

Fifty-seventh
Legislative Assembly
of North Dakota

ENGROSSED 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; to amend and reenact subdivision a of subsection 16 of
3 section 10-04-02 of the North Dakota Century Code, relating to viatical settlement contracts; to
4 repeal chapter 26.1-33.1 of the North Dakota Century Code, relating to viatical settlement
5 contracts; and to provide a penalty.

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

7 **SECTION 1. AMENDMENT.** Subdivision a of subsection 16 of section 10-04-02 of the
8 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9 a. The assignment, transfer, sale, devise, or bequest of a death benefit, life
10 insurance policy, or certificate of insurance by the viator to the viatical
11 settlement provider pursuant to chapter ~~26.1-33.1~~ 26.1-33.2;

12 **SECTION 2.** Chapter 26.1-33.2 of the North Dakota Century Code is created and
13 enacted as follows:

14 **26.1-33.2-01. Definitions.**

- 15 1. "Advertising" means any written, electronic, or printed communication or any
16 communication by means of recorded telephone messages or transmitted on
17 radio, television, or the internet, disseminated, circulated, or placed before the
18 public, directly or indirectly, for the purpose of creating an interest in or inducing a
19 person to sell a life insurance policy pursuant to a viatical settlement contract.
20 2. "Business of viatical settlements" means an activity involved in, but not limited to,
21 the offering, solicitation, negotiation, procurement, effectuation, purchasing,
22 investing, financing, monitoring, tracking, underwriting, selling, transferring,
23 assigning, pledging, hypothecating, or in any other manner, of viatical settlement
24 contracts or purchase agreements.

1 3. "Chronically ill" means:

- 2 a. Being unable to perform at least two activities of daily living, such as eating,
3 toileting, transferring, bathing, dressing, or continence;
4 b. Requiring substantial supervision to protect the individual from threats to
5 health and safety due to severe cognitive impairment; or
6 c. Having a level of disability similar to that described in subdivision a as
7 determined by the secretary of health and human services.

8 4. a. "Financing entity" means an underwriter, placement agent, lender, purchaser
9 of securities, purchaser of a policy or certificate from a viatical settlement
10 provider, credit enhancer, or any entity that has a direct ownership in a policy
11 or certificate that is the subject of a viatical settlement contract, but:

- 12 (1) Whose principal activity related to the transaction is providing funds to
13 effect the viatical settlement or purchase of one or more viaticated
14 policies; and
15 (2) Who has an agreement in writing with one or more licensed viatical
16 settlement providers to finance the acquisition of viatical settlement
17 contracts.

- 18 b. "Financing entity" does not include a nonaccredited investor or viatical
19 settlement purchaser.

20 5. "Fraudulent viatical settlement act" includes:

- 21 a. Acts or omissions committed by any person who, knowingly or with intent to
22 defraud, for the purpose of depriving another of property or for pecuniary
23 gain, commits, or permits its employees or its agents to engage in, acts
24 including:
25 (1) Presenting, causing to be presented, or preparing with knowledge or
26 belief that it will be presented to or by a viatical settlement provider,
27 viatical settlement broker, viatical settlement purchaser, financing
28 entity, insurer, insurance producer or any other person, false material
29 information, or concealing material information, as part of, in support of,
30 or concerning a fact material to one or more of the following:

- 1 (a) An application for the issuance of a viatical settlement contract or
- 2 insurance policy;
- 3 (b) The underwriting of a viatical settlement contract or insurance
- 4 policy;
- 5 (c) A claim for payment or benefit pursuant to a viatical settlement
- 6 contract or insurance policy;
- 7 (d) Premiums paid on an insurance policy;
- 8 (e) Payments and changes in ownership or beneficiary made in
- 9 accordance with the terms of a viatical settlement contract or
- 10 insurance policy;
- 11 (f) The reinstatement or conversion of an insurance policy;
- 12 (g) In the solicitation, offer, effectuation, or sale of a viatical
- 13 settlement contract or insurance policy;
- 14 (h) The issuance of written evidence of viatical settlement contract or
- 15 insurance; or
- 16 (i) A financing transaction.
- 17 (2) Employing any device, scheme, or artifice to defraud related to
- 18 viaticated policies.
- 19 b. In the furtherance of a fraud or to prevent the detection of a fraud, any person
- 20 commits or permits its employees or its agents to:
- 21 (1) Remove, conceal, alter, destroy, or sequester from the commissioner
- 22 the assets or records of a licensee or other person engaged in the
- 23 business of viatical settlements;
- 24 (2) Misrepresent or conceal the financial condition of a licensee, financing
- 25 entity, insurer, or other person;
- 26 (3) Transact the business of viatical settlements in violation of laws
- 27 requiring a license, certificate of authority, or other legal authority for
- 28 the transaction of the business of viatical settlements; or
- 29 (4) File with the commissioner or the chief insurance regulatory official of
- 30 another jurisdiction a document containing false information or

1 otherwise conceals information about a material fact from the
2 commissioner.

