

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1284

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1284**

House Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: **February 2, 2009**

Recorder Job Number: 8333

Committee Clerk Signature



Minutes:

**Chairman Keiser introduced HB 1284.** This is taken directly from the NCOIL Life Settlements Model Act. Last session this Committee and the legislature as whole addressed STOLI (Stranger Originated Life Insurance). We adopted the NAIC Model Act. There were a lot of concerns about how the act was produced. That bill did not address STOLI—it failed. What it did is attempt to address STOLI by approaching it indirectly. It didn't provide a penalty for anyone who engaged in it. It did not deal with STOLI. It created, instead of a two-year period, a five-year period under which ownership could not be transferred given certain conditions. If I wanted to engage in STOLI today, I could legally do it. The bill also failed to address trusts. (He went through the bill comparing the changes it makes to the present law.) The heart of the ENCOIL model is that it better define the various elements of the life settlement industry and the STOLI industry.

On page 10, line 12 we define STOLI: "It is a practice or plan to initiate a life insurance policy for the benefit of a third-party investor that at the time of policy origination has no insurable interest in the insured. . . ." This definition was refined by NCOIL, but if you can find a

loophole in it, let's improve it. Trusts are a major issue that must be addressed.

Under licensing requirements, the bonding requirement is removed—a significant change.

I'm not certain our language on advertising is strong enough. One of the major concerns is the accuracy and quality of the advertising. We have to insure that disclosures are done appropriately so that all of the stakeholders in this transaction have reasonable and timely information. I think if you read through these you will find they are inclusive, clear and they can be followed by the industry. Disclosure to the insurer is added. They may ask your intention in taking out the policy. This provides a lot more safeguards than our current law. There are a lot of general rules that critical—they level the playing field. We are protecting our consumers as much as can in terms of their rights to rescind and transparency of information that is required. Prohibited practices on page 31 is new and not in our current law. This brings into play all parties in the transactions including the consumer. Penalties can be imposed on all parties. The Penalties section is significant. It coincides with insurance code that deals with insurance fraud. The license of a person who commits fraud must be revoked—it is not optional.

The key points of this bill are it defines STOLI, we make them fraudulent, we provide a penalty, and we address trusts. The Securities Commission had a great concern about the bill we adopted last session. What we want from a policy standpoint is continuous regulation, but we want a clear bright line that separates a securities transaction from an insurance transaction. The Insurance Commissioner doesn't want the Securities Commissioner coming in to the insurance part of our business and regulating it. The Securities Commissioner doesn't want the Insurance Commissioner coming in to the securities side setting up forms, regulations and rules. The bill we passed last session has that problem. There is a part of the securities section that our current law allows the insurance department to get in to their business. We worked it out and it is in the language here.

I do have an amendment that the Securities Commissioner brought to us. **(Attachment 1)** It is more technical in nature and simply makes this legislation fit with North Dakota's securities code.

I'm very confident and proud of the work that NCOIL did in terms of addressing this issue on a national scale; looking at it in a very comprehensive way. We took a lot of time to do it and we did not rush. The major issue of contention is the two versus five years. That issue is simply one of do you want the five-year limit in there. Does that in some way enhance insurable interest and in some make STOLIs less likely to occur? Or, do you want to leave it as a two-year period and treat it as a property rights issue? We have traditionally used two years in a life insurance product. If you treat it as a regulatory control, it does reduce the incentive for life settlement product to be initiated during the first 3 to 5 years. From the property rights standpoint, it reduces the value of that property to anyone who wants to enter in to a live settlement contract. If, at 3 or 4 years you decide you want to sell it then you have to wait two more years. Is it really a property thing you own and do you own it at two years or do you own it five years?

What we have now is not good law. We need to incorporate the things contained in this bill.

**Representative Boe:** How many other states are looking at adopting this today?

**Chairman Keiser:** It changes daily. There are people here that will talk about that.

**Representative Johnson:** The requirement for the bond has been removed. What was the reasoning for removing that?

**Chairman Keiser:** NCOIL looked at it at length and saw no merit to the bond requirement.

You have licensing requirements, etc.; you already have coverage already that will cover these transactions.

**Representative Ruby:** Can you talk about the difference and lines between the Insurance and Securities Commissioners.

**Chairman Keiser:** I think the Insurance Commissioner will address that for you. The problem that occurred in putting together pools of investors to buy the product that crossed the line. It has been corrected in this bill.

**Representative Ruby:** On page 16, reporting requirements, you show there is a requirement for reports of policy issuance for 5 years, but the other area is for 2 years.

**Chairman Keiser:** We want to be able to track these things for a period of time even if it's legal transaction and understand what is happening in our market place. So we want to track them for 5 years.

**Vice Chairman Kasper:** Just for clarification last session we settled on a bond of \$150,000.

**Jack Kelley, director, Government Affairs, Institutional Markets Association,** testified in favor of the bill. We are the institutional banks like Credit Suisse, JP Morgan, UBS, Goldman Sachs and others who are the participants in the life markets providing investments in to this marketplace. Chairman Keiser and Vice Chairman Kasper went back to NCOIL and worked diligently on this issue. NCOIL adopted a very comprehensive bill. At the onset I had three issues and have provided amendments to address those. **(Attachment A-1)** He discussed the proposed amendments. This is a deliberate, honest, frank bill that gets to a lot of things the previous bill did not in consumer protection and disclosure. This bill has accomplished that.

**Doug Head** neutral on the bill. ND was the first state to pass a bill of this type. Since that time Nebraska, West Virginia, Iowa and Ohio have considered this type of legislation. They have changed to the 5-year plan. With the benefit of the NCOIL model to define, banning and punishing STOLI activity, Hawaii, California, Arizona, Kansas, Indiana, Kentucky, Georgia,

New York, Connecticut, Rhode Island and Maine all took up that approach and advanced it. In some states it did not make it all the way through the process. In some states it was vetoed by governors. In California in his veto message, the governor said the bill did not go far enough in allowing access for consumers to this market and participates to bid on policies. He wanted to see more assurance in the regulation that there would be more people able to participate in the market. He also felt it important that consumers get more disclosure about settlement markets. The bills signed into law are about 3 to 1 in favor of the NCOIL approach. The five year ban approach in our view directly attacks the property rights of consumers. The ENCOIL plan targets the inappropriate practice of STOLI. That's essentially the big picture issue before you today. If you identify a monster, you harpoon it—you don't catch it a net with all the other fish in the sea. The problem with the 5-year ban is that many perfectly legitimate life settlements transactions are inappropriately attacked and labeled as STOLI. The rights of consumers are diminished. We support this initiative. We do think there are technical amendments needed. We would urge you to adopt this approach and work with the NIC in their models as well. I suggest that your efforts be to allow consumers access to an asset that they own—a life insurance policy—at an appropriate time.

**Representative Thorpe:** People who want to be able to speculate in my life expectancy, I think that should be allowed. Are we harpooning the monster in this bill?

**Head:** I think we are. A consumer's understanding the value of life insurance is not a sin on behalf of the consumer, if he has control of the policy from the day of inception. If another person is just using your life to speculate—that's inappropriate. If you decide you might want more life insurance and you may want to sell that policy, I don't want to make you a sinner.

**Representative Kasper:** When you see abuses in a life settlement transaction in your industry, what type of transaction is occurring?

**Head:** True abuse involves the creation of a life insurance policy without insurable interest.

That abuse can occur when one is offered free life insurance or a kickback. It doesn't occur in the settlement process because we don't want to buy that bad paper that is originated. It occurs because commissions are paid for, older policies, large policies, at the front end of the policy before it comes to our door. We don't want to buy an inappropriately originated policy. The investment banks demand that all kinds of verifications occur in the marketplace to insure that we are not and they are not purchasing a badly originated policy.

**Representative Kasper:** If an insured pays their own premium, we are not impinging on that person's right to sell the policy particularly after the two year period.

**Head:** Unfortunately the language also includes evaluation for a life settlement. If I, as an informed consumer, decide I want to do financial planning and buy appropriate insurance policies that under this five-year approach is a potential sin.

**Representative Kasper:** That 5-year hold that only applies to premium financed non-recourse policies. For a person to say they are concerned about their life expectancy when they apply for a life insurance policy and it is issued you are going to know what your life expectancy is by the table.

**Head:** Unfortunately there is no consistency. We see instances of table shaving in the industry where a substandard life is insured at standard rate because insurers are in competition with each other and agents do everything they can to sell policies and assist consumers to get the best deal.

**Representative Kasper:** There are times I have solicited life insurance applications for my clients from 4 or 5 companies. Obviously we are going to look for the best offer. I can assure that in my 30 plus years in the business the underwriters are making an offer that they think is fair. On the premium financing of life insurance at origination, what is the difference in profit to

the investor group that finances that policy if we have a two-year period compared to the five-year period.

**Head:** I have heard arguments by premium finance companies that they are not radically hurt. They will tweak their models a bit and essentially add a point or a half a point to their cost in order to be able to do so at 6 years or 5 1/2 years. I think it's better to address the public policy concern rather than go at it through this indirect methodology.

**Representative Ruby:** We were told that a two-year could be looked at differently for tax liability purposes. Is that issue?

**Head:** It was argued that congress being aware of consumers using this option in their life insurance policy would start to reevaluate the argument that allows for the tax free benefits of life insurance. In fact, taxes are paid on these transactions. I don't think there is a reasonable chance of the individual consumer availing themselves of the settlement option who is paying taxes is going to be in an altered situation of the tax benefit that accrues to Americans.

**Chairman Keiser:** What about abuses in trusts?

**Head:** We believe that the approach that ENCOIL has taken does address trusts and appropriately attacks trusts when they are used as cloaks to hide an inappropriate transaction. There have been problems with inappropriate origination but premium financing is not the source of the problem.

**Karen Tyler, ND Securities Commissioner,** provided information to the Committee on the investment side of transactions. She supports the ENCOIL approach. **(Attachment 2)** Her testimony includes proposed amendments to the bill.

**Adam Hamm, ND Insurance Commission,** testified in opposition of the bill. **(Attachment 3)**

**Chairman Keiser:** Whether a life settlement contract is initiated at 2, 5, 10, or 20 years, the investor is going to underwrite the contract—right?



**Hamm:** I don't disagree. What the five year moratorium is meant to prevent is the wagering on life that can and will exist at a two-year moratorium. The bond is not a panacea but it is a level of protection that exists in current law that would not exist if this bill is passed.

**Chairman Keiser:** Which disclosures are in current law that are not in here?

**Hamm:** I haven't done a line by line comparison, but I will.

**Chairman Keiser:** It creates an illusion when you as a Commissioner testify that it doesn't do that when, in fact, I would argue that we have more protections in this bill.

**Hamm:** The fundamental difference in my position and the position in this bill is the difference between the five-year moratorium and the two-year moratorium. Other issues are secondary.

**Representative Thorpe:** You identify the viatical and the life settlement as two different things?

**Hamm:** The question is how to define them in such a way so that everyone is covered. Is there so much terminology that it becomes a lack of clarity? We support making these definitions stronger.

**Chairman Keiser:** I encourage you to reexamine this bill with your staff. Go over the new items. This is different only with adding consumer protection. The 2 and 5 year issue is different.

**Hamm:** The language for conspicuous disclosure is not contained here as it in current law. I will go through this line by line and if everything needed is there, I will change my testimony to support it.

**Representative Amerman:** Would the revision of the parts of the bill that you were concerned with—the 15 days to rescind. If the insured dies,. . . Unstructured discussion. . .

**Elaine \_\_\_\_:** Being an agent and a mom with policies on my children, I could not imagine that I would be in any state where I could figure out what I needed to do to correct that. I would be

dealing with funeral arrangements, tragedies, in my desperation you are not thinking clearly. I would beg that 15 days be much longer. . . unintelligible . .

**Norbert Mayer, representing the ND Association of Insurance and Financial Advisors,** testified in opposition of the bill. **(Attachment 4)** It weakens portions of the existing state law. We don't like STOLIs. We are opposed to turning life insurance into an investment product as opposed to the risk product that it is intended to be. They give the federal government another reason to tax life insurance. Although current law does not eliminate STOLIs, it is a significant deterrent because of the five year waiting period instead of the two year. This is our major concern with the legislation. We feel the five year moratorium is good and should be retained. We are also concerned with the elimination of the bonding requirement. We think the 60 day rescission period is good and should be retained.

**Representative Thorpe:** Are you aware of any problems within the industry on the bonding or the amount of bonding?

**Mayer:** I am not aware of any.

**Chairman Keiser:** I would to thank you publicly. You have been very active with our Committee and your input is very helpful. Are you thrilled with our current law?

**Mayer:** It needs some improvement and we feel that the next bill that is heard (HB 1397) is going to make some of those improvements. If this bill could be amended to address some of our concerns it will be acceptable as well.

**Chairman Keiser:** Have you compared the two bills? Either we do that or we are going to spend 4 hours in the next hearing going through it line by line. That's a dilemma. You are our expert. What we have does not stop STOLIs at all.

**Bruce Ferguson, American Council of Life Insurers,** testified in opposition to the bill. There are many parts of the bill that are good. Unfortunately this bill repeals the most effective anti-

STOLI provision in existing law and that is the 5-year moratorium. We think it is a very critical provision of current law that should be maintained along with the addition of important provisions that the NCOIL model addressed. That model contains what we think is a very important definition of STOLI. The 5-year moratorium is self enforcing. It stops STOLI before the potential harm is done to the consumer. In short, a combination of the existing ND law along with the very important NCOIL provisions that Chairman Keiser led the effort to draft is what we think constitutes the most appropriate and strongest method of addressing STOLI. Other states have taken that approach. We believe that HB 1397 takes the best of both models.

**Chairman Keiser:** Would you go to page 2, line 31, it appears the ENCOIL has one additional model or entity. When we look at the disclosures to the consumers how do they stack up in this bill compared to our present law. There are critical little differences here that may be very important.

**Ferguson:** What I believe are the differences from a disclosure standpoint to the consumer, is that there is a provision in the current law that requires the provision of disclosure to individuals who are investors in life settlement transactions. That provision would be eliminated in this bill. The provision that requires disclosure to the owner of a policy who is considering selling that policy with respect to the unique risks associated with selling the policy that there may tax consequences, loss of insurability and those things that exist with respect to settlements. Those provisions are not in current ND law but would be included if HB 1284 were enacted. Those are the two fundamental differences I see. There may be minor differences with respect to indirect impact of settlement provisions.

**Chairman Keiser:** The disclosure on the investor side is just where the overlap is/

**Commissioner Tyler:** When we talk about comparing these bills it is important for the Committee to understand that the language that Mr. Ferguson just referred to is currently found in insurance code.

**Representative Kasper:** In your amendments that we have yet to see, it is my understanding that when removing all the securities language you also may be removing some information notice and protection for people who own life insurance policies. Is that what your amendments will do?

**Tyler:** No, the only language that we are seeking to include pertains strictly to the disclosure requirements that must be applied in a viatical sale. It's cleanly on the investment side of the transaction.

**Chairman Keiser:** If we amended this bill back to 5 years and 60 days and conspicuous notice, you would have no problem with this then.

**Ferguson:** As long as that notice is required be it through the insurance code or the securities code that be sufficient.

**Chairman Keiser closed the hearing of HB 1284.**

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1284

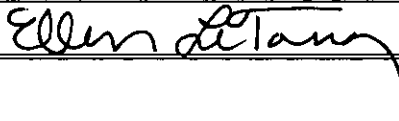
House Industry, Business and Labor Committee

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Hearing Date: February 9, 2009

Recorder Job Number: 9002

Committee Clerk Signature



**Chairman Keiser:** Opened the committee work session on HB 1284.

**Vice Chairman Kasper:** Mary Holman spent a week doing this comparison, see attachment.

This is pretty comprehensive. This will give you time to look them over. Chairman Keiser ask that we draft each amendment separately so we can vote on each amendment.

**Chairman Keiser:** Closes the hearing on HB 1284.

## 2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1284

**House Industry, Business and Labor Committee**

☐ Check here for Conference Committee

**Hearing Date:** February 16, 2009

**Recorder Job Number:** 1284

Committee Clerk Signature

*Ellen LeTang*

**Chairman Keiser:** Opened the committee work session on HB 9547.

**Vice Chairman Kasper:** There are a series of amendments that we will discuss. They are in order of importance in comparison of the two bills. The amendments are drafted for HB 1284, see attachments. In amendment 0103 brings back the current statute on a premium financed policy you have to hold it for five years before you can sell it, unless you have certain exceptions which are under section b. They took out the 5<sup>th</sup> exception which was divorce.

**Vice Chairman Kasper:** Motions to adopt amendment 0103.

**Representative Clark:** Second.

**Chairman Keiser:** Further discussion.

**Voice roll call was taken on HB 1284 for amendment 0103 with 11 ayes, 1 nays, 1 absent.**

**Amendment passes.**

**Vice Chairman Kasper:** Passes out amendment 0102 and this one deals with the right of 30/15 rescission period. It has a 30 days to rescind and once the money has been deposited in an escrow account, you have 15 days to rescind.

**Vice Chairman Kasper:** Motions to adopt amendment 0102.

**Representative Nottestad:** Second.

**Chairman Keiser:** Further discussion.

**Representative N Johnson:** This went from 15 days to 60.

**Chairman Keiser:** No, it's 30 to 60 on the total, but once the money is placed into escrow, it's going from 15 days to 30.

**Vice Chairman Kasper:** Current law is keeps at 60 and 30 days and is what we passes two years ago.

**Chairman Keiser:** The ENCOIL did change the days because the people who are in the transaction want their money. The delay keeps them from getting their money, that the only impact.

**Representative Thorpe:** I know how they say they can get their money quicker, however what this industry is doing, I feel that the policy is purchased on their life expectancy. I think they need the extra 15 days to decide if this was a good deal.

**Vice Chairman Kasper:** What the amendment says, which current statue, on item nine, is if the insured dies during the rescission period, the life settlement contract is deemed to be rescinded. This gives the insured 15 more days. I agree with Representative Thorpe.

**Representative Ruby:** There are times when heirs don't know about and give them some time to look it over.

**Voting roll call was taken on HB 1284 for amendment 0102 with 11 ayes, 1 nays, 1 absent. Amendment passes.**

**Vice Chairman Kasper:** The next amendment is 0104 and this talks about the bonding. Under current statue, we require a bond by providers and brokers of a \$150,000 if they are going to be involved in life settlement transactions in North Dakota. The argument from life settlement industry is that this impedes business bring done in North Dakota. It costs too much to get bonded.

**Vice Chairman Kasper:** Motions to adopt amendment 0104.

**Representative Thorpe: Second.**

**Chairman Keiser: Further discussion.**

**Chairman Keiser:** My only concern with the bond requirement is that we should extent this to every provider and broker in this state regardless of what they are selling. We aren't we placing bond requirement where the problem is?

**Representative Ruby:** Good point.

**Vice Chairman Kasper:** That is a ligament point. I think the opportunity for abuse of insurance law is much greater when you are dealing with the policies in the life settlement area and with bigger numbers.

**Representative Ruby:** Who is recipient of the bond in case of a default?

**Chairman Keiser:** The damaged party I would assume.

**Voting rolling was taken on HB 1284 for amendment 0104 with 7 ayes, 5 nays, 1 absent.**

**Amendment passes.**

**Vice Chairman Kasper:** The next amendment is 0105 and currently does not have the bill the securities oversight by the insurance department.

**Vice Chairman Kasper: Motions to adopt amendment 0105.**

**Representative Vigesaa: Second.**

**Chairman Keiser: Further discussion.**

**Karen Tyler:** North Dakota Securities Commission. See attachment with chart and on pages 1 & 19.

**Chairman Keiser:** On this flow chart, the broker dealers and agents on the blue side as well, they are not indicated on the insurance transaction?

**Tyler:** I know we use some of the same terminology, but if we are talking about the adjustment side of the transaction, there is broker dealers, firms and security agents. They are



from individuals that must be registered with the securities regulator to do business in the state.

**Voice roll call was taken on HB 1284 for amendment 0105 with 0 ayes, 12 nays, 1 absent.**

**Amendment fails.**

**Vice Chairman Kasper:** I want to thank Mary Hoberg and Jennifer Representative Clark for their help in these amendments and it couldn't have been done without them. Vice Chairman Kasper has clean language for the following amendments on a handout, see attachment. The next amendment is 0107 on the second page, this adds three disclosures that are consumer friendly, it does not take anything away, but adds to the bill.

**Vice Chairman Kasper: Motions to adopt amendment 0107.**

**Representative Ruby: Second.**

**Chairman Keiser: Further discussion.**

**Voting roll call was taken on HB 1284 for amendment 0107 with 12 ayes, 0 nays, 1 absent.**

**Amendment passes.**

**Vice Chairman Kasper:** Next amendment is 0108 and this is a simple amendment that is grammatical and adds a couple of items.

**Vice Chairman Kasper: Motions to adopt amendment 0108.**

**Representative Sukut: Second.**

**Chairman Keiser: Further discussion.**

**Representative N Johnson:** What are the two changes in different language?

**Vice Chairman Kasper:** The provider could have subsidiary companies that it owns or it could have a relationship with another company that they may be doing things jointly. This simply says that if you have a relationship besides the provider that is involved in this transaction, it must be disclosed.

**Chairman Keiser:** Jennifer Clark, I have a question for you. On the first of these amendments, if you noticed on the NCOIL model, it says knowingly and with intent and it's changing it to knowingly or with intent. As I read the "or" everybody knowingly signs one, but this or you will be guilty the minute you sign it. The intent is knowingly and with intent.

**JClark:** Gives the statutory definition of knowingly and with intent.

**Vice Chairman Kasper:** The intent of the amendment is to provide more consumer protection and if it's not, we would be better to stay with and. The word or makes either one stand alone.

**Vice Chairman Kasper:** Withdraws the motion on amendment 0108.

**Representative Sukut:** Seconds.

**Vice Chairman Kasper:** Next is amendment 0109. This amendment imports the commissioner's authority to suspend or revoke a broker's license for violations and bad pay conduct with owners. It basically closes loop holes.

**Vice Chairman Kasper:** **Motions to adopt amendment 0109.**

**Representative Amerman:** **Second.**

**Chairman Keiser:** **Further discussion.**

**Voice roll call was taken on HB 1284 for amendment 0109 with 12 ayes, 0 nays, 1 absent.**

**Amendment passes.**

**Vice Chairman Kasper:** The next amendment is 0110. Imports existing law, specifying who may contact the insured about inquire about the insurer's health status or address. It is directed to the time after the policy has been sold and the provider or broker contacts the insured about the insured health status or address. Contact must be made by a provider or broker licensed in the state where the owner resided at the time of the settlement or by the representative of that licensed provider or broker. JClark added the language "or broker" to match the language mentioned earlier in the same sub-paragraph.

**Vice Chairman Kasper: Motions to adopt amendment 0110.**

**Representative Gruchalla: Second.**

**Chairman Keiser: Further discussion.**

**Voice Roll Call was taken on HB 1284 for amendment 0110 with 12 ayes, 0 nays, 1 absent.**

**Amendment passes.**

**Vice Chairman Kasper:** The next amendment is 0111. This brings in brokers or providers to tell the insurer when they are part of a life settlement transaction involving their origination or financing of a policy before or within the first five years after a policy is issued.

**Vice Chairman Kasper: Motions to adopt amendment 0111.**

**Representative Sukut: Second.**

**Chairman Keiser: Further discussion.**

**Chairman Keiser:** I don't think this one is appropriate, but do with it what you want. We have an entire section on this bill with disclosures. This is unfair disclosure and it's in the wrong section. It has taken the disclosure to the insured. We have provided the insurance companies all the power that they asked for.

**Voting rolling was taken on HB 1284 for amendment 0111 with 1 ayes, 11 nays, 1 absent.**

**Amendment fails.**

**Vice Chairman Kasper:** The next amendment is 0112. This import existing law authorizing the commissioner to adopt rules in two specific areas, one, payments under a life settlements to individuals who are terminally or chronically ill and two, the licensing of providers and brokers. It also make one technical language cleanup.

**Vice Chairman Kasper: Motions to adopt amendment 0112.**

**Representative Schneider: Second.**

**Chairman Keiser: Further discussion.**

**Voting rolling was taken on HB 1284 for amendment 0112 with 12 ayes, 0 nays, 1 absent.**

**Amendment passes.**

**Chairman Keiser:** We will go back to amendment 0108 and asks JClark to give her statutory definitions on knowingly and with intent.

**JClark:** In criminal law for culpability, your mental mind set for doing an act. When we talk about intentionally, we talk about when they engage in the contact and the conduct. It was their purpose to do so. When we talk about knowingly, that person's firm believe was doing so regardless whether or not that was his purpose. Knowingly, does not necessarily require that purpose element. So, if you use or you have expanded the culpability and if you use and you are going to require it being done with purpose.

**Representative Ruby:** How do you prove that?

**JClark:** We have legal counsel for that.

**Vice Chairman Kasper: Motions to adopt amendment 0108.**

**Representative Ruby: Second.**

**Chairman Keiser: Further discussion.**

Discussion the two definition of knowingly and with intent.

