

SENATE BILL NO. 2150

Introduced by

Industry, Business and Labor Committee

(At the request of the Insurance Commissioner)

1 A BILL for an Act to create and enact chapter 26.1-33.2 of the North Dakota Century Code,
2 relating to viatical settlement contracts; and to repeal chapter 26.1-33.1 of the North Dakota
3 Century Code, relating to viatical settlement contracts; and to provide a penalty.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1.** Chapter 26.1-33.2 of the North Dakota Century Code is created and
6 enacted as follows:

7 **26.1-33.2-01. Definitions.**

- 8 1. "Advertising" means any written, electronic, or printed communication or any
9 communication by means of recorded telephone messages or transmitted on radio,
10 television, or the internet, disseminated, circulated, or placed before the public,
11 directly or indirectly, for the purpose of creating an interest in or inducing a person
12 to sell a life insurance policy pursuant to a viatical settlement contract.
- 13 2. "Business of viatical settlements" means an activity involved in, but not limited to,
14 the offering, solicitation, negotiation, procurement, effectuation, purchasing,
15 investing, financing, monitoring, tracking, underwriting, selling, transferring,
16 assigning, pledging, hypothecating, or in any other manner, of viatical settlement
17 contracts or purchase agreements.
- 18 3. "Chronically ill" means:
- 19 a. Being unable to perform at least two activities of daily living, such as eating,
20 toileting, transferring, bathing, dressing, or continence;
- 21 b. Requiring substantial supervision to protect the individual from threats to
22 health and safety due to severe cognitive impairment; or
- 23 c. Having a level of disability similar to that described in subdivision a as
24 determined by the secretary of health and human services.

- 1 4. a. "Financing entity" means an underwriter, placement agent, lender, purchaser
2 of securities, purchaser of a policy or certificate from a viatical settlement
3 provider, credit enhancer, or any entity that has a direct ownership in a policy
4 or certificate that is the subject of a viatical settlement contract, but:
- 5 (1) Whose principal activity related to the transaction is providing funds to
6 effect the viatical settlement or purchase of one or more viaticated
7 policies; and
- 8 (2) Who has an agreement in writing with one or more licensed viatical
9 settlement providers to finance the acquisition of viatical settlement
10 contracts.
- 11 b. "Financing entity" does not include a nonaccredited investor or viatical
12 settlement purchaser.
- 13 5. "Fraudulent viatical settlement act" includes:
- 14 a. Acts or omissions committed by any person who, knowingly or with intent to
15 defraud, for the purpose of depriving another of property or for pecuniary gain,
16 commits, or permits its employees or its agents to engage in, acts including:
- 17 (1) Presenting, causing to be presented, or preparing with knowledge or
18 belief that it will be presented to or by a viatical settlement provider,
19 viatical settlement broker, viatical settlement purchaser, financing entity,
20 insurer, insurance producer or any other person, false material
21 information, or concealing material information, as part of, in support of,
22 or concerning a fact material to one or more of the following:
- 23 (a) An application for the issuance of a viatical settlement contract or
24 insurance policy;
- 25 (b) The underwriting of a viatical settlement contract or insurance
26 policy;
- 27 (c) A claim for payment or benefit pursuant to a viatical settlement
28 contract or insurance policy;
- 29 (d) Premiums paid on an insurance policy;

- (e) Payments and changes in ownership or beneficiary made in accordance with the terms of a viatical settlement contract or insurance policy;
 - (f) The reinstatement or conversion of an insurance policy;
 - (g) In the solicitation, offer, effectuation, or sale of a viatical settlement contract or insurance policy;
 - (h) The issuance of written evidence of viatical settlement contract or insurance; or
 - (i) 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 other legal authority for the transaction of the business of viatical settlements; or
 - (4) File with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceals information about a material fact from the commissioner.
- c. Embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums, credits, or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner, or any other person engaged in the business of viatical settlements or insurance.
- d. Recklessly entering into, brokering, otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by

1 presenting false information concerning any fact material to the policy or by
2 concealing, of the purpose of misleading another, information concerning any
3 fact material to the policy, when the viator or the viator's agent intended to
4 defraud the policy's issuer. "Recklessly" means engaging in the conduct of
5 conscious and clearly unjustifiable disregard of a substantial likelihood of the
6 existence of the relevant facts or risks, such disregard involving a gross
7 deviation from acceptable standards of conduct.

