of the policy to the
2 provider, the copy shall be deemed to conclusively establish that the contract satisfies
3 the requirements of this section, and the insurer shall timely respond to the request.

4 **"§ 58-58-260. Advertising for viatical settlements.**

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

14 (b) This section shall apply to any advertising of contracts or related products or
15 services intended for dissemination in this State, including Internet advertising viewed
16 by persons located in this State. Where disclosure requirements are established pursuant
17 to federal regulation, this section shall be interpreted so as to minimize or eliminate
18 conflict with federal regulation wherever possible.

19 (c) Every viatical settlement licensee shall establish and at all times maintain a
20 system of control over the content, form, and method of dissemination of all
21 advertisements of its contracts, products, and services. All advertisements, regardless of
22 by whom written, created, designed, or presented, shall be the responsibility of the
23 viatical settlement licensee, as well as the individual who created or presented the
24 advertisement. A system of control shall include regular routine notification, at least
25 once a year, to agents and others authorized by the viatical settlement licensee who
26 disseminate advertisements of the requirements and procedures for approval before the
27 use of any advertisements not furnished by the viatical settlement licensee.

28 (d) Advertisements shall be truthful and not misleading in fact or by implication.
29 The form and content of an advertisement of a contract shall be sufficiently complete
30 and clear so as to avoid deception. It shall not have the capacity or tendency to mislead
31 or deceive. Whether an advertisement has the capacity or tendency to mislead or
32 deceive shall be determined by the Commissioner from the overall impression that the
33 advertisement may be reasonably expected to create upon a person of average education
34 or intelligence within the segment of the public to which it is directed.

35 (e) All information required to be disclosed under this Part shall be set out
36 conspicuously and in close conjunction with the statements to which such information
37 relates or under appropriate captions of such prominence that it shall not be minimized,
38 rendered obscure or presented in an ambiguous fashion or intermingled with the context
39 of the advertisement so as to be confusing or misleading.

40 (f) An advertisement shall not:

- 41 (1) Omit material information or use words, phrases, statements,
42 references, or illustrations if the omission or use has the capacity,

1 tendency, or effect of misleading or deceiving viators as to the nature
2 or extent of any benefit, loss covered, premium payable, or state or
3 federal tax consequence. The fact that the contract offered is made
4 available for inspection before consummation of the sale, or an offer is
5 made to refund the payment if the viator is not satisfied or that the
6 contract includes a 'free look' period that satisfies or exceeds legal
7 requirements, does not remedy misleading statements.

8 (2) Use the name or title of a life insurance company or a policy unless the
9 insurer has approved the advertisement.

10 (3) State or imply that interest charged on an accelerated death benefit or a
11 policy loan is unfair, inequitable, or in any manner an incorrect or
12 improper practice.

13 (4) State or imply that a contract, benefit, or service has been approved or
14 endorsed by a group of individuals, society, association, or other
15 organization unless that is the fact and unless any relationship between
16 an organization and the viatical settlement licensee is disclosed. If the
17 entity making the endorsement or testimonial is owned, controlled, or
18 managed by the viatical settlement licensee, or receives any payment
19 or other consideration from the viatical settlement licensee for making
20 an endorsement or testimonial, that fact shall be disclosed in the
21 advertisement.

22 (5) Contain statistical information unless it accurately reflects recent and
23 relevant facts. The source of all statistics used in an advertisement
24 shall be identified.

25 (6) Disparage insurers, providers, brokers, insurance producers, policies,
26 services, or methods of marketing.

27 (7) Use a trade name, group designation, name of the parent company of a
28 viatical settlement licensee, name of a particular division of the viatical
29 settlement licensee, service mark, slogan, symbol, or other device or
30 reference without disclosing the name of the viatical settlement
31 licensee, if the advertisement would have the capacity or tendency to
32 mislead or deceive as to the true identity of the viatical settlement
33 licensee, or to create the impression that a company other than the
34 viatical settlement licensee would have any responsibility for the
35 financial obligation under a contract.

