

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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**HOUSE BILL 359*
Committee Substitute Favorable 6/19/01**

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

"Article 58.

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

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

- 13 (1) By designating G.S. 58-58-1 through G.S. 58-58-40 as Part 1 with the
14 heading "General Provisions".
15 (2) By designating G.S. 58-58-45 through G.S. 58-58-65 as Part 2 with the
16 heading "Financial Provisions".
17 (3) By designating G.S. 58-58-70 through G.S. 58-58-120 as Part 3 with
18 the heading "Insurable Interests and Other Rights".
19 (4) By designating G.S. 58-58-125 through G.S. 58-58-170 as Part 4 with
20 the heading "Miscellaneous Provisions".
21 (5) By reserving G.S. 58-58-175 through G.S. 58-58-195 for future
22 codification purposes.

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

"Part 5. Viatical Settlements.

26 **§ 58-58-200. Short title.**

This Part may be cited as the Viatical Settlements Act.

28 **§ 58-58-205. Definitions.**

- 1 (1) 'Advertising' means any written, electronic, or printed communication
2 or any communication by means of recorded telephone messages or
3 transmitted on radio, television, the Internet, or similar
4 communications media, including filmstrips, motion pictures, and
5 videos, published, disseminated, circulated, or placed before the
6 public, directly or indirectly, for the purpose of creating an interest in
7 or inducing a person to purchase or sell a life insurance policy or an
8 interest in a life insurance policy under a viatical settlement contract or
9 a purchase agreement.
- 10 (2) 'Business of viatical settlements' means an activity involved in, but not
11 limited to, the offering, solicitation, negotiation, procurement,
12 effectuation, purchasing, investing, financing, monitoring, tracking,
13 underwriting, selling, transferring, assigning, pledging, hypothecating,
14 or in any other manner, of viatical settlement contracts or purchase
15 agreements.
- 16 (3) 'Chronically ill' means:
17 a. Being unable to perform at least two activities of daily living
18 (i.e., eating, toileting, transferring, bathing, dressing, or
19 continence);
20 b. Requiring substantial supervision to protect the individual from
21 threats to health and safety due to severe cognitive impairment;
22 or
23 c. Having a level of disability similar to that described in
24 sub-subdivision a. of this subdivision as determined by the
25 Secretary of Health and Human Services.
- 26 (4) 'Financing entity' means an underwriter, placement agent, lender,
27 purchaser of securities, purchaser of a policy from a viatical settlement
28 provider, credit enhancer, or any entity that has a direct ownership in a
29 policy that is the subject of a viatical settlement contract, but:
30 a. Whose principal activity related to the transaction is providing
31 funds to effect the viatical settlement or purchase of one or
32 more viaticated policies; and
33 b. Who has an agreement in writing with one or more licensed
34 viatical settlement providers to finance the acquisition of
35 viatical settlement contracts.
- 36 'Financing entity' does not include a nonaccredited investor or viatical
37 settlement purchaser.
- 38 (5) 'Fraudulent viatical settlement act' includes:
39 a. Acts or omissions committed by any person who, knowingly
40 and with intent to defraud, for the purpose of depriving another
41 of property or for pecuniary gain, commits, or permits its
42 employees or its agents to engage in acts including:

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1. Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, viatical settlement investment agent, financing entity, insurer, insurance producer, viator, insured 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 under a viatical settlement contract or insurance policy.
 - IV. Premiums paid on an insurance policy or as a result of a viatical settlement purchase agreement.
 - V. Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract, viatical settlement purchase agreement, or insurance policy.
 - VI. The reinstatement or conversion of an insurance policy.
 - VII. In the solicitation, offer, effectuation, or sale of a viatical settlement contract, insurance policy, or viatical settlement purchase agreement.
 - VIII. The issuance of written evidence of viatical settlement contract, viatical settlement purchase agreement, or insurance.
 - IX. A financing transaction.
 2. Employing any device, scheme, or artifice to defraud related to viaticated policies.
 - b. In the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits its employees or its agents to:
 1. Remove, conceal, alter, destroy, or sequester from the Commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;
 2. Misrepresent or conceal the financial condition of a licensee, financing entity, insurer, or other person;
 3. Transact the business of viatical settlements in violation 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. The
24 trust shall have a written agreement with the licensed viatical
25 settlement provider under which the licensed viatical settlement
26 provider is responsible for ensuring compliance with all statutory and
27 regulatory requirements and under which the trust agrees to make all
28 records and files related to viatical settlement transactions available to
29 the Commissioner as if those records and files were maintained
30 directly by the licensed viatical settlement provider.
31 (8) 'Special purpose entity' means a corporation, partnership, trust, limited
32 liability company, or other similar entity formed solely to provide
33 either directly or indirectly access to institutional capital markets for a
34 financing entity or licensed viatical settlement provider.
35 (9) 'Terminally ill' means having an illness or sickness that can reasonably
36 be expected to result in death in 24 months or fewer.
37 (10) 'Viatical settlement investment agent' or 'investment agent' means a
38 person who is an appointed or contracted agent of a licensed viatical
39 settlement provider who solicits or arranges the funding for the
40 purchase of a viatical settlement by a viatical settlement purchaser and
41 who is acting on behalf of a viatical settlement provider.
42 (11) 'Viatical settlement broker' or 'broker' means a person that on behalf of
43 a viator and for a fee, commission, or other valuable consideration

1 offers or attempts to negotiate viatical settlement contracts between a
2 viator and one or more viatical settlement providers. Notwithstanding
3 the manner in which the viatical settlement broker is compensated, a
4 viatical settlement broker is deemed to represent only the viator and
5 owes a fiduciary duty to the viator to act according to the viator's
6 instructions and in the best interest of the viator. The term does not
7 include an attorney, certified public accountant, or a financial planner
8 accredited by a nationally recognized accreditation agency, who is
9 retained to represent the viator and whose compensation is not paid
10 directly or indirectly by the viatical settlement provider or purchaser.