8 e. Attempting to commit, assisting, aiding, or abetting in the commission of or
9 conspiracy to commit the acts or omissions specified in this subsection.

10 6. "Person" means a natural person or a legal entity, including an individual,
11 partnership, limited liability company, association, trust, or corporation.

12 7. "Policy" means an individual or group policy, group certificate, contract, or
13 arrangement of life insurance affecting the rights of a resident of this state or
14 bearing a reasonable relation to this state, regardless of whether delivered or
15 issued for delivery in this state.

16 8. "Related provider trust" means a titling trust or other trust established by a licensed
17 viatical settlement provider or a financing entity for the sole purpose of holding the
18 ownership or beneficial interest in purchased policies in connection with a financing
19 transaction. The trust must have a written agreement with the licensed viatical
20 settlement provider under which the licensed viatical settlement provider is
21 responsible for ensuring compliance with all statutory and regulatory requirements
22 and under which the trust agrees to make all records and files related to viatical
23 settlement transactions available to the commissioner as if those records and files
24 were maintained directly by the licensed viatical settlement provider.

25 9. "Special purpose entity" means a corporation, partnership, trust, limited liability
26 company, or other similar entity formed solely to provide either directly or indirectly
27 access to institutional capital markets to a financing entity or viatical settlement
28 provider.

29 10. "Terminally ill" means having an illness or sickness that can reasonably be
30 expected to result in death in twenty-four months or less.

11. "Viatical settlement broker" means a person who on behalf of a viator and for a fee, commission, or other valuable consideration, offers or advertises the availability of viatical settlements, introduces viators to viatical settlement providers, or offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. The term does not include an attorney, certified public accountant, or a financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator and whose compensation is not paid directly or indirectly by the viatical settlement provider or purchaser.

12. "Viatical settlement contract" means a written agreement establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. A viatical settlement contract also includes a contract for a loan or other financing transaction secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy. A viatical settlement contract includes an agreement to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator.

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

- a. A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan;
- b. The issuer of a life insurance policy providing accelerated benefits;

- c. An authorized or eligible insurer that provides stop loss coverage to a viatical settlement provider, purchaser, financing entity, special purpose entity, or related provider trust;
- d. A natural person who enters into or effectuates no more than one agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit;
- e. A financing entity;
- f. A special purpose entity;
- g. A related provider trust;
- h. A viatical settlement purchaser; or
- i. An accredited investor or qualified institutional buyer as defined respectively in regulation D, rule 501 or rule 144A of the Federal Securities Act of 1933, as amended, and who purchases a viaticated policy from a viatical settlement provider.

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

15. "Viator" means the owner of a life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract. For the purposes of this chapter, a viator is not limited to an owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed.

26.1-33.2-02. License requirements - Penalty.

1. A person may not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the commissioner of the state of residence of the viator. A person may not operate as a viatical settlement broker without first obtaining an insurance producer license from the commissioner.
2. Application for a viatical settlement provider must be made to the commissioner by the applicant on a form prescribed by the commissioner, and the application must be accompanied by a fee of two hundred fifty dollars.