36 (8) Use any combination of words, symbols, or physical materials that by
37 their content, phraseology, shape, color, or other characteristics are so
38 similar to a combination of words, symbols, or physical materials used
39 by a government program or agency or otherwise appear to be of such
40 a nature that they tend to mislead prospective viators into believing
41 that the solicitation is in some manner connected with a government
42 program or agency.

1 (9) Create the impression that the provider, its financial condition or
2 status, the payment of its claims, or the merits, desirability, or
3 advisability of its contracts are recommended or endorsed by any
4 government entity.

5 (g) The words 'free', 'no cost', 'without cost', 'no additional cost', 'at no extra cost',
6 or words of similar import shall not be used with respect to any benefit or service unless
7 true. An advertisement may specify the charge for a benefit or a service, may state that a
8 charge is included in the payment, or use other appropriate language.

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

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

20 (j) When an endorsement refers to benefits received under a contract, all
21 pertinent information shall be retained for a period of five years after its use.

22 (k) The name of the viatical settlement licensee shall be clearly identified in all
23 advertisements about the licensee or its contracts, products, or services, and if any
24 specific contract is advertised, the contract shall be identified either by form number or
25 some other appropriate description. If an application is part of the advertisement, the
26 name of the provider or broker shall be shown on the application.

27 (l) An advertisement may state that a viatical settlement licensee is licensed in
28 the state where the advertisement appears, provided it does not exaggerate that fact or
29 suggest or imply that a competing viatical settlement licensee may not be so licensed.
30 The advertisement may ask the audience to consult the licensee's web site or contact the
31 Department to find out if the state requires licensing and, if so, whether the provider or
32 broker is licensed.

33 (m) The name of the actual licensee shall be stated in all of its advertisements. An
34 advertisement shall not use a trade name, any group designation, name of any affiliate
35 or controlling entity of the licensee, service mark, slogan, symbol, or other device in a
36 manner that would have the capacity or tendency to mislead or deceive as to the true
37 identity of the actual licensee or create the false impression that an affiliate or
38 controlling entity would have any responsibility for the financial obligation of the
39 licensee.

40 (n) An advertisement shall not directly or indirectly create the impression that
41 any state or federal governmental agency endorses, approves, or favors:

1 (1) Any viatical settlement licensee or its business practices or methods of
2 operation;

3 (2) The merits, desirability, or advisability of any contract;

4 (3) Any contract; or

5 (4) Any policy or life insurance company.

6 (o) If the advertiser emphasizes the speed with which the viatication will occur,
7 the advertising must disclose the average time frame from completed application to the
8 date of offer and from acceptance of the offer to receipt of the funds by the viator.

9 (p) If the advertising emphasizes the dollar amounts available to viators, the
10 advertising shall disclose the average purchase price as a percent of face value obtained
11 by viators contracting with the licensee during the past six months.

12 **"§ 58-58-265. Fraudulent viatical settlement acts, interference, and participation**
13 **of convicted felons prohibited.**

14 (a) A person who commits a fraudulent viatical settlement act is guilty of a Class
15 H felony.

16 (b) A person shall not knowingly or intentionally interfere with the enforcement
17 of the provisions of this Part or investigations of suspected or actual violations of this
18 Part.

19 (c) A person in the business of viatical settlements shall not knowingly or
20 intentionally permit any person convicted of a felony involving dishonesty or breach of
21 trust to participate in the business of viatical settlements.

22 **"§ 58-58-270. Report to Commissioner.**

23 Whenever any person licensed under this Part knows or has reasonable cause to
24 believe that any other person has violated any provision of this Part, it is the duty of that
25 person, upon acquiring the knowledge, to notify the Commissioner and provide the
26 Commissioner with a complete statement of all of the relevant facts and circumstances.
27 The report is a privileged communication and when made without actual malice does
28 not subject the person making the report to any liability whatsoever. The Commissioner
29 may suspend, revoke, or refuse to renew the license of any person who willfully fails to
30 comply with this section.