**Voting rolling was taken on HB 1284 for amendment 0108 with 4 ayes, 8 nays, 1 absent.**

**Amendment fails.**

**Chairman Keiser:** I would suggest that we further amend 0108 to incorporate that other language. Strike page three, line 11 and adopt the remaining amendment.

**Representative N Johnson:** Also on page five, line five has the "and" "or" language.

**Vice Chairman Kasper:** I amend my amendment.

**Vice Chairman Kasper: Motions to adopt the further amended amendment 0108 .**

**Representative Clark: Second.**

**Chairman Keiser: Further discussion.**

**Voting rolling was taken on HB 1284 for the further amended amendment 0108 with 12 ayes, 0 nays, 1 absent. Amendment passes.**

**Chairman Keiser: What are the wishes of the committee?**

**Vice Chairman Kasper: Motions a Do Pass as Amended on HB 1284.**

**Representative Vigesaa: Second.**

**Chairman Keiser: Further discussion.**

**Voting roll call was taken on HB 1284 for a Do Pass as Amended with 12 ayes, 0 nays, 1 absent with Representative Ruby the carrier.**

**FISCAL NOTE**  
**Requested by Legislative Council**  
01/13/2009

Bill/Resolution No.: HB 1284

**1A. State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2007-2009 Biennium		2009-2011 Biennium		2011-2013 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

**1B. County, city, and school district fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

2007-2009 Biennium			2009-2011 Biennium			2011-2013 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts

**2A. Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

This bill replaces the current viatical settlements statute, 26.1-33.3, enacted in the 2007 legislative session with the National Conference of Insurance Legislators Life Settlements Model Act. The bill amends and adopts terms and definitions relating to viatical settlement contracts.

**B. Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

This bill will have no fiscal impact.

**3. State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

**A. Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*

This bill will not affect revenues.

**B. Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*

This bill will not affect expenditures.

**C. Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation is also included in the executive budget or relates to a continuing appropriation.*

This bill will not affect appropriations.

<b>Name:</b>	Larry Martin	<b>Agency:</b>	Insurance Department
<b>Phone Number:</b>	328-2930	<b>Date Prepared:</b>	01/16/2009

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1284

Page 29, replace lines 17 through 31 with:

- "14. It is a violation of this chapter for any person to enter a life settlement contract at any time before or at the time of the application for or issuance of a policy that is the subject of a life settlement contract or within a five-year period commencing with the date of issuance of the insurance policy or certificate unless the owner certifies to the provider or the provider otherwise conclusively shows that one or more of the following conditions have been met within the five-year period:
- a. The policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least sixty months. The time covered under a group policy must be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;
  - b. The owner submitted independent evidence to the provider that one or more of the following conditions have been met within the five-year period:
    - (1) The owner or insured is terminally or chronically ill;
    - (2) The owner's spouse died or no remaining beneficiaries are then surviving;
    - (3) The owner retired from full-time employment; or
    - (4) The owner became physically or mentally disabled and a physician determined that the disability prevents the owner from maintaining full-time employment;
  - c. A final order, judgment, or decree has been entered by a court of competent jurisdiction, on the application of a creditor of the owner, adjudicating the owner in default, bankrupt, or insolvent, or approving a petition seeking reorganization of the owner or appointing a receiver, trustee, or liquidator to all or a substantial part of the owner's assets; or
  - d. The owner entered a life settlement contract more than two years after the date of issuance of a policy and, with respect to the policy, at all times before the date that is two years after policy issuance, the following conditions are met:
    - (1) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of the policy's net cash surrender value, provided by, or fully recourse liability incurred by, the insured or a person described in paragraph 5 of subdivision b of subsection 11 of section 26.1-33.4-01;

- (2) There is no agreement or understanding with any other person to guarantee any such liability or to purchase, or stand ready to purchase, the policy, including through an assumption or forgiveness of the loan; and
  - (3) Neither the insured nor the policy has been evaluated for settlement in connection with the issuance of the policy.
15. Copies of the independent evidence described in subdivision b of subsection 14 and documents required by subsection 1, 2, 3, or 7 must be submitted to the insurer when the provider submits a request to the insurer for verification of coverage. The copies must be accompanied by a letter of attestation from the provider that the copies are true and correct copies of the documents received by the provider.
16. If the provider submits to the insurer a copy of the owner's or insured's certification described in and the independent evidence required by subdivision b of subsection 14 when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the provider, the copy is deemed to establish conclusively that the life settlement contract satisfies the requirements of this section and the insurer timely shall respond to the request."

Page 30, remove lines 1 through 26

Renumber accordingly



Date: Feb 16 - 2009Roll Call Vote # 1**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES****BILL/RESOLUTION NO.** 1284House House, Business & Labor Committee☐ Check here for Conference CommitteeLegislative Council Amendment Number 0103Action Taken ☐ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		✓	Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe		
Representative Clark	✓		Representative Gruchalla	✓	
Representative N Johnson	✓		Representative Schneider	✓	
Representative Nottestad	✓		Representative Thorpe	✓	
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total (Yes) 11 No 1Absent 1

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1284

Page 22, replace lines 30 and 31 with:

- "e. The fact the owner has the right to rescind a life settlement contract before the earlier of sixty calendar days after the date upon which the life settlement contract is executed by all parties or thirty calendar days after the life settlement proceeds have been delivered to the escrow agent by or on behalf of the provider as provided in subsection 11 of section 26.1-33.4-10."

Page 23, line 1, remove "received the disclosures contained herein."

Page 28, replace lines 20 through 27 with:

- "9. All life settlement contracts entered in this state must provide the owner with a right to rescind the contract before the earlier of sixty calendar days after the date upon which the life settlement contract is executed by all parties or thirty calendar days after the life settlement proceeds have been sent to the escrow agent by or on behalf of the provider as provided in subsection 11. Rescission by the owner may be conditioned upon the owner giving notice and repaying to the provider within the rescission period all proceeds of the settlement and any premiums, loans, and loan interest paid by or on behalf of the provider in connection with or as a consequence of the life settlement. If the insured dies during the rescission period, the life settlement contract is deemed to have been rescinded, subject to repayment to the provider or purchaser of all life settlement proceeds and any premiums, loans, and loan interest that have been paid by the provider or purchaser, within sixty calendar days of the death of the insured. In the event of any rescission, if the provider has paid commissions or other compensation to a broker in connection with the rescinded transaction, the broker shall refund all the commissions and compensation to the provider within five business days following receipt of written demand from the provider, which demand must be accompanied by either the owner's notice of rescission if rescinded at the election of the owner or notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period."

Page 29, replace line 3 with "the later to occur of the expiration of any then remaining rescission period or the escrow agent's receipt of the acknowledgement of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company."

Page 29, line 8, replace "thirty" with "sixty"

Renumber accordingly

Date: Feb 16 - 2009Roll Call Vote # 2

## 2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1284House House, Business & Labor Committee☐ Check here for Conference CommitteeLegislative Council Amendment Number 0102Action Taken ☐ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		✓	Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe		
Representative Clark	✓		Representative Gruchalla	✓	
Representative N Johnson	✓		Representative Schneider	✓	
Representative Nottestad	✓		Representative Thorpe	✓	
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total (Yes) 11 No 1Absent 1

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1284

Page 10, line 27, after "Licensing" insert "and bonding"

Page 13, remove line 4

Page 13, line 18, replace the underscored period with "; and

- f. If a provider or broker, has demonstrated evidence of financial responsibility in a format prescribed by the commissioner through a surety bond executed and issued by an insurer authorized to issue surety bonds in this state or through a deposit of cash, certificates of deposit, or securities or any combination thereof in the amount of one hundred fifty thousand dollars. The commissioner shall accept, as evidence of financial responsibility under this subdivision, proof that financial instruments in accordance with the requirements in this subdivision have been filed with one or more states in which the applicant is licensed as a provider or broker. The commissioner may ask for evidence of financial responsibility at any time the commissioner determines necessary. Any surety bond issued pursuant to this subdivision must specifically authorize recovery by the commissioner on behalf of any person in this state which sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices by the provider or broker."

Renumber accordingly

Date: Feb 16 - 2009Roll Call Vote # 3**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**BILL/RESOLUTION NO. 1284House House, Business & Labor Committee☐ Check here for Conference CommitteeLegislative Council Amendment Number 0104Action Taken ☐ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		✓	Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe		
Representative Clark	✓		Representative Gruchalla	✓	
Representative N Johnson		✓	Representative Schneider	✓	
Representative Nottestad	✓		Representative Thorpe	✓	
Representative Ruby		✓			
Representative Sukut		✓			
Representative Vigesaa		✓			

Total (Yes) 7 No 5Absent 1

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1284

Page 25, after line 25, insert:

- "4. A provider or the provider's life settlement investment agent shall provide the life settlement purchaser with at least the following disclosures before the date the life settlement purchase agreement is signed by all parties. The disclosures must be conspicuously displayed in any life purchase contract or in a separate document signed by the purchaser and provider or life settlement investment agent, and must make the following disclosure to the purchaser:
- a. The purchaser will receive no returns, such as dividends and interest, until the insured dies and a death claim payment is made.
  - b. The actual annual rate of return on a life settlement contract is dependent upon an accurate projection of the insured's life expectancy and the actual date of the insured's death. An annual "guaranteed" rate of return is not determinable.
  - c. The settled policy should not be considered a liquid purchase since it is impossible to predict the exact timing of the policy's maturity and the funds probably are not available until the death of the insured. There is no established secondary market for resale of these products by the purchaser.
  - d. The purchaser may lose all benefits or may receive substantially reduced benefits if the insurer goes out of business during the term of the life settlement investment.
  - e. The purchaser is responsible for payment of the insurance premium or other costs related to the policy if required by the terms of the life settlement purchase agreement. These payments may reduce the purchaser's return. If a party other than the purchaser is responsible for the payment, the name and address of that party also must be disclosed.
  - f. The purchaser is responsible for payment of the insurance premiums or other costs related to the policy if the insured returns to health. Disclose the amount of such premiums if applicable.
  - g. State the name, business address, and telephone number of the independent third party providing escrow services and the relationship to the broker.
  - h. The amount of any trust fees or other expenses to be charged to the life settlement purchaser must be disclosed.
  - i. State whether the purchaser is entitled to a refund of all or part of the purchaser's investment under the settlement contract if the policy is later determined to be null and void.
  - j. Disclose that group policies may contain limitations or caps in the conversion rights, additional premiums may have to be paid if the

policy is converted, name the party responsible for the payment of the additional premiums, and, if a group policy is terminated and replaced by another group policy, state that there may be no right to convert the original coverage.

- k. Disclose the risks associated with policy contestability, including the risk that the purchaser will have no claim or only a partial claim to death benefits if the insurer rescinds the policy within the contestability period.
  - l. Disclose whether the purchaser will be the owner of the policy in addition to being the beneficiary and if the purchaser is the beneficiary only and not also the owner, the special risks associated with that status, including the risk that the beneficiary may be changed or the premium may not be paid.
  - m. Describe the experience and qualifications of the person that determines the life expectancy of the insured, such as in-house staff, independent physicians, and specialty firms that weigh medical and actuarial data; the information this projection is based on; and the relationship of the projection maker to the provider, if any.
  - n. Disclosure to an investor must include distribution of a brochure describing the process of investment in life settlements. The national association of insurance commissioners' form for the brochure must be used unless a form is developed by the commissioner.
5. A provider or the provider's life settlement investment agent shall provide the purchaser with at least the following disclosures no later than at the time of the assignment, transfer, or sale of all or a portion of an insurance policy. The disclosures must be contained in a document signed by the life settlement purchaser and provider or life settlement investment agent, and must:
- a. Disclose all the life expectancy certifications obtained by the provider in the process of determining the price paid to the owner;
  - b. State whether premium payments or other costs related to the policy have been escrowed. If escrowed, state the date upon which the escrowed funds will be depleted and whether the purchaser will be responsible for payment of premiums thereafter and, if so, the amount of the premiums;
  - c. State whether premium payments or other costs related to the policy have been waived and, if waived, disclose whether the investor will be responsible for payment of the premiums if the insurer that wrote the policy terminates the waiver after purchase and the amount of those premiums;
  - d. Disclose the type of policy offered or sold, such as whole life, term life, universal life, or a group policy certificate; any additional benefits contained in the policy; and the current status of the policy;
  - e. If the policy is term insurance, disclose the special risks associated with term insurance, including the purchaser's responsibility for additional premiums if the owner continues the term policy at the end of the current term;
  - f. State whether the policy is contestable;

- g. State whether the insurer that wrote the policy has any additional rights that could negatively affect or extinguish the purchaser's rights under the life settlement contract, what these rights are, and under what conditions these rights are activated; and
  - h. State the name and address of the person responsible for monitoring the insured's condition and describe how often the monitoring of the insured's condition is done, how the date of death is determined, and how and when this information will be transmitted to the purchaser.
6. The life settlement purchase agreement is voidable by the purchaser at any time within three days after the disclosures mandated by subsections 4 and 5 are received by the purchaser."

Renumber accordingly



Date: FebRoll Call Vote # 4

## 2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1284House House, Business & Labor Committee☐ Check here for Conference CommitteeLegislative Council Amendment Number 0105Action Taken ☐ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		✓
Vice Chairman Kasper		✓	Representative Boe		
Representative Clark		✓	Representative Gruchalla		✓
Representative N Johnson		✓	Representative Schneider		✓
Representative Nottestad		✓	Representative Thorpe		✓
Representative Ruby		✓			
Representative Sukut		✓			
Representative Vigesaa		✓			

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

*failed*

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1284

Page 24, after line 31, insert:

- "s. If an insurance policy to be settled has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be settled, that the owner must be informed of the possible loss of coverage on the other lives under the policy and must be advised to consult with the owner's insurance producer or the insurer issuing the policy for advice on the proposed settlement.
- t. The dollar amount of the current death benefit payable to the provider under the policy or certificate. If known, the provider also shall disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the extent to which the owner's interest in those benefits will be transferred as a result of the viatical settlement contract.
- u. Any affiliations or contractual arrangements between the provider and the purchaser."

Renumber accordingly

Date: Feb 16 - 2009Roll Call Vote # 5**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**BILL/RESOLUTION NO. 1284House House, Business & Labor Committee☐ Check here for Conference CommitteeLegislative Council Amendment Number 0107Action Taken ☐ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe		
Representative Clark	✓		Representative Gruchalla	✓	
Representative N Johnson	✓		Representative Schneider	✓	
Representative Nottestad	✓		Representative Thorpe	✓	
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total (Yes) 12 No 0Absent 1

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1284

Page 15, line 9, after "2." insert "The commissioner may suspend, revoke, or refuse to renew the license of a broker if the commissioner finds that the broker has violated this chapter or has otherwise engaged in bad-faith conduct with one or more owners.

3."

Renumber accordingly

Date: Feb 16 - 2009Roll Call Vote # 6**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES****BILL/RESOLUTION NO.** 1284House House, Business & Labor Committee☐ Check here for Conference CommitteeLegislative Council Amendment Number 0109Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As AmendedMotion Made By Kasper Seconded By Amerman

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	✓		Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe		
Representative Clark	✓		Representative Gruchalla	✓	
Representative N Johnson	✓		Representative Schneider	✓	
Representative Nottestad	✓		Representative Thorpe	✓	
Representative Ruby	✓				
Representative Sukut	✓				
Representative Vigesaa	✓				

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1284

Page 24, line 17, after the underscored period insert "This contact may be made only by a provider or broker licensed in the state in which the owner resided at the time of the settlement or by the authorized representative of such a provider or broker."

Renumber accordingly

Date: Feb 26-2009Roll Call Vote # 7**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES****BILL/RESOLUTION NO.** 1284House House, Business & Labor Committee☐ Check here for Conference CommitteeLegislative Council Amendment Number 0110Action Taken ☐ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	S		Representative Amerman	S	
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative N Johnson			Representative Schneider		
Representative Nottestad			Representative Thorpe		
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

Total (Yes) 12 No 0Absent 1

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1284

Page 22, line 16, after "owners" insert "and insurers"

Page 25, after line 25, insert:

- "4. Before the initiation of a life settlement plan, life settlement transaction, or series of life settlement transactions, a broker or provider shall disclose fully to an insurer the details of a plan, transaction, or series of transactions to originate, renew, continue, or finance a life insurance policy with the insurer for the purpose of engaging in the business of life settlements at any time before, or during the first five years after, issuance of the policy. This subsection is limited to disclosures of a plan, transaction, or series of transactions to which the broker or provider is a party. Any disclosure required under this subsection must be in writing and may not include proprietary information."

Page 25, line 26, after "Insurer" insert "and by insurer"

Renumber accordingly



Date: Feb 16 - 2009Roll Call Vote # 8**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**BILL/RESOLUTION NO. 1284House House, Business & Labor Committee☐ Check here for Conference CommitteeLegislative Council Amendment Number 0111Action Taken ☐ Do Pass ☐ Do Not Pass ☒ As AmendedMotion Made By Kasper Seconded By Sukut

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		✓	Representative Amerman		✓
Vice Chairman Kasper	✓		Representative Boe		✓
Representative Clark		✓	Representative Gruchalla		✓
Representative N Johnson		✓	Representative Schneider		✓
Representative Nottestad		✓	Representative Thorpe		✓
Representative Ruby		✓			
Representative Sukut		✓			
Representative Vigasaa		✓			

Total (Yes) 11 No 1Absent 1

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

failed

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1284

Page 11, line 10, replace "chapter" with "title"

Page 30, line 30, after "2." insert:

"The commissioner may establish standards for evaluating reasonableness of a payment under a life settlement contract for an individual who is terminally or chronically ill. This authority includes regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy insuring the life of an individual who is chronically or terminally ill.

3. The commissioner may establish appropriate licensing requirements, fees, and standards for continued licensure for providers and brokers.

4."

Renumber accordingly

Date: Feb 16 - 2009Roll Call Vote # 9

## 2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1284House House, Business & Labor Committee☐ Check here for Conference CommitteeLegislative Council Amendment Number 0112Action Taken ☐ Do Pass ☐ Do Not Pass ☒ As AmendedMotion Made By Kasper Seconded By Schneider

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative N Johnson			Representative Schneider		
Representative Nottestad			Representative Thorpe		
Representative Ruby					
Representative Sukut					
Representative Vigesaa					

Total (Yes) 12 No 0Absent 1

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1284

Page 3, line 11, replace "and" with "or"

Page 5, line 5, replace "and" with "or"

Page 5, line 26, after "provider" insert ", or any affiliate of the provider,"

Page 5, line 29, after "owner's" insert "present or future"

Page 5, line 30, after the second "or" insert "ownership of"

Renumber accordingly

Date: Feb

Roll Call Vote # 10

**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**

**BILL/RESOLUTION NO.** 1284

House House, Business & Labor Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 0108

Action Taken ☐ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser		✓	Representative Amerman	✓	
Vice Chairman Kasper	✓		Representative Boe		
Representative Clark	✓		Representative Gruchalla		✓
Representative N Johnson		✓	Representative Schneider		✓
Representative Nottestad		✓	Representative Thorpe		✓
Representative Ruby	✓				
Representative Sukut		✓			
Representative Vigesaa		✓			

Total (Yes) 4 No 8

Absent 1

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

February 16, 2009

✓  
2/16/09  
1 of 4

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1284

Page 5, line 26, after "provider" insert ", or any affiliate of the provider,"

Page 5, line 29, after "owner's" insert "present or future"

Page 5, line 30, after the second "or" insert "ownership of"

Page 10, line 27, after "Licensing" insert "and bonding"

Page 11, line 10, replace "chapter" with "title"

Page 13, remove line 4

Page 13, line 18, replace the underscored period with "; and

- f. If a provider or broker, has demonstrated evidence of financial responsibility in a format prescribed by the commissioner through a surety bond executed and issued by an insurer authorized to issue surety bonds in this state or through a deposit of cash, certificates of deposit, or securities or any combination thereof in the amount of one hundred fifty thousand dollars. The commissioner shall accept, as evidence of financial responsibility under this subdivision, proof that financial instruments in accordance with the requirements in this subdivision have been filed with one or more states in which the applicant is licensed as a provider or broker. The commissioner may ask for evidence of financial responsibility at any time the commissioner determines necessary. Any surety bond issued pursuant to this subdivision must specifically authorize recovery by the commissioner on behalf of any person in this state which sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices by the provider or broker."

Page 15, line 9, after "2." insert "The commissioner may suspend, revoke, or refuse to renew the license of a broker if the commissioner finds that the broker has violated this chapter or has otherwise engaged in bad-faith conduct with one or more owners.

3."

Page 22, replace lines 30 and 31 with:

- "e. The fact the owner has the right to rescind a life settlement contract before the earlier of sixty calendar days after the date upon which the life settlement contract is executed by all parties or thirty calendar

2064

days after the life settlement proceeds have been delivered to the escrow agent by or on behalf of the provider as provided in subsection 11 of section 26.1-33.4-10."

Page 23, line 1, remove "received the disclosures contained herein."

Page 24, line 17, after the underscored period insert "This contact may be made only by a provider or broker licensed in the state in which the owner resided at the time of the settlement or by the authorized representative of such a provider or broker."

Page 24, after line 31, insert:

- "s. If an insurance policy to be settled has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be settled, that the owner must be informed of the possible loss of coverage on the other lives under the policy and must be advised to consult with the owner's insurance producer or the insurer issuing the policy for advice on the proposed settlement.
- t. The dollar amount of the current death benefit payable to the provider under the policy or certificate. If known, the provider also shall disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the extent to which the owner's interest in those benefits will be transferred as a result of the life settlement contract.
- u. Any affiliations or contractual arrangements between the provider and the purchaser."

Page 28, replace lines 20 through 27 with:

- "9. All life settlement contracts entered in this state must provide the owner with a right to rescind the contract before the earlier of sixty calendar days after the date upon which the life settlement contract is executed by all parties or thirty calendar days after the life settlement proceeds have been sent to the escrow agent by or on behalf of the provider as provided in subsection 11. Rescission by the owner may be conditioned upon the owner giving notice and repaying to the provider within the rescission period all proceeds of the settlement and any premiums, loans, and loan interest paid by or on behalf of the provider in connection with or as a consequence of the life settlement. If the insured dies during the rescission period, the life settlement contract is deemed to have been rescinded, subject to repayment to the provider or purchaser of all life settlement proceeds and any premiums, loans, and loan interest that have been paid by the provider or purchaser, within sixty calendar days of the death of the insured. In the event of any rescission, if the provider has paid commissions or other compensation to a broker in connection with the rescinded transaction, the broker shall refund all the commissions and compensation to the provider within five business days following receipt of written demand from the provider, which demand must be accompanied by either the owner's notice of rescission if rescinded at the election of the owner or notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period."

Page 29, replace line 3 with "the later to occur of the expiration of any then remaining rescission period or the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company."

Page 29, line 8, replace "thirty" with "sixty"

Page 29, replace lines 17 through 31 with:

- "14. It is a violation of this chapter for any person to enter a life settlement contract at any time before or at the time of the application for or issuance of a policy that is the subject of a life settlement contract or within a five-year period commencing with the date of issuance of the insurance policy or certificate unless the owner certifies to the provider or the provider otherwise conclusively shows that one or more of the following conditions have been met within the five-year period:
- a. The policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least sixty months. The time covered under a group policy must be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;
  - b. The owner submitted independent evidence to the provider that one or more of the following conditions have been met within the five-year period:
    - (1) The owner or insured is terminally or chronically ill;
    - (2) The owner's spouse died or no remaining beneficiaries are then surviving;
    - (3) The owner retired from full-time employment; or
    - (4) The owner became physically or mentally disabled and a physician determined that the disability prevents the owner from maintaining full-time employment;
  - c. A final order, judgment, or decree has been entered by a court of competent jurisdiction, on the application of a creditor of the owner, adjudicating the owner in default, bankrupt, or insolvent, or approving a petition seeking reorganization of the owner or appointing a receiver, trustee, or liquidator to all or a substantial part of the owner's assets; or
  - d. The owner entered a life settlement contract more than two years after the date of issuance of a policy and, with respect to the policy, at all times before the date that is two years after policy issuance, the following conditions are met:
    - (1) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of the policy's net cash surrender value, provided by, or fully recourse liability incurred by, the insured or a person described in paragraph 5 of subdivision b of subsection 11 of section 26.1-33.4-01;



4 of 4

- (2) There is no agreement or understanding with any other person to guarantee any such liability or to purchase, or stand ready to purchase, the policy, including through an assumption or forgiveness of the loan; and
  - (3) Neither the insured nor the policy has been evaluated for settlement in connection with the issuance of the policy.
15. Copies of the independent evidence described in subdivision b of subsection 14 and documents required by subsection 1, 2, 3, or 7 must be submitted to the insurer when the provider submits a request to the insurer for verification of coverage. The copies must be accompanied by a letter of attestation from the provider that the copies are true and correct copies of the documents received by the provider.
16. If the provider submits to the insurer a copy of the owner's or insured's certification described in and the independent evidence required by subdivision b of subsection 14 when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the provider, the copy is deemed to establish conclusively that the life settlement contract satisfies the requirements of this section and the insurer timely shall respond to the request."

Page 30, remove lines 1 through 26

Page 30, line 30, after "2." insert "The commissioner may establish standards for evaluating reasonableness of a payment under a life settlement contract for an individual who is terminally or chronically ill. This authority includes regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy insuring the life of an individual who is chronically or terminally ill.