- 1 3. Application for a viatical settlement broker license must be made to the
- 2 commissioner by the applicant on a form prescribed by the commissioner and the
- 3 application must be accompanied by a fee of two hundred fifty dollars.
- 4 4. Licenses must be renewed from year to year on the anniversary date upon
- 5 payment of the annual renewal fees of one hundred fifty dollars. Failure to pay the
- 6 fees by the renewal date results in expiration of the license.
- 7 5. The applicant shall provide information on forms required by the commissioner. An
- 8 applicant shall fully disclose the identity of all stockholders, partners, officers,
- 9 members, and employees. The commissioner may refuse to issue a license in the
- 10 name of a legal entity if not satisfied that any officer, employee, stockholder,
- 11 partner, or member thereof who may materially influence the applicant's conduct
- 12 meets the standards of this chapter.
- 13 6. A license issued to a legal entity authorizes all partners, officers, members, and
- 14 designated employees to act as viatical settlement providers or viatical settlement
- 15 brokers as applicable, under the license, and all those persons must be named in
- 16 the application and any supplements to the application.
- 17 7. Upon the filing of an application and the payment of the license fee, the
- 18 commissioner shall issue a license if the commissioner finds that the applicant:
- 19 a. If a viatical settlement provider, has provided a detailed plan of operation;
- 20 b. Is competent and trustworthy and intends to act in good faith in the capacity
- 21 involved by the license applied for;
- 22 c. Has a good business reputation and has had experience, training, or
- 23 education so as to be qualified in the business for which the license is applied
- 24 for;
- 25 d. If a legal entity, provides a certificate of good standing from the state of its
- 26 domicile; and
- 27 e. If a viatical settlement provider or viatical settlement broker has provided an
- 28 antifraud plan that meets the requirements of subsection 6 of section
- 29 26.1-33.2-10.
- 30 8. The commissioner may not issue a license to a nonresident applicant, unless a
- 31 written designation of an agent for service of process is filed and maintained with

the commissioner or the applicant has filed with the commissioner, the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

9. A person may not act or hold oneself out to be a viatical settlement provider unless licensed under this chapter. Any person willfully violating this section is guilty of a class C felony.

26.1-33.2-03. License revocation and denial.

1. The commissioner may refuse to issue, suspend, revoke, or refuse to renew the license of a viatical settlement provider or viatical settlement broker if the commissioner finds that:
 - a. There was any material misrepresentation in the application for the license;
 - b. The licensee or any officer, partner, member, or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent;
 - c. The viatical settlement provider demonstrates a pattern of unreasonable payments to viators;
 - d. The licensee has been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or to a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;
 - e. The viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to this chapter;
 - f. The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract;
 - g. The licensee no longer meets the requirements for initial licensure;
 - h. The viatical settlement provider has assigned, transferred, or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, financing entity, special purpose entity, or related provider trust;

i. The licensee knowingly has provided materially untrue information to a life insurance company that issued a policy of life insurance that is the subject of a viatical settlement contract; or

j. The licensee has violated any provision of this chapter.

2. If the commissioner denies a license application or suspends, revokes, or refuses to renew the license of a viatical settlement provider or viatical settlement broker, the commissioner shall conduct a hearing in accordance with chapter 28-32.

26.1-33.2-04. Approval of viatical settlement contracts and disclosure statements.

A person may not use a viatical settlement contract or provide to a viator a disclosure statement form in this state unless filed and approved by the commissioner. Any viatical settlement contract form filed with the commissioner must be deemed approved if it has not been disapproved within sixty days of filing. The commissioner may disapprove a viatical settlement contract form or disclosure statement form if the contract or provisions contained therein are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. All viatical settlement contracts and applications for viatical settlements issued or delivered in this state must contain the following statement:

Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison.

The lack of a statement as required in this section does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

26.1-33.2-05. Reporting requirements and confidentiality.

1. Each licensee shall file with the commissioner on or before March first of each year an annual statement containing information regarding business transacted in this state for the previous calendar year:

a. For each policy viaticated:

(1) The date the viatical settlement was entered.

(2) The life expectancy of the viator at time of contract.

(3) The face amount of the policy.

(4) The amount paid by the viatical settlement provider to viaticate the policy and the percentage that amount represents of the face amount.