31 **"§ 58-58-275. Reporting and investigation of suspected viatical settlement**
32 **fraudulent acts; immunity from liability.**

33 (a) As used in this section, 'Commissioner' includes an employee, agent, or
34 designee of the Commissioner. A person, or an employee or agent of that person, acting
35 without actual malice, is not subject to civil liability for libel, slander, or any other cause
36 of action by virtue of furnishing to the Commissioner under the requirements of law or
37 at the direction of the Commissioner reports or other information relating to any known
38 or suspected viatical settlement fraudulent act.

39 (b) The Commissioner, acting without actual malice, is not subject to civil
40 liability for libel or slander by virtue of an investigation of any known or suspected
41 viatical settlement fraudulent act; or by virtue of the publication or dissemination of any
42 official report related to any such investigation, which report is published or

1 disseminated in the absence of fraud, bad faith, or actual malice on the part of the
2 Commissioner.

3 (c) During the course of an investigation of a known or suspected viatical
4 settlement fraudulent act, the Commissioner may request any person to furnish copies of
5 any information relative to the known or suspected viatical settlement fraudulent act.
6 The person shall release the information requested and cooperate with the
7 Commissioner under this section.

8 **"§ 58-58-280. Confidentiality.**

9 (a) Information and evidence provided under G.S. 58-58-270 or G.S. 58-58-275
10 or obtained by the Commissioner in an investigation of suspected or actual fraudulent
11 viatical settlement acts shall be privileged and confidential, is not a public record, and is
12 not subject to discovery or subpoena in a civil or criminal action.

13 (b) Subsection (a) of this section does not prohibit release by the Commissioner
14 of documents and evidence obtained in an investigation of suspected or actual
15 fraudulent viatical settlement acts:

16 (1) In administrative or judicial proceedings to enforce laws administered
17 by the Commissioner;

18 (2) To federal, state, or local law enforcement or regulatory agencies, to
19 an organization established for the purpose of detecting and preventing
20 fraudulent viatical settlement acts, or to the NAIC; or

21 (3) At the discretion of the Commissioner, to a person in the business of
22 viatical settlements that is aggrieved by a fraudulent viatical settlement
23 act.

24 (c) Release of documents and evidence under subsection (b) of this section does
25 not abrogate or modify the privilege granted in subsection (a) of this section.

26 **"§ 58-58-285. Other law enforcement or regulatory authority.**

27 This Part does not:

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

31 (2) Prevent or prohibit a person from disclosing voluntarily information
32 concerning viatical settlement fraud to a law enforcement or regulatory
33 agency other than the Commissioner.

34 (3) Limit the powers granted elsewhere by the laws of this State to the
35 Commissioner to investigate and examine possible violations of law
36 and to take appropriate action against wrongdoers.

37 **"§ 58-58-290. Injunctions; civil remedies; cease and desist orders.**

38 (a) In addition to the penalties and other enforcement provisions of this Part, if
39 any person violates this Part or any rule implementing this Part, the Commissioner may
40 seek an injunction in a court of competent jurisdiction and may apply for temporary and
41 permanent orders that the Commissioner determines are necessary to restrain the person
42 from committing the violation.

1 **(b) Any person damaged by the acts of a person in violation of this Part may**
2 **bring a civil action against the person committing the violation in a court of competent**
3 **jurisdiction.**

4 **(c) The Commissioner may issue, in accordance with G.S. 58-63-32, a cease and**
5 **desist order upon a person that violates any provision of this Part, any rule or order**
6 **adopted by the Commissioner, or any written agreement entered into with the**
7 **Commissioner. The cease and desist order may be subject to judicial review under G.S.**
8 **58-63-35.**

9 **(d) When the Commissioner finds that an activity in violation of this Part**
10 **presents an immediate danger to the public that requires an immediate final order, the**
11 **Commissioner may issue an emergency cease and desist order reciting with particularity**
12 **the facts underlying the findings. The emergency cease and desist order is effective**
13 **immediately upon service of a copy of the order on the respondent and remains effective**
14 **for 90 days. If the Commissioner begins nonemergency cease and desist proceedings,**
15 **the emergency cease and desist order remains effective, absent an order by a court of**
16 **competent jurisdiction in accordance with G.S. 58-63-35.**