11 (12) 'Viatical settlement contract' means a written agreement establishing
12 the terms under which compensation or anything of value will be paid,
13 which compensation or value is less than the expected death benefit of
14 the policy, in return for the viator's assignment, transfer, sale, devise,
15 or bequest of the death benefit or ownership of any portion of the
16 policy. A viatical settlement contract also includes a contract for a loan
17 or other financing transaction with a viator secured primarily by a
18 policy, other than a loan by a life insurance company under the terms
19 of the life insurance contract, or a loan secured by the cash value of a
20 policy. A viatical settlement contract includes an agreement with a
21 viator to transfer ownership or change the beneficiary designation at a
22 later date regardless of the date that compensation is paid to the viator.

23 (13) 'Viatical settlement provider' or 'provider' means a person, other than a
24 viator, that enters into or effectuates a viatical settlement contract.
25 Viatical settlement provider does not include:

- 26 a. A bank, savings bank, savings and loan association, credit
27 union, or other licensed lending institution that takes an
28 assignment of a life insurance policy as collateral for a loan;
29 b. The issuer of a life insurance policy providing accelerated
30 benefits under rules adopted by the Commissioner and under
31 the contract;
32 c. An authorized or eligible insurer that provides stop-loss
33 coverage to a viatical settlement provider, purchaser, financing
34 entity, special purpose entity, or related provider trust;
35 d. A natural person who enters into or effectuates no more than
36 one agreement in a calendar year for the transfer of life
37 insurance policies for any value less than the expected death
38 benefit;
39 e. A financing entity;
40 f. A special purpose entity;
41 g. A related provider trust;
42 h. A viatical settlement purchaser; or

- 1 i. An accredited investor or qualified institutional buyer as
2 defined respectively in Regulation D, Rule 501 or Rule 144A of
3 the Federal Securities Act of 1933, as amended, and who
4 purchases a viaticated policy from a viatical settlement
5 provider.
- 6 (14) 'Viatical settlement purchase agreement' or 'purchase agreement'
7 means an agreement, entered into by a viatical settlement purchaser, to
8 which the viator is not a party, to purchase a life insurance policy or an
9 interest in a life insurance policy, that is entered into for the purpose of
10 deriving an economic benefit.
- 11 (15) 'Viatical settlement purchaser' or 'purchaser' means a person who gives
12 a sum of money as consideration for a life insurance policy or an
13 interest in the death benefits of a life insurance policy or a person who
14 owns or acquires or is entitled to a beneficial interest in a trust that
15 owns a viatical settlement contract or is the beneficiary of a life
16 insurance policy that has been or will be the subject of a viatical
17 settlement contract for the purpose of deriving an economic benefit.
18 'Viatical settlement purchaser' does not include:
- 19 a. A licensee under this Part;
20 b. An accredited investor or qualified institutional buyer as
21 defined respectively in Regulation D, Rule 501 or Rule 144A of
22 the Federal Securities Act of 1933, as amended;
23 c. A financing entity;
24 d. A special purpose entity; or
25 e. A related provider trust.
- 26 (16) 'Viaticated policy' means a policy that has been acquired by a viatical
27 settlement provider under a viatical settlement contract.
- 28 (17) 'Viator' means the owner of a policy or a certificate holder under a
29 group policy who enters or seeks to enter into a viatical settlement
30 contract. For the purposes of this Part, a viator shall not be limited to
31 an owner of a life insurance policy or a certificate holder under a group
32 policy insuring the life of an individual with a terminal or chronic
33 illness or condition except where specifically addressed. 'Viator' does
34 not include:
- 35 a. A licensee under this Part;
36 b. An accredited investor or qualified institutional buyer as
37 defined respectively in Regulation D, Rule 501 or Rule 144A of
38 the Federal Securities Act of 1933, as amended;
39 c. A financing entity;
40 d. A special purpose entity; or
41 e. A related provider trust.

42 **"§ 58-58-210. License requirements.**

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

7 (b) A person shall not operate as an investment agent in this State without first
8 obtaining a license from the Commissioner. If there is more than one purchaser of a
9 single policy and the purchasers are residents of different states, the purchase agreement
10 shall be governed by the law of the state in which the purchaser having the largest
11 percentage ownership resides or, if the purchasers hold equal ownership, the state of
12 residence of one purchaser agreed upon in writing by all purchasers.

13 (c) Application for a provider, broker, or investment agent license shall be made
14 to the Commissioner by the applicant on a form prescribed by the Commissioner, and
15 these applications shall be accompanied by a fee of one hundred dollars (\$100.00).

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

19 (e) The applicant shall provide information on forms required by the
20 Commissioner. The Commissioner may require the applicant to fully disclose the
21 identity of all stockholders, partners, officers, members, and employees; and may refuse
22 to issue a license in the name of a legal entity if not satisfied that any officer, employee,
23 stockholder, partner, or member of the legal entity who may materially influence the
24 applicant's conduct meets the standards of this Part.