- (5) If the viator has died:
 - (a) The date of death.
 - (b) The total insurance premiums paid by the viatical settlement provider to maintain the policy in force.
 - b. A breakdown, by disease category, of applications received, accepted, and rejected.
 - c. A breakdown of policies viaticated by issuer and policy type.
 - d. The number of secondary market versus primary transactions.
 - e. The total number of policies viaticated.
 - f. The amount of outside borrowings.
 2. Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, insurance company, insurance producer, insurance broker, information bureau, rating agency, or company, or any other person with actual knowledge of an insured's identity, may not disclose the insured's identity or the insured's financial or medical information to any other person unless the disclosure:
 - a. Is necessary to effect a viatical settlement between the viator and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;
 - b. Is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency;
 - c. Is a term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider; or
 - d. Is necessary to permit a financing entity, related provider trust, or special purpose entity to finance the purchase of policies by a viatical settlement provider or a viatical settlement purchaser and the insured has provided prior consent to the disclosure.
- 26.1-33.2-06. Examination or investigations.**
1. When the commissioner deems it reasonably necessary to protect the interest of the public, the commissioner may examine any licensee or applicant for a license. In lieu of an examination under this chapter of any foreign or alien licensee

1 licensed in this state, the commissioner may accept an examination report on the
2 licensee as prepared by the commissioner for the licensee's state of domicile or
3 port-of-entry state. The expenses incurred in conducting any examination must be
4 paid by the licensee or applicant. The commissioner may investigate suspected
5 fraudulent viatical settlement acts and persons engaged in the business of viatical
6 settlements.

- 7 2. a. Names and individual identification data for all viators are not subject to
8 section 44-04-18 and are private and confidential information and may not be
9 disclosed by the commissioner, unless required by law.
10 b. Records of all transactions of viatical settlement contracts must be maintained
11 by the licensee and must be made available to the commissioner for
12 inspection during reasonable business hours.

13 **26.1-33.2-07. Disclosure.**

- 14 1. With each application for a viatical settlement, a viatical settlement provider or
15 viatical settlement broker must provide the viator with at least the following
16 disclosures no later than the time the application for the viatical settlement contract
17 is signed by all parties. The disclosures must be provided in a separate document
18 that is signed by the viator and the viatical settlement provider or viatical settlement
19 broker and must provide the following information:
20 a. Possible alternatives to viatical settlement contracts including any accelerated
21 death benefits or policy loans offered under the viator's life insurance policy.
22 b. Some or all of the proceeds of the viatical settlement may be taxable under
23 federal income tax and state franchise and income taxes, and assistance
24 should be sought from a professional tax advisor.
25 c. Proceeds of the viatical settlement could be subject to the claims of creditors.
26 d. Receipt of the proceeds of a viatical settlement may adversely affect the
27 viator's eligibility for medicaid or other government benefits or entitlements,
28 and advice should be obtained from the appropriate government agencies.
29 e. The viator has the right to rescind a viatical settlement contract as provided in
30 subsection 3 of section 26.1-33.2-08. If the insured dies during the rescission
31 period, the settlement contract shall be deemed to have been rescinded,

- 1 subject to repayment of all viatical settlement proceeds and any premiums,
2 loans, and loan interest to the viatical settlement provider or purchaser.
- 3 f. Funds will be sent to the viator within three business days after the viatical
4 settlement provider has received the insurer or group administrator's
5 acknowledgement that ownership of the policy or interest in the certificate has
6 been transferred and the beneficiary has been designated.
- 7 g. Entering into a viatical settlement contract may cause other rights or benefits,
8 including conversion rights and waiver of premium benefits that may exist
9 under the policy or certificate, to be forfeited by the viator and that assistance
10 should be sought from a financial adviser.
- 11 h. Disclosure to a viator must include distribution of a brochure describing the
12 process of viatical settlements.
- 13 i. The disclosure document must contain the following language: "All medical,
14 financial, or personal information solicited or obtained by a viatical settlement
15 provider or viatical settlement broker about an insured, including the insured's
16 identity, medical, and financial information or the identity of family members, a
17 spouse, or significant other, may be disclosed as necessary to effect the
18 viatical settlement between the viator and the viatical settlement provider. If
19 you are asked to provide this information, you will be asked to consent to the
20 disclosure. The information may be provided to someone who buys the policy
21 or provides funds for the purchase."
- 22 j. The insured may be contacted by either the viatical settlement provider or
23 broker or its authorized representative for the purpose of determining the
24 insured's health status. This contact is limited to once every three months if
25 the insured has a life expectancy of more than one year, and no more than
26 once per month if the insured has a life expectancy of one year or less.
- 27 2. A viatical settlement provider must provide the viator with at least the following
28 disclosures no later than the date the viatical settlement contract is signed by all
29 parties. The disclosures must be conspicuously displayed in the viatical settlement
30 contract or in a separate document signed by the viator and the viatical settlement
31 provider or viatical settlement broker and provide the following information:

- 1 a. State the affiliation, if any, between the viatical settlement provider and the
- 2 issuer of the insurance policy to be viaticated.
- 3 b. The document must include the name, address, and telephone number of the
- 4 viatical settlement provider.
- 5 c. A viatical settlement broker shall disclose to a prospective viator the amount
- 6 and method of calculating the broker's compensation.
- 7 d. If an insurance policy to be viaticated has been issued as a joint policy or
- 8 involves family riders or any coverage of a life other than the insured under
- 9 the policy to be viaticated, the viator must be informed of the possible loss of
- 10 coverage on the other lives under the policy and must be advised to consult
- 11 with the viator's insurance producer or the insurer issuing the policy for advice
- 12 on the proposed viatical settlement.
- 13 e. State the dollar amount of the current death benefit payable to the viatical
- 14 settlement provider under the policy or certificate. If known, the viatical
- 15 settlement provider shall also disclose the availability of any additional
- 16 guaranteed insurance benefits, the dollar amount of any accidental death and
- 17 dismemberment benefits under the policy or certificate, and the viatical
- 18 settlement provider's interest in those benefits.
- 19 f. State the name, business address, and telephone number of the independent
- 20 third party escrow agent and the fact that the viator or owner may inspect or
- 21 receive copies of the relevant escrow or trust agreements or documents.
- 22 3. If the viatical settlement provider transfers ownership or changes the beneficiary of
- 23 the insurance policy, the provider shall communicate the change in ownership or
- 24 beneficiary to the insured within twenty days after the change.

26.1-33.2-08. General rules.

1. a. A viatical settlement provider entering into a viatical settlement contract must
- first obtain:
- (1) If the viator is the insured, a written statement from a licensed attending
- physician that the viator is of sound mind and under no constraint or
- undue influence to enter into a viatical settlement contract;

(2) A witnessed document in which the viator consents to the viatical settlement contract, represents that the viator has a full and complete understanding of the viatical settlement contract, that the viator has a full and complete understanding of the benefits of the life insurance policy, acknowledges that the viator has entered into the viatical settlement contract freely and voluntarily, and, if applicable for the purposes of determining payments for persons who are terminally or chronically ill, acknowledges that the insured is terminally ill or is chronically ill and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued; and

(3) A document in which the insured consents to the release of the insured's medical records to a viatical settlement provider, viatical settlement broker, and the insurance company that issued the life insurance policy covering the life of the insured.

b. Within twenty days after a viator executes documents necessary to transfer any rights under an insurance policy or within twenty days of entering any agreement, option, promise, or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider must give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy. The notice must be accompanied by the documents required by subdivision c in their entirety.

c. The viatical provider must delivery a copy of the medical release required under paragraph 3 of subdivision a and a copy of the viator's application for the viatical settlement contract to the insurer that issued the life insurance policy that is the subject of the viatical transaction along with the notice required under subdivision b.

2. All medical information solicited or obtained by any licensee is subject to the applicable provision of state law relating to confidentiality of medical information.

3. All viatical settlement contracts entered into in this state must provide the viator with an unconditional right to rescind the contract for at least thirty calendar days from the date of the contract or fifteen days from the receipt of the viatical

1 settlement proceeds, whichever is less. If the insured dies during the rescission
2 period, the viatical settlement contract shall be deemed to have been rescinded,
3 subject to repayment to the viatical settlement provider of all viatical settlement
4 proceeds.