3. The commissioner may establish appropriate licensing requirements, fees, and standards for continued licensure for providers and brokers.

4."

Renumber accordingly

Date: Feb 16 - 2009Roll Call Vote # 11**2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES**BILL/RESOLUTION NO. 1284House House, Business & Labor Committee☐ Check here for Conference CommitteeLegislative Council Amendment Number 1080 <sup>further</sup> ~~further~~ amendedAction Taken ☐ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser			Representative Amerman		
Vice Chairman Kasper			Representative Boe		
Representative Clark			Representative Gruchalla		
Representative N Johnson			Representative Schneider		
Representative Nottestad			Representative Thorpe		
Representative Ruby					
Representative Sukut					
Representative Vigasaa					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

If the vote is on an amendment, briefly indicate intent:

Date: Feb 16 - 2009Roll Call Vote # 12

## 2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1284House House, Business & Labor Committee☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken ☒ Do Pass ☐ Do Not Pass ☒ As Amended

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	7		Representative Amerman	7	
Vice Chairman Kasper	7		Representative Boe		
Representative Clark	7		Representative Gruchalla	7	
Representative N Johnson	7		Representative Schneider	7	
Representative Nottestad	7		Representative Thorpe	7	
Representative Ruby	7				
Representative Sukut	7				
Representative Vigasaa	7				

Total (Yes) 12 No 0Absent 1Floor Assignment Ruby

If the vote is on an amendment, briefly indicate intent:

**REPORT OF STANDING COMMITTEE**

**HB 1284: Industry, Business and Labor Committee (Rep. Keiser, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1284 was placed on the Sixth order on the calendar.

Page 5, line 26, after "provider" insert ", or any affiliate of the provider."

Page 5, line 29, after "owner's" insert "present or future"

Page 5, line 30, after the second "or" insert "ownership of"

Page 10, line 27, after "**Licensing**" insert "**and bonding**"

Page 11, line 10, replace "chapter" with "title"

Page 13, remove line 4

Page 13, line 18, replace the underscored period with "; and

- f. If a provider or broker, has demonstrated evidence of financial responsibility in a format prescribed by the commissioner through a surety bond executed and issued by an insurer authorized to issue surety bonds in this state or through a deposit of cash, certificates of deposit, or securities or any combination thereof in the amount of one hundred fifty thousand dollars. The commissioner shall accept, as evidence of financial responsibility under this subdivision, proof that financial instruments in accordance with the requirements in this subdivision have been filed with one or more states in which the applicant is licensed as a provider or broker. The commissioner may ask for evidence of financial responsibility at any time the commissioner determines necessary. Any surety bond issued pursuant to this subdivision must specifically authorize recovery by the commissioner on behalf of any person in this state which sustained damages as the result of erroneous acts, failure to act, conviction of fraud, or conviction of unfair practices by the provider or broker.

Page 15, line 9, after "2." insert "The commissioner may suspend, revoke, or refuse to renew the license of a broker if the commissioner finds that the broker has violated this chapter or has otherwise engaged in bad-faith conduct with one or more owners.

3."

Page 22, replace lines 30 and 31 with:

- "e. The fact the owner has the right to rescind a life settlement contract before the earlier of sixty calendar days after the date upon which the life settlement contract is executed by all parties or thirty calendar days after the life settlement proceeds have been delivered to the escrow agent by or on behalf of the provider as provided in subsection 11 of section 26.1-33.4-10.

Page 23, line 1, remove "received the disclosures contained herein."

Page 24, line 17, after the underscored period insert "This contact may be made only by a provider or broker licensed in the state in which the owner resided at the time of the settlement or by the authorized representative of such a provider or broker."

Page 24, after line 31, insert:

- "s. If an insurance policy to be settled has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be settled, that the owner must be informed of the possible loss of coverage on the other lives under the policy and must be advised to consult with the owner's insurance producer or the insurer issuing the policy for advice on the proposed settlement.
- t. The dollar amount of the current death benefit payable to the provider under the policy or certificate. If known, the provider also shall disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the extent to which the owner's interest in those benefits will be transferred as a result of the life settlement contract.
- u. Any affiliations or contractual arrangements between the provider and the purchaser."

Page 28, replace lines 20 through 27 with:

- "9. All life settlement contracts entered in this state must provide the owner with a right to rescind the contract before the earlier of sixty calendar days after the date upon which the life settlement contract is executed by all parties or thirty calendar days after the life settlement proceeds have been sent to the escrow agent by or on behalf of the provider as provided in subsection 11. Rescission by the owner may be conditioned upon the owner giving notice and repaying to the provider within the rescission period all proceeds of the settlement and any premiums, loans, and loan interest paid by or on behalf of the provider in connection with or as a consequence of the life settlement. If the insured dies during the rescission period, the life settlement contract is deemed to have been rescinded, subject to repayment to the provider or purchaser of all life settlement proceeds and any premiums, loans, and loan interest that have been paid by the provider or purchaser, within sixty calendar days of the death of the insured. In the event of any rescission, if the provider has paid commissions or other compensation to a broker in connection with the rescinded transaction, the broker shall refund all the commissions and compensation to the provider within five business days following receipt of written demand from the provider, which demand must be accompanied by either the owner's notice of rescission if rescinded at the election of the owner or notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period."

Page 29, replace line 3 with "the later to occur of the expiration of any then remaining rescission period or the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment, or designation of beneficiary from the insurance company."

Page 29, line 8, replace "thirty" with "sixty"

Page 29, replace lines 17 through 31 with:

- "14. It is a violation of this chapter for any person to enter a life settlement contract at any time before or at the time of the application for or issuance of a policy that is the subject of a life settlement contract or within a five-year period commencing with the date of issuance of the insurance policy or certificate unless the owner certifies to the provider or the provider otherwise conclusively shows that one or more of the following conditions have been met within the five-year period:
- a. The policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least sixty months. The time covered under a group policy must be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;
  - b. The owner submitted independent evidence to the provider that one or more of the following conditions have been met within the five-year period:
    - (1) The owner or insured is terminally or chronically ill;
    - (2) The owner's spouse died or no remaining beneficiaries are then surviving;
    - (3) The owner retired from full-time employment; or
    - (4) The owner became physically or mentally disabled and a physician determined that the disability prevents the owner from maintaining full-time employment;
  - c. A final order, judgment, or decree has been entered by a court of competent jurisdiction, on the application of a creditor of the owner, adjudicating the owner in default, bankrupt, or insolvent, or approving a petition seeking reorganization of the owner or appointing a receiver, trustee, or liquidator to all or a substantial part of the owner's assets; or
  - d. The owner entered a life settlement contract more than two years after the date of issuance of a policy and, with respect to the policy, at all times before the date that is two years after policy issuance, the following conditions are met:
    - (1) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of the policy's net cash surrender value, provided by, or fully recourse liability incurred by, the insured or a person described in paragraph 5 of subdivision b of subsection 11 of section 26.1-33.4-01;
    - (2) There is no agreement or understanding with any other person to guarantee any such liability or to purchase, or stand ready to purchase, the policy, including through an assumption or forgiveness of the loan; and

- (3) Neither the insured nor the policy has been evaluated for settlement in connection with the issuance of the policy.
15. Copies of the independent evidence described in subdivision b of subsection 14 and documents required by subsection 1, 2, 3, or 7 must be submitted to the insurer when the provider submits a request to the insurer for verification of coverage. The copies must be accompanied by a letter of attestation from the provider that the copies are true and correct copies of the documents received by the provider.
16. If the provider submits to the insurer a copy of the owner's or insured's certification described in and the independent evidence required by subdivision b of subsection 14 when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the provider, the copy is deemed to establish conclusively that the life settlement contract satisfies the requirements of this section and the insurer timely shall respond to the request."

Page 30, remove lines 1 through 26

Page 30, line 30, after "2." insert "The commissioner may establish standards for evaluating reasonableness of a payment under a life settlement contract for an individual who is terminally or chronically ill. This authority includes regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy insuring the life of an individual who is chronically or terminally ill.

3. The commissioner may establish appropriate licensing requirements, fees, and standards for continued licensure for providers and brokers.
- 4."

Renumber accordingly

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HB 1284



## 2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1284

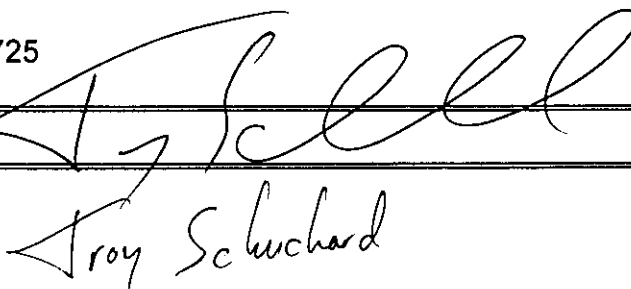
Senate Industry, Business, and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 11, 2009

Recorder Job Number: 10725

Committee Clerk Signature



Troy Schuchard

Minutes:

**Chairman Klein:** Opened the hearing on HB 1284, all members present.

**George Keiser:** Representative District 47 introduced HB 1284 and testified in support. This legislation mainly deals with 3 areas: 1) Viatical settlements, 2) Recognition of value in Life Insurance Policies, and 3) Anti-STOLI (Stranger-originated life insurance) Bill. The basic infrastructure for this bill came from the NAIC (National Association for Insurance Commissioners) model. This is what people would refer to as a *blended model*. It is blending our previous North Dakota Century Code with significant elements from the NAIC model put into the infrastructure of NCOIL model because the NCOIL model went into great detail and depth to approach the STOLI question in a direct manor; defines a STOLI and creates trusts for trying to establish a STOLI.

**Senator Horne:** What is a STOLI?

**George Keiser:** Stranger-Originated Life Insurance and what it does is this, hypothetically; I am going to Senator Andrist with a group of investors and offer a business proposition in which the investors take out an insurance policy, make him the beneficiary, and right after the insurance company issues the policy, the investors will give you \$500K. The investors originated this policy, but the current law says I can't even talk to him about this because by

definition that is a STOLI. However, Senator Andrist goes out and buys a policy, and at the end of 5 years I can approach he or he could approach me for a legitimate business transaction.

The problem is that the purchaser has no viable interest in the insured. We need to create a balance between the property rights of a legitimate policy and protecting against all the illegitimate things that are happening out there. Committee, this is big business.

**Senator Potter:** On the related provider trust definition, in defining it as "one that has a sole purpose of holding the ownership", if that creates a loophole. If I have some other purpose as well as this purpose, what do you think about that?

**George Keiser:** I don't have any thoughts on that because these things are so technical.

These definitions came from a broad spectrum of legal minds from all phases of the industry.

**Jim Kasper:** Representative District 46 testified in support of HB 1284. The bill before you is the best of the best. It takes the NAIC legislation that we had in effect and now puts it into the NCOIL language, which is #1 clear, and #2 incorporates the areas we did not address in the NAIC Legislation of 2007. We are now addressing the definition, penalty clauses for agents, brokers, and insured's who knowingly participates in a STOLI transaction.

**Bruce Ferguson:** American Council of Life Insurers testified in support of HB 1284. You need to have a vested interest in the insured life and not a vested interest in the insured death. This is the fundamental foundation for life insurance and if we lose sight of that, life insurance becomes useless.

**Karen Tyler:** North Dakota Securities Commissioner testified in support of HB 1284. As to the amendments proposed for this bill strictly deal with securities; definition of, types. These amendments are due to the evolution of the industry. We are also trying to conform our language as it would be in the insurance code. Adjustment in terminology is the purpose of the amendments.

**Senator Horne:** Are there many people engaged in this activity in North Dakota? Are there many folks taking advantage of this in North Dakota? And how do you know?

**Karen Tyler:** I will start with the last question first, these investments are securities so the provider functioning as a broker-dealer would have to register to do business in the State. The individual selling to the investor would have to be registered as a security's agent in the state. The security itself would have to be registered unless it qualified for an exemption. To address the activity in North Dakota, we have had 8 complaints in 5 years. There is not a lot of volume out there and there is not a big problem, yet.

**Mary Holberg:** Legal Council for North Dakota Insurance Department testified in support of HB 1284. The Commissioner fully supports this bill and the amendments presented this morning.

**Norbert Mayer:** Representing North Dakota Association Insurance & Finance Advisors testified in support of HB 1284.

**Chairman Klein:** Closed the hearing on HB 1284

**Senator Wanzek:** Motion for a Do Pass on amendments

**Senator Andrist:** Seconded

**Chairman Klein:** motion to amend is approved 7-0

**Senator Wanzek:** Motion for a Do Pass as Amended on HB 1284

**Senator Andrist:** Seconded

**Chairman Klein:** Motion for a Do Pass is approved 7-0, Senator Klein to carry.

March 6, 2009

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1284

Page 1, line 3, replace "subsection" with "subsections 19 and"

Page 1, line 8, replace "Subsection" with "Subsections 19 and"

Page 1, line 9, replace "is" with "are"

Page 1, after line 9, insert:

- "19. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical or life settlement contract or a fractionalized or pooled interest therein; program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor when the investor has no direct control over the investment or policy decisions of the venture; voting-trust certificate; certificate of deposit for a security; foreign currency commodity contract, as used in chapter 51-23; or beneficial interest in title to property, profits, or earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing."

Page 1, line 10, after "Viatical" insert "or life"

Page 1, line 13, after ""Viatical" insert "or life"

Page 1, line 16, overstrike "viator" and insert immediately thereafter "owner" and overstrike "viatical"

Page 1, line 17, overstrike "settlement"

Renumber accordingly

Date: 3/11/09  
Roll Call Vote #: 1

## Senate

## Industry, Business and Labor

Legislative Council Amendment Number \_\_\_\_\_

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

[illegible]

Total (Yes) 7 No 0

Absent 0

**Floor Assignment**

**If the vote is on an amendment, briefly indicate intent:**

Date: 3/11/09

Roll Call Vote #: 2

**2009 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 1284**

## Senate

Committee

## Industry, Business and Labor

☐ Check here for Conference Committee

Legislative Council Amendment Number

### Action Taken

☒ **Pass**

☐ **Do Not Pass**

☐ **Amended**

Motion Made By Senator Wanzek      Seconded By Senator Andrist

[illegible]

Total (Yes) 7 No 0

Absent 0

Floor Assignment *Senator Klein*

**If the vote is on an amendment, briefly indicate intent:**

**REPORT OF STANDING COMMITTEE**

HB 1284, as engrossed: Industry, Business and Labor Committee (Sen. Klein, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1284 was placed on the Sixth order on the calendar.

Page 1, line 3, replace "subsection" with "subsections 19 and"

Page 1, line 4, replace "term" with "terms", after "viatical" insert "or life", and after "contract" insert "and security"

Page 1, line 8, replace "Subsection" with "Subsections 19 and"

Page 1, line 9, replace "is" with "are"

Page 1, after line 9, insert:

"19. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical or life settlement contract or a fractionalized or pooled interest therein; program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor when the investor has no direct control over the investment or policy decisions of the venture; voting-trust certificate; certificate of deposit for a security; foreign currency commodity contract, as used in chapter 51-23; or beneficial interest in title to property, profits, or earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing."

Page 1, line 10, after "Viatical" insert "or life"

Page 1, line 13, after ""Viatical" insert "or life"

Page 1, line 16, overstrike "viator" and insert immediately thereafter "owner" and overstrike "viatical"

Page 1, line 17, overstrike "settlement"

Renumber accordingly

2009 TESTIMONY

HB 1284



(1)

**PROPOSED AMENDMENTS TO HOUSE BILL NO. 1284**

Page 1, line 3, replace "subsection" with "subsections 19 and"

Page 1, line 8, replace "Subsection" with "Subsections 19 and"

Page 1, after line 9 insert:

- "19. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical or life settlement contract or a fractionalized or pooled interest therein; program, contract, or other arrangement in which persons invest in a common enterprise the returns of which depend to any extent upon inducing other persons to participate or invest in the enterprise; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of profit or some other form of benefit to the investor when the investor has no direct control over the investment or policy decisions of the venture; voting-trust certificate; certificate of deposit for a security; foreign currency commodity contract, as used in chapter 51-23; or beneficial interest in title to property, profits, or earnings; or, in general, any interest or instrument commonly known as a "security"; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing."

Page 1, line 10, after "Viatical" insert "or life"

Page 1, line 13, after "Viatical" insert "or life"

Page 1, line 16, overstrike "viator" and insert immediately thereafter "owner", and overstrike "viatical"

Page 1, line 17, overstrike "settlement"

## PROPOSED AMENDMENTS

House Bill No. 1284 is amended as follows:

Section 26.1-33.4-12. Prohibited practices, is amended as follows:

Amendment No. 1:

At Section 1 (e) after the word "interest", add the following changes as shown below:

e. Enter a premium finance agreement with any person or agency, or any person affiliated with such person or agency, pursuant to which such person shall receive any proceeds, fees, or other consideration, directly or indirectly, from the policy or owner of the policy or any other person with respect to the premium finance agreement or any settlement contract or other transaction related to such policy that are in addition to the amounts required to pay the principal, interest, and service charges and any costs or expenses incurred by the lender or the borrower in connection with the financing related to policy premiums pursuant to the premium finance agreement or subsequent sale of such agreement; provided, further, that any payments, charges, fees, or other amounts in addition to the amounts required to pay the principal, interest, and service charges, and any costs or expenses incurred by the lender or the borrower in connection with the financing related to policy premiums paid under the premium finance agreement must be remitted to the original owner of the policy or to the original owner's estate if the original owner is not living at the time of the determination of the overpayment;

Explanation of Amendment1.

This amendment conforms the language in the Prohibited Practices section to that found in section 26.1-33.4-01 at subsection (11) a. (2) (a) of the bill (that defines what is a "Life settlement contract") to ensure that costs and expenses incurred in a premium finance loan are properly included therein.

Amendment No. 2.

Section 26.1-33.4-12. Prohibited practices, is amended as follows:

At Section 1 (f) after the word "broker" add ", unless such relationship is disclosed to the Owner".

f. With respect to any settlement contract or insurance policy and a broker, knowingly solicit an offer from, effectuate a life settlement contract with, or make a sale to any provider, financing entity, or related provider trust that is controlling, controlled by, or under common control with such broker, unless such relationship is disclosed to the owner;

Amendment No. 3

At Section 1 (g) after the word "contract" add ", unless such relationship is disclosed to the Owner".

g. With respect to any life settlement contract or insurance policy and a provider, knowingly enter into a life settlement contract with an owner, if, in connection with such life settlement contract, anything of value will be paid to a broker that is controlling, controlled by, or under common control with such provider or the financing entity or related provider trust that is involved in such settlement contract, unless such relationship is disclosed to the owner;

#### Explanation of Amendments 2 and 3.

Section 26.1-33.4-08, at paragraph 3. c. provides that a broker must disclose to an Owner by means of a "A written disclosure of any affiliations or contractual arrangements between the broker and any person making an offer in connection with the proposed life settlement contracts." These two amendments conform Section 26.1-33.4-12 (f) and (g) with the provisions requiring broker disclosure to an owner of any affiliations it might have with anyone offering a proposed settlement contract. If it is allowed in one section of the bill it should be allowed in the other sections as long as the common control relationships are disclosed.

#### Amendment No. 4

The definition of Stranger-originated life insurance should be changed as follows:

Section 26.1-33.4-01 at paragraph 23 should read as follows:

23. "Stranger-originated life insurance" is a practice, act or agreement, at or prior to the issuance of a life insurance policy, ~~plan~~ to initiate a life insurance policy for the benefit of a third-party investor that at the time of policy origination has no insurable interest in the insured. Stranger-originated life insurance practices include cases in which life insurance is purchased with resources or guarantees from or through a person that at the time of policy inception could not lawfully initiate the policy on its own, and where at the time of inception there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy or the policy benefits or both to a third party. Trusts that are created to give the appearance of insurable interest, and are used to initiate policies for investors, violate insurable interest laws and the prohibition against wagering on life. Stranger-originated life insurance arrangements do not include those practices set forth in subdivision b of subsection 11.

#### Explanation of Amendment No. 4.

This amendment to the NCOIL Model Act was presented at the very last minute in the NCOIL Committee's discussions and there was very little discussion about its provisions. Consequently, as state legislatures have adopted the model in various states, there has evolved more than 10 different definitions of STOLI.

The change here to remove the word plan is to clarify that a consumer has the right to contemplate that one of the options in purchasing a life insurance policy is that somewhere in the future he might sell the policy if his circumstances change to warrant such a decision. Having this "plan" in mind would be precluded by the current wording in the NCOIL Model Act. The above change also recognizes that a STOLI involves a an agreement to do something at or prior to the issuance of a life insurance policy.



## **House Bill 1284**

### **Testimony of North Dakota Securities Commissioner Karen Tyler**

#### **Before the House Industry, Business and Labor Committee**

**February 2, 2009**

Mr. Chairman and members of the Committee, good morning. I am Karen Tyler, the state Securities Commissioner. I am here to provide information regarding, and ask you to accept, certain securities related amendments to HB 1284.

As I'm sure you all know, there are two separate and distinct aspects to a viatical or life settlement transaction – the insurance side of the transaction involving the insurance policy owner and viatical or life settlement provider (and perhaps other intermediaries), and the securities side of the transaction involving the sale of the viatical or life settlement investment to the investor.

Viatical or Life Settlement Investments are securities, and are governed by the full spectrum of laws, rules, regulations and policies of State and Federal securities regulatory authority. State Securities Regulators were very appreciative of the collaborative and inclusive approach NCOIL deployed in to drafting the Life Settlements Model Act. The committee, under Chairman Keiser's leadership, took

the time to seek information about and fully understand the comprehensive body of securities regulation that applies to the offer and sale of a viatical or life settlement investment. As a result, the bright line between the two separate and distinct sides of the transaction has been clearly and appropriately preserved in the NCOIL model act.

The proposed amendments to HB 1284 seek to conform our definitions section of the Securities Act (10-04-02) to evolved industry terminology. I know you are all aware that through evolution in the industry, a new variation of a life insurance settlement developed in which the policy owner was not terminally ill, and in addition to viatical settlements, life settlements were established. The changes to our definitions section reflect this evolution. The definitions of viatical settlements and life settlements, for purposes of the Securities Act, are identical so they have been combined to read “viatical or life settlement”. The amendments to page 1, lines 9 through 13 all reflect this change.

The changes set forth in line 16 and 17 simply change terminology in order to conform to terminology that would be set forth in the insurance code – changing the term “viator” to “owner” and then changing the chapter reference.

In my capacity as North Dakota Securities Commissioner, and as the Immediate Past President of the North American Securities Administrators Association, I would like to thank Chairman Keiser for his leadership, for including state securities regulators in the dialog as this model was drafted, for the informed approach the Committee applied to structuring this model act, and for preserving the bright line between the insurance and securities sides of a settlement transaction and the regulation thereof.

I thank you for your time, would ask that you accept the proposed amendments to HB 1284, and would be happy to answer any questions you may have.

**HOUSE BILL NO. 1284**

**Presented by:** Adam Hamm  
Commissioner  
North Dakota Insurance Department

**Before:** House Industry, Business and Labor Committee  
Representative George Keiser, Chairman

**Date:** February 2, 2009

**TESTIMONY**

Good morning, Chairman Keiser and members of the committee. My name is Adam Hamm and I am the Insurance Commissioner. I appear before you today to respectfully oppose House Bill No. 1284.

This bill incorporates many good ideas about life settlement transactions. My concerns are based on consumer protections that exist in current law that would be lost if this bill were passed. In my opinion, the better way to go is a hybrid approach that takes improvements found in this bill and grafts them onto existing law. This hybrid approach has been adopted in other states and it would be the best outcome for North Dakotans as well because it would result in the strongest protections for policyholders, investors, and the public. Viatical settlements can be important and valuable transactions, but there is potential for abuse if consumer safeguards are lost.

A brief background will put my comments in context. The transactions we are talking about are known as "viatical settlements" or "life settlements." In my testimony I will refer to these transactions as viatical settlement contracts since that is the language of the current law. The scenario is that a person who has a life insurance policy with a cash value has an opportunity to sell the policy. The insured person will receive an amount that is more than the cash value built up in the policy but less than the death benefit of the policy. The sale itself is called a settlement. The entity that buys the policy is the viatical settlement provider. The new owner of the policy will receive the death benefit when the individual dies. Another player in the scenario is the investor, who invests money with the entity that purchases the



policy. While the insured person is alive, the provider who bought the policy pays the premiums on the policy. When the insured person dies, the investors will receive their share of the death benefit. If the insured person dies soon, the investors will receive a bigger return on their investment. If the insured person dies later, the investors' return will shrink.

Our current law on life settlements is N.D.C.C. chapter 26.1-33.3. It became effective August 1, 2007.

It may have been already mentioned today by others that House Bill No. 1284 is based on the Life Settlements Model Act adopted by the National Conference of Insurance Legislators on November 16, 2007. The NCOIL model was finalized after our current law was enacted.