17 **(e) In addition to the penalties and other enforcement provisions of this Part, any**
18 **person who violates this Part is subject to G.S. 58-2-70.**

19 **"§ 58-58-295. Unfair trade practices.**

20 **A violation of this Part is an unfair trade practice under Article 63 of this Chapter.**

21 **"§ 58-58-300. Authority to adopt rules.**

22 **The Commissioner may:**

- 23 **(1) Adopt rules implementing this Part.**
- 24 **(2) Establish standards for evaluating reasonableness of payments under**
25 **contracts for persons who are terminally or chronically ill, including**
26 **standards for the amount paid in exchange for assignment, transfer,**
27 **sale, devise, or bequest of a benefit under a policy.**
- 28 **(3) Establish appropriate licensing requirements, fees, and standards for**
29 **continued licensure for providers.**
- 30 **(4) Require a bond or other mechanism for financial accountability for**
31 **providers and brokers.**
- 32 **(5) Adopt rules governing the relationship and responsibilities of insurers,**
33 **providers, and brokers during the viatication of a policy.**

34 **"§ 58-58-305. Jurisdictional limitations.**

35 **Nothing in this Part affects the North Carolina Securities Act or the jurisdiction of**
36 **the North Carolina Secretary of State.**

37 **"§ 58-58-310. Effective date.**

38 **A provider or broker transacting business in this State on the effective date of this**
39 **Part may continue to do so pending approval of the provider's or broker's application for**
40 **a license as long as the application is filed with the Commissioner no later than April 1,**
41 **2002. If the application is disapproved, then the provider or broker shall cease**
42 **transacting viatical business in this State."**

1 **SECTION 4.** G.S. 58-33-32(e) reads as rewritten:

2 "(e) Notwithstanding any other provision of this section, a person licensed or
3 registered as a viatical settlement ~~broker, viatical settlement provider, or viatical~~
4 ~~settlement representative, broker or provider,~~ as defined in ~~G.S. 58-58-42 (a), G.S.~~
5 ~~58-58-205,~~ in that person's home state shall receive a nonresident viatical settlement
6 ~~broker, viatical settlement provider, or viatical settlement representative broker or~~
7 ~~provider~~ license pursuant to this section. Except for the licensure provisions of this
8 section, nothing in this section otherwise amends or supersedes any provision of ~~G.S.~~
9 ~~58-58-42. Part 5 of Article 58 of this Chapter."~~

10 **SECTION 5.** G.S. 58-58-42 is repealed.

11
12 **PART II. SECURITIES LAWS PROVISIONS**

13
14 **SECTION 6.** G.S. 78A-2 reads as rewritten:

15 **"§ 78A-2. Definitions.**

16 When used in this Chapter, unless the context otherwise requires:

17 ...

18 (2) "Dealer" means any person engaged in the business of effecting
19 transactions in securities for the account of others or for his own
20 account. "Dealer" does not include:

- 21 a. A salesman,
22 b. A bank, savings institution, or trust company,
23 c. A person who has no place of business in this State if
24 1. He effects transactions in this State exclusively with or
25 through (i) the issuers of the securities involved in the
26 transactions, (ii) other dealers, or (iii) banks, savings
27 institutions, trust companies, insurance companies,
28 investment companies as defined in the Investment
29 Company Act of 1940, pension or profit-sharing trusts,
30 or other financial institutions or institutional buyers,
31 whether acting for themselves or as trustees, or
32 2. In the case of a person registered as a dealer with the
33 Securities and Exchange Commission under the
34 Securities Exchange Act of 1934 and in one or more
35 states, during any period of 12 consecutive months he
36 does not effect more than 15 purchases or sales in this
37 State in any manner with persons other than those
38 specified in clause 1, whether or not the dealer or any of
39 the purchasers or sellers is then present in this State, or
40 d. An issuer if
41 1. The security is exempted under subdivisions (1), (2), (3),
42 (4), (5), (7), (9), (10), (11), (13), or (14) of G.S. 78A-16,