3 c. Embezzlement, theft, misappropriation, or conversion of moneys, funds,
4 premiums, credits, or other property of a viatical settlement provider, insurer,
5 insured, viator, insurance policyowner, or any other person engaged in the
6 business of viatical settlements or insurance.

7 d. Recklessly entering into, brokering, otherwise dealing in a viatical settlement
8 contract, the subject of which is a life insurance policy that was obtained by
9 presenting false information concerning any fact material to the policy or by
10 concealing, of the purpose of misleading another, information concerning any
11 fact material to the policy, when the viator or the viator's agent intended to
12 defraud the policy's issuer. "Recklessly" means engaging in the conduct of
13 conscious and clearly unjustifiable disregard of a substantial likelihood of the
14 existence of the relevant facts or risks, such disregard involving a gross
15 deviation from acceptable standards of conduct.

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

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

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

24 8. "Related provider trust" means a titling trust or other trust established by a licensed
25 viatical settlement provider or a financing entity for the sole purpose of holding the
26 ownership or beneficial interest in purchased policies in connection with a
27 financing transaction. The trust must have a written agreement with the licensed
28 viatical settlement provider under which the licensed viatical settlement provider is
29 responsible for ensuring compliance with all statutory and regulatory requirements
30 and under which the trust agrees to make all records and files related to viatical

1 settlement transactions available to the commissioner as if those records and files
2 were maintained directly by the licensed viatical settlement provider.

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

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

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

21 12. "Viatical settlement contract" means a written agreement establishing the terms
22 under which compensation or anything of value will be paid, which compensation
23 or value is less than the expected death benefit of the insurance policy or
24 certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of
25 the death benefit or ownership of any portion of the insurance policy or certificate
26 of insurance. A viatical settlement contract also includes a contract for a loan or
27 other financing transaction secured primarily by an individual or group life
28 insurance policy, other than a loan by a life insurance company pursuant to the
29 terms of the life insurance contract, or a loan secured by the cash value of a policy.
30 A viatical settlement contract includes an agreement to transfer ownership or

1 change the beneficiary designation at a later date regardless of the date that
2 compensation is paid to the viator.

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

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

9 b. The issuer of a life insurance policy providing accelerated benefits;

10 c. An authorized or eligible insurer that provides stop loss coverage to a viatical
11 settlement provider, purchaser, financing entity, special purpose entity, or
12 related provider trust;

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

16 e. A financing entity;

17 f. A special purpose entity;

18 g. A related provider trust;

19 h. A viatical settlement purchaser; or

20 i. An accredited investor or qualified institutional buyer as defined respectively
21 in regulation D, rule 501 or rule 144A of the Federal Securities Act of 1933, as
22 amended, and who purchases a viaticated policy from a viatical settlement
23 provider.

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

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

31 **26.1-33.2-02. License requirements - Penalty.**

- 1 1. A person may not operate as a viatical settlement provider or viatical settlement
2 broker without first obtaining a license from the commissioner of the state of
3 residence of the viator. A person may not operate as a viatical settlement broker
4 without first obtaining an insurance producer license from the commissioner.
- 5 2. Application for a viatical settlement provider must be made to the commissioner by
6 the applicant on a form prescribed by the commissioner, and the application must
7 be accompanied by a fee of two hundred fifty dollars.
- 8 3. Application for a viatical settlement broker license must be made to the
9 commissioner by the applicant on a form prescribed by the commissioner and the
10 application must be accompanied by a fee of two hundred fifty dollars.
- 11 4. Licenses must be renewed from year to year on the anniversary date upon
12 payment of the annual renewal fees of one hundred fifty dollars. Failure to pay the
13 fees by the renewal date results in expiration of the license.
- 14 5. The applicant shall provide information on forms required by the commissioner.
15 An applicant shall fully disclose the identity of all stockholders, partners, officers,
16 members, and employees. The commissioner may refuse to issue a license in the
17 name of a legal entity if not satisfied that any officer, employee, stockholder,
18 partner, or member thereof who may materially influence the applicant's conduct
19 meets the standards of this chapter.
- 20 6. A license issued to a legal entity authorizes all partners, officers, members, and
21 designated employees to act as viatical settlement providers or viatical settlement
22 brokers as applicable, under the license, and all those persons must be named in
23 the application and any supplements to the application.
- 24 7. Upon the filing of an application and the payment of the license fee, the
25 commissioner shall issue a license if the commissioner finds that the applicant:
 - 26 a. If a viatical settlement provider, has provided a detailed plan of operation;
 - 27 b. Is competent and trustworthy and intends to act in good faith in the capacity
28 involved by the license applied for;
 - 29 c. Has a good business reputation and has had experience, training, or
30 education so as to be qualified in the business for which the license is applied
31 for;