There are four protections for consumers that would be lost by changing from current law to this bill. They are:

1. A shortened moratorium period that must pass before a policy can be settled.
2. The requirement that brokers who help the insured find a buyer for their policy, and providers who purchase the policy must have a bond.
3. Specific and conspicuous disclosures to investors of unique aspects of viatical settlements that may affect their investment and investors' opportunity to rescind.
4. A shorter rescission period during which a person can decide to cancel the sale and get the policy back.

#### 1. Shortened Moratorium on Sale of Policy

Under current law, there is a waiting period from the date the policy is taken out. A person cannot enter into a viatical settlement contract until five years have passed from the date the policy is issued, except for certain life-changing circumstances such as death of a

spouse or discovery of terminal illness. This bill would shorten the period to two years. The five-year moratorium is to protect against the sale of a life insurance policy solely to benefit an investor, as opposed to providing life insurance benefits to beneficiaries upon the death of the insured. If the investor does not intend to have a quick return on investment, then the five-year moratorium is not a barrier. Problems have developed where a provider wants to make a quick return on the investment and has offered people incentives, like cash now or later, to take out a policy in order to sell it. The provider and the investors have an interest in the insured person having a short life span so they will get the death benefit sooner and will have a shorter period to pay premiums. This interest goes against the traditional purpose of life insurance, which is to provide for survivors after a death.

## 2. Broker and Provider Bond

Current law requires brokers and providers to have a surety bond or physical deposit of cash or securities of \$150,000. The bond or physical deposit is a fund that is available to compensate North Dakotans who may have a loss due to wrongful acts or failure to act by brokers or providers, who are the people who put the deals together. This bill requires no bond or physical deposit or any proof that a broker or provider will pay if an insured person is defrauded or cheated in the deal. This is a step backward for consumer protection.

## 3. Conspicuous Disclosures to Investors and Investors' Opportunity to Rescind

Current law protects people who invest money with providers by requiring the provider to make specific disclosures that must be "conspicuously displayed" in the investment contract or in a separate document. The investor and the provider must both sign the document. The law has a list of 14 things that must be disclosed to the investor so that the investor understands the unique aspects of what they are investing in. This bill does not require disclosures for investors.

Viatical settlements as an investment are a security that is regulated by the North Dakota Securities Department. The North American Securities Administrators Association has adopted guidelines regarding viatical settlements that call for disclosures to be made in the prospectus that must be given to investors and when the security is registered. Under this

bill, the Securities Guidelines would replace current law. The Securities Guidelines do not appear to be as strong as the conspicuous disclosure requirements in place in current insurance law. I do not support any weakening of consumer protections.

4. Shorter Rescission Period During Which a Person Can Decide to Cancel the Sale and Get the Policy Back

Current law gives insureds a time period after they sign the settlement contract to rescind the deal and get the policy back. The period is 60 days from the date of signing the contract, or 30 days after receiving payment. This bill would shorten that period to 15 days. Fifteen days is too short a time to be able to rescind. Selling a life insurance policy can be a major transaction for anyone. In difficult economic times like we are experiencing now, an insured person may make a decision to sell his policy that he may later see was not in his best interest. The current 60-day/30-day rescission period gives a meaningful window for consumers to be sure the sale is the right move for them.

I respectfully oppose House Bill No. 1284 on these consumer protection grounds. In my testimony on House Bill No. 1397, I will outline the reasons that bill provides stronger protections for North Dakota policyholders and investors.

I would be happy to answer any questions. Thank you.

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**TESTIMONY OPPOSING HB 1284**  
**February 2, 2009**  
**8:00 am**

**HOUSE INDUSTRY, BUSINESS & LABOR COMMITTEE**  
**GEORGE KEISER, CHAIR**

Mr. Chairman and members of the House Industry Business and Labor Committee:

My name is Norbert Mayer, I represent the members of the ND Association of Insurance and Financial Advisors, and we stand in opposition to HB 1284 because it weakens the law passed during the 2007 Legislative Session.

Stranger Originated Life Insurance turns life insurance into an investment product as opposed to the risk product it is intended to be. Families and business interests are protected against the uncertain risk of an insured person dying prematurely. STOLI makes it possible for investors to speculate on the premature death of individuals. This could certainly be reason enough for the Federal Government to start taxing the death proceeds and the internal build up of cash value as an investment and looking to regulating this type of life insurance as a security.

We feel our current legislation, although it does not eliminate STOLI's, is a significant deterrent to reducing the number of these policies, by requiring a 5 year waiting period before transfer of ownership of a contract can take place. HB 1284 reduces that to a two year period, thereby making STOLI's more appealing for potential investors and expanding that type of business.

We are also concerned with the elimination of the bonding requirement for agents and reducing the length of time a consumer has to rescind a settlement contract if the consumer feels he or she may have made the wrong decision.

We urge you to give a "DO NOT PASS" recommendation for HB 1284.

Thank you for your time and consideration. I would be happy to answer any questions you might have.

Comparison of HB 1284 and HB1397 on:

- contract requirements
- reporting requirements and privacy
- examination
- advertising
- general rules, but not the 2 year moratorium in HB 1284, which is in a separate comparison document
- authority to adopt regulations – conflict of laws
- prohibited practices, but not the 5 year moratorium in HB 1397, which is in a separate comparison document
- fraud prevention and control
- injunctions, civil remedies, cease and desist
- penalties
- unfair trade practices

This is a summary. It does not include every detail of the contents of both bills.

**Contract requirements.** No significant differences in content.

**Reporting requirements and privacy:**

1. HB 1284 treats individual transaction data and information that reasonably could be used to identify the owner or insured in a different way than HB 1397 and current law. HB 1284 prohibits the inclusion of this in the annual report. HB 1284 p. 16 line 11 – 14. HB 1397 and current law call for the filing of this information with the commissioner on a confidential basis. HB 1397 p. 28 line 30 through p. 29 line 2.
2. HB1284 adds a penalty for providers who fail to file an annual statement or to reply within thirty days to a written inquiry by the commissioner. The penalty is not found in HB 1397 or current law. The penalty is up to \$250 per day of delay, not to exceed \$25,000 in the aggregate. HB 1284 p. 16 lines 15 – 20.
3. HB 1284 adds some provisions to the ban on disclosure of the identity of an insured or the insured's financial or medical information. These are not in HB 1397. New language in HB 1284:
  - Allows the disclosure if necessary to effectuate the sale of life settlement contracts as investments, if the owner and insured give prior written consent. HB 1284 p. 16 line 30 through p. 17 line 3.
  - Adds the receiving provider as being subject to the confidentiality requirements where one provider transfers a policy to a receiving provider. HB 1284 p. 17 line 8 – 9.
  - Defines "authorized representative" who makes contacts for purposes of determining health status. HB 1284 p. 17 line 11 – 17.

- HB 1284 eliminates the purchase of financial guaranty insurance as a basis for permissible disclosure. HB 1284 p. 17 line 18. HB 1397 p. 29 line 24.

## **Examination**

1. HB 1284 and HB 1397 describe different circumstances under which the commissioner may examine a licensee or an applicant. HB 1284 states the commissioner may examine a licensee or an applicant “when the commissioner deems it reasonably necessary to protect the interests of the public.” HB 1284 p. 17 line 25 -26. HB 1397 states the commissioner may examine a licensee (applicant not stated) “as often as the commissioner deems appropriate after considering the factors set forth” followed by a list of factors. HB 1397 p. 29 line 30 through p. 30 line 6.
2. HB 1284 adds a ban on disclosure of the identity of an owner or insured not included in HB 1397 or current law. HB 1284 p. 18 line 7 – 9.
3. HB 1284 and HB 1397 set out different recordkeeping requirements under the examination caption as to who must keep records, what must be kept, and how long. HB 1284 states “Records of all consummated transactions and life settlement contracts must be maintained by the provider for three years after the death of the insured and must be available to the commissioner for inspection...” HB 1284 p. 18 line 10 -12. HB 1397 requirements apply to “a person licensed by this chapter” which would include brokers. The retention period is 5 years. There is a list of what must be kept. The person may have to produce the documents to the commissioner after the retention period if the person has retained the documents. Records must be legible and complete. HB 1397 p. 30 line 19 through p. 31 line 7.
4. The 2 bills have slightly different language about the examiner using guidelines and procedures set forth in an examiners’ handbook. HB 1284 is generic (“handbook adopted by a national organization”) at p. 18 line 19. HB 1397 refers to the handbook adopted by NAIC at p. 31 line 14.
5. HB 1284 allows the licensee or applicant being examined to request a hearing on any matter in dispute within 30 days of receiving the examination report. HB 1284 p. 20 line 6.
6. HB 1284 adds that disclosure of names and individual identification data for owner, purchasers, and insureds, may be made to “another regulator” and as allowed under § 26.1-03-19.4 [examinations; disclosure to other state insurance departments, law enforcement] as well as required by law. HB 1284 p. 20 line 12 - 13.
7. HB 1284 adds that the licensee may have access to all documents used to make the report. HB 1284 p. 20 line 24-25.
8. HB 1284 omits and HB 1397 retains current law addressing confidentiality and nonproduction of documents in the possession of the NAIC, prohibition on the commissioner testifying, waiver of privilege or claim of confidentiality, and related matters. HB 1397 p. 33 line 27 through p. 35 line 24.

## **Advertising**

HB 1284 p. 22 line 4 – 15.

HB 1397 p. 52 line 13 – 22.

There is virtually no overlap in the provisions on advertising. HB 1284 allows brokers and providers to engage in advertising in compliance with the commissioner's rules applicable to life insurers or to brokers and providers licensed under this chapter. HB 1284 also provides substantive do's and don'ts for ads. HB 1397 focuses on the licensee needing a system of control over ads and what the system of control must be.

HB 1284 allows the commissioner to require the submission of advertising material. This provision is found in the "contract requirements" section of the bill. HB 1284 p. 15 line 30 – 31.

HB 1284 declares it to be a violation for a provider to enter into a life settlement contract "unless the promotional, advertising, and marketing materials, as may be prescribed by regulation, have been filed with the commissioner." HB 1284 p. 32 line 25 – 29. HB 1284 also declares a violation for the "inclusion of any reference in the marketing materials that would cause an owner to reasonably believe that the insurance is free for any period of time." HB 1284 p. 32 line 29 – 31. This content is in the Prohibited Practices section.

#### **General rules**

HB 1284 p. 27 line 8 through p. 30 line 26

HB 1397 p. 44 line 21 through p. 48 line 16

As stated at the top of this document, this document does not address the 2 year moratorium that is addressed in HB 1284 "General rules" on page 29 line 14 through p. 30 line 26. See separate comparison document on 2 year/5 year moratorium.

1. HB 1284 limits the requirement of obtaining a physician's statement on the owner being of sound mind to situations where the owner is the insured and is terminally or chronically ill. HB 1284 p. 27 line 9. HB 1284 qualifies release of the insured's medical records to the insurance company that issued the policy by adding "if the policy was issued less than 2 years from the date of application for a settlement contract." HB 1284 p. 27 line 14 – 16.
2. HB 1284 omits language of HB 1397 and current law declaring an insurer's failure to meet its obligations of response to a request for verification of coverage to be a violation. HB 1397 p. 45 line 25 – 28.
3. HB 1284 adds language that if a broker performs the verification of coverage activities required of the provider [on p. 27 line 18], the provider is deemed to have fulfilled the requirements of subsection 1 of section 26.1-33.4-08. That subsection is found on p. 22 line 17 through p. 24 line 31 and is the list of items (a) through (r) that must be disclosed to the owner. It is not clear whether the broker would have any duty to make the disclosures to the owner, where the provider is deemed to have made the disclosures by the broker's act. This language is addressed in the comparison document on disclosures. HB 1397 does not have comparable deemer language implicating the disclosures to the owner.
4. HB 1284 adds language requiring that any fee paid to a broker be computed as a percentage of the offer and not the face value of the policy; permitting the broker to reduce the fee; and requiring the broker to disclose to the owner anything of



value paid or given to the broker which relates to a life settlement contract. HB 1284 p. 29 line 10-16.

5. HB 1284 omits language in 1397 describing the role of the escrow agent in the settlement process. HB 1284 p. 28 line 28 through p. 29 line 3. HB 1397 p. 47 line 4 – 25.

#### **Authority to adopt regulations – Conflict of laws**

HB 1284 p. 30 line 28 through p. 31 line 19

HB 1397 p. 59 line 12 – 27.

1. HB 1284 is broad, general language conferring authority on the commissioner to adopt rules. It omits language in HB 1397 specifically permitting the commissioner to adopt rules establishing standards for evaluating the reasonableness of payments under life settlement contracts for persons who are terminally or chronically ill.
2. HB 1284 adds conflict of laws language not found in HB 1397 or current law. HB 1284 p. 30 line 30 through p. 31 line 19. This language anticipates the situation where there are multiple owners of a policy who live in different states; a provider from this state who enters a life settlement contract with an owner who is a resident of another state; and where laws that apply to an owner and a purchaser (investor) conflict.

#### **Prohibited practices**

HB 1284 p. 31 line 21 through p. 33 line 6.

HB 1397 p. 48 line 19 through p. 52 line 10.

HB 1397 and current law contain 2 sections addressing prohibited practices: Section 26.1-33.3-10 Prohibited Practices and Section 26.1-33.3-11 Prohibited practices and conflicts of interest.

As stated at the top of this document, this document does not address the 5 year moratorium that is addressed in HB 1397 “Prohibited practices” on page 48 line 20 through p. 50 line 17. See separate comparison document on 2 year/5 year moratorium. Advertising content of HB 1284 on prohibited practices is discussed above under Advertising.

HB 1284 adds these provisions not found in HB 1397:

1. It is unlawful for any person to enter a life settlement contract if the person knows or should know that the policy was obtained by means of a false, deceptive, or misleading application. HB 1284 p. 31 line 22 – 24.
2. It is unlawful for any person to engage in any transaction, practice, or course of business if the person knows or reasonably should know that the intent was to avoid the notice requirements of this chapter. HB 1284 p. 31 line 25 - 27.
3. It is unlawful for any person to engage in any fraudulent act or practice in connection with any transaction relating to any settlement involving an owner who is a resident of North Dakota. HB 1284 p. 31 line 28 - 29.

HB 1284 states that a violation of the Prohibited Practices section is a fraudulent life settlement act (p. 33 line 6) which is prohibited at HB 1284 p. 33 line 8.

The two bills are the same regarding prohibited practices:

1. New language that a person may not issue, solicit, market, or promote the purchase of a policy for the purpose of or with emphasis on settling the policy. HB 1284 p.31 line 30 - 31. HB 1397 p. 51 line 20 – 21.
2. New language that a person may not enter a premium finance agreement where amounts are paid in addition to the amounts required to pay principal, interest, and service charges related to premiums. Such amounts must be remitted to the owner upon determination of the overpayment. HB 1284 p. 32 line 1 – 14. HB 1397 p. 51 line 22 through p. 52 line 3.
3. Regarding common control: Under HB 1397, a broker may not make a settlement with a provider controlling, controlled by, or under common control with the broker unless the relationship is disclosed to the owner. HB 1397 p. 51 line 4 – 9. A provider may not make a settlement if anything of value will be paid to a broker that is controlling, controlled by, or under common control with the provider, unless the relationship is disclosed to the owner. HB 1397 p. 51 line 10 - 17. A violation of either is a fraudulent settlement act. HB 1397 p. 51 line 18 – 19. HB 1284 prohibits these acts without any provision for saving by disclosure to the owner. HB 1284 p. 32 line 15 – 24.

HB 1397 contains these provisions not in HB 1284:

1. Upon receipt of a request for change of ownership of a policy, the insurer must respond within 30 days with acknowledgement or specifying reasons why the change cannot be processed. HB 1397 p. 50 line 24 -27.
2. A broker may not make a settlement with a provider controlling, controlled by, or under common control with the broker unless the relationship is disclosed to the owner. HB 1397 p. 51 line 4 – 9. A provider may not make a settlement if anything of value will be paid to a broker that is controlling, controlled by, or under common control with the provider, unless the relationship is disclosed to the owner. HB 1397 p. 51 line 10 - 17. A violation of either is a fraudulent settlement act. HB 1397 p. 51 line 18 – 19. HB 1284 prohibits these acts without any provision for saving by disclosure to the owner. HB 1284 p. 32 line 15 – 24.
3. It is unlawful for an insurer to engage in an act that restricts, limits, or impairs the lawful transfer of ownership of a policy to effectuate a life settlement contract. HB 1397 p. 52 line 7 – 10.

**Fraud prevention and control**

HB 1284 p. 33 line 7 through p. 36 line 26.

HB 1397 p. 52 line 25 through p. 56 line 30.

The two bills have almost completely the same content.

HB 1284 adds language, not in HB 1397, that this chapter does not preempt, supersede, or limit any provision of any state securities law or any rule, order, or notice issued thereunder. HB 1284 p. 35 line 22 -23.

HB 1397 provides that an award of attorney fees to a prevailing party in a tort action for malicious fraud reporting does not apply to a person furnishing information concerning that person's own fraudulent life settlement acts. HB 1397 p. 54 line 25 – 27.

**Injunctions – civil remedies – cease and desist; penalties**

HB 1284 p. 36 line 27 through p. 38 line 5

HB 1397 p. 57 line 3 through p. 59 line 4

The two bills are essentially the same regarding injunctions, civil remedies, and cease and desist.

HB 1284 adds language not found in HB 1397:

1. That if a court finds a willful violation of this chapter, the court may award statutory damages in addition to actual damages in an amount up to three times the actual damage award. HB 1284 p. 37 line 19 – 21.
2. The provisions of this chapter may not be waived by agreement. Page 37 line 21 - 22.
3. A choice of law provision may not be utilized to prevent the application of this chapter to any settlement in which a party to the settlement is a North Dakota resident. Page 37 line 22 – 24.

The penalty language is shorter in HB 1284. Both bills state a maximum civil penalty of \$50,000 per violation. The language of HB 1284 is not completely clear about the maximum civil penalty.

HB 1397 includes these provisions not found in HB 1284 regarding penalties:

1. Restitution to persons aggrieved may be ordered by the commissioner and must be ordered in addition to fine or imprisonment under criminal proceedings. Page 57 line 28 – 30 through p. 58 line 5.
2. Except for a fraudulent life settlement act committed by an owner, the enforcement provisions and penalties do not apply to an owner. Page 58 line 6 – 8.
3. Sentencing and classification of offenses and statute of limitations. Page 58 line 9 through p. 59 line 4.

**Unfair trade practices**

HB 1284 p. 38 line 6 – 7.

HB 1397 p. 59 line 7 – 9.

Both bills declare a violation of this chapter to be an unfair trade practice. HB 1397 specifically includes “the commission of a fraudulent life settlement act.” Page 59 line 7 – 8.

Comparison of HB 1284 and HB1397 on 2 year/5 year moratorium  
Insurance Department  
February 6, 2009

This is a summary. It does not include every detail of the contents of both bills.

The moratorium is found in HB 1284 in section 26.1-33.4-10(14) on page 29 line 14 through page 30 line 26. This is located in the "General rules" section of the bill. HB 1284 establishes a two (2) year time period during which a person "may not enter a life settlement regardless of the date the compensation is to be provided..." The moratorium does not apply specified circumstances listed below.

The two bills are the same regarding:

Exceptions to the moratorium where one or more conditions are met. The conditions are:

- The policy was issued upon the owner's exercise of conversion rights from a group or individual policy . HB 1284 p. 29 lines 23 - 28, HB 1397 § 26.1-33.3-10(1)(a). **HB 1284 requires a 24 month total time period covered by the conversion policy plus the prior policy. HB 1397 requires a 60 month total time period covered by the conversion policy plus the prior policy.**
- 1. Owner or insured is terminally or chronically ill. HB 1284 p. 29 line 31; HB 1397 §26.1-33.3-10(1)(b)(1);  
2. Owner's spouse dies. HB 1284 p. 30 line 5; HB 1397 §26.1-33.3-10(1)(b)(2);  
3. Owner divorces spouse. HB 1284 p. 30 line 6; HB 1397 §26.1-33.3-10(1)(b)(3);  
4. Owner retires. HB 1284 p. 30 line 7; HB 1397 §26.1-33.3-10(1)(b)(4);  
5. Owner becomes disabled. HB 1284 p. 30 line 8 – 10; HB 1397 §26.1-33.3-10(1)(b)(5).

Items 1. through 5 under this bullet are "anytime" exceptions to the moratorium. **HB 1284 adds a sixth item to this list: Owner or insured disposes of ownership interests in a closely held corporation. Bill p. 30 lines 1 – 4.** Copies of evidence for the items in this list must be submitted to the insurer. HB 1284 p. 30 line 16 – 26, HB 1397 §26.1-33.3-10(2) and (3). There are some differences in the details of provisions on notice to the insurer.

- Owner is adjudicated bankrupt or insolvent HB 1284 p. 30 line 11- 15. HB 1397 §26.1-33.3-10(1)(c). **HB 1397 adds, owner adjudicated "in default" at p. 49 line 16.**

HB 1397 and current law address the moratorium at § 26.1-33.3-10(1) found in the bill at page 48 line 20 through page 50 line 4. This is located in the "Prohibited practices" section of the bill. HB 1397 declares a violation for a person to enter a life settlement contract before the application for or issuance of a policy "within a five-year period commencing with the date of issuance of the policy or certificate." HB 1397 contains one exception to the moratorium not in HB 1284: The owner may enter a life settlement

contract more than two (2) years after issuance of the policy, if at all times before that 2 year date, these conditions are met:

1. Policy premiums have been funded exclusively with unencumbered assets provided by the insured;
2. There is no agreement to purchase the policy; and
3. Neither the insured nor the policy has been evaluated for settlement.

HB 1397 § 26.1-33.3-10(1)(d), bill p. 49 line 19 through p. 50 line 4.

HB 1397 has a provision regarding insurer actions when presented with a request to effectuate the transfer of a policy that is not in HB 1284: the insurer must respond in writing within thirty (30) calendar days with acknowledgement that the change has been put into effect or specifying why the change cannot be processed. HB 1397 p. 50 line 22 – 27.

This is a summary. It does not include every detail of the contents of both bills.

### **I. Disclosures to owners**

This is found in HB 1284 in section 26.1-33.4-08, bill p. 22 line 16 through p. 25 line 25. It is organized into these lists:

- What the provider must disclose to the owner no later than the date the settlement contract is signed. There must be a separate document signed by the owner and provider. This list is 18 items (26.1-33.4-08(1)(a) through (r)).

The list of 18 items has these 3 new items that are not found in current law or HB 1397:

- (i) The date by which the funds will be available to the owner and the transmitter of the funds. P. 23 lines 22-23.
- (l) The fact that the commissioner shall require providers and brokers to print separate signed fraud warnings on their applications and on their life settlement contracts the following statement: Any person that knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to fines and confinement in prison.
- (r) The fact that a change of ownership could in the future limit the insured's ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life.

The other 15 items are found in current N.D.C.C. § 26.1-33.3-07 and HB 1397 though some are not in identical form. The main differences are:

- (a) HB 1284 does not list "policy loans offered" as a possible alternative to life settlement contracts. HB 1397 lists this alternative (p. 37 line 17).
- (e) 15 days rescission period in HB 1284 p. 22 line 30 -31. Failure to give written notice of the right of rescission tolls the right of rescission until 30 days after the written notice of right of rescission has been given. Bill p. 29 line 7 – 9. The rescission period is the earlier of 60 days from date of contract signing or 30 days from receipt of the proceeds, under HB 1397 p. 46 line 15 - 20. If the owner dies during the rescission period, there is no stated period during which the owner's estate must pay back the proceeds. Under HB 1397 and current law, the owner's estate must pay back the proceeds within 60 days of the insured's death. Bill p. 46 line 29 - 30 [Rep. Amerman question at hearing 2/2/09] See comparison document on rescission.

**"The written disclosures must be conspicuously displayed in any life settlement contract furnished to the owner by a provider, including any**

**affiliations or contractual arrangements between the provider and the broker.”** (26.1-33.4-08(2); found in HB 1284 at p. 25 lines 1 – 3)

Note: HB 1284 provides that if a broker performs the verification of coverage activities required of the provider, the provider is deemed to have fulfilled the requirements of making the 18 disclosures. HB 1284 p. 28 line 9 – 11. As HB 1284 now exists, the provider may not have to make the 18 disclosures items (a) through (r) to the owner if the broker does verification of coverage activities. If this is not the intended result, an amendment could spell out that the broker also make the 18 disclosures to the owner along with the verification of coverage activities.

- What the broker must disclose to the owner and provider no later than the date the settlement contract is signed. This list is 6 items (26.1-33.4-08(3)(a) through (f)). These 6 items have one new item that not is found in current law or HB 1397:

(f) “The failure to provide the disclosures or rights described in this section is deemed an unfair trade practice pursuant to section 26.1-33.4-16.”

Items a, b, c, and d are the same in HB 1397. Item e has minor differences (HB 1284 calls for “a complete reconciliation of the gross offer or bid” to the net proceeds; HB 1397 and current law call for disclosure of the total amount of the offer and percentage comprised by the broker’s compensation).