- 1 or the security is a security covered under federal law, or
2 the transaction is exempted under G.S. 78A-17, except
3 for G.S. 78A-17(19) if the security is a viatical
4 settlement contract, or the transaction is in a security
5 covered under federal law, and such exemption has not
6 been denied or revoked under G.S. 78A-18, or
- 7 2. The security is registered under this Chapter and it is
8 offered and sold through a registered dealer, or
- 9 3. All of the following conditions are met: (i) No
10 commission or other remuneration is paid or given
11 directly or indirectly for soliciting any prospective
12 purchaser in this State; (ii) the total amount of the
13 offering, both within and without this State, does not
14 exceed two million five hundred thousand dollars
15 (\$2,500,000); and (iii) the total number of purchasers,
16 both within and without this State, does not exceed 100.
17 Provided, however, the Administrator may by rule or
18 order waive the condition imposed by subdivision (iii)
19 hereof; or
- 20 4. The security is issued by an open-end management
21 company that is registered under the Investment
22 Company Act of 1940 and so long as no sales load is
23 paid or given, directly or indirectly.
- 24 e. A person who acts as a business broker with respect to a
25 transaction involving the offer or sale of all of the stock in any
26 closely held corporation provided that such stock is sold to no
27 more than one person, as that term is defined herein.
- 28 f. An individual who represents an issuer in effecting transactions
29 in a security described in sub-subdivision (2)d. of this section or
30 a security covered under federal law, provided no commission
31 or other special remuneration is paid or given directly or
32 indirectly for soliciting any prospective purchaser in this State.
- 33 ...
- 34 (5) "Issuer" means any person who issues or proposes to issue any
35 security, except that
- 36 a. With respect to certificates of deposit, voting-trust certificates,
37 or collateral-trust certificates, or with respect to certificates of
38 interest or shares in an unincorporated investment trust not
39 having a board of directors or persons performing similar
40 functions or of the fixed, restricted-management, or unit type,
41 the term "issuer" means the person or persons performing the
42 acts and assuming the duties of depositor or manager pursuant

1 to the provisions of the trust or other agreement or instrument
2 under which the security is issued; and

3 b. With respect to certificates of interest or participation in oil,
4 gas, or mining titles or leases or in payments out of production
5 under such titles or leases, there is not considered to be any
6 "issuer."

7 c. With respect to a viatical settlement contract, "issuer" means a
8 person involved in creating, offering, transferring, or selling to
9 an investor any interest in a viatical settlement contract,
10 including but not limited to fractional or pooled interests.

11 ...

12 (11) "Security" means any note; stock; treasury stock; bond; debenture;
13 evidence of indebtedness; certificate of interest or participation in any
14 profit-sharing agreement; collateral-trust certificate; preorganization
15 certificate or subscription; transferable share; investment contract
16 including without limitation any investment contract taking the form of
17 a whiskey warehouse receipt or other investment of money in whiskey
18 or malt beverages; voting-trust certificate; certificate of deposit for a
19 security; certificate of interest or participation in an oil, gas, or mining
20 title or lease or in payments out of production under a title or lease;
21 viatical settlement contract or any fractional or pooled interest in a
22 viatical settlement contract; or, in general, any interest or instrument
23 commonly known as a "security," or any certificate of interest or
24 participation in, temporary or interim certificate for, receipt for
25 guarantee of, or warrant or right to subscribe to or purchase, any of the
26 foregoing. "Security" does not include any insurance or endowment
27 policy, funding agreement, as defined in G.S. 58-7-16, or annuity
28 contract under which an insurance company promises to pay (i) a fixed
29 sum of money either in a lump sum or periodically for life or for some
30 other specified period, or (ii) benefits or payments or value that vary so
31 as to reflect investment results of any segregated portfolio of
32 investments or of a designated separate account or accounts in which
33 amounts received or retained in connection with a contract have been
34 placed if the delivering or issuing insurance company has currently
35 satisfied the Commissioner of Insurance that it is in compliance with
36 G.S. 58-7-95.

37 ...