d. If a legal entity, provides a certificate of good standing from the state of its domicile; and

e. If a viatical settlement provider or viatical settlement broker has provided an antifraud plan that meets the requirements of subsection 6 of section 26.1-33.2-10.

8. The commissioner may not issue a license to a nonresident applicant, unless a 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 viatical settlement provider 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:

1 a. For each policy viaticated:

2 (1) The date the viatical settlement was entered.

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

4 (3) The face amount of the policy.

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

7 (5) If the viator has died:

8 (a) The date of death.

9 (b) The total insurance premiums paid by the viatical settlement
10 provider to maintain the policy in force.

11 b. A breakdown, by disease category, of applications received, accepted, and
12 rejected.

13 c. A breakdown of policies viaticated by issuer and policy type.

14 d. The number of secondary market versus primary transactions.

15 e. The total number of policies viaticated.

16 f. The amount of outside borrowings.

17 2. Except as otherwise allowed or required by law, a viatical settlement provider,
18 viatical settlement broker, insurance company, insurance producer, information
19 bureau, rating agency, or company, or any other person with actual knowledge of
20 an insured's identity, may not disclose the insured's identity or the insured's
21 financial or medical information to any other person unless the disclosure:

22 a. Is necessary to effect a viatical settlement between the viator and a viatical
23 settlement provider and the viator and insured have provided prior written
24 consent to the disclosure;

25 b. Is provided in response to an investigation or examination by the
26 commissioner or any other governmental officer or agency;

27 c. Is a term of or condition to the transfer of a policy by one viatical settlement
28 provider to another viatical settlement provider; or

29 d. Is necessary to permit a financing entity, related provider trust, or special
30 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 licensed in this state, the commissioner may accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state. The expenses incurred in conducting any examination must be paid by the licensee or applicant. The commissioner may investigate suspected fraudulent viatical settlement acts and persons engaged in the business of viatical settlements.
2.
 - a. Names and individual identification data for all viators are confidential information and may not be disclosed by the commissioner, unless required by law.
 - b. Records of all transactions of viatical settlement contracts must be maintained by the licensee and must be made available to the commissioner for inspection during reasonable business hours.

26.1-33.2-07. Disclosure.

1. With each application for a viatical settlement, a viatical settlement provider or viatical settlement broker must provide the viator with at least the following disclosures no later than the time the application for the viatical settlement contract is signed by all parties. The disclosures must be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker and must provide the following information:
 - a. Possible alternatives to viatical settlement contracts including any accelerated death benefits or policy loans offered under the viator's life insurance policy.
 - b. Some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor.
 - c. Proceeds of the viatical settlement could be subject to the claims of creditors.

- 1 d. Receipt of the proceeds of a viatical settlement may adversely affect the
2 viator's eligibility for medicaid or other government benefits or entitlements,
3 and advice should be obtained from the appropriate government agencies.
- 4 e. The viator has the right to rescind a viatical settlement contract within thirty
5 days from the date of the contract or fifteen calendar days after receipt of the
6 viatical settlement proceeds by the viator, whichever is earlier, as provided in
7 subsection 3 of section 26.1-33.2-08. If the insured dies during the rescission
8 period, the settlement contract shall be deemed to have been rescinded,
9 subject to repayment of all viatical settlement proceeds and any premiums,
10 loans, and loan interest to the viatical settlement provider or purchaser.
- 11 f. Funds will be sent to the viator within three business days after the viatical
12 settlement provider has received the insurer or group administrator's
13 acknowledgement that ownership of the policy or interest in the certificate has
14 been transferred and the beneficiary has been designated.
- 15 g. Entering into a viatical settlement contract may cause other rights or benefits,
16 including conversion rights and waiver of premium benefits that may exist
17 under the policy or certificate, to be forfeited by the viator and that assistance
18 should be sought from a financial adviser.
- 19 h. Disclosure to a viator must include distribution of a brochure describing the
20 process of viatical settlements.
- 21 i. The disclosure document must contain the following language: "All medical,
22 financial, or personal information solicited or obtained by a viatical settlement
23 provider or viatical settlement broker about an insured, including the insured's
24 identity, medical, and financial information or the identity of family members, a
25 spouse, or significant other, may be disclosed as necessary to effect the
26 viatical settlement between the viator and the viatical settlement provider. If
27 you are asked to provide this information, you will be asked to consent to the
28 disclosure. The information may be provided to someone who buys the policy
29 or provides funds for the purchase."
- 30 j. The insured may be contacted by either the viatical settlement provider or
31 broker or its authorized representative for the purpose of determining the