Disclosures to the owner in HB 1397 are found in section 26.1-33.3-07, bill p. 37 line 8 through p. 41 line 6. HB 1397 retains the language of current N.D.C.C. § 26.1-33.3-07. HB 1397 is organized into these lists:

- What the provider or broker must disclose to owner when application to settle policy is signed. This list is 11 items (N.D.C.C. § 26.1-33.3-07(1)(a) through (k)). These 11 items are all in the HB 1284 list.
- What the provider must disclose to owner when settlement contract is signed. This list is 6 items (N.D.C.C. § 26.1-33.3-07(2)(a) through (f)). **These disclosures must be conspicuously displayed in the contract or in a separate document signed by the owner.** There are 3 items that are not on the HB 1284 list:
  - (c) Any affiliations or contractual arrangements between the provider and investor.
  - (d) If the policy covers any life other than the insured (such as through a joint policy or riders), the owner must be informed of possible loss of coverage on the other lives and advised to consult the owner’s producer or insurer.
  - (e) Dollar amount of the current death benefit payable to the provider.HB 1397 p. 39 line 25 through p. 40 line 9.
- What the broker must disclose to the owner when the settlement contract is signed. This list is 5 items (N.D.C.C. § 26.1-33.3-07(3)(a) through (e)). **This list must be conspicuously displayed in the settlement contract or in a separate document signed by the owner.**

- If the provider transfers ownership or change the beneficiary, the provider must communicate that change to the insured within 20 days. (N.D.C.C. § 26.1-33.3-07(4) p. 41 line 4 - 6)

## **II. Disclosures to investors**

This is not found in HB 1284.

This is found in HB 1397 section 26.1-33.3-07(5) (bill p. 41 line 7 through p. 44 line 7). HB 1397 retains the language of current N.D.C.C. § 26.1-33.3-07(5), (6), and (7) regarding disclosure to investors and investor's right to rescind within 3 days.

HB 1397 is organized into 2 lists:

- What the provider or provider's agent must disclose to the investor prior to signing of the viatical purchase contract (i.e. the settlement contract). This list is 14 items (N.D.C.C. § 26.1-33.3-07(5)(a) through (n)). **This list must be conspicuously displayed in the settlement contract or in a separate document signed by the investor and the provider or provider's agent.**
- What the provider or provider's agent must disclose to the investor no later than at the time of assignment, transfer, or sale of all or a portion of a policy. This list is 8 items (N.D.C.C. § 26.1-33.3-07(6)(a) through (h)). The disclosures must be in a document signed by the investor and the provider or agent. There is no requirement of conspicuous display.

HB 1397 also states the investor's right to rescind the investment within 3 days. N.D.C.C. § 26.1-33.3-07(7).

The amendments proposed by the Securities Commissioner would remove all the disclosures to investors and the right to rescind the investment within 3 days.

## **III. Disclosures to insurer**

HB 1284 addresses "disclosure to insurer" in § 26.1-33.4-09 found in the bill p. 25 line 26 through p. 27 line 6. This is the same caption as HB 1397 §26.1-33.3-08 with different content. The two bills have no common feature under this caption. HB 1284 § 26.1-33.4-09 could be accurately captioned, Disclosures to insurer – disclosures by insurer, since it incorporates disclosures to and by insurers where premium financing exists.

HB 1284 § 26.1-33.4-09 does 4 things:

1. Permits an insurer to inquire whether the proposed owner intends to pay premiums with financing that will use the policy as collateral.
2. If the loan provides funds that can be used for a purpose other than paying premiums, the application must be rejected as a prohibited practice under § 26.1-33.4-12.



3. If the financing does not violate § 26.1-33.4-12, the insurer may make disclosures no later than the delivery of the policy. The 4 disclosures by the insurer are:
  - Change of ownership could lead to a stranger owning an interest in the insured's life;
  - Change of ownership could lead to future limit on ability to purchase insurance;
  - If more coverage is sought in the future, insured's higher age, health status and other factors may reduce ability to obtain coverage and may result in significantly higher premiums;
  - Consult a professional advisor, since change in ownership in satisfaction of the loan may result in tax consequences to the owner.
4. Permits the insurer to require certifications from the applicant or the insured or both such as :
  - I have entered into an agreement for the future sale of this policy;
  - My loan arrangement provides funds sufficient to pay for some or all premiums, but I have not entered into any agreement by which I am to receive consideration in exchange for procuring this policy; and
  - The borrower has an insurable interest in the insured.

HB 1397 addresses "disclosures to insurer" at 26.1-33.3-08 found at bill p. 44 lines 10 through 18. HB 1397 and current law contain a run on sentence that renders difficult an exact understanding. The gist seems to be, the provider or broker must fully disclose details of the plan to originate, renew, continue, or finance a policy for the purpose of engaging in a settlement before or during the first five years of the policy. In other words, the producer or broker must disclose the prohibited activity to the insurer. § 26.1-33.3-10(1)

Comparison of HB 1284 and HB1397 on rescission period  
Insurance Department  
February 6, 2009

This is a summary. It does not include every detail of the contents of both bills.

HB 1284 addresses the rescission period at § 26.1-33.4-10 (4) found in the bill p. 28 line 20 – 27. This is in the “General rules” section. Settlement contracts must provide that the owner may rescind the contract on or before fifteen (15) days after the date it is executed by all parties. Failure to give written notice of the right of rescission tolls the right of rescission until 30 days after the written notice of right of rescission has been given. Bill p. 29 line 7 – 9. HB 1397 and current law do not have the provision on tolling the right of rescission.

The two bills are the same regarding:

1. The owner must repay all proceeds and any premiums, loans, and loan interest paid within the rescission period. HB 1284 p. 28 line 22 – 25; HB 1397 p. 46 line 20 - 25.
2. If the insured dies during the rescission period, the contract is deemed rescinded. The owner’s estate must repay all proceeds and any premiums, loans, and loan interest paid. HB 1284 p. 28 line 25 – 27; HB 1397 p. 46 line 25 - 30. **Under HB 1284, if the owner dies during the rescission period, there is no stated period during which the owner’s estate must pay back the proceeds. Under HB 1397 and current law, the owner’s estate must pay back the proceeds within 60 days of the insured’s death. Bill p. 46 line 29 - 30 [Rep. Amerman question at hearing 2/2/09]**
3. A related provision: Notice of the rescission period must be given with other disclosures to the owner no later than the date the settlement contract is signed. HB 1284 p. 22 line 30 through p. 23 line 7. HB 1397 p. 38 line 1 – 13. See comparison document on disclosures.

HB 1397 addresses the rescission period at § 26.1-33.3-09(3) found in the bill on page 46 line 15 through page 47 line 8. The rescission period ends the earlier of 60 days from date of contract signing or 30 days from receipt of the proceeds, under HB 1397 p. 46 line 15 - 20. HB 1397 has additional provisions not found in HB 1284 that address broker refunding of commissions and compensation to the provider. Page 46 line 30 through page 47 line 8.

Comparison of 1284 and 1397 license suspension, revocation, or refusal to renew  
Insurance Department  
February 6, 2009

This is a summary. It does not include every detail of the contents of both bills.

HB 1284 addresses license suspension, etc. at § 26.1-33.4-03 found in the bill at page 14 line 13 through page 15 line 11. The commissioner shall conduct a hearing before denying a license application or suspending, revoking, or refusing to renew the license of any licensee.

HB 1397 addresses license suspension, etc. at § 26.1-33.3-03 found in the bill at page 26 line 30 through page 28 line 6.

The two bills are the same regarding:

1. The list of 9 items that are grounds for suspension, revocation, or refusal to renew by the commissioner. **Exception: In HB 1397 and current law (p. 27 line 1), this list is also grounds for refusal to issue a license but not in HB 1284 (p. 14 line 1).**
2. The commissioner shall conduct a hearing before denying a license application or suspending, revoking, or refusing to renew the license of any licensee. HB 1284 p. 15 line 9 – 11. HB 1397 p. 28 line 3 – 6, adding that the hearing “shall be in accordance with chapter 28-32.

Comparison of 1284 and 1397 licensing requirements including bond  
Insurance Department  
February 6, 2009

This is a summary. It does not include every detail of the contents of both bills.

HB 1284 addresses licensing at § 26.1-33.4-02 found in the bill p. 10 line 27 through p. 14 line 12. HB 1284 is different from HB 1397 regarding licensing on these points:

1. Unlike HB 1397 and current law at § 26.1-33-02(1)(a), it does not require a person to hold a producer's license in order to obtain a broker's license.
2. The fee for a license is an amount established by the commissioner. The license and renewal fees for a provider must be reasonable. The license and renewal fees for a broker may not exceed those for an insurance producer. Page 11 line 4 -10.
3. A life insurance producer who has held a resident life producer license for at least one year in North Dakota or the producer's home state is deemed to meet the licensing requirements for broker. The broker must notify the commissioner and pay any applicable fee. Page 11 line 11 - 21.
4. Licenses may be renewed annually on the anniversary date.
5. HB 1284 states "commissioner shall make an investigation of each applicant and may issue a license" (p. 12 line 25), where HB 1397 states "commissioner shall make an investigation of each applicant and issue a license.... (p. 25 line 13). The difference is that in HB 1284, issuance is discretionary if the criteria are met. In HB 1397 and current law, issuance is mandatory if the criteria are met.
6. HB 1284 has no requirement for a provider or broker to furnish a bond or physical deposit as proof of financial responsibility.
7. A provider may not use a person to perform the functions of a broker unless the person is licensed. A broker may not use a person to perform the functions of a provider unless the person is licensed. Page 13 line 27 through page 14 line 3. This creates a duty on the provider not to use an unlicensed broker, as well as the duty on the broker not to act without a license. This also creates a duty on the broker not to use an unlicensed provider, as well as the duty on the provider not to act without a license.
8. A broker must complete 15 hours of training "related to life settlements and life settlement transactions as required by the commissioner" except that a life insurance producer operating as a broker is not subject to this requirement. Page 14 lines 7 - 12.

The two bills are the same regarding:

1. Persons licensed as an attorney, certified public accountant, or financial planner who is retained by the owner may negotiate life settlements on behalf of the owner without a license. HB 1284 p. 11 lines 27 through 31. HB 1397 p. 24 lines 18 through 23.
2. Application forms are prescribed by the commissioner.
3. An insurer may not be responsible for any act or omission of a broker or provider arising out of a life settlement transaction. HB 1284 p. 11 lines 22 through 26. HB 1397 p. 24 lines 11 through 17.

4. Applicants shall submit information as prescribed by the commissioner. HB 1284 p. 12 lines 12 – 15. HB 1397 p. 25 lines 4 – 7.
5. A license issued to an entity authorizes named individuals to act as a licensee. HB 1284 p. 12 lines 20 – 23. HB 1397 p. 25 lines 8 – 11.
6. Standards for issuance of a license, except for commissioner's discretion and bond requirement.
7. Requirement of an antifraud plan. HB 1284 p. 13 lines 5 – 18. HB 1397 p. 56 lines 13 – 27.
8. Nonresidents must designate the commissioner as agent for service of process. HB 1284 p. 13 lines 19 – 23. HB 1397 p. 26 lines 19-23.
9. A provider or broker must provide new or revised information about officers, stockholders, etc. within 30 days of the change. HB 1284 p. 14 lines 4-6. HB 1397 p. 26 lines 24 – 27.

HB 1397 addresses licensing at § 26.1-33.3-02 found in the bill p. 24 line 5 through p. 26 line 27.

1. The application fee for a provider is \$250. The application fee for a broker is \$200. Renewal fee for both is \$100. Page 24 lines 24 – 28.
2. A surety bond or physical deposit in the amount of \$150,000 is required for a broker or provider license. Page 25 line 21 through page 26 line 13.
3. Brokers are not required to get 15 hours of training every 2 years. To get a broker license under current law and HB 1397, the applicant must first have a producer's license. Page 24 lines 8 - 10. Insurance producers are subject to continuing education requirements in N.D.C.C. chapter 26.1-26.

Table of contents of 1284, 1397, and current law

This is the Table of Contents with page numbers for HB 1284

Section 1	amend N.D.C.C. § 10-04-02	p.1	
Section 2	26.1-33.4-01 Definitions	p.1	
	26.1-33.4-02 Licensing requirements	p. 10	
	26.1-33.4-03 License suspension, revocation, or refusal to renew	p. 14	
	26.1-33.4-04 Contract requirements	p. 15	
	26.1-33.4-05 Reporting requirements and privacy	p. 16	
	26.1-33.4-06 Examination	p. 17	
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	26.1-33.4-10 General rules	p. 27	
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	26.1-33.4-13 Fraud prevention and control	p. 33	
	26.1-33.4-14 Injunctions-Civil remedies-Cease and desist		p. 36
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*This is the table of contents with page numbers for HB 1397*

Section 1	amend N.D.C.C. § 10-04-02	p. 1	
Section 2	26.1-33.3-01. Definitions.	p. 9	
	26.1-33.3-02. License and bond requirements.	P. 24	
	26.1-33.3-03. License revocation and denial.	P. 26	
	26.1-33.3-04. Approval of <del>viatical</del> <u>life</u> settlement contracts and disclosure statements.	P. 28	
	26.1-33.3-05. Reporting requirements and privacy.	P. 28	
	26.1-33.3-06. Examination or investigations.	P. 29	
	26.1-33.3-07. Disclosure to <del>viator</del> <u>owner</u> .	P. 37	
	26.1-33.3-08. Disclosure to insurer.	P. 44	
	26.1-33.3-09. General rules.	P. 44	
	26.1-33.3-10. Prohibited practices.	P. 48	
	26.1-33.3-11. Prohibited practices and conflicts of interest.	P. 51	
	26.1-33.3-12. Advertising for <u>viatical life</u> settlements.	P. 52	
	26.1-33.3-13. Fraud prevention and control.	P. 52	
	26.1-33.3-14. Injunctions - Civil remedies - Cease and desist - Penalty.	P. 57	
	26.1-33.3-15. Unfair trade practices.	P. 59	
	26.1-33.3-16. Authority to promulgate regulations.	P. 59	
	26.1-33.3-17. Effective date.	P. 59	

This is the table of contents of current law, N.D.C.C. chapter 26.1-33.3

- 26.1-33.3-01. Definitions.
- 26.1-33.3-02. License and bond requirements.
- 26.1-33.3-03. License revocation and denial.
- 26.1-33.3-04. Approval of viatical settlement contracts and disclosure statements.
- 26.1-33.3-05. Reporting requirements and privacy.
- 26.1-33.3-06. Examination or investigations.
- 26.1-33.3-07. Disclosure to viator.
- 26.1-33.3-08. Disclosure to insurer.
- 26.1-33.3-09. General rules.
- 26.1-33.3-10. Prohibited practices.
- 26.1-33.3-11. Prohibited practices and conflicts of interest.
- 26.1-33.3-12. Advertising for viatical settlements.
- 26.1-33.3-13. Fraud prevention and control.
- 26.1-33.3-14. Injunctions - Civil remedies - Cease and desist - Penalty.
- 26.1-33.3-15. Unfair trade practices.
- 26.1-33.3-16. Authority to promulgate regulations.
- 26.1-33.3-17. Effective date.

# CONVERSION TABLE – HB 1284 AND HB 1397

## Items to be Disclosed to Owner

HB 1397 26.1-33.3-07	HB 1284 26.1-33.4-08	HB 1284 26.1-33.4-08	HB 1397 26.1-33.3-07
(1) a	a	a	(1) a
b	o	b	(1) c
c	b	c	(1) d
d	c	d	(1) e
e	d	e	(1) f
f	e	f	(1) g
g	f	g	(1) h
h	g	h	(3) d
i	j	i	no counterpart
j	k	j	(1) i
k	m	k	(1) j
		l	no counterpart
		m	(1) k
(2) a	n	n	(2) a
b	p	o	(1) b
c	no counterpart	p	(2) b
d	no counterpart	q	(2) f
e	no counterpart	r	no counterpart
f	q		



Comparison of HB 1284 and HB1397 on definitions  
Insurance Department  
February 6, 2009

This is a summary of definitions related to points brought out in testimony at the hearing on February 2, 2009. It does not include every detail of the contents of both bills.

HB 1284 addresses definitions at § 26.1-33.4-01 found in the bill p. 1 line 23 through p. 10 line 26.

HB 1397 addresses definitions at § 26.1-33.3-01 found in the bill page 9 line 30 through page 24 line 2.

The two bills are the same regarding:

**1. Definition of STOLI, which is not in current law. There are small differences in the two bills on STOLI definition.**

HB 1284 p. 10 line 13 – 24:

“Stranger-originated life insurance” is a practice or plan to initiate a life insurance policy for the benefit of a third-party investor that at the time of policy origination has no insurable interest in the insured. Stranger-originated life insurance practices include cases in which life insurance is purchased with resources or guarantees from or through a person that at the time of policy inception could not lawfully initiate the policy on its own, and where at the time of inception there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy or the policy benefits or both to a third party. Trusts that are created to give the appearance of insurable interest, and are used to initiate policies for investors, violate insurable interest laws and the prohibition against wagering on life. Stranger-originated life insurance arrangements do not include those practices set forth in subdivision b of subsection 11[“‘Life settlement contract’ does not include...[items 1 through 9]”].”

HB 1397 defines STOLI at p. 18 line 25 – p. 19 line 6. Overstrikes and underscores show the difference from HB 1284.

“Stranger-originated life insurance” is a practice or plan to initiate a life insurance policy for the benefit of a third-party investor that, at the time of policy origination, has no insurable interest in the insured. Stranger-originated life insurance practices include cases in which life insurance is purchased with resources or guarantees from or through a person that on its own, at the time of policy inception, could not lawfully initiate the policy ~~on its own~~, and where in which, at the time of policy inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy or the policy benefits or both to a third party. Trusts that are created to give the appearance of insurable interest, and are used to initiate policies for investors, violate insurable interest laws and the prohibition against wagering on life. Stranger-originated life insurance arrangements

do not include those practices set forth in subdivision c of subsection 7 [“‘Life settlement contract’ does not include...[items 1 through 8]”].”

Jack Kelly’s proposed amendment would delete “plan” from the first line of each definition of STOLI.

**2. Definition of “life settlement contract” which is “viatical settlement contract” in current law. Most of the language is the same but there are some differences in the 2 bills on definition of “life settlement contract.”**

HB 1284 p. 5 line 26 through page 6 line 7.

“‘Life settlement contract’ means a written agreement entered between a provider and an owner establishing the terms under which compensation or anything of value will be paid, which compensation or thing of value is less than the expected death benefit of the insurance policy or certificate, in return for the owner’s assignment, transfer, sale, devise, or bequest of the death benefit or any portion of an insurance policy or certificate of insurance for compensation; provided, however, that the minimum value of a life settlement contract must be greater than a cash surrender value or accelerated death benefit available at the time of an application for a life settlement contract. The term includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life on an individual residing in this state.”

HB 1397 defines “life settlement contract” at p. 13 line 17 through p. 14 line 11. Overstrikes and underscores show the difference from HB 1284.

“‘Life settlement contract’ means a written agreement ~~entered between a provider and an owner~~ between an owner and a provider or any affiliate of the provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or ~~thing of~~ value is less than the expected death ~~benefit~~ benefits of the insurance policy ~~or certificate~~, in return for the owner’s present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of ~~an the~~ insurance policy or certificate of insurance ~~for compensation~~; ~~provided, however, that the minimum value of a life settlement contract must be greater than a cash surrender value or accelerated death benefit available at the time of an application for a life settlement contract.~~ The term “Life settlement contract” also includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life on ~~an individual~~ a person residing in this state.”

In both bills, the definition of “life settlement contract” goes on with language on what “life settlement contract” includes. It is mostly the same language in both bills

(HB 1284 p. 6 line 8 – 20. HB 1397 p. 13 line 28 through p. 14 line 11, except that HB 1284 add a provision that “life settlement contract” also includes a written agreement for a loan or other lending transaction, secured primarily by an individual or group life insurance policy. HB 1284 p. 6 line 9 -10.

**3. The list of 9 items in HB 1284 and the list of 8 items in HB 1397, regarding what “life settlement contract does not include”.**

1. Both list policy loan or accelerated death benefit. HB 1284 p. 6 line 22 – 24; HB 1397 p. 14 line 12 – 14.
2. Both list bank loans, if not used to evade regulation. **This is partly, but not totally, a complete match.** HB 1284 item (3) on p. 6 line 25 may be included in HB 1397 item (2) on p. 14 line 15 – 22. Whether these two treatments of the subject are the same or different could be determined by a person conversant with the details of premium financing or the use of life insurance as collateral for a loan.
3. Both list a loan made by a lender that does not violate N.D.C.C. chapter 26.1-20.1 [Insurance Premium Finance Companies]. HB 1284 p. 7 line 1 – 3. HB 1397 p. 14 line 23 -25. Both bills contain a cross reference to another part of the definition but the language referenced is not the same.
4. Both list an agreement where parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life of the insured. HB 1284 p. 7 line 4 – 8. HB 1397 p. 14 line 26 -29.
5. Both list employer-purchased insurance on the life of an employee. HB 1284 p. 7 line 9 -12. HB 1397 p. 14 line 30 through p. 15 line 2.
6. Both list bona fide business succession planning arrangement. HB 1284 p. 7 line 13 – 23. HB 1397 p. 15 line 4 – 13.
7. Both list agreement with a service provider or service provider’s trust who performs significant services for the service recipient’s trade or business. HB 1284 p. 7 line 24 – 27. HB 1397 p. 15 line 14 – 17.
8. Both list any other contract, transaction or arrangement that the commissioner determines is not of the type intended to be regulated by this chapter. HB 1284 p. 7 line 28 -30. HB 1397 p. 15 line 18 -21. **HB 1284 appears to be missing the word “exempted” after “arrangement” on page 7 line 28.**

**4. Both bills throughout update the terminology to “life settlement” replacing the current terminology “viatical settlement”.**

**5. Definition of “fraudulent life settlement act”.** HB 1284 p. 3 line 10 through page 5 line 16. HB 1397 p. 11 line 11 through p. 13 line 14.

This is substantially the same in both bills. Both bills state “any practice or plan which involves stranger-originated life insurance” is a fraudulent life settlement act. HB 1284 p. 4 line 6-7. HB 1397 p. 12 line 9-10. This is not in current law.

Both bills prohibit the presenting or preparing of false material information, or the concealing of material information, in a list of actions. HB 1284 p. 3 line 20 through p. 4 line 7. HB 1397 p. 11 line 16 through p. 12 line 6. The bills have the same list for items (a) through (h).

The bills have different content in item (i). HB 1284 item (i) states “(i) Any application for, the existence of, or any payments related to a loan secured directly or indirectly by any interest in a life insurance policy....” HB 1397 states “(i) A financing transaction.”

Both bills add as a fraudulent life settlement act the failure to disclose to the insurer, when requested by the insurer, that the prospective insured has undergone a life expectancy evaluation. HB 1284 p. 4 line 8 – 12. HB 1397 line 11 – 14.

Both bills prohibit the employing of any device, scheme or artifice in violation of state insurable interest laws in the solicitation, application or issuance of a policy. HB 1284 does this in the definition of “fraudulent life settlement act” p. 4 line 15 – 17. HB 1397 does this as a prohibited practice p. 52 line 4 – 6.

HB 1284 adds that it is a fraudulent life settlement act to “misrepresent the state of residence of an owner to be a state or jurisdiction that does not have a law substantially similar to this chapter for the purpose of evading or avoiding the provisions of this chapter.” HB 1284 p. 5 line 14 – 16. This language is not in the HB 1397 list on p. 13 ending at line 14.

**6. New definitions in HB 1284.** HB 1284 adds these definitions on p. 5 line 17 - 25, that are not in HB 1397:

- “Insured” p. 5 line 17 - 18
- “Life expectancy” p. 5 line 19 - 22
- “Life insurance producer” p. 5 line 23 - 25
- “Premium finance loan” p. 8 line 22- 24
- “Purchased policy” p. 9 line 19-20
- “Purchaser” p. 9 line 21 - 25

HB 1284 and HB 1397 both add these definitions that are not in current law:

- “Broker”. The definition is substantially the same in both bills.
- “Owner” HB 1284 p. 8 line 3 – 14. HB 1397 p. 16 line 24 through p. 17 line 10. The definitions differ slightly. Both definitions have the same list of 5 items for what “owner” does not include. HB 1284 p. 8 line 8 - 14. HB 1397 p. 17 line 4 – 10.

HB 1284 states: “‘Owner’ means the owner of a life insurance policy or a certificate holder under a group policy, with or without terminal illness, who enters or seeks to enter a life settlement contract.” Bill p. 8 line 3 – 5.

HB 1397 states: “Owner’ means the owner of a life insurance policy or a certificate holder under a group policy, ~~with or without a terminal illness, and who~~ that resides in this state and enters or seeks to enter a life settlement contract.” Bill p. 16 line 24 – 26.

The HB 1397 definition of “owner” includes a declaration of which state’s law governs when there is more than one owner on a single policy and the owner are residents of different states. HB 1397 p. 16 line 29 through p. 17 line 3. HB 1284 has the same language in its Conflict of Laws section in that bill p. 30 line 30 through p. 31 line 5.

- “Settled policy” The definition is the same in both bills.

Definitions in HB 1284 and 1397 that are in current law:

- “Provider” known in current law as “viatical settlement provider”. HB 1284 p. 8 line 25 through p. 9 line 18. HB 1397 p. 17 line 14 through p. 18 line 3. Both bills have a list of items that “provider” does not include. HB 1397 does not have HB 1284’s items j. and k. HB 1284 does not have HB 1397’s number 10.