25 (f) A license issued to a legal entity authorizes all partners, officers, members,
26 and designated employees to act as providers, brokers, or investment agents, as
27 applicable, under the license; and all those persons shall be named in the application and
28 any supplements to the application.

29 (g) Upon the filing of an application and the payment of the license fee, the
30 Commissioner shall investigate each applicant and issue a license if the Commissioner
31 finds that the applicant:

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

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

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

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

40 (h) The Commissioner shall not issue a license to a nonresident applicant unless a
41 written designation of an agent for service of process is filed and maintained with the
42 Commissioner or the applicant has filed with the Commissioner the applicant's written

1 irrevocable consent that any action against the applicant may be commenced against the
2 applicant by service of process on the Commissioner.

3 (i) A provider, broker, or investment agent shall provide to the Commissioner
4 new or revised information about officers, ten percent (10%) or more stockholders,
5 partners, directors, members, or designated employees within 20 days after the change.

6 **"§ 58-58-215. License revocation and denial.**

7 (a) The Commissioner may refuse to issue, suspend, revoke, or refuse to renew
8 the license of a provider, broker, or investment agent if the Commissioner finds that:

9 (1) There was any material misrepresentation in the application for the
10 license;

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

15 (3) The provider demonstrates a pattern of unreasonable payments to
16 viators;

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

22 (5) The provider has entered into any viatical settlement contract that has
23 not been approved pursuant to this Part;

24 (6) The provider has failed to honor contractual obligations set out in a
25 viatical settlement contract or a purchase agreement;

26 (7) The licensee no longer meets the requirements for initial licensure;

27 (8) The provider has assigned, transferred, or pledged a viaticated policy
28 to a person other than a provider licensed in this State, viatical
29 settlement purchaser, an accredited investor, or qualified institutional
30 buyer as defined respectively in Regulation D, Rule 501 or Rule 144A
31 of the Federal Securities Act of 1933, as amended, financing entity,
32 special purpose entity, or related provider trust; or

33 (9) The licensee or any officer, partner, member, or key management
34 personnel has violated any provision of this Part.

35 (b) If the Commissioner denies a license application or suspends, revokes, or
36 refuses to renew the license of a provider, broker or investment agent, the
37 Commissioner shall conduct a hearing in accordance with Chapter 150B of the General
38 Statutes.

39 **"§ 58-58-220. Approval of viatical settlement contracts and disclosure statements.**

40 A person shall not use a contract or provide to a viator a disclosure statement form in
41 this State unless filed with and approved by the Commissioner. The Commissioner shall
42 disapprove a contract form or disclosure statement form if, in the Commissioner's
43 opinion, the contract or provisions contained therein are unreasonable, contrary to the

1 interests of the public, or otherwise misleading or unfair to the viator. At the
2 Commissioner's discretion, the Commissioner may require the submission of
3 advertising material.

4 **"§ 58-58-225. Reporting requirements and privacy.**

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

8 (b) Except as otherwise allowed or required by law, a provider, broker,
9 investment agent, insurance company, insurance producer, information bureau, rating
10 agency or company, or any other person with actual knowledge of an insured's identity,
11 shall not disclose that identity as an insured, or the insured's financial or medical
12 information to any other person unless the disclosure:

13 (1) Is necessary to effect a viatical settlement between the viator and a
14 provider and the viator and insured have provided prior written
15 consent to the disclosure;

16 (2) Is necessary to effect a purchase agreement between the viatical
17 settlement purchaser and a provider and the viator and insured have
18 provided prior written consent to the disclosure;

19 (3) Is provided in response to an investigation or examination by the
20 Commissioner or any other governmental officer or agency or pursuant
21 to the requirements of G.S. 58-58-270;

22 (4) Is a term of or condition to the transfer of a policy by one provider to
23 another provider;

24 (5) Is necessary to permit a financing entity, related provider trust, or
25 special purpose entity to finance the purchase of policies by a provider
26 and the viator and insured have provided prior written consent to the
27 disclosure;

28 (6) Is necessary to allow the provider or broker or their authorized
29 representatives to make contacts for the purpose of determining health
30 status; or

31 (7) Is required to purchase stop-loss coverage.

32 **"§ 58-58-230. Examinations.**

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

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

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

41 (d) When making an examination under this Part, the Commissioner may retain
42 attorneys, appraisers, independent actuaries, independent certified public accountants, or

1 other professionals and specialists as examiners, the reasonable cost of which shall be
2 borne by the licensee that is the subject of the examination.

3 **"§ 58-58-235. Record retention requirements.**

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

5 (1) Proposed, offered, or executed contracts, purchase agreements,
6 underwriting documents, policy forms, and applications from the date
7 of the proposal, offer, or execution of the contract or purchase
8 agreement, whichever is later.

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

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

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

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

20 **"§ 58-58-240. Investigative authority of the Commissioner.**

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

23 **"§ 58-58-245. Disclosure.**

24 (a) With each application for a viatical settlement, the provider or broker shall
25 provide the viator with at least the following disclosures no later than the time the
26 application for the contract is signed by all parties. The disclosures shall be provided in
27 a separate document that is signed by the viator and the provider or broker and shall
28 provide the following information:

29 (1) There are possible alternatives to contracts including any accelerated
30 death benefits or policy loans offered under the viator's policy.