1 insured's health status. This contact is limited to once every three months if
2 the insured has a life expectancy of more than one year, and no more than
3 once per month if the insured has a life expectancy of one year or less.

4 2. A viatical settlement provider must provide the viator with at least the following
5 disclosures no later than the date the viatical settlement contract is signed by all
6 parties. The disclosures must be conspicuously displayed in the viatical settlement
7 contract or in a separate document signed by the viator and the viatical settlement
8 provider or viatical settlement broker and provide the following information:

9 a. State the affiliation, if any, between the viatical settlement provider and the
10 issuer of the insurance policy to be viaticated.

11 b. The document must include the name, address, and telephone number of the
12 viatical settlement provider.

13 c. A viatical settlement broker shall disclose to a prospective viator the amount
14 and method of calculating the broker's compensation.

15 d. If an insurance policy to be viaticated has been issued as a joint policy or
16 involves family riders or any coverage of a life other than the insured under
17 the policy to be viaticated, the viator must be informed of the possible loss of
18 coverage on the other lives under the policy and must be advised to consult
19 with the viator's insurance producer or the insurer issuing the policy for advice
20 on the proposed viatical settlement.

21 e. State the dollar amount of the current death benefit payable to the viatical
22 settlement provider under the policy or certificate. If known, the viatical
23 settlement provider shall also disclose the availability of any additional
24 guaranteed insurance benefits, the dollar amount of any accidental death and
25 dismemberment benefits under the policy or certificate, and the viatical
26 settlement provider's interest in those benefits.

27 f. State the name, business address, and telephone number of the independent
28 third party escrow agent and the fact that the viator or owner may inspect or
29 receive copies of the relevant escrow or trust agreements or documents.

- 1 3. If the viatical settlement provider transfers ownership or changes the beneficiary of
2 the insurance policy, the provider shall communicate the change in ownership or
3 beneficiary to the insured within twenty days after the change.

4 **26.1-33.2-08. General rules.**

- 5 1. a. A viatical settlement provider entering into a viatical settlement contract must
6 first obtain:

7 (1) If the viator is the insured, a written statement from a licensed attending
8 physician that the viator is of sound mind and under no constraint or
9 undue influence to enter into a viatical settlement contract;

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

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

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

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

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

8 3. All viatical settlement contracts entered into in this state must provide the viator
9 with an unconditional right to rescind the contract for at least thirty calendar days
10 from the date of the contract or fifteen days from the receipt of the viatical
11 settlement proceeds, whichever is less. If the insured dies during the rescission
12 period, the viatical settlement contract shall be deemed to have been rescinded,
13 subject to repayment to the viatical settlement provider of all viatical settlement
14 proceeds, and any premiums, loans, and loan interest that have been paid by the
15 viatical settlement provider.

16 4. The viatical settlement provider must instruct the viator to send the executed
17 documents required to effect the change in ownership, assignment, or change in
18 beneficiary directly to the independent escrow agent. Within three business days
19 after the date the escrow agent receives the document or from the date the viatical
20 settlement provider receives the documents, if the viator erroneously provides the
21 documents directly to the provider, the escrow agent shall pay or transfer the
22 proceeds of the viatical settlement into an escrow or trust account maintained in a
23 state or federally chartered financial institution whose deposits are insured by the
24 federal deposit insurance corporation. Upon payment of the settlement proceeds
25 into the escrow account, the escrow agent shall deliver the original change in
26 ownership, assignment, or change in beneficiary forms to the viatical settlement
27 provider. Upon the licensed provider's receipt of the acknowledgement of the
28 transfer of ownership, assignment, or designation of beneficiary from the insurance
29 company, the licensed provider shall instruct the escrow agent to pay the
30 settlement proceeds to the viator. Payment must be made within three business

1 days of the date the provider received the acknowledge forms from the insurance
2 company.