Definitions in HB 1397 that are not in current law and are not in HB 1284:

- “Life settlement investment agent” HB 1397 p. 15 line 22 through p. 16 line 3.
- “Life settlement purchase agreement” HB 1397 p. 16 line 4 – 8.
- “Life settlement purchaser” HB 1397 p. 16 line 9 - 23

**Kasper, Jim M.**

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**From:** Clark, Jennifer S.  
**Sent:** Friday, February 06, 2009 9:07 AM  
**To:** Kasper, Jim M.  
**Subject:** Proposed Amendments - HB 1284

Representative-

Per your request, you will receive the following 4 sets of proposed amendments to HB 1284.

**90569.0102** This set of amendments replaces the NCOIL 30/15 day rescission provisions with the existing 30/60 day provisions.

- The new language on page 22 is essentially the existing language from NDCC 26.1-33.3-07(1)(f);
- The new language on page 28 is essentially the existing language from NDCC 26.1-33.3-09(3); and
- The new language on page 29 is essentially the existing language from the last sentence of NDCC 26.1-33.3-09(4).

**90569.0103** This set of amendments replaces the NCOIL "2-year" prohibited practice by importing the existing "5-year" prohibited practice.

- The new language on page 29 is essentially the existing language from NDCC 26.1-33.3-10(1), (2), and (3).  
NOTE: The divorce exception has been removed from (14)(b).

**90569.0104** This set of amendments imports the existing bonding requirements.

- The new language on page 13 is essentially the existing language from NDCC 26.1-33.3-02(6)(d)

**90569.0105** This set of amendments imports the existing disclosure to viator provisions the Securities Commissioner had requested to have removed.

- The new language on page 25 is essentially the existing language from NDCC 26.1-33.3-07(5), (6), and (7).

Please look over these amendments to make sure they accurately reflect the changes you requested. Have a nice weekend-

Jenn

Jennifer Clark  
Counsel  
ND Legislative Council  
(701) 328-2916  
[jclark@nd.gov](mailto:jclark@nd.gov)

Summary of the amendments to HB 1284 from meeting February 11, 2009  
attended by Rep. Kasper, Rep. Ruby, and Insurance Department staff

**90569.0107** This set of amendments imports three disclosures in existing law that a provider must make to an owner. The three disclosures are friendly to consumers because they give additional information to the owner that may help the owner in the settlement transaction process. These are things an owner may want to know in deciding whether to accept an offer to sell his or her policy.

- Item (s) on page 24 after line 31 informs the owner about possible loss of coverage on other lives, where the policy being settled is a joint policy or has family riders or other coverage on lives other than the owner. This is essentially the existing language from N.D.C.C. § 26.1-33.3-07(2)(d).
- Item (t) on page 24 after line 31 tells the owner the dollar amount of the current death benefit and, if known, additional benefits under the policy. This addresses policies that have additional benefits such as accidental death and dismemberment benefits. This is essentially the existing language from N.D.C.C. § 26.1-33.3-07(2)(e).
- Item (u) on page 24 after line 31 tells the owner of any affiliations or contractual arrangements between the provider and the investor. The investor is the person who will ultimately receive the death benefit when the owner dies. This is essentially the existing language from N.D.C.C. § 26.1-33.3-07(2)(c).

**90569.0108** This set of amendments retains the standard of proof in the definition of “fraudulent life settlement act” and imports key phrases in the definition of “life settlement contract.”

- The changes on page 3 line 11 and page 5 line 5 give more protection to consumers by making it easier to prove a broker or provider committed a fraudulent life settlement act. With this change, a fraudulent life settlement act would be committed by a person if that person, knowingly or with intent to defraud, did certain things. Acting either knowingly or with intent to defraud would be a fraudulent life settlement act, which in turn triggers the enforcement and penalty provisions. This is essentially the existing language from N.D.C.C. § 26.1-33.3-01(5)(a).
- The changes on page 5 lines 26, 29, and 30 imports language that brings more transactions within the scope of regulation. Transactions between an owner and an affiliate of the provider (not just the provider) will be covered. It also clarifies there will be a regulated transaction where the owner will make a future transfer of a policy, not just a present transfer of a policy. It also clarifies that the owner is transferring something belonging to the owner (“ownership of” added p. 5 line 30). This amendment is essentially the existing language from N.D.C.C. § 26.1-33.3-01(12)(a).

**90569.0109** This amendment imports the commissioner's existing authority to suspend or revoke a broker's license for violations and for bad faith conduct with owners. Basically, it closes loopholes. The commissioner could take action against a creative wrongdoing broker whose conduct is not prohibited by the letter of the law but is dealing in bad faith with owners. This amendment on page 15 is essentially the existing language from N.D.C.C. § 26.1-33.3-03(2).

**90569.0110** This amendment imports existing law specifying who may contact the insured to inquire about the insured's current health status or address. This amendment on page 24 line 17 is directed to the time after the policy has been sold and the provider or broker contacts the insured about the insured's health status or address. It would narrow the field of who is allowed to make the contacts. The contacts must be made by a provider or broker licensed in the state where the owner resided at the time of the settlement, or by the authorized representative of that licensed provider or broker. This amendment is essentially the existing language from N.D.C.C. § 26.1-33.3-07(1)(k).

**Note to Rep. Kasper: Jennifer Clark added "or broker" to the amendment to match the language earlier in the same subparagraph on page 24 line 12 (m) that makes it applicable to "provider or broker".**

**90569.0111** This amendment imports existing law requiring brokers or providers to tell the insurer when they are part of a life settlement transaction involving the origination of a policy or the financing of a policy before or within the first five years after a policy is issued. It also changes the caption on two sections to match more accurately the contents of the section.

- The change on page 22 line 16 alerts readers in the caption that the section contains a disclosure to an insurer in addition to disclosures to the owner. The disclosure to an insurer starts on page 25 line 25.
- The change on page 25 line 25 imports existing law, with some technical language clean up. If a provider has a plan to originate or finance a policy that will be settled before or during the first five (5) years after the policy is issued, the provider must tell the insurer the details of the plan. The same requirement of telling the insurer applies to brokers. The provider must tell the insurer in writing. Proprietary information belonging to the provider would not be disclosed to the insurer. This amendment is essentially the existing language from N.D.C.C. § 26.1-33.3-08.
- The change on page 25 line 26 makes the caption more accurately match the content of the section by adding disclosures by insurer. No change is made to the substance of the section. Disclosures by the insurer start on page 26 line 6.

**90569.0112** This amendment imports existing law authorizing the commissioner to adopt rules in two specific areas: 1) payments under a life settlement to individuals who are terminally or chronically ill, and 2) licensing of providers and brokers. This amendment also makes one technical language clean up.

- Addition (b) on page 30 line 29 keeps the commissioner's authority to make rules that set standards so that payments to owners who are terminally or chronically ill



can be evaluated to determine if the payments are reasonable. Standards for reasonableness protect terminally ill or chronically ill owners from being shortchanged through unfairly low settlement offers. This amendment is essentially the existing language from N.D.C.C. § 26.1-33.3-16(2).

- Addition (c) on page 30 line 29 keeps the commissioner's authority to adopt rules that establish requirements for getting a license and keeping a license, including fees. Current law sets the license fees for providers and brokers in statute in N.D.C.C. § 26.1-33.3-02(2) and (3). HB 1284 directs the commissioner to set provider and broker license fees that are reasonable, with a ceiling on broker license fees.
- The change on page 11 line 10 makes the correct cross reference within the Century Code for insurance producer license fees. The correct cross reference is to "this title" because agent license fees are provided for in at least two other chapters of the Century Code besides the life settlement chapter.

- Thank you - JBF/ACLI intro

- Great to be back - traveled to many states  
on many issues since we last met.

- Ordinarily, Mr. Chairman, I would be here today  
<sup>speaking in favor of</sup>  
~~to support~~ your bill as a <sup>great</sup> place to start in  
addressing STOLI

- ~~Under your leadership at NCOIL, your bill~~
- I would like to applaud you for your efforts at  
NCOIL to address STOLI through amendments to  
the NCOIL Life Settlements Model Act, upon which  
this bill is based. <sup>(38)</sup> We agree that many of these provisions <sup>should</sup>  
<sup>be</sup>  
<sup>inc.</sup>  
<sup>into</sup>  
<sup>it</sup>  
<sup>1397</sup>
- It contains many important features that ACLI  
would like to see enacted into ND law
  - Def. of STOLI, fraudulent settlement act.
  - closes the loophole through which STOLI transactions  
occur by the use of trusts that give the  
appearance of insurable interest but are really  
cloaking devices for speculator investors to get their  
hands on policies the law prevents them from owning
- Unfortunately, House Bill 1284 would also  
repeal the most effective anti-STOLI provision  
contained in existing law: the limited 5 year  
moratorium on the settlement of policies that  
are characteristic of STOLI transactions.
- And it is for that <sup>critically important</sup> reason, Mr. Chairman, that  
we must respectfully oppose House Bill 1284  
as a weakening of current law

After  
disagreement

It bears repeating that current law imposes a 5 year settlement moratorium only on those transactions that are characteristic of STOLI

- Third party investor is paying the premiums through a non-recourse premium finance loan in which the insured is not paying a nickel for the policy and can walk away from the loan at any time and give up the policy as forgiveness for the loan
- Third party investor guarantees the settlement value of the policy and
- LE in connection with the issuance of the policy -

Two year moratorium applies to all other transactions with immediate exceptions.

While the NCOIL Model ~~to~~ and House Bill 1284 contain a definition of STOLI that is intended to capture a range of STOLI transactions, it is likely to be left to the courts to decide what constitutes a "plan or practice" to originate a policy for the ultimate benefit of a third party investor who lacks insurable interest.

- Litigation is a lose-lose proposition: for insurer, costly legal process to pursue an action to rescind the policy; for the insured, who never dreamed they would become a party to litigation when they were promised "no risk free insurance" by speculators.

By contrast, the 5-year moratorium is self-enforcing and stops STOLI before the potential harm is done to the consumer.

- Does not impact life settlements 70 yrs old

~~Other provisions would be lost~~

~~Insurer bonding~~

STOLI = 2 yrs and one week - "plain" instructed Mr. Kelly - act on practice

In short, combination of existing ND

law with important NCOL provisions is

the most effective means for addressing STOLI.

Now is the time to strengthen your law, not weaken it.

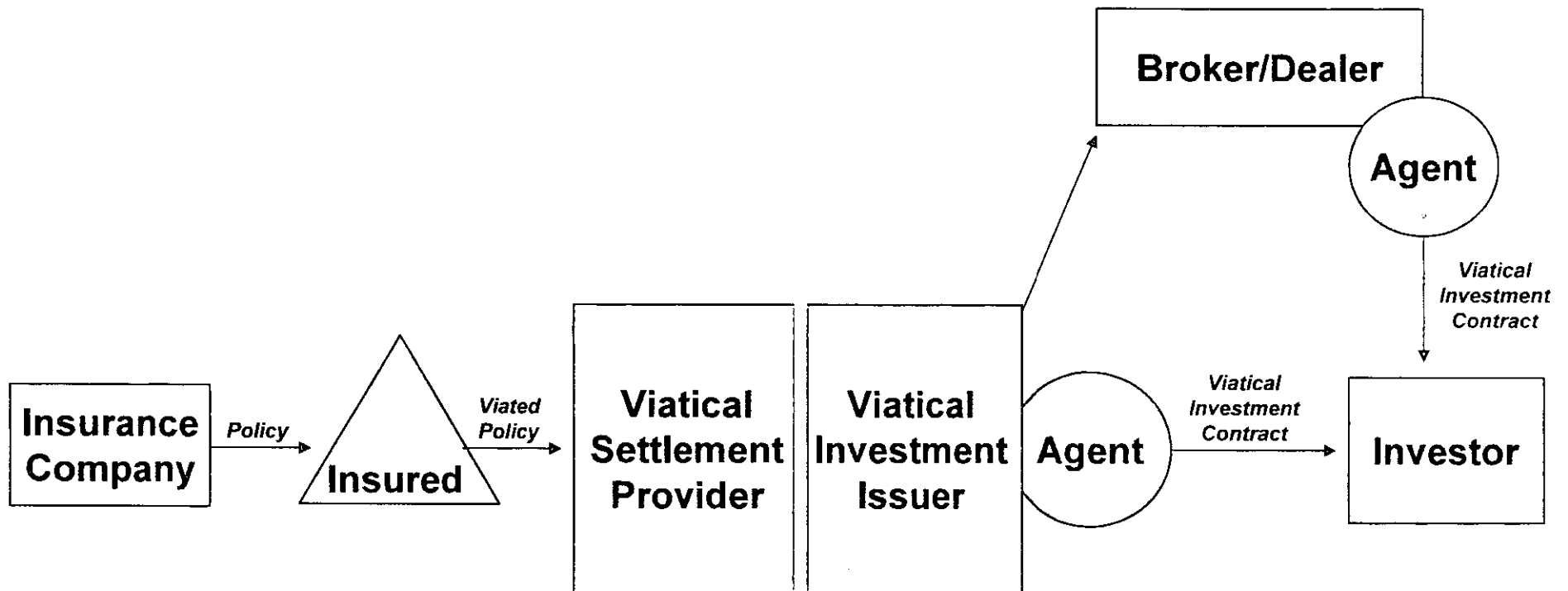
There are penalties 26.1-33.3-14  
civil and criminal

Who benefits? Follow the money - where is it going  
Puts tax free benefits of Life Ins at risk.

Congress - huge deficits - looking for revenue. If life ins. is being used to benefit hedge funds and investment banks and not families and benefits, we are greatly concerned about what will happen.  
Special Committee on Aging  
Wall Street Main Street

## INSURANCE REGULATION

## SECURITIES REGULATION



### Required Registration Under Securities Law:

Issuer  
Broker-Dealer  
Agents  
Securities (Viatical Investment Contracts)

Draft: 12/10/06  
*Revisions to Model 697*

Adopted by the Life Insurance and Annuities Committee

## VIATICAL SETTLEMENTS MODEL ACT

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**Drafting Note:** In implementing this model act, states may elect to use terminology referring to life settlements rather than viatical settlements.

### Section 1. Short Title

This Act may be cited as the Viatical Settlements Act.

### Section 2. Definitions

- A. "Advertising" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet or similar communications media, including film strips, motion pictures and videos, published, disseminated, circulated or placed directly before the public, in this state, for the purpose of creating an interest in or inducing a person to [purchase or] sell, assign, devise, bequest or transfer the death benefit or ownership of a life insurance policy pursuant to a viatical settlement contract.

**Drafting Note:** Throughout this document text related to investments in viatical settlements is in brackets. It should be considered for inclusion in states where securities regulators do not regulate the investment side of the transaction or adapted for inclusion in the securities code.

- B. "Business of viatical settlements" means an activity involved in, but not limited to, the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating or in any other manner, acquiring an interest in a life insurance policy by means of a viatical settlement contract or other agreement.

C. "Chronically ill" means:

- (1) Being unable to perform at least two (2) activities of daily living (i.e., eating, toileting, transferring, bathing, dressing or continence);
- (2) Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or
- (3) Having a level of disability similar to that described in Paragraph (1) as determined by the Secretary of Health and Human Services.

D. "Commissioner" means the insurance commissioner of this state.

**Drafting Note:** Use the title of the chief insurance regulatory official wherever the term "commissioner" appears.

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

- (a) Whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies; and
- (b) Who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts.

(2) "Financing entity" does not include a non-accredited investor or a viatical settlement purchaser.

F. "Fraudulent viatical settlement act" includes:

- (1) Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in acts including:
  - (a) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a viatical settlement provider, viatical settlement broker, viatical settlement purchaser, [viatical settlement investment agent,] financing entity, insurer, insurance producer or any other person, false material information, or concealing material information, as part of, in support of or concerning a fact material to one or more of the following:
    - (i) An application for the issuance of a viatical settlement contract or insurance policy;
    - (ii) The underwriting of a viatical settlement contract or insurance policy;
    - (iii) A claim for payment or benefit pursuant to a viatical settlement contract or insurance policy;
    - (iv) Premiums paid on an insurance policy[, 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; or
    - (ix) A financing transaction;
  - (b) Employing any plan, financial structure, device, scheme, or artifice to defraud related to viaticated policies; and
  - (c) Failing to disclose to an insurer a plan, transaction or series of transactions as required pursuant to Section 9 of this Act.
- (2) In the furtherance of a fraud or to prevent the detection of a fraud any person commits or permits its employees or its agents to:
- (a) Remove, conceal, alter, destroy or sequester from the commissioner the assets or records of a licensee or other person engaged in the business of viatical settlements;
  - (b) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer or other person;
  - (c) Transact the business of viatical settlements in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of viatical settlements; or
  - (d) File with the commissioner or the equivalent chief insurance regulatory official of another jurisdiction a document containing false information or otherwise conceals information about a material fact from the commissioner;
- (3) Embezzlement, theft, misappropriation or conversion of monies, funds, premiums, credits or other property of a viatical settlement provider, insurer, insured, viator, insurance policyowner or any other person engaged in the business of viatical settlements or insurance;
- (4) Recklessly entering into, negotiating, brokering, otherwise dealing in a viatical settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the person or the persons intended to defraud the policy's issuer, the viatical settlement provider or the viator. "Recklessly" means engaging in the conduct in conscious and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct;



- (5) Facilitating the change of state of ownership of a policy or certificate or the state of residency of a viator to a state or jurisdiction that does not have a law similar to this Act for the express purposes of evading or avoiding the provisions of this Act; or
  - (6) Attempting to commit, assisting, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.
- G. "Life insurance producer" means any person licensed in this state as a resident or nonresident insurance producer who has received qualification or authority for life insurance coverage or a life line of coverage pursuant to [insert reference to applicable producer licensing statute, with specific reference to a life insurance or equivalent line of authority].
- H. "Person" means a natural person or a legal entity, including, without limitation, an individual, partnership, limited liability company, association, trust, or corporation.
- I. "Policy" means an individual or group policy, group certificate, contract or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.
- J. "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust shall have a written agreement with the licensed viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner as if those records and files were maintained directly by the licensed viatical settlement provider.
- K. "Special purpose entity" means a corporation, partnership, trust, limited liability company or other similar entity formed solely to provide either directly or indirectly access to institutional capital markets:
- (1) For a financing entity or licensed viatical settlement provider; or
  - (2)
    - (i) In connection with a transaction in which the securities in the special purposes entity are acquired by the viator or by "qualified institutional buyers" as defined in Rule 144 promulgated under the Securities Act of 1933, as amended; or
    - (ii) The securities pay a fixed rate of return commensurate with established asset-backed institutional capital markets.
- L. "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death in twenty-four (24) months or less.
- M. "Viatical settlement broker" means a person, including a life insurance producer as provided for in Section 3 of this Act, who working exclusively on behalf of a viator and for a fee, commission or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or one or more viatical settlement brokers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator, and not the insurer or the viatical settlement provider, 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.

- N. (1) "Viatical settlement contract" means a written agreement establishing the terms under which compensation or anything of value is or will be paid, which compensation or value is less than the expected death benefits of the policy, in return for the viator's present or future assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance.
- (2) "Viatical settlement contract" includes a premium finance loan made for a life insurance policy by a lender to viator on, before or after the date of issuance of the policy where:
- (a) The loan proceeds are not used solely to pay:
    - (i) Premiums for the policy;
    - (ii) The costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses, and third party collateral provider fees and expenses, including fees payable to letter of credit issuers.
  - (b) The viator or the insured receives on the date of the premium finance loan a guarantee of a future viatical settlement value of the policy; or
  - (c) The viator or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy.
- (3) "Viatical settlement contract" does not include:
- (a) A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms;
  - (b) A loan based on the cash surrender value of a policy made by a bank or other licensed financial institution in which the lender takes an assignment of a life insurance policy solely as collateral for a loan or, if there is a default on such loan and the policy is transferred, the further assignment of such a policy by the lender;
  - (c) A loan made by a lender that does not violate [insert reference to state's insurance premium finance law], provided that the premium finance loan is not described in Paragraph (2) of this subsection;
  - (d) An agreement where all the parties (x) are closely related to the insured by blood or law or (y) have a lawful substantial economic interest in the continued life, health and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties;
  - (e) Any designation, consent or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or trust established by the employer, of life insurance on the life of the employee;
  - (f) A bona fide business succession planning arrangement;

- (i) Between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trust established by its shareholders;
    - (ii) Between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trust established by its partners; or
    - (iii) Between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trust established by its members;
  - (g) An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or
  - (h) Any other contract, transaction or arrangement exempted from the definition of viatical settlement contract by the commissioner based on a determination that the contract, transaction or arrangement is not of the type intended to be regulated by this Act.
- [O. "Viatical settlement investment agent" means a person who is an appointed or contracted agent of a licensed viatical settlement provider who solicits or arranges the funding for the purchase of a viatical settlement by a viatical settlement purchaser and who is acting on behalf of a viatical settlement provider.
- (1) A viatical settlement investment agent shall not have any contact directly or indirectly with the viator or insured or have knowledge of the identity of the viator or insured.
  - (2) A viatical settlement investment agent is deemed to represent the viatical settlement provider of whom the viatical settlement investment agent is an appointed or contracted agent.]
- P. (1) "Viatical settlement provider" means a person, other than a viator, that enters into or effectuates a viatical settlement contract with a viator resident in this state.
- (2) "Viatical settlement provider" does not include:
- (a) A bank, savings bank, savings and loan association, credit union, other licensed lending institution, or premium finance company making premium finance loans and exempted by the commissioner from the licensing requirement under the premium finance laws, that takes an assignment of a life insurance policy solely as collateral for a loan;
  - (b) The issuer of the life insurance policy ;
  - (c) An authorized or eligible insurer that provides stop loss coverage or financial guaranty insurance 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) Any other person that the commissioner determines is not the type of person intended to be covered by the definition of viatical settlement provider.

[Q. "Viatical settlement purchase agreement" means a contract or agreement, entered into by a viatical settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or an interest in a life insurance policy, that is entered into for the purpose of deriving an economic benefit.]

R. (1) "Viatical settlement purchaser" means a person who provides a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy, or a person who owns or acquires or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit.

(2) "Viatical settlement purchaser" does not include:

- (a) A licensee under this Act;
- (b) An accredited investor or qualified institutional buyer as defined, respectively, in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended;
- (c) A financing entity;
- (d) A special purpose entity; or
- (e) A related provider trust.

**Drafting Note:** States should consider ways to encourage cooperation between the regulators of the sale of the insurance policy and the regulators of the purchase of the interest by an investor if these are regulated by different state agencies. States should also review securities laws as they might apply to transactions governed under this Act.

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

T. (1) "Viator" means the owner of a life insurance policy or a certificate holder under a group policy who resides in this state and enters or seeks to enter into a viatical settlement contract. For the purposes of this Act, a viator shall not be limited to an owner of a 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. If there is more than one viator on a single policy and the viators are residents of different states, the transaction shall be governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all the viators.

(2) "Viator" does not include:

- (a) A licensee under this Act, including a life insurance producer acting as a viatical settlement broker pursuant to this Act;
- (b) Qualified institutional buyer as defined, respectively, in Rule 144A promulgated under the Federal Securities Act of 1933, as amended;
- (c) A financing entity;
- (d) A special purpose entity; or
- (e) A related provider trust.

**Section 3. License and Bond Requirements**

- A. (1) A person shall 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.
- [(2) A person shall not operate as a viatical settlement investment agent without first obtaining a license from the commissioner of the state of residence of the viatical settlement purchaser. If there is more than one purchaser of a single policy and the purchasers are residents of different states, the viatical settlement purchase agreement shall be governed by the law of the state in which the purchaser having the largest percentage ownership resides or, if the purchasers hold equal ownership, the state of residence of one purchaser agreed upon in writing by all purchasers.]

**Drafting Note:** Regulators should be aware of the potential for conflict between the laws governing the sale and purchase of interests in life insurance policies and consider procedures to address any conflicts.

- (3) (a) A life insurance producer who has been duly licensed as a resident insurance producer with a life line of authority in this state or his or her home state for at least one year and is licensed as a nonresident producer in this state shall be deemed to meet the licensing requirements of this section and shall be permitted to operate as a viatical settlement broker.
- (b) Not later than thirty (30) days from the first day of operating as a viatical settlement broker, the life insurance producer shall notify the commissioner that he or she is acting as a viatical settlement broker on a form prescribed by the commissioner, and shall pay any applicable fee to be determined by the commissioner. Notification shall include an acknowledgement by the life insurance producer that he or she will operate as a viatical settlement broker in accordance with this Act.
- (c) The insurer that issued the policy being viaticated shall not be responsible for any act or omission of a viatical settlement broker or viatical settlement provider arising out of or in connection with the viatical settlement transaction, unless the insurer receives compensation for the placement of a viatical settlement contract from the viatical settlement provider or viatical settlement broker in connection with the viatical settlement contract.

**Drafting Note:** Section 3A(3)(a) and (b) would only apply to states that do not require the viatical settlement broker to obtain a separate license or registration. A life insurance producer operating in a state that requires a separate viatical settlement broker license or registration may be required to obtain such license or registration prior to operating as a viatical settlement broker in that state.