31 (2) Some or all of the proceeds of the viatical settlement may be taxable
32 under federal income tax and state franchise and income taxes, and
33 assistance should be sought from a professional tax advisor.

34 (3) Proceeds of the viatical settlement could be subject to the claims of
35 creditors.

36 (4) Receipt of the proceeds of a viatical settlement may adversely affect
37 the viator's eligibility for Medicaid or other government benefits or
38 entitlements, and advice should be obtained from the appropriate
39 government agencies.

40 (5) The viator has the right to rescind a contract for 15 days after the
41 receipt of the viatical settlement proceeds by the viator, as provided in
42 G.S. 58-58-250(h). If the insured dies during the rescission period, the
43 settlement contract shall be deemed to have been rescinded, subject to

- 1 repayment of all viatical settlement proceeds and any premiums, loans,
2 and loan interest to the provider or purchaser.
- 3 (6) Funds will be sent to the viator within three business days after the
4 provider has received the insurer or group administrator's
5 acknowledgment that ownership of the policy or interest in the
6 certificate has been transferred and the beneficiary has been
7 designated.
- 8 (7) Entering into a contract may cause other rights or benefits, including
9 conversion rights and waiver of premium benefits that may exist under
10 the policy, to be forfeited by the viator. Assistance should be sought
11 from a financial adviser.
- 12 (8) Disclosure to a viator shall include distribution of a brochure
13 describing the process of viatical settlements. The NAIC's form for the
14 brochure shall be used unless the Commissioner develops one.
- 15 (9) The disclosure document shall contain the following language: 'All
16 medical, financial, or personal information solicited or obtained by a
17 provider or broker about an insured, including the insured's identity or
18 the identity of family members, a spouse or a significant other may be
19 disclosed as necessary to effect the viatical settlement between the
20 viator and the provider. If you are asked to provide this information,
21 you will be asked to consent to the disclosure. The information may be
22 provided to someone who buys the policy or provides funds for the
23 purchase. You may be asked to renew your permission to share
24 information every two years.'
- 25 (10) The insured may be contacted by either the provider or broker or its
26 authorized representative for the purpose of determining the insured's
27 health status. This contact is limited to once every three months if the
28 insured has a life expectancy of more than one year, and no more than
29 once per month if the insured has a life expectancy of one year or less.
- 30 (b) A provider shall provide the viator with at least the following disclosures no
31 later than the date the contract is signed by all parties. The disclosures shall be
32 conspicuously displayed in the contract or in a separate document signed by the viator
33 and the provider or broker, and provide the following information:
- 34 (1) State the affiliation, if any, between the provider and the issuer of the
35 insurance policy to be viaticated.
- 36 (2) The document shall include the name, address, and telephone number
37 of the provider.
- 38 (3) A broker shall disclose to a prospective viator the amount and method
39 of calculating the broker's compensation. The term 'compensation'
40 includes anything of value paid or given to a broker for the placement
41 of a policy.
- 42 (4) If an insurance policy to be viaticated has been issued as a joint policy
43 or involves family riders or any coverage of a life other than the

1 insured under the policy to be viaticated, the viator shall be informed
2 of the possible loss of coverage on the other lives under the policy and
3 shall be advised to consult with his or her insurance producer or the
4 insurer issuing the policy for advice on the proposed viatical
5 settlement.

6 (5) State the dollar amount of the current death benefit payable to the
7 provider under the policy. If known, the provider shall also disclose
8 the availability of any additional guaranteed insurance benefits, the
9 dollar amount of any accidental death and dismemberment benefits
10 under the policy, and the provider's interest in those benefits.

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

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

18 (d) A provider or its investment agent shall provide the viatical settlement
19 purchaser with at least the following disclosures before the date the purchase agreement
20 is signed by all parties. The disclosures shall be conspicuously displayed in any
21 purchase agreement or in a separate document signed by the viatical settlement
22 purchaser and provider or investment agent, and shall make the following disclosure to
23 the viatical settlement purchaser:

24 (1) The purchaser will receive no returns (i.e., dividends and interest) until
25 the insured dies.

26 (2) The actual annual rate of return on a contract is dependent upon an
27 accurate projection of the insured's life expectancy, and the actual date
28 of the insured's death. An annual 'guaranteed' rate of return is not
29 determinable.

30 (3) The viaticated life insurance contract should not be considered a liquid
31 purchase since it is impossible to predict the exact timing of its
32 maturity and the funds probably are not available until the death of the
33 insured. There is no established secondary market for resale of these
34 products by the purchaser.

35 (4) The purchaser may lose all benefits or may receive substantially
36 reduced benefits if the insurer goes out of business during the term of
37 the viatical investment.

38 (5) The purchaser is responsible for payment of the insurance premium or
39 other costs related to the policy, if required by the terms of the viatical
40 purchase agreement. These payments may reduce the purchaser's
41 return. If a party other than the purchaser is responsible for the
42 payment, the name and address of that party also shall be disclosed.