38 (13) "Viatical settlement contract" means an agreement for the purchase,
39 sale, assignment, transfer, devise, or bequest of all or any portion of
40 the death benefit or ownership of a life insurance policy or contract for
41 consideration which is less than the expected death benefit of the life

1 insurance policy or contract. "Viatical settlement contract" does not
2 include:

- 3 a. The assignment, transfer, sale, devise, or bequest of a death
4 benefit of a life insurance policy or contract made by the viator
5 to an insurance company or to a viatical settlement provider or
6 broker licensed pursuant to the Viatical Settlements Act (Part 5
7 of Article 58 of Chapter 58 of the General Statutes);
8 b. The assignment of a life insurance policy or contract to a bank,
9 savings bank, savings and loan association, credit union, or
10 other licensed lending institution as collateral for a loan; or
11 c. The exercise of accelerated benefits pursuant to the terms of a
12 life insurance policy or contract and consistent with applicable
13 law."

14 **SECTION 7.** Article 2 of Chapter 78A of the General Statutes is amended
15 by adding a new section to read:

16 **"§ 78A-13. Disclosures required in offer and sale of viaticals.**

17 (a) Disclosures Required Prior to Signing of Purchase Agreement or Transfer of
18 Consideration. – It is unlawful for an issuer to fail to provide persons to whom viatical
19 settlement contracts are offered for sale or sold at least the disclosures required by rule
20 or order of the Administrator on or before (i) the date on which the viatical settlement
21 purchase agreement is signed by all parties and (ii) the date on which the purchaser
22 remits consideration pursuant to the purchase agreement. The disclosures shall be
23 conspicuously displayed in any viatical purchase contract or in a separate document
24 signed by the viatical settlement purchaser and by the issuer.

25 (b) Disclosures Required Upon Assignment or Sale of Underlying Insurance
26 Policy. – It is unlawful for an issuer to fail to provide the purchaser of a viatical
27 settlement contract with at least the disclosures required by rule or order of the
28 Administrator no later than at the time of any assignment, transfer, or sale of all or a
29 portion of an insurance policy related to the viatical settlement contract. The disclosures
30 shall be contained in a document signed by the viatical settlement purchaser and by the
31 issuer."

32 **SECTION 8.** G.S. 78A-17 reads as rewritten:

33 **"§ 78A-17. Exempt transactions.**

34 Except as otherwise provided in this Chapter, the~~The~~ following transactions are
35 exempted from G.S. 78A-24 and 78A-49(d):

36 ...

37 (19) Any offer or sale of any viatical settlement contract or any
38 fractionalized or pooled interest therein by the issuer in a transaction
39 that meets all of the following criteria:

- 40 a. The underlying viatical settlement transaction with the viator
41 was not in violation of the provisions of Part 5 of Article 58 of

1 Chapter 58 of the General Statutes (the "Viatical Settlements
2 Act"); and

3 b. The offer and sale of such contract or interest therein is
4 conducted in accordance with such conditions as the
5 Administrator requires by rule or order, including conditions
6 governing advertising, suitability standards, and the disclosure
7 of information to offerees and purchasers.

8 The Administrator may establish a fee to recover costs for any filing
9 required by such rules, not to exceed five hundred dollars (\$500.00)."

10 **SECTION 9.** G.S. 78A-27(b) reads as rewritten:

11 "(b) A registration statement under this section shall contain the following
12 information and be accompanied by the following documents in addition to the
13 information specified in G.S. 78A-28(c) and the consent to service of process required
14 by G.S. 78A-63(f):

15 ...

16 (12) A copy of any prospectus, pamphlet, circular, form letter,
17 advertisement, or other sales literature intended as of the effective date
18 to be used in connection with the offering; if the security is a viatical
19 settlement contract, the prospectus and advertising shall comply with
20 rules or orders of the Administrator relating to the offering of viatical
21 settlement contracts;".