3 5. Failure to tender consideration to the viator for the viatical settlement contract
4 within the time disclosed pursuant to subdivision f of subsection 1 of section
5 26.1-33.2-07 renders the viatical settlement contract voidable by the viator for lack
6 of consideration until the time consideration is tendered to and accepted by the
7 viator.

8 6. Contacts with the insured for the purpose of determining the health status of the
9 insured by the viatical settlement provider or viatical settlement broker after the
10 viatical settlement has occurred must only be made by the viatical settlement
11 provider or broker licensed in this state or its authorized representatives and is
12 limited to once every three months for insureds with a life expectancy of more than
13 one year and to no more than once per month for insureds with a life expectancy
14 of one year or less. The provider or broker shall explain the procedure for these
15 contacts at the time the viatical settlement contract is entered. Viatical settlement
16 providers and viatical settlement brokers shall be responsible for the actions of
17 their authorized representatives.

18 7. Every viatical settlement licensee shall establish and at all times maintain a system
19 of control over the content, form, and method of dissemination of all
20 advertisements of its contracts, products, and services. All advertisements are the
21 responsibility of the viatical settlement licensee, as well as the individual who
22 created or presented the advertisement. Advertisements must be truthful and not
23 misleading in fact or by implication.

24 **26.1-33.2-09. Prohibited practices.** It is a violation of this chapter for any person to
25 enter into a viatical settlement contract within a two-year period commencing with the date of
26 issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement
27 provider that one or more of the following conditions have been met within the two-year period:

28 1. The policy was issued upon the viator's exercise of conversion rights arising out of
29 a group or individual policy, if the total of the time covered under the conversion
30 policy plus the time covered under the prior policy is at least twenty-four months.
31 The time covered under a group policy must be calculated without regard to any

change in insurance carriers, if the coverage has been continuous and under the same group sponsorship.

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;

(7) A final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the owner or insured, adjudicating the owner or insured bankrupt or insolvent, or approving a petition seeking reorganization of the owner or insured or appointing a receiver, trustee, or liquidator to all or a substantial part of the owner's or insured's assets; or

(8) The owner of the policy experiences a significant decrease in income that is unexpected by the owner and that impairs the owner's reasonable ability to pay the policy premium.

b. The independent evidence must be submitted to the insurer when the viatical settlement provider submits a request to the insurer to effect transfer of policy or certificate to the viatical settlement provider. The insurer shall respond to the request in a timely manner. Nothing in this section prohibits an insurer from exercising its right to contest the validity of any policy on the grounds of fraud.

5. If the viatical settlement provider submits to the insurer a copy of the owner's or insured's certification described in subsection 4 when the viatical settlement provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy must be deemed to conclusively establish that the viatical settlement contract is valid and enforceable and the insurer shall timely respond to the request.

26.1-33.2-10. Fraud prevention and control.

1. A person may not commit a fraudulent viatical settlement act. A person may not knowingly or intentionally interfere with the enforcement of the provisions of this chapter or investigations of suspected or actual violations of this chapter. A person in the business of viatical settlements may not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.
2. A person engaged in the business of viatical settlements having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed must notify the commissioner.
3. Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.
4. Civil liability may not be imposed on and a cause of action does not arise from a person acting without actual malice and furnishing information concerning suspected, anticipated, or completed fraudulent viatical settlement acts or suspected or completed fraudulent insurance acts if the information is provided to or received from:

- a. The commissioner or the commissioner's employees, agents, or representatives;
 - b. Federal, state, or local law enforcement or regulatory officials or their employees, agents, or representatives;
 - c. A person involved in the prevention and detection of fraudulent viatical settlement act or that person's agents, employees, or representatives;
 - d. The national association of insurance commissioners, national association of securities dealers, North American securities administrators association, or their employees, agents, or representatives, or other regulatory body overseeing life insurance, viatical settlements, securities, or investment fraud; or
 - e. The life insurer that issued the life insurance policy covering the life of the insured.
5. The documents and evidence provided pursuant to subsection 4 or obtained by the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts are confidential 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 confidential 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.

SECTION 3. REPEAL. Chapter 26.1-33.1 of the North Dakota Century Code is
repealed.