- 1 (6) If the purchaser is responsible for payment of the insurance premiums
2 or other costs related to the policy if the insured returns to health,
3 disclose the amount of such premiums, if applicable.
- 4 (7) State the name and address of any person providing escrow services
5 and the relationship to the broker.
- 6 (8) The amount of any trust fees or other expenses to be charged to the
7 viatical settlement purchaser shall be disclosed.
- 8 (9) State whether the purchaser is entitled to a refund of all or part of his
9 or her investment under the contract if the policy is later determined to
10 be null and void.
- 11 (10) Disclose that group policies may contain limitations or caps in the
12 conversion rights, additional premiums may have to be paid if the
13 policy is converted, name the party responsible for the payment of the
14 additional premiums and, if a group policy is terminated and replaced
15 by another group policy, state that there may be no right to convert the
16 original coverage.
- 17 (11) Disclose the risks associated with policy contestability including, but
18 not limited to, the risk that the purchaser will have no claim or only a
19 partial claim to death benefits should the insurer rescind the policy
20 within the contestability period.
- 21 (12) Disclose whether the purchaser will be the owner of the policy in
22 addition to being the beneficiary, and if the purchaser is the
23 beneficiary only and not also the owner, the special risks associated
24 with that status, including, but not limited to, the risk that the
25 beneficiary may be changed or the premium may not be paid.
- 26 (13) Describe the experience and qualifications of the person who
27 determines the life expectancy of the insured, i.e., in-house staff,
28 independent physicians, and specialty firms that weigh medical and
29 actuarial data; the information this projection is based on; and the
30 relationship of the projection maker to the provider, if any.
- 31 (14) Disclosure to an investor shall include distribution of a brochure
32 describing the process of investment in viatical settlements. The
33 NAIC's form for the brochure shall be used unless the Commissioner
34 develops one.
- 35 (e) A provider or its investment agent shall provide the viatical settlement
36 purchaser with at least the following disclosures no later than at the time of the
37 assignment, transfer, or sale of all or a portion of an insurance policy. The disclosures
38 shall be contained in a document signed by the viatical settlement purchaser and
39 provider or investment agent and shall make the following disclosures to the viatical
40 settlement purchaser:
- 41 (1) Disclose all the life expectancy certifications obtained by the provider
42 in the process of determining the price paid to the viator.

- 1 (2) State whether premium payments or other costs related to the policy
2 have been escrowed. If escrowed, state the date upon which the
3 escrowed funds will be depleted and whether the purchaser will be
4 responsible for payment of premiums thereafter and, if so, the amount
5 of the premiums.
- 6 (3) State whether premium payments or other costs related to the policy
7 have been waived. If waived, disclose whether the investor will be
8 responsible for payment of the premiums if the insurer that wrote the
9 policy terminates the waiver after purchase and the amount of those
10 premiums.
- 11 (4) Disclose the type of policy offered or sold, i.e., whole life, term life,
12 universal life, or a group policy certificate, any additional benefits
13 contained in the policy, and the current status of the policy.
- 14 (5) If the policy is term insurance, disclose the special risks associated
15 with term insurance including, but not limited to, the purchaser's
16 responsibility for additional premiums if the viator continues the term
17 policy at the end of the current term.
- 18 (6) State whether the policy is contestable.
- 19 (7) State whether the insurer that wrote the policy has any additional rights
20 that could negatively affect or extinguish the purchaser's rights under
21 the contract, what these rights are, and under what conditions these
22 rights are activated.
- 23 (8) State the name and address of the person responsible for monitoring
24 the insured's condition. Describe how often the monitoring of the
25 insured's condition is done, how the date of death is determined, and
26 how and when this information will be transmitted to the purchaser.
- 27 (f) The purchase agreement is voidable by the purchaser at any time within three
28 days after the disclosures mandated by subsections (d) and (e) of this section are
29 received by the purchaser.

30 **"§ 58-58-250. General rules.**

- 31 (a) A provider entering into a contract shall first obtain:
- 32 (1) If the viator is the insured, a written statement from a licensed
33 attending physician that the viator is of sound mind and under no
34 constraint or undue influence to enter into a contract.
- 35 (2) A document in which the insured consents to the release of his or her
36 medical records to a provider or broker and, if the policy being
37 viaticated has been in effect for less than five years, to the insurance
38 company that issued the policy covering the life of the insured.
- 39 (b) Within 20 days after a viator executes documents necessary to transfer any
40 rights under a policy or within 20 days after entering any agreement, option, promise, or
41 any other form of understanding, expressed or implied, to viaticate the policy, the
42 provider shall give written notice to the insurer that issued that policy that the policy has

1 or will become a viaticated policy. The notice shall be accompanied by the documents
2 required by subsection (c) of this section.

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

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

15 (e) Before or at the time of execution of the contract, the provider shall obtain a
16 witnessed document in which the viator consents to the contract, represents that the
17 viator has a full and complete understanding of the contract, that he or she has a full and
18 complete understanding of the benefits of the policy, acknowledges that he or she is
19 entering into the contract freely and voluntarily and, for persons with a terminal or
20 chronic illness or condition, acknowledges that the insured has a terminal or chronic
21 illness.

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

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

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

33 (i) The purchaser may rescind a contract within three days after the purchaser
34 receives the disclosures required by G.S. 58-58-245(d) and G.S. 58-58-245(e).