22 **SECTION 10.** G.S. 78A-49(d) reads as rewritten:

23 "(d) The Administrator may by rule or order require the filing of any prospectus,
24 pamphlet, circular, form letter, advertisement, or other sales literature or advertising
25 communication addressed or intended for distribution to prospective investors, unless
26 the security or transaction is exempted by G.S. 78A-16 or 78A-17 (except ~~78A-17(9),~~
27 ~~(17))~~78A-17(9), (17), and (19)) and such exemption has not been denied or revoked
28 under G.S. 78A-18 or the security is a security covered under federal law or the
29 transaction is with respect to a security covered under federal law."

30 **SECTION 11.** G.S. 78A-56 reads as rewritten:

31 "§ 78A-56. Civil liabilities.

32 (a) Any person who:

33 (1) Offers or sells a security in violation of G.S. 78A-8(1), 78A-8(3),
34 78A-10(b), 78A-12, ~~78A-13~~, 78A-24, or 78A-36(a), or of any rule or
35 order under G.S. 78A-49(d) which requires the affirmative approval of
36 sales literature before it is used, or of any condition imposed under
37 G.S. 78A-27(d) or 78A-28(g), or

38 (2) Offers or sells a security by means of any untrue statement of a
39 material fact or any omission to state a material fact necessary in order
40 to make the statements made, in the light of the circumstances under
41 which they were made, not misleading (the purchaser not knowing of
42 the untruth or omission), and who does not sustain the burden of proof

1 that he did not know, and in the exercise of reasonable care could not
2 have known, of the untruth or omission,
3 is liable to the person purchasing the security from him, who may sue either at law or in
4 equity to recover the consideration paid for the security, together with interest at the
5 legal rate from the date of payment, costs, and reasonable attorneys' fees, less the
6 amount of any income received on the security, upon the tender of the security, or for
7 damages if he no longer owns the security. Damages are the amount that would be
8 recoverable upon a tender less the value of the security when the purchaser disposed of
9 it and interest at the legal rate as provided by G.S. 24-1 from the date of disposition.

10 ...

11 (k) The purchaser of a viatical settlement contract, or interest therein, may
12 rescind the purchase agreement for a viatical settlement contract within
13 three business days after the purchaser receives the written disclosures
14 required by G.S. 78A-13(a)."

15 **SECTION 12.** G.S. 78A-57(a) reads as rewritten:

16 "(a) Any person who willfully violates any provision of this Chapter except G.S.
17 78A-8, 78A-9, 78A-11, ~~or~~ 78A-12, or 78A-13 or who willfully violates any rule or
18 order under this Chapter, or who willfully violates G.S. 78A-9 knowing the statement
19 made to be false or misleading in any material respect, shall upon conviction be
20 punished as a Class I felon; but no person may be imprisoned for the violation of any
21 rule or order if he proves that he had no knowledge of the rule or order. Any person who
22 willfully violates G.S. 78A-8, 78A-11, ~~or~~ 78A-12, or 78A-13 shall, upon conviction be
23 punished as a Class H felon."

24 **SECTION 13.** G.S. 78A-63(a) reads as rewritten:

25 "(a) Sections 78A-8, 78A-10, 78A-13, 78A-24, 78A-31, 78A-36(a), and 78A-56
26 apply to persons who sell or offer to sell when (i) an offer to sell is made in this State, or
27 (ii) an offer to buy is made and accepted in this State."

28 **SECTION 14.** Article 8 of Chapter 78A of the General Statutes is amended
29 by adding a new section to read:

30 **"§ 78A-66. Jurisdictional limitations.**

31 Nothing in this Chapter affects the Viatical Settlements Act or the jurisdiction of the
32 North Carolina Department of Insurance."

34 **PART III. MISCELLANEOUS PROVISIONS**

35
36 **SECTION 15.** The Revisor of Statutes shall cause to be printed along with
37 this act such official comments as the Revisor deems appropriate.

38 **SECTION 16.** The headings to the parts of this act are a convenience to the
39 reader and are for reference only. The headings do not expand, limit, or define the text
40 of this act.

41 **SECTION 17.** If any provision of this act or its application is held invalid,
42 the invalidity does not affect other provisions or applications of this act that can be

1 given effect without the invalid provisions or applications, and to this end the provisions
2 of this act are severable.

3 **SECTION 18.** This act becomes effective January 1, 2002.