5 4. The viatical settlement provider must instruct the viator to send the executed
6 documents required to effect the change in ownership, assignment, or change in
7 beneficiary directly to the independent escrow agent. Within three business days
8 after the date the escrow agent receives the document or from the date the viatical
9 settlement provider receives the documents, if the viator erroneously provides the
10 documents directly to the provider, the escrow agent shall pay or transfer the
11 proceeds of the viatical settlement into an escrow or trust account maintained in a
12 state or federally chartered financial institution whose deposits are insured by the
13 federal deposit insurance corporation. Upon payment of the settlement proceeds
14 into the escrow account, the escrow agent shall deliver the original change in
15 ownership, assignment, or change in beneficiary forms to the viatical settlement
16 provider. Upon the licensed provider's receipt of the acknowledgement of the
17 transfer of ownership, assignment, or designation of beneficiary from the insurance
18 company, the licensed provider shall instruct the escrow agent to pay the
19 settlement proceeds to the viator. Payment must be made within three business
20 days of the date the provider received the acknowledge forms from the insurance
21 company.

22 5. Failure to tender consideration to the viator for the viatical settlement contract
23 within the time disclosed pursuant to subdivision f of subsection 1 of section
24 26.1-33.2-07 renders the viatical settlement contract voidable by the viator for lack
25 of consideration until the time consideration is tendered to and accepted by the
26 viator.

27 6. Contacts with the insured for the purpose of determining the health status of the
28 insured by the viatical settlement provider or viatical settlement broker after the
29 viatical settlement has occurred must only be made by the viatical settlement
30 provider or broker licensed in this state or its authorized representatives and is
31 limited to once every three months for insureds with a life expectancy of more than

one year and to no more than once per month for insureds with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.

26.1-33.2-09. Prohibited practices. It is a violation of this chapter for any person to enter into a viatical settlement contract within a two-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:

1. The policy was issued upon the owner's exercise of conversion rights arising out of a group policy;
2. The owner of the policy is a charitable organization exempt from taxation under 26 U.S.C. 501(c)(3);
3. The owner of the policy is not a natural person, such as a corporation, limited liability company, or partnership;
4. a. The viator or owner submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the two-year period:
 - (1) The owner or insured is diagnosed with an illness or condition that is either life threatening or that requires a course of treatment for a period of at least two years or long-term care or home health care, or both;
 - (2) The owner's or insured's spouse dies;
 - (3) The owner or insured divorces that person's spouse;
 - (4) The owner or insured retires from full-time employment;
 - (5) The owner or insured becomes physically or mentally disabled and a physician determines that the disability prevents the owner or insured from maintaining full-time employment;
 - (6) The owner of the policy was the insured's employer at the time the policy or certificate was issued and the employment relationship terminated;

- 1 (7) A final order, judgment, or decree is entered by a court of competent
2 jurisdiction, on the application of a creditor of the owner or insured,
3 adjudicating the owner or insured bankrupt or insolvent, or approving a
4 petition seeking reorganization of the owner or insured or appointing a
5 receiver, trustee, or liquidator to all or a substantial part of the owner's
6 or insured's assets;
- 7 (8) The owner of the policy experiences a significant decrease in income
8 that is unexpected by the owner and that impairs the owner's
9 reasonable ability to pay the policy premium; or
- 10 (9) The independent evidence must be submitted to the insurer when the
11 viatical settlement provider submits a request to the insurer to effect
12 transfer of policy or certificate to the viatical settlement provider. The
13 insurer shall respond to the request in a timely manner. Nothing in this
14 section prohibits an insurer from exercising its right to contest the
15 validity of any policy on the grounds of fraud.
- 16 5. If the viatical settlement provider submits to the insurer a copy of the owner's or
17 insured's certification described in subsection 4 when the viatical settlement
18 provider submits a request to the insurer to effect the transfer of the policy or
19 certificate to the viatical settlement provider, the copy must be deemed to
20 conclusively establish that the viatical settlement contract is valid and enforceable
21 and the insurer shall timely respond to the request.
- 22 6. Every viatical settlement licensee shall establish and at all times maintain a system
23 of control over the content, form, and method of dissemination of all
24 advertisements of its contracts, products, and services. All advertisements must
25 be the responsibility of the viatical settlement licensee, as well as the individual
26 who created or presented the advertisement. Advertisements must be truthful and
27 not misleading in fact or by implication.
- 28 **26.1-33.2-10. Fraud prevention and control.**
- 29 1. A person may not commit a fraudulent viatical settlement act. A person may not
30 knowingly or intentionally interfere with the enforcement of the provisions of this
31 chapter or investigations of suspected or actual violations of this chapter. A person