35 (j) The provider shall instruct the viator to send the executed documents required
36 to effect the change in ownership, assignment, or change in beneficiary directly to the
37 independent escrow agent. Within three business days after the date the escrow agent
38 receives the documents, or from the date the provider receives the documents, if the
39 viator erroneously provides the documents directly to the provider, the provider shall
40 pay or transfer the proceeds of the viatical settlement into an escrow or trust account
41 maintained in a state or federally chartered financial institution, the deposits of which
42 are insured by the Federal Deposit Insurance Corporation (FDIC) or any successor
43 entity. Upon payment of the settlement proceeds into the escrow account, the escrow

1 agent shall deliver the original change in ownership, assignment, or change in
2 beneficiary forms to the provider or related provider trust. Upon the escrow agent's
3 receipt of the acknowledgment of the properly completed transfer of ownership,
4 assignment, or designation of beneficiary from the insurance company, the escrow agent
5 shall pay the settlement proceeds to the viator.

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

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

19 (m) An investment agent shall not have any direct or indirect contact with the
20 viator or have knowledge of the identity of the viator. An investment agent is deemed to
21 represent the viatical settlement provider of whom the investment agent is an appointed
22 or contracted agent.

23 **§ 58-58-255. Prohibited practices.**

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

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

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

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

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

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

- 1 **b.** The viator's spouse dies.
2 **c.** The viator divorces his or her spouse.
3 **d.** The viator retires from full-time employment.
4 **e.** The viator becomes physically or mentally disabled and a
5 physician determines that the disability prevents the viator from
6 maintaining full-time employment.
7 **f.** The viator was the insured's employer at the time the policy was
8 issued and the employment relationship terminated.
9 **g.** A final order, judgment, or decree is entered by a court of
10 competent jurisdiction, on the application of a creditor of the
11 viator, adjudicating the viator bankrupt or insolvent, or
12 approving a petition seeking reorganization of the viator or
13 appointing a receiver, trustee, or liquidator to all or a substantial
14 part of the viator's assets.
15 **h.** The viator experiences a significant decrease in income that is
16 unexpected and that impairs the viator's reasonable ability to
17 pay the policy premium.
18 **i.** The viator or insured disposes of his or her ownership interests
19 in a closely held corporation.

20 **(b)** Copies of the independent evidence described in subdivision (a)(4) of this
21 subsection and documents required by G.S. 58-58-250(a) shall be submitted to the
22 insurer when the provider submits a request to the insurer for verification of coverage.
23 The copies shall be accompanied by a letter of attestation from the provider that the
24 copies are true and correct copies of the documents received by the provider.

25 **(c)** If the provider submits to the insurer a copy of the owner or insured's
26 certification described in subdivision (a)(4) and subsection (b) of this section when the
27 provider submits a request to the insurer to effect the transfer of the policy to the
28 provider, the copy shall be deemed to conclusively establish that the contract satisfies
29 the requirements of this section and the insurer shall timely respond to the request.

30 **§ 58-58-260. Advertising for viatical settlements and viatical settlements purchase**
31 **agreements.**

32 **(a)** The purpose of this section is to provide prospective viators and viatical
33 settlement purchasers with clear and unambiguous statements in the advertisement of
34 viatical settlements and to assure the clear, truthful, and adequate disclosure of the
35 benefits, risks, limitations, and exclusions of any contract or purchase agreement bought
36 or sold. This purpose is intended to be accomplished by the establishment of guidelines
37 and standards of permissible and impermissible conduct in the advertising of viatical
38 settlements to assure that product descriptions are presented in a manner that prevents
39 unfair, deceptive, or misleading advertising and is conducive to accurate presentation
40 and description of viatical settlements through the advertising media and material used
41 by viatical settlement licensees.

42 **(b)** This section shall apply to any advertising of contracts, viatical purchase
43 agreements or related products or services intended for dissemination in this State.

1 including Internet advertising viewed by persons located in this State. Where disclosure
2 requirements are established pursuant to federal regulation, this section shall be
3 interpreted so as to minimize or eliminate conflict with federal regulation wherever
4 possible.

5 (c) Every viatical settlement licensee shall establish and at all times maintain a
6 system of control over the content, form, and method of dissemination of all
7 advertisements of its contracts, products, and services. All advertisements, regardless of
8 by whom written, created, designed, or presented, shall be the responsibility of the
9 viatical settlement licensee, as well as the individual who created or presented the
10 advertisement. A system of control shall include regular routine notification, at least
11 once a year, to agents and others authorized by the viatical settlement licensee who
12 disseminate advertisements of the requirements and procedures for approval before the
13 use of any advertisements not furnished by the viatical settlement licensee.

14 (d) Advertisements shall be truthful and not misleading in fact or by implication.
15 The form and content of an advertisement of a contract or purchase agreement, product,
16 or service shall be sufficiently complete and clear so as to avoid deception. It shall not
17 have the capacity or tendency to mislead or deceive. Whether an advertisement has the
18 capacity or tendency to mislead or deceive shall be determined by the Commissioner
19 from the overall impression that the advertisement may be reasonably expected to create
20 upon a person of average education or intelligence within the segment of the public to
21 which it is directed.