- (4) A person licensed as an attorney, certified public accountant or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the viator, whose compensation is not paid directly or indirectly by the viatical settlement provider, may negotiate viatical settlement contracts on behalf of the viator without having to obtain a license as a viatical settlement broker.
- B. Application for a viatical settlement provider, viatical settlement broker [or viatical settlement investment agent] license shall be made to the commissioner by the applicant on a form prescribed by the commissioner, and these applications shall be accompanied by the fees specified in Section [insert appropriate section].
- C. Licenses may be renewed from year to year on the anniversary date upon payment of the annual renewal fees specified in Section [insert appropriate section]. Failure to pay the fees by the renewal date results in expiration of the license.
- D. The applicant shall provide information on forms required by the commissioner. The commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members and employees, and the commissioner may, in the exercise of the commissioner's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member thereof who may materially influence the applicant's conduct meets the standards of this Act.
- E. A license issued to a legal entity authorizes all partners, officers, members and designated employees to act as viatical settlement providers, viatical settlement brokers [or viatical settlement investment agents,] as applicable, under the license, and all those persons shall be named in the application and any supplements to the application.
- F. Upon the filing of an application and the payment of the license fee, the commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:
  - (1) If a viatical settlement provider, has provided a detailed plan of operation;
  - (2) Is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;
  - (3) Has a good business reputation and has had experience, training or education so as to be qualified in the business for which the license is applied for;
  - (4)
    - (a) If a viatical settlement provider, has demonstrated evidence of financial responsibility in a format prescribed by the commissioner through either a surety bond executed and issued by an insurer authorized to issue surety bonds in this state or a deposit of cash, certificates of deposit or securities or any combination thereof in the amount of \$250,000.
    - (b) If a viatical settlement broker, has demonstrated evidence of financial responsibility in a format prescribed by the commissioner through either a surety bond executed and issued by an insurer authorized to issue surety bonds in this state or a deposit of cash, certificates of deposit or securities or any combination thereof in the amount of \$250,000.
    - (c) The commissioner shall accept, as evidence of financial responsibility, proof that financial instruments in accordance with the requirements in this paragraph

have been filed with one or more states where the applicant is licensed as a viatical settlement provider or viatical settlement broker.

- (d) The commissioner may ask for evidence of financial responsibility at any time the commissioner deems necessary.
  - (e) Any surety bond issued pursuant to Paragraph 4 shall be in the favor of this state and shall specifically authorize recovery by the commission on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud or conviction of unfair practices by the viatical settlement provider or viatical settlement broker.
- (5) If a legal entity, provides a certificate of good standing from the state of its domicile; and
  - (6) If a viatical settlement provider or viatical settlement broker, has provided an anti-fraud plan that meets the requirements of Section 14G of this Act.
- G. The commissioner shall 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.
  - H. A viatical settlement provider, viatical settlement broker or viatical settlement investment agent shall provide to the commissioner new or revised information about officers, ten percent (10%) or more stockholders, partners, directors, members or designated employees within thirty (30) days of the change.
  - I. An individual licensed as a viatical settlement broker shall complete on a biennial basis fifteen (15) hours of training related to viatical settlements and viatical settlement transactions, as required by the commissioner; provided, however, that a life insurance producer who is operating as a viatical settlement broker pursuant to Subsection A(3) shall not be subject to the requirements of this subsection. Any person failing to meet the requirements of this subsection shall be subject to the penalties imposed by the commissioner.

#### **Section 4. License Revocation and Denial**

- A. The commissioner may refuse to issue, suspend, revoke or refuse to renew the license of a viatical settlement provider, viatical settlement broker [or viatical settlement investment agent] if the commissioner finds that:
  - (1) There was any material misrepresentation in the application for the license;
  - (2) 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;
  - (3) The viatical settlement provider demonstrates a pattern of unreasonable payments to viators;
  - (4) The licensee or any officer, partner, member or key management personnel 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;

- (5) The viatical settlement provider has entered into any viatical settlement contract that has not been approved pursuant to this Act;
  - (6) The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract [or a viatical settlement purchase agreement];
  - (7) The licensee no longer meets the requirements for initial licensure;
  - (8) 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, viatical settlement purchaser, an accredited investor or qualified institutional buyer as defined respectively in Rule 501(a) or Rule 144A promulgated under the Federal Securities Act of 1933, as amended, financing entity, special purpose entity, or related provider trust; or
  - (9) The licensee or any officer, partner, member or key management personnel has violated any provision of this Act.
- B. The commissioner may suspend, revoke or refuse to renew the license of a viatical settlement broker or a life insurance producer operating as a viatical settlement broker pursuant to this Act if the commissioner finds that the viatical settlement broker or life insurance producer has violated the provisions of this Act or has otherwise engaged in of bad faith conduct with one or more viators.
- C. If the commissioner denies a license application or suspends, revokes or refuses to renew the license of a viatical settlement provider, viatical settlement broker [or viatical settlement investment agent,] or suspends, revokes, or refuses to renew a license of a life insurance producer operating as a viatical settlement broker pursuant to this Act the commissioner shall conduct a hearing in accordance with [insert reference to state's administrative procedure act].

#### **Section 5. Approval of Viatical Settlement Contracts and Disclosure Statements**

A person shall not use a viatical settlement contract form or provide to a viator a disclosure statement form in this state unless first filed with and approved by the commissioner. The commissioner shall disapprove a viatical settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or provisions contained therein fail to meet the requirements of Sections 8, 10, 13 and 14B of this Act or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. At the commissioner's discretion, the commissioner may require the submission of advertising material.

#### **Section 6. Reporting Requirements and Privacy**

- A. Each viatical settlement provider shall file with the commissioner on or before March 1 of each year an annual statement containing such information as the commissioner may prescribe by regulation. Such information shall be limited to only those transactions where the viator is a resident of this state. Individual transaction data regarding the business of viatical settlements or data that could compromise the privacy of personal, financial and health information of the viator or insured shall be filed with the commissioner on a confidential basis.
- B. Except as otherwise allowed or required by law, a viatical settlement provider, viatical settlement broker, [viatical settlement investment agent,] insurance company, insurance producer, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, shall not disclose that identity as an insured, or the insured's financial or medical information to any other person unless the disclosure:
- (1) 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;



- [(2) Is necessary to effect a viatical settlement purchase agreement between the viatical settlement purchaser and a viatical settlement provider and the viator and insured have provided prior written consent to the disclosure;]
- (3) Is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency or pursuant to the requirements of Section 14C;
- (4) Is a term of or condition to the transfer of a policy by one viatical settlement provider to another viatical settlement provider;
- (5) 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 and the viator and insured have provided prior written consent to the disclosure;
- (6) Is necessary to allow the viatical settlement provider or viatical settlement broker or their authorized representatives to make contacts for the purpose of determining health status;  
or
- (7) Is required to purchase stop loss coverage or financial guaranty insurance.

**Drafting Note:** In implementing this section, states should keep in mind privacy considerations of insureds. However, the language needs to be broad enough to allow licensed entities to notify commissioners of unlicensed activity and for insurers to make necessary disclosures to insurers and in similar situations.

## **Section 7. Examination or Investigations**

### **A. Authority, Scope and Scheduling of Examinations**

- (1)
  - (a) The commissioner may conduct an examination under this Act of a licensee as often as the commissioner in his or her discretion deems appropriate after considering the factors set forth in this paragraph.
  - (b) In scheduling and determining the nature, scope, and frequency of the examinations, the commissioner shall consider such matters as the consumer complaints, results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, report of independent certified public accountants, and other relevant criteria as determined by the commissioner.
- (2) For purposes of completing an examination of a licensee under this Act, the commissioner may examine or investigate any person, or the business of any person, in so far as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the licensee.
- (3) In lieu of an examination under this Act of any foreign or alien licensee licensed in this state, the commissioner may, at the commissioner's discretion, accept an examination report on the licensee as prepared by the commissioner for the licensee's state of domicile or port-of-entry state.
- (4) As far as practical, the examination of a foreign or alien insurer shall be made in cooperation with the insurance supervisory officials of other states in which the insurer transacts business.

### **B. Record Retention Requirements**

- (1) A person required to be licensed by this Act shall for five (5) years retain copies of all:
  - (a) Proposed, offered or executed contracts, purchase agreements, underwriting documents, policy forms, and applications from the date of the proposal, offer or execution of the contract or purchase agreement, whichever is later;
  - (b) All checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of funds from the date the transaction; and
  - (c) All other records and documents related to the requirements of this Act.
- (2) This section does not relieve a person of the obligation to produce these documents to the commissioner after the retention period has expired if the person has retained the documents.
- (3) Records required to be retained by this section must be legible and complete and may be retained in paper, photograph, microprocess, magnetic, mechanical, or electronic media, or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

C. Conduct of Examinations

- (1) Upon determining that an examination should be conducted, the commissioner shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the *Examiners Handbook* adopted by the National Association of Insurance Commissioners (NAIC). The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.
- (2) Every licensee or person from whom information is sought, its officers, directors and agents shall provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets and computer or other recordings relating to the property, assets, business and affairs of the licensee being examined. The officers, directors, employees and agents of the licensee or person shall facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the commissioner shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the licensee to engage in the viatical settlement business or other business subject to the commissioner's jurisdiction. Any proceedings for suspension, revocation or refusal of any license or authority shall be conducted pursuant to Section [insert reference to cease and desist statute or other law having a post-order hearing mechanism].
- (3) The commissioner shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the Court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.
- (4) When making an examination under this Act, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other

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

- (5) Nothing contained in this Act shall be construed to limit the commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be *prima facie* evidence in any legal or regulatory action.
- (6) Nothing contained in this Act shall be construed to limit the commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the commissioner may, in his or her sole discretion, deem appropriate.

**Drafting Note:** In many states examination work papers remain confidential. The previous paragraph should be adjusted to conform to state statute and practice.

D. Examination Reports

- (1) Examination reports shall be comprised of only facts appearing upon the books, records or other documents of the licensee, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.
- (2) No later than sixty (60) days following completion of the examination, the examiner in charge shall file with the commissioner a verified written report of examination under oath. Upon receipt of the verified report, the commissioner shall transmit the report to the licensee examined, together with a notice that shall afford the licensee examined a reasonable opportunity of not more than thirty (30) days to make a written submission or rebuttal with respect to any matters contained in the examination report.
- (3) In the event the commissioner determines that regulatory action is appropriate as a result of an examination, the commissioner may initiate any proceedings or actions provided by law.

E. Confidentiality of Examination Information

- (1) Names and individual identification data for all viators shall be considered private and confidential information and shall not be disclosed by the commissioner, unless required by law.
- (2) Except as otherwise provided in this Act, all examination reports, working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the commissioner or any other person in the course of an examination made under this Act, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a licensee shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. The commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.

- (3) Documents, materials or other information, including, but not limited to, all working papers, and copies thereof, in the possession or control of the NAIC and its affiliates and subsidiaries shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if they are:
- (a) Created, produced or obtained by or disclosed to the NAIC and its affiliates and subsidiaries in the course of assisting an examination made under this Act, or assisting a commissioner in the analysis or investigation of the financial condition or market conduct of a licensee; or
  - (b) Disclosed to the NAIC and its affiliates and subsidiaries under Subsection E(4) by a commissioner.
  - (c) For the purposes of Subsection E(2), "Act" includes the law of another state or jurisdiction that is substantially similar to this Act.
- (4) Neither the commissioner nor any person that received the documents, material or other information while acting under the authority of the commissioner, including the NAIC and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to Subsection E(1).
- (5) In order to assist in the performance of the commissioner's duties, the commissioner:
- (a) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection E(1), with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication or other information;
  - (b) May receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and
  - (c) [Optional provision] May enter into agreements governing sharing and use of information consistent with this subsection.
- (6) No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection E(4).
- (7) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this state.
- (8) Nothing contained in this Act shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary

examination report or results, or any matter relating thereto, to the commissioner of any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time or to the NAIC, so long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this Act.

F. Conflict of Interest

- (1) An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this Act. This section shall not be construed to automatically preclude an examiner from being:
  - (a) A viator;
  - (b) An insured in a viaticated insurance policy; or
  - (c) A beneficiary in an insurance policy that is proposed to be viaticated.
- (2) Notwithstanding the requirements of this clause, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this Act.

G. Cost of Examinations

**Drafting Note:** The NAIC Model State Insurance Department Funding Bill or such funding mechanism as may be currently authorized by law should be incorporated here by reference. Any funding mechanism should assure that the manner in which examinations are funded does not influence the scheduling, scope or conduct of examination.

H. Immunity from Liability

- (1) No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives or any examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this Act.
- (2) No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this Act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This paragraph does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in Paragraph (1).
- (3) A person identified in Paragraph (1) or (2) shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this Act and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

I. Investigative Authority of the Commissioner

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

**Section 8. Disclosure to Viator**

A. With each application for a viatical settlement, a viatical settlement provider or viatical settlement broker shall 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 shall be provided in a separate document that is signed by the viator and the viatical settlement provider or viatical settlement broker, and shall provide the following information:

- (1) There are possible alternatives to viatical settlement contracts including any accelerated death benefits or policy loans offered under the viator's life insurance policy.
- (2) That a viatical settlement broker represents exclusively the viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to the viator, including a duty to act according to the viator's instructions and in the best interest of the viator.
- (3) 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.
- (4) Proceeds of the viatical settlement could be subject to the claims of creditors.
- (5) Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.
- (6) The viator has the right to rescind a viatical settlement contract before the earlier of sixty (60) calendar days after the date upon which the viatical settlement contract is executed by all parties or thirty (30) calendar days after the viatical settlement proceeds have been paid to the viator, as provided in Section 10F. Rescission, if exercised by the viator, is effective only if both notice of the rescission is given, and the viator repays all proceeds and any premiums, loans and loan interest paid on account of the viatical settlement within the rescission period. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment by the viator or the viator's estate of all viatical settlement proceeds and any premiums, loans and loan interest the viatical settlement within sixty (60) days of the insured's death.
- (7) Funds will be sent to the viator within three (3) business days after the viatical settlement provider has received the insurer or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.
- (8) Entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator. Assistance should be sought from a financial adviser.
- (9) Disclosure to a viator shall include distribution of a brochure describing the process of viatical settlements. The NAIC's form for the brochure shall be used unless another form is developed or approved by the commissioner.
- (10) The disclosure document shall contain the following language: "All medical, financial or personal information solicited or obtained by a viatical settlement provider or viatical

settlement broker about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the viatical settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."

- (11) Following execution of a viatical contract, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number, or as otherwise provided in this Act. This contact shall be limited to once every three (3) months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less. All such contracts shall be made only by a viatical settlement provider licensed in the state in which the viator resided at the time of the viatical settlement, or by the authorized representative of a duly licensed viatical settlement provider.

B. A viatical settlement provider shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide the following information:

- (1) The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy to be viaticated;
- (2) The document shall include the name, business address and telephone number of the viatical settlement provider;
- (3) Any affiliations or contractual arrangements between the viatical settlement provider and the viatical settlement purchaser, including the amount and method of calculating the provider's compensation. The term "compensation" includes anything of value paid or given to a viatical settlement broker for the placement of a policy.
- (4) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement;
- (5) State the dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate. If known, the viatical settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the extent to which the viator's interest in those benefits will be transferred as a result of the viatical settlement contract; and
- (6) State whether the funds will be escrowed with an independent third party during the transfer process, and if so, provide the name, business address, and telephone number of the independent third party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

C. A viatical settlement broker shall provide the viator with at least the following disclosures no later than the date the viatical settlement contract is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and provide the following information:

- (1) The name, business address and telephone number of the viatical settlement broker;
- (2) A full, complete and accurate description of all offers, counter-offers, acceptances and rejections relating to the proposed viatical settlement contract;
- (3) A written disclosure of any affiliations or contractual arrangements between the viatical settlement broker and any person making an offer in connection with the proposed viatical settlement contracts;
- (4) The amount and method of calculating the broker's compensation, which term "compensation" includes anything of value paid or given to a viatical settlement broker for the placement of a policy; and
- (5) Where any portion of the viatical settlement broker's compensation, as defined in Paragraph (3) of this subsection, is taken from a proposed viatical settlement offer, the broker shall disclose the total amount of the viatical settlement offer and the percentage of the viatical settlement offer comprised by the viatical settlement broker's compensation.

D. If the viatical settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within twenty (20) days after the change.

[E. A viatical settlement provider or its viatical settlement investment agent shall provide the viatical settlement purchaser with at least the following disclosures prior to the date the viatical settlement purchase agreement is signed by all parties. The disclosures shall be conspicuously displayed in any viatical purchase contract or in a separate document signed by the viatical settlement purchaser and viatical settlement provider or viatical settlement investment agent, and shall make the following disclosure to the viatical settlement purchaser:

- (1) The purchaser will receive no returns (i.e., dividends and interest) until the insured dies and a death claim payment is made.
- (2) The actual annual rate of return on a viatical settlement contract is dependent upon an accurate projection of the insured's life expectancy, and the actual date of the insured's death. An annual "guaranteed" rate of return is not determinable.
- (3) The viaticated life insurance contract should not be considered a liquid purchase since it is impossible to predict the exact timing of its maturity and the funds probably are not available until the death of the insured. There is no established secondary market for resale of these products by the purchaser.
- (4) The purchaser may lose all benefits or may receive substantially reduced benefits if the insurer goes out of business during the term of the viatical investment.
- (5) The purchaser is responsible for payment of the insurance premium or other costs related to the policy, if required by the terms of the viatical purchase agreement. These payments may reduce the purchaser's return. If a party other than the purchaser is responsible for the payment, the name and address of that party also shall be disclosed.
- (6) The purchaser is responsible for payment of the insurance premiums or other costs related to the policy if the insured returns to health. Disclose the amount of such premiums, if applicable.



- (7) State the name, business address and telephone number of the independent third party providing escrow services and the relationship to the broker.
- (8) The amount of any trust fees or other expenses to be charged to the viatical settlement purchaser shall be disclosed.
- (9) State whether the purchaser is entitled to a refund of all or part of his or her investment under the settlement contract if the policy is later determined to be null and void.
- (10) Disclose that group policies may contain limitations or caps in the conversion rights, additional premiums may have to be paid if the policy is converted, name the party responsible for the payment of the additional premiums and, if a group policy is terminated and replaced by another group policy, state that there may be no right to convert the original coverage.
- (11) Disclose the risks associated with policy contestability including, but not limited to, the risk that the purchaser will have no claim or only a partial claim to death benefits should the insurer rescind the policy within the contestability period.
- (12) Disclose whether the purchaser will be the owner of the policy in addition to being the beneficiary, and if the purchaser is the beneficiary only and not also the owner, the special risks associated with that status, including, but not limited to, the risk that the beneficiary may be changed or the premium may not be paid.
- (13) Describe the experience and qualifications of the person who determines the life expectancy of the insured, i.e., in-house staff, independent physicians and specialty firms that weigh medical and actuarial data; the information this projection is based on; and the relationship of the projection maker to the viatical settlement provider, if any.
- (14) Disclosure to an investor shall include distribution of a brochure describing the process of investment in viatical settlements. The NAIC's form for the brochure shall be used unless one is developed by the commissioner.]

[F. A viatical settlement provider or its viatical settlement investment agent shall provide the viatical settlement purchaser with at least the following disclosures no later than at the time of the assignment, transfer or sale of all or a portion of an insurance policy. The disclosures shall be contained in a document signed by the viatical settlement purchaser and viatical settlement provider or viatical settlement investment agent, and shall make the following disclosures to the viatical settlement purchaser:

- (1) Disclose all the life expectancy certifications obtained by the provider in the process of determining the price paid to the viator.
- (2) State whether premium payments or other costs related to the policy have been escrowed. If escrowed, state the date upon which the escrowed funds will be depleted and whether the purchaser will be responsible for payment of premiums thereafter and, if so, the amount of the premiums.
- (3) State whether premium payments or other costs related to the policy have been waived. If waived, disclose whether the investor will be responsible for payment of the premiums if the insurer that wrote the policy terminates the waiver after purchase and the amount of those premiums.

- (4) Disclose the type of policy offered or sold, i.e., whole life, term life, universal life or a group policy certificate, any additional benefits contained in the policy, and the current status of the policy.
- (5) If the policy is term insurance, disclose the special risks associated with term insurance including, but not limited to, the purchaser's responsibility for additional premiums if the viator continues the term policy at the end of the current term.
- (6) State whether the policy is contestable.
- (7) State whether the insurer that wrote the policy has any additional rights that could negatively affect or extinguish the purchaser's rights under the viatical settlement contract, what these rights are, and under what conditions these rights are activated.
- (8) State the name and address of the person responsible for monitoring the insured's condition. Describe how often the monitoring of the insured's condition is done, how the date of death is determined, and how and when this information will be transmitted to the purchaser.]

[G. The viatical settlement purchase agreement is voidable by the purchaser at any time within three (3) days after the disclosures mandated by Subsections E and F of this section are received by the purchaser.]

#### **Section 9. Disclosure to Insurer**

Prior to the initiation of a plan, transaction or series of transactions, a viatical settlement broker or viatical settlement provider shall fully disclose to an insurer a plan, transaction or series of transactions, to which the viatical settlement broker or viatical settlement provider is a party, to originate, renew, continue or finance a life insurance policy with the insurer for the purpose of engaging in the business of viatical settlements at anytime prior to, or during the first five (5) years after, issuance of the policy.

#### **Section 10. General Rules**

- A. (1) A viatical settlement provider entering into a viatical settlement contract shall first obtain:
  - (a) 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; and
  - (b) A document in which the insured consents to the release of his or her medical records to a licensed viatical settlement provider, viatical settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.
- (2) Within twenty (20) days after a viator executes documents necessary to transfer any rights under an insurance policy or within twenty (20) days of entering any agreement, option, promise or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider shall give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy. The notice shall be accompanied by the documents required by Paragraph (3).
- (3) The viatical provider shall deliver a copy of the medical release required under Paragraph (1)(b), a copy of the viator's application for the viatical settlement contract, the notice required under Paragraph (2) and a request for verification of coverage to the insurer that issued the life policy that is the subject of the viatical transaction. The NAIC's form for

verification of coverage shall be used unless another form is developed or approved by the commissioner.

**Drafting Note:** The NAIC's forms are Appendices B and C of the Viatical Settlements Model Regulation.

- (4) The insurer shall respond to a request for verification of coverage submitted on an approved form by a viatical settlement provider or viatical settlement broker within thirty (30) calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible fraud. The insurer shall accept a request for verification of coverage made on an NAIC form or any other form approved by the commissioner. The insurer shall accept an original or facsimile or electronic copy of such request and any accompanying authorization signed by the viator. Failure by the insurer to meet its obligations under this subsection shall be a violation of Section 11C and Section 16 of this Act.
- (5) Prior to or at the time of execution of the viatical settlement contract, the viatical settlement provider shall obtain 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 he or she has a full and complete understanding of the benefits of the life insurance policy, acknowledges that he or she is entering into the viatical settlement contract freely and voluntarily and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the life insurance policy was issued.
- (6) If a viatical settlement broker performs any of these activities required of the viatical settlement provider, the provider is deemed to have fulfilled the requirements of this section.

- B. All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information.

**Drafting Note:** A state may wish to make specific reference to the privacy provisions adopted in response to the requirements of the Gramm-Leach-Bliley Act, such as the state equivalent to the NAIC's Privacy of Consumer Financial and Health Information Regulation. Consider whether the state's privacy provision allows continual sharing of medical information or whether permission must be renewed.

- C. All viatical settlement contracts entered into in this state shall provide the viator with an absolute right to rescind the contract before the earlier of sixty (60) calendar days after the date upon which the viatical settlement contract is executed by all parties or thirty (30) calendar days after the viatical settlement proceeds have been sent to the viator as provided in Section 10F. Rescission by the viator may be conditioned upon the viator both giving notice and repaying to the viatical settlement provider within the rescission period all proceeds of the settlement and any premiums, loans and loan interest paid by or on behalf of the viatical settlement provider in connection with or as a consequence of the viatical settlement. If the insured dies during the rescission period, the viatical settlement contract shall be deemed to have been rescinded, subject to repayment to the viatical settlement provider or purchaser of all viatical settlement proceeds, and any premiums, loans and loan interest that have been paid by the viatical settlement provider or purchaser, which shall be paid within sixty (60) calendar days of the death of the insured. In the event of any rescission, if the viatical settlement provider has paid commissions or other compensation to a viatical settlement broker in connection with the rescinded transaction, the viatical settlement broker shall refund all such commissions and compensation to the viatical settlement provider within five business days following receipt of written demand from the viatical settlement provider, which demand shall be accompanied by either the viator's notice of rescission if

rescinded at the election of the viator, or notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period.