1 in the business of viatical settlements may not knowingly or intentionally permit any
2 person convicted of a felony involving dishonesty or breach of trust to participate in
3 the business of viatical settlements.

4 2. A person engaged in the business of viatical settlements having knowledge or a
5 reasonable belief that a fraudulent viatical settlement act is being, will be, or has
6 been committed must notify the commissioner.

7 3. Any other person having knowledge or a reasonable belief that a fraudulent viatical
8 settlement act is being, will be, or has been committed may provide to the
9 commissioner the information required by, and in a manner prescribed by, the
10 commissioner.

11 4. Civil liability may not be imposed on and a cause of action does not arise from a
12 person acting without actual malice and furnishing information concerning
13 suspected, anticipated, or completed fraudulent viatical settlement acts or
14 suspected or completed fraudulent insurance acts if the information is provided to
15 or received from:

16 a. The commissioner or the commissioner's employees, agents, or
17 representatives;

18 b. Federal, state, or local law enforcement or regulatory officials or their
19 employees, agents, or representatives;

20 c. A person involved in the prevention and detection of fraudulent viatical
21 settlement act or that person's agents, employees, or representatives;

22 d. The national association of insurance commissioners, national association of
23 securities dealers, North American securities administrators association, or
24 their employees, agents, or representatives, or other regulatory body
25 overseeing life insurance, viatical settlements, securities, or investment fraud;
26 or

27 e. The life insurer that issued the life insurance policy covering the life of the
28 insured.

29 5. The documents and evidence provided pursuant to subsection 4 or obtained by the
30 commissioner in an investigation of suspected or actual fraudulent viatical
31 settlement acts are private and confidential and are not subject to section 6 of

article XI of the Constitution of North Dakota or section 44-04-18 and are not subject to discovery or subpoena in a civil or criminal action.

6. Viatical settlement providers and viatical settlement brokers shall submit to the commissioner an antifraud plan that must reasonably detect, prosecute, and prevent fraudulent viatical settlement acts. Antifraud plans must include at least:
 - a. Fraud investigators, who may be viatical settlement provider employees or independent contractors.
 - b. A description of the procedures for detecting and investigating possible fraudulent viatical settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications.
 - c. A description of the procedures for reporting possible fraudulent viatical settlement acts to the commissioner.
 - d. A description of the plan for antifraud education and training of underwriters and other personnel.
 - e. A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.
 - f. Antifraud plans submitted to the commissioner are privileged and confidential and are not subject to section 44-04-18 and are not subject to discovery or subpoena in a civil or criminal action.

26.1-33.2-11. Injunctions - Civil remedies - Cease and desist. In addition to the penalties and other enforcement provisions of this title, any person who violates this chapter is subject to civil penalties of up to fifty thousand dollars per violation. Imposition of civil penalties must be pursuant to an order of the commissioner issued under chapter 28-32. The commissioner's order may require a person found to be in violation of this chapter to make restitution to persons aggrieved by violations of this chapter.

26.1-33.2-12. Unfair trade practices. A violation of this chapter is an unfair trade practice under chapter 26.1-04 subject to the penalties contained in that chapter.

26.1-33.2-13. Authority to adopt rules. The commissioner may adopt rules implementing this chapter.

- 1 **SECTION 2. REPEAL.** Chapter 26.1-33.1 of the North Dakota Century Code is
- 2 repealed.