22 (e) Certain viatical settlement advertisements are deemed false and misleading
23 on their face and are prohibited. False and misleading viatical settlement advertisements
24 include, but are not limited to, the following representations:

- 25 (1) 'Guaranteed', 'fully secured', '100 percent secured', 'fully insured',
26 'secure', 'safe', 'backed by rated insurance companies', 'backed by
27 federal law', 'backed by state law', or 'state guaranty funds', or similar
28 representations;
- 29 (2) 'No risk', 'minimal risk', 'low risk', 'no speculation', 'no fluctuation', or
30 similar representations;
- 31 (3) 'Qualified or approved for individual retirement accounts (IRAs), Roth
32 IRAs, 401(k) plans, simplified employee pensions (SEP), 403(b),
33 Keogh plans, TSA, other retirement account rollovers', 'tax deferred',
34 or similar representations;
- 35 (4) Utilization of the word 'guaranteed' to describe the fixed return, annual
36 return, principal, earnings, profits, investment, or similar
37 representations;
- 38 (5) 'No sales charges or fees' or similar representations;
- 39 (6) 'High yield', 'superior return', 'excellent return', 'high return', 'quick
40 profit', or similar representations;
- 41 (7) Purported favorable representations or testimonials about the benefits
42 of contracts or purchase agreements as an investment, taken out of

1 context from newspapers, trade papers, journals, radio and television
2 programs, and all other forms of print and electronic media.

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

6 (g) An advertisement shall not:

7 (1) Omit material information or use words, phrases, statements,
8 references, or illustrations if the omission or use has the capacity,
9 tendency, or effect of misleading or deceiving viators, purchasers, or
10 prospective purchasers as to the nature or extent of any benefit, loss
11 covered, premium payable, or state or federal tax consequence. The
12 fact that the contract or purchase agreement offered is made available
13 for inspection before consummation of the sale, or an offer is made to
14 refund the payment if the viator is not satisfied or that the contract or
15 purchase agreement includes a 'free look' period that satisfies or
16 exceeds legal requirements, does not remedy misleading statements.

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

19 (3) Represent that premium payments will not be required to be paid on
20 the policy that is the subject of a contract or purchase agreement in
21 order to maintain that policy, unless that is the fact.

22 (4) State or imply that interest charged on an accelerated death benefit or a
23 policy loan is unfair, inequitable, or in any manner an incorrect or
24 improper practice.

25 (5) State or imply that a contract or purchase agreement, benefit, or
26 service has been approved or endorsed by a group of individuals,
27 society, association, or other organization unless that is the fact and
28 unless any relationship between an organization and the viatical
29 settlement licensee is disclosed. If the entity making the endorsement
30 or testimonial is owned, controlled, or managed by the viatical
31 settlement licensee, or receives any payment or other consideration
32 from the viatical settlement licensee for making an endorsement or
33 testimonial, that fact shall be disclosed in the advertisement.

34 (6) Contain statistical information unless it accurately reflects recent and
35 relevant facts. The source of all statistics used in an advertisement
36 shall be identified.

37 (7) Disparage insurers, providers, brokers, investment agents, insurance
38 producers, policies, services, or methods of marketing.

39 (8) Use a trade name, group designation, name of the parent company of a
40 viatical settlement licensee, name of a particular division of the viatical
41 settlement licensee, service mark, slogan, symbol, or other device or
42 reference without disclosing the name of the viatical settlement
43 licensee, if the advertisement would have the capacity or tendency to

1 mislead or deceive as to the true identity of the viatical settlement
2 licensee, or to create the impression that a company other than the
3 viatical settlement licensee would have any responsibility for the
4 financial obligation under a contractor purchase agreement.

5 (9) Use any combination of words, symbols, or physical materials that by
6 their content, phraseology, shape, color, or other characteristics are so
7 similar to a combination of words, symbols, or physical materials used
8 by a government program or agency or otherwise appear to be of such
9 a nature that they tend to mislead prospective viators or purchasers into
10 believing that the solicitation is in some manner connected with a
11 government program or agency.

12 (10) Create the impression that the provider, its financial condition or
13 status, the payment of its claims, or the merits, desirability, or
14 advisability of its contracts or purchase agreement forms are
15 recommended or endorsed by any government entity.

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

20 (i) Testimonials, appraisals, or analysis used in advertisements must be genuine;
21 represent the current opinion of the author; be applicable to the contract or purchase
22 agreement, product, or service advertised, if any; and be accurately reproduced with
23 sufficient completeness to avoid misleading or deceiving prospective viators or
24 purchasers as to the nature or scope of the testimonials, appraisals, analysis, or
25 endorsement. In using testimonials, appraisals, or analysis, the viatical settlement
26 licensee makes as its own all the statements contained therein, and the statements are
27 subject to all the provisions of this section.

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

32 (k) When an endorsement refers to benefits received under a contract or purchase
33 agreement, all pertinent information shall be retained for a period of five years after its
34 use.

35 (l) The name of the viatical settlement licensee shall be clearly identified in all
36 advertisements about the licensee or its contract or purchase agreements, products, or
37 services, and if any specific contract or purchase agreement is advertised, the contract or
38 purchase agreement shall be identified either by form number or some other appropriate
39 description. If an application is part of the advertisement, the name of the provider or
40 broker shall be shown on the application.

41 (m) An advertisement may state that a viatical settlement licensee is licensed in
42 the state where the advertisement appears, provided it does not exaggerate that fact or
43 suggest or imply that a competing viatical settlement licensee may not be so licensed.

1 The advertisement may ask the audience to consult the licensee's web site or contact the
2 department of insurance to find out if the state requires licensing and, if so, whether the
3 provider, broker, or investment agent is licensed.

4 (n) The name of the actual licensee shall be stated in all of its advertisements. An
5 advertisement shall not use a trade name, any group designation, name of any affiliate
6 or controlling entity of the licensee, service mark, slogan, symbol, or other device in a
7 manner that would have the capacity or tendency to mislead or deceive as to the true
8 identity of the actual licensee or create the false impression that an affiliate or
9 controlling entity would have any responsibility for the financial obligation of the
10 licensee.

11 (o) An advertisement shall not directly or indirectly create the impression that
12 any state or federal governmental agency endorses, approves, or favors:

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

15 (2) The merits, desirability, or advisability of any contract or purchase
16 agreement;

17 (3) Any contract or purchase agreement; or

18 (4) Any policy or life insurance company.

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

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

25 **"§ 58-58-265. Fraudulent viatical settlement acts, interference, and participation**
26 **of convicted felons prohibited.**

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

29 (b) A person shall not knowingly or intentionally interfere with the enforcement
30 of the provisions of this Part or investigations of suspected or actual violations of this
31 Part.

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

35 **"§ 58-58-270. Report to Commissioner.**

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

1 **"§ 58-58-275. Reporting and investigation of suspected viatical settlement**
2 **fraudulent acts; immunity from liability.**

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

9 (b) The Commissioner, acting without actual malice, is not subject to civil
10 liability for libel or slander by virtue of an investigation of any known or suspected
11 viatical settlement fraudulent act; or by virtue of the publication or dissemination of any
12 official report related to any such investigation, which report is published or
13 disseminated in the absence of fraud, bad faith, or actual malice on the part of the
14 Commissioner.

15 (c) During the course of an investigation of a known or suspected viatical
16 settlement fraudulent act, the Commissioner may request any person to furnish copies of
17 any information relative to the known or suspected viatical settlement fraudulent act.
18 The person shall release the information requested and cooperate with the
19 Commissioner under this section.

20 **"§ 58-58-280. Confidentiality.**

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

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

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

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

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

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

38 **"§ 58-58-285. Other law enforcement or regulatory authority.**

39 This Part does not:

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

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

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

7 **"§ 58-58-290. Injunctions; civil remedies; cease and desist orders.**

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

13 (b) Any person damaged by the acts of a person in violation of this Part may
14 bring a civil action against the person committing the violation in a court of competent
15 jurisdiction.

16 (c) A violation of this Part attendant to the execution of a purchase agreement
17 renders the purchase agreement voidable and subject to rescission by the viatical
18 settlement purchaser, upon return of the policy received to the provider. Suit for
19 rescission may be brought in a court of competent jurisdiction or where the alleged
20 viator resides or has a principal place of business or where the alleged violation
21 occurred.

22 (d) The Commissioner may issue, in accordance with G.S. 58-63-32, a cease and
23 desist order upon a person that violates any provision of this Part, any rule or order
24 adopted by the Commissioner, or any written agreement entered into with the
25 Commissioner. The cease and desist order may be subject to judicial review under G.S.
26 58-63-35.

27 (e) When the Commissioner finds that an activity in violation of this Part
28 presents an immediate danger to the public that requires an immediate final order, the
29 Commissioner may issue an emergency cease and desist order reciting with particularity
30 the facts underlying the findings. The emergency cease and desist order is effective
31 immediately upon service of a copy of the order on the respondent and remains effective
32 for 90 days. If the Commissioner begins nonemergency cease and desist proceedings,
33 the emergency cease and desist order remains effective, absent an order by a court of
34 competent jurisdiction in accordance with G.S. 58-63-35.

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

37 **"§ 58-58-295. Unfair trade practices.**

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

39 **"§ 58-58-300. Authority to adopt rules.**

40 The Commissioner may:

41 (1) Adopt rules implementing this Part.

42 (2) Establish standards for evaluating reasonableness of payments under
43 contracts for persons who are terminally or chronically ill, including

1 standards for the amount paid in exchange for assignment, transfer,
2 sale, devise, or bequest of a benefit under a policy.

3 (3) Establish appropriate licensing requirements, fees, and standards for
4 continued licensure for providers and investment agents.

5 (4) Require a bond or other mechanism for financial accountability for
6 providers and brokers.

7 (5) Adopt rules governing the relationship and responsibilities of insurers
8 and providers, brokers, and investment agents during the viatication of
9 a policy.

10 "**§ 58-58-305. Disclaimer.**

11 Nothing in this Part affects the North Carolina Securities Act or the jurisdiction of
12 the North Carolina Secretary of State.

13 "**§ 58-58-310. Effective date.**

14 A provider, broker, or investment agent transacting business in this State on the
15 effective date of this Part may continue to do so pending approval of the provider,
16 broker, or investment agent's application for a license as long as the application is filed
17 with the Commissioner no later than three months from the effective date of this Part. If
18 the application is disapproved, then the provider, broker, or investment agent shall cease
19 transacting viatical business in this State."

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

21 "(e) Notwithstanding any other provision of this section, a person licensed or
22 registered as a viatical settlement broker, viatical settlement provider, or viatical
23 settlement representative, as defined in ~~G.S. 58-58-42 (a)~~, G.S. 58-58-205, in that
24 person's home state shall receive a nonresident viatical settlement broker, viatical
25 settlement provider, or viatical settlement representative license pursuant to this section.
26 Except for the licensure provisions of this section, nothing in this section otherwise
27 amends or supersedes any provision of ~~G.S. 58-58-42~~. Part 5 of Article 58 of this
28 Chapter."

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

30 **SECTION 6.** This act becomes effective October 1, 2001.