- [D. The purchaser shall have the right to rescind a viatical settlement contract within three (3) days after the disclosures mandated by Section 8D and 8E are received by the purchaser.]
- E. The viatical settlement provider shall instruct the viator to send the executed documents required to effect the change in ownership, assignment or change in beneficiary directly to the independent escrow agent. Within three (3) business days after the date the escrow agent receives the document (or from the date the viatical settlement provider receives the documents, if the viator erroneously provides the documents directly to the provider), the provider shall pay or transfer the proceeds of the viatical settlement into an escrow or trust account maintained in a state or federally-chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the viatical settlement provider or related provider trust or other designated representative of the viatical settlement provider. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator.
- F. Failure to tender consideration to the viator for the viatical settlement contract within the time set forth in the disclosure pursuant to Section 8A(7) renders the viatical settlement contract voidable by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator. Funds shall be deemed sent by a viatical settlement provider to a viator as of the date that the escrow agent either releases funds for wire transfer to the viator or places a check for delivery to the viator via United States Postal Service or other nationally recognized delivery service.
- G. Contacts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or viatical settlement broker after the viatical settlement has occurred shall only be made by the viatical settlement provider or broker licensed in this state or its authorized representatives and shall be limited to once every three (3) 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 into. The limitations set forth in this subsection shall not apply to any contacts with an insured for reasons other than determining the insured's health status. Viatical settlement providers and viatical settlement brokers shall be responsible for the actions of their authorized representatives.

#### **Section 11. Prohibited Practices**

- A. It is a violation of this Act for any person to enter into a viatical settlement contract at any time prior to the application or issuance of a policy which is the subject of viatical settlement contract or within a five-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 five-year period:
  - (1) The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least sixty (60) months. The time covered under a group policy shall be calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;

- (2) The viator submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the five-year period:
  - (a) The viator or insured is terminally or chronically ill;
  - (b) The viator's spouse dies;
  - (c) The viator divorces his or her spouse;
  - (d) The viator retires from full-time employment;
  - (e) The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment; or
  - (f) A final order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or approving a petition seeking reorganization of the viator or appointing a receiver, trustee or liquidator to all or a substantial part of the viator's assets; or
- (3) The viator enters into a viatical settlement contract more than two (2) years after the date of issuance of a policy and, with respect to the policy, at all times prior to the date that is two (2) years after policy issuance, the following conditions are met:
  - (a) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of its net cash surrender value, provided by, or fully recourse liability incurred by, the insured or a person described in Section 2N(3)(d);
  - (b) There is no agreement or understanding with any other person to guarantee any such liability or to purchase, or stand ready to purchase, the policy, including through an assumption or forgiveness of the loan; and
  - (c) Neither the insured nor the policy has been evaluated for settlement.
- B. Copies of the independent evidence described in Subsection A(2) and documents required by Section 10A shall be submitted to the insurer when the viatical settlement provider or other party entering into a viatical settlement contract with a viator submits a request to the insurer for verification of coverage. The copies shall be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.
- C. If the viatical settlement provider submits to the insurer a copy of the owner or insured's certification described in and the independent evidence required by Subsection A(2) when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the viatical settlement provider, the copy shall be deemed to conclusively establish that the viatical settlement contract satisfies the requirements of this section and the insurer shall timely respond to the request.
- D. No insurer may, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a viatical settlement contract, require that the viator, insured, viatical settlement provider or viatical settlement broker sign any forms, disclosures, consent or

waiver form that has not been expressly approved by the commissioner for use in connection with viatical settlement contracts in this state.

- E. Upon receipt of a properly completed request for change of ownership or beneficiary of a policy, the insurer shall respond in writing within thirty (30) calendar days with written acknowledgement confirming that the change has been effected or specifying the reasons why the requested change cannot be processed. The insurer shall not unreasonably delay effecting change of ownership or beneficiary and shall not otherwise seek to interfere with any viatical settlement contract lawfully entered into in this state.

**Section 12. Prohibited Practices and Conflicts of Interest**

- A. With respect to any viatical settlement contract or insurance policy, no viatical settlement broker knowingly shall solicit an offer from, effectuate a viatical settlement with or make a sale to any viatical settlement provider, viatical settlement purchaser, [viatical settlement investment agent], financing entity or related provider that is controlling, controlled by, or under common control with such viatical settlement broker.
- B. With respect to any viatical settlement contract or insurance policy, no viatical settlement provider knowingly may enter into a viatical settlement contract with a viator, if, in connection with such viatical settlement contract, anything of value will be paid to a viatical settlement broker that is controlling, controlled by, or under common control with such viatical settlement provider or the viatical settlement purchaser, [viatical settlement investment agent], financing entity or related provider trust that is involved in such viatical settlement contract.
- C. A violation of Subsection A or Subsection B shall be deemed a fraudulent viatical settlement act.
- D. No viatical settlement provider shall enter into a viatical settlement contract unless the viatical settlement promotional, advertising and marketing materials, as may be prescribed by regulation, have been filed with the commissioner. In no event shall any marketing materials expressly reference that the insurance is "free" for any period of time. The inclusion of any reference in the marketing materials that would cause a viator to reasonably believe that the insurance is free for any period of time shall be considered a violation of this Act.
- E. No life insurance producer, insurance company, viatical settlement broker, viatical settlement provider or viatical settlement investment agent shall make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

**Section 13. Advertising for Viatical Settlements [and Viatical Settlements Purchase Agreements]**

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

- A. This section shall apply to any advertising of viatical settlement contracts, [viatical purchase agreements] or related products or services intended for dissemination in this state, including Internet advertising viewed by persons located in this state. Where disclosure requirements are established pursuant to federal regulation, this section shall be interpreted so as to minimize or eliminate conflict with federal regulation wherever possible.

- B. Every viatical settlement licensee shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its contracts, products and services. All advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the viatical settlement licensees, as well as the individual who created or presented the advertisement. A system of control shall include regular routine notification, at least once a year, to agents and others authorized by the viatical settlement licensee who disseminate advertisements of the requirements and procedures for approval prior to the use of any advertisements not furnished by the viatical settlement licensee.
- C. Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a viatical settlement contract [or viatical settlement purchase agreement, product or service] shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the commissioner from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.
- [D. Certain viatical settlement advertisements are deemed false and misleading on their face and are prohibited. False and misleading viatical settlement advertisements include, but are not limited to, the following representations:
- (1) "Guaranteed," "fully secured," "100 percent secured," "fully insured," "secure," "safe," "backed by rated insurance companies," "backed by federal law," "backed by state law," or "state guaranty funds," or similar representations;
  - (2) "No risk," "minimal risk," "low risk," "no speculation," "no fluctuation," or similar representations;
  - (3) "Qualified or approved for individual retirement accounts (IRAs), Roth IRAs, 401(k) plans, simplified employee pensions (SEP), 403(b), Keogh plans, TSA, other retirement account rollovers," "tax deferred," or similar representations;
  - (4) Utilization of the word "guaranteed" to describe the fixed return, annual return, principal, earnings, profits, investment, or similar representations;
  - (5) "No sales charges or fees" or similar representations;
  - (6) "High yield," "superior return," "excellent return," "high return," "quick profit," or similar representations; and
  - (7) Purported favorable representations or testimonials about the benefits of viatical settlement contracts or viatical settlement purchase agreements as an investment, taken out of context from newspapers, trade papers, journals, radio and television programs, and all other forms of print and electronic media.]
- E. The information required to be disclosed under this section shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.
- (1) An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or use has the capacity, tendency or effect of misleading or deceiving viators, [purchasers or prospective purchasers] as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence. The fact that the viatical settlement contract [or viatical settlement purchase agreement]

offered is made available for inspection prior to consummation of the sale, or an offer is made to refund the payment if the viator is not satisfied or that the viatical settlement contract [or viatical settlement purchase agreement] includes a "free look" period that satisfies or exceeds legal requirements, does not remedy misleading statements.

- (2) An advertisement shall not use the name or title of a life insurance company or a life insurance policy unless the advertisement has been approved by the insurer.
- [(3) An advertisement shall not represent that premium payments will not be required to be paid on the life insurance policy that is the subject of a viatical settlement contract or viatical settlement purchase agreement in order to maintain that policy, unless that is the fact.]
- (4) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable or in any manner an incorrect or improper practice.
- (5) The words "free," "no cost," "without cost," "no additional cost," "at no extra cost," or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.
- (6) Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the viatical settlement contract [or viatical settlement purchase agreement,] product or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators [or purchasers] as to the nature or scope of the testimonials, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, a licensee under this Act makes as its own all the statements contained therein, and the statements are subject to all the provisions of this section.
  - (a) If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the party making use of the testimonial, appraisal, analysis or endorsement, either directly or through a related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.
  - (b) An advertisement shall not state or imply that a viatical settlement contract [or viatical settlement purchase agreement,] benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the viatical settlement licensee, or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.
  - (c) When an endorsement refers to benefits received under a viatical settlement contract [or viatical settlement purchase agreement] all pertinent information shall be retained for a period of five (5) years after its use.

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



- G. An advertisement shall not disparage insurers, viatical settlement providers, viatical settlement brokers, viatical settlement investment agents, insurance producers, policies, services or methods of marketing.
- H. The name of the viatical settlement licensee shall be clearly identified in all advertisements about the licensee or its viatical settlement contract [or viatical settlement purchase agreements], products or services, and if any specific viatical settlement contract [or viatical settlement purchase agreement] is advertised, the viatical settlement contract [or viatical settlement purchase agreement] shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name of the viatical settlement provider shall be shown on the application.
- I. An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol or other device or reference without disclosing the name of the viatical settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee, or to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a viatical settlement contract [or viatical settlement purchase agreement].
- J. An advertisement shall not use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators [or purchasers] into believing that the solicitation is in some manner connected with a government program or agency.
- K. An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that competing viatical settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the department of insurance to find out if the state requires licensing and, if so, whether the viatical settlement provider, viatical settlement broker [or viatical settlement investment agent] is licensed.
- L. An advertisement shall not create the impression that the viatical settlement provider, its financial condition or status, the payment of its claims or the merits, desirability, or advisability of its viatical settlement contracts [or viatical settlement purchase agreement forms] are recommended or endorsed by any government entity.
- M. The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.
- N. An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the U. S. government endorses, approves or favors:
  - (1) Any viatical settlement licensee or its business practices or methods of operation;
  - (2) The merits, desirability or advisability of any viatical settlement contract or [viatical settlement purchase agreement];
  - (3) Any viatical settlement contract or [viatical settlement purchase agreement]; or

(4) Any life insurance policy or life insurance company.

- O. If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.
- P. If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six (6) months.

**Section 14. Fraud Prevention and Control**

**A. Fraudulent Viatical Settlement Acts, Interference and Participation of Convicted Felons Prohibited.**

- (1) A person shall not commit a fraudulent viatical settlement act.
- (2) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this Act or investigations of suspected or actual violations of this Act.
- (3) A person in the business of viatical settlements shall 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.

**B. Fraud Warning Required.**

- (1) Viatical settlements contracts [and purchase agreement forms] and applications for viatical settlements, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

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

**Drafting Note:** The preceding will be tailored to whether the form is related to a viatical settlement contract or purchase agreement.

- (2) The lack of a statement as required in Paragraph (1) of this subsection does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

**C. Mandatory Reporting of Fraudulent Viatical Settlement Acts.**

- (1) Any person engaged in the business of viatical settlements having knowledge or a reasonable suspicion that a fraudulent viatical settlement act is being, will be or has been committed shall provide to the commissioner such information as required by, and in a manner prescribed by, the commissioner.
- (2) 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.

D. Immunity from Liability.

- (1) No civil liability shall be imposed on and no cause of action shall arise from a person's 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 acts or that person's agents, employees or representatives;
  - (d) The National Association of Insurance Commissioners (NAIC), National Association of Securities Dealers (NASD), the North American Securities Administrators Association (NASAA), 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.
- (2) Paragraph (1) of this subsection shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act, the party bringing the action shall plead specifically any allegation that Paragraph (1) does not apply because the person filing the report or furnishing the information did so with actual malice.
- (3) A person furnishing information as identified in Paragraph (1) shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this Act and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated. However, such an award does not apply to any person furnishing information concerning his or her own fraudulent viatical settlement acts.
- (4) This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in Paragraph (1).

E. Confidentiality.

- (1) The documents and evidence provided pursuant to Subsection D or obtained by the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.
- (2) Paragraph (1) does not prohibit release by the commissioner of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts:

- (a) In administrative or judicial proceedings to enforce laws administered by the commissioner;
  - (b) To federal, state or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts or to the NAIC; or
  - (c) At the discretion of the commissioner, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act.
- (3) Release of documents and evidence under Paragraph (2) does not abrogate or modify the privilege granted in Paragraph (1).

F. Other Law Enforcement or Regulatory Authority.

This Act shall not:

- (1) Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;
- (2) Prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the insurance department; or
- (3) Limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

G. Viatical Settlement Antifraud Initiatives.

- (1) Viatical settlement providers and viatical settlement brokers shall have in place antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent viatical settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of this section.
- (2) Antifraud initiatives shall include:
  - (a) Fraud investigators, who may be viatical settlement provider or viatical settlement broker employees or independent contractors; and
  - (b) An antifraud plan, which shall be submitted to the commissioner. The antifraud plan shall include, but not be limited to:
    - (i) 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;
    - (ii) A description of the procedures for reporting possible fraudulent viatical settlement acts to the commissioner;

- (iii) A description of the plan for antifraud education and training of underwriters and other personnel; and
  - (iv) 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.
- (3) Antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

**Section 15. Injunctions; Civil Remedies; Cease and Desist**

- A. In addition to the penalties and other enforcement provisions of this Act, if any person violates this Act or any regulation implementing this Act, the commissioner may seek an injunction in a court of competent jurisdiction and may apply for temporary and permanent orders that the commissioner determines are necessary to restrain the person from committing the violation.
- B. Any person damaged by the acts of a person in violation of this Act may bring a civil action against the person committing the violation in a court of competent jurisdiction.
- [C. A violation of this Act attendant to the execution of a viatical settlement purchase agreement renders the viatical settlement purchase agreement voidable and subject to rescission by the viatical settlement purchaser, upon return of the policy received to the viatical settlement provider. Suit for rescission may be brought in a court of competent jurisdiction or where the alleged violator resides or has a principal place of business or where the alleged violation occurred.]
- D. The commissioner may issue, in accordance with [cite the state administrative procedure act], a cease and desist order upon a person that violates any provision of this Act, any regulation or order adopted by the commissioner, or any written agreement entered into with the commissioner.
- E. When the commissioner finds that an activity in violation of this Act presents an immediate danger to the public that requires an immediate final order, the commissioner may issue an emergency cease and desist order reciting with particularity the facts underlying the findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for ninety (90) days. If the commissioner begins non-emergency cease and desist proceedings, the emergency cease and desist order remains effective, absent an order by a court of competent jurisdiction pursuant to [cite the state administrative procedure act].

**Drafting Note:** States should review their laws to see if the provisions of Subsections D and E are already in state law.

- F. In addition to the penalties and other enforcement provisions of this Act, any person who violates this Act is subject to civil penalties of up to \$[insert amount] per violation. Imposition of civil penalties shall be pursuant to an order of the commissioner issued under [insert reference to statutes relating to hearings conducted by the commissioner]. The commissioner's order may require a person found to be in violation of this Act to make restitution to persons aggrieved by violations of this Act.
- G. A person convicted of a violation of this Act by a court of competent jurisdiction [insert classifications for misdemeanor and felony penalties that match provisions in state's penal codes

for theft offenses]. A person convicted of a violation of this Act shall be ordered to pay restitution to persons aggrieved by the violation of this Act. Restitution shall be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment.

H. Except for a fraudulent viatical settlement act committed by a viator, the enforcement provisions and penalties of this section shall not apply to a viator. **Drafting Note:** The following is an example of a graded sentencing requirement and a stay of the statute of limitations.

A person convicted of a violation of this Act by a court of competent jurisdiction may be sentenced in accordance with Paragraphs (1), (2), (3) or (4) based on the greater of (i) the value of property, services, or other benefit wrongfully obtained or attempted to obtain, or (ii) the aggregate economic loss suffered by any person as a result of the violation. A person convicted of a fraudulent viatical settlement act must be ordered to pay restitution to persons aggrieved by the fraudulent viatical settlement act. Restitution must be ordered in addition to a fine or imprisonment but not in lieu of a fine or imprisonment.

(1) to imprisonment for not more than 20 years or to payment of a fine of not more than \$100,000, or both, if the value of viatical settlement contract is more than \$35,000;

(2) to imprisonment for not more than ten years or to payment of a fine of not more than \$20,000, or both, if the value of viatical settlement contract is more than \$2,500 but not more than \$35,000;

(3) to imprisonment for not more than five years or to payment of a fine of not more than \$10,000, or both, if the value of viatical settlement contract is more than \$500 but not more than \$2,500; or

(4) to imprisonment for not more than one year or to payment of a fine of not more than \$3,000, or both, if the value of viatical settlement contract is \$500 or less.

In any prosecution under this section under Paragraphs (1), (2), (3) and (4) the value of the viatical settlement contracts within any six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this section; provided that when two or more offenses are committed by the same person in two or more counties, the accused may be prosecuted in any county in which one of the offenses was committed for all of the offenses aggregated under this section. The applicable statute of limitations provision under [states should insert here the applicable statute of limitations provision cite] shall not begin to run until the insurance company or law enforcement agency is aware of the fraud, but in no event may the prosecution be commenced later than seven years after the act has occurred.

#### **Section 16. Unfair Trade Practices**

A violation of this Act, including the commission of a fraudulent viatical settlement act, shall be considered an unfair trade practice under Sections [insert reference to state's Unfair Trade Practices Act] subject to the penalties contained in that Act.

#### **Section 17. Authority to Promulgate Regulations**

The commissioner shall have the authority to:

- A. Promulgate regulations implementing this Act;
- B. Establish standards for evaluating reasonableness of payments under viatical settlement contracts for persons who are terminally or chronically ill. This authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise or bequest of a benefit under a life insurance policy insuring the life of a person that is chronically or terminally ill;

- C. Establish appropriate licensing requirements, fees and standards for continued licensure for viatical settlement providers, brokers [and viatical settlement investment agents];

**Drafting Note:** Fees need not be mentioned if the fee is set by statute.

- D. Require a bond or other mechanism for financial accountability for viatical settlement providers and brokers; and
- E. Adopt rules governing the relationship and responsibilities of both insurers and viatical settlement providers, viatical settlement brokers [and viatical settlement investment agents] during the viatication of a life insurance policy or certificate.

**Section 18. Severability**

If any portion of this Act or any amendments thereto, or its applicability to any person or circumstance is held invalid by a court, the remainder of this Act or its applicability to other persons or circumstances shall not be affected.

**Section 19. Effective Date**

This Act shall take effect on [insert date]. A viatical settlement provider, viatical settlement broker [or viatical settlement investment agent] transacting business in this state may continue to do so pending approval or disapproval of the provider, broker [or investment agent's] application for a license as long as the application is filed with the commissioner by [insert date].

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**STATEMENT SUPPORTING HOUSE BILL 1284**  
**BY**  
**J. BRUCE FERGUSON**  
**AMERICAN COUNCIL OF LIFE INSURERS**  
**BEFORE THE**  
**STATE OF NORTH DAKOTA**  
**SENATE INDUSTRY, BUSINESS AND LABOR COMMITTEE**  
**SENATOR JERRY KLEIN, CHAIRMAN**

**MARCH 11, 2009**



Good morning, Mr. Chairman and members of the Committee. My name is Bruce Ferguson, and I am Senior Vice President, State Relations for the American Council of Life Insurers (ACLI). ACLI is a national trade association comprised of 340 member life insurers which account for over 90 percent of the life insurance coverage in the State of North Dakota.

I am here this morning to testify in strong support for House Bill 1284, which would update North Dakota's viatical settlement law to make it among the strongest in the nation to prohibit stranger-originated life insurance (STOLI). STOLI is practice where speculators aim to circumvent your state's insurable interest law and abuse the vital social purpose of life insurance.

Accompanying this testimony is a brochure entitled "STOLI: The Problem and the Appropriate State Response" which has been prepared by ACLI, the National Association of Insurance and Financial Advisors (NAIFA), and the Association for Advanced Life Underwriting (AALU). The brochure summarizes why STOLI represents a threat to both consumers and the life insurance industry.

Of course, the STOLI issue is not a new issue for this Committee. In 2007, North Dakota became the first state in the nation to enact legislation addressing STOLI based on model legislation adopted by the National Association of Insurance Commissioners, under the leadership of former Insurance Commissioner Jim Poolman. Since that time, much has happened. STOLI promoters have developed new and sophisticated schemes to circumvent the law through the use of trusts that give the appearance of insurable interest. Unfortunately, when the onion is peeled back the same speculators are there, financing the policy, owning a beneficial interest in the policy through the trust, and profiting when the insured dies.

In fall 2007, the National Conference of Insurance Legislators (NCOIL) updated its own model legislation to address STOLI transactions conducted through trusts and other schemes. Mr. Chairman, you and Representative George Keiser are to be commended for the key roles you played in modernizing the NCOIL Model to combat STOLI.

ACLI strongly believes that the best legislation to combat STOLI can be achieved by combining provisions of existing North Dakota law with provisions from the NCOIL Life Settlements Model Act. That is precisely what House Bill 1284 – as amended and passed the House unanimously – will accomplish. ACLI appreciates the important contributions of Representatives Jim Kasper, George Keiser and Commissioner Adam Hamm

in amending the bill in the House to make it the strongest anti-STOLI legislation possible.

Among other things, House Bill 1284:

- Retains the limited 5-year settlement prohibition in existing law, which targets transactions with the characteristics of STOLI, such as non-recourse premium financing ("free" insurance), settlement guarantees and life expectancy evaluations. Protects consumer property rights by permitting settlements at any time for reasons such as chronic or terminal illness, death of spouse, divorce, disability and bankruptcy.
- Defines "STOLI" to mean a practice or plan to initiate a life insurance policy for the benefit of a third party investor that, at the time of policy origination, has no insurable interest in the insured. Includes within the definition of STOLI trusts that are created to give the appearance of insurable interest. Makes STOLI a fraudulent settlement act.
- Makes it a fraudulent settlement act for any person to fail to disclose to an insurer when requested by the insurer that the prospective insured has undergone a life expectancy evaluation by any person other than the insurer in connection with the issuance of the policy.
- Requires life settlement providers to report information to the insurance commissioner so the commissioner can detect and stop STOLI transactions.
- Prohibits a person from issuing, soliciting, marketing or otherwise promoting the purchase of an insurance policy for the purpose of or with an emphasis on settling the policy.
- Prohibits abusive premium financing agreements designed to force the insured to hand over the policy to the STOLI financier who is paying the premiums for the policy.

With these changes, North Dakota's anti-STOLI law will become the strongest in the nation to stop STOLI transactions while preserving the lawful uses of viatical and life settlements. For these reasons, we respectfully ask the Committee for a "Do Pass" Recommendation for House Bill 1284.



# ● STOLI:

## *The Problem and the Appropriate State Response*



AALU, NAIFA, and ACLI believe that stranger-originated life insurance ("STOLI") represents a threat to both consumers and the life insurance industry. The intended purpose of life insurance is to protect the financial futures of families and businesses, not to make strangers money. This is a story that state legislators across the country should understand. We also believe there is an appropriate state by state legislative response to this problem. This primer addresses three important topics:

- Part I. Why is STOLI a problem?
- Part II. What is the most effective state by state response?
- Part III. What are the myths being spread by those who would like to see STOLI continue?

## Part I: Why is STOLI a Problem?

To understand why STOLI is a problem, one needs to address some key questions. They are as follows:

### QUESTION: What is stranger-originated life insurance ("STOLI")?

ANSWER: STOLI is a contrived transaction designed to evade state insurable interest and other laws and allow investors to use life insurance to profit from the deaths of people they don't know. In STOLI schemes, investors entice seniors to take out policies, with the intent to transfer most of the benefit to those investors who then profit when they die. The sooner the policyholder dies, the greater the investor's profit. In effect, STOLI promotes wagering on human life. Also, STOLI threatens to expose consumers to unexpected taxes, loss of privacy, and inability to obtain needed life insurance in the future.



### How does STOLI work?

- Investors, such as hedge funds, induce senior citizens to purchase life insurance. The seniors purchase the policies in their own names but agree to an arrangement where the investors, after a period of time (usually the expiration of a two-year contestability period), get beneficial ownership of the policy.
- The seniors receive some financial inducement for this: be it an upfront payment, a portion of the profit when policies are sold or a small continuing interest in the death benefit.
- Investors often agree to finance the premiums with a loan that does not require repayment, but instead transfer of the policy.
- The investors typically profit by collecting the death benefits after the seniors die. The sooner the seniors die, the higher the profit.



## What are the risks to consumers?

- Senior citizens participating in these arrangements may not be aware that the income, including the cost of insurance coverage during the "free period," is generally taxable and they may receive substantially less compensation than expected.
- The seniors may not be aware that the life insurance policies may be far more valuable to them as estate protection rather than as a scheme for making a quick buck.
- The prevalence of STOLI may even increase costs of legitimate policies, since companies have to devote significant resources to detect these schemes, which both increases the cost and time that it takes to issue policies to legitimate purchasers.
- Seniors participating in STOLI may use up their insurance capacity and be unable to purchase life insurance in the future for estate planning and other legitimate needs.
- Through these transactions, seniors will be giving permission for someone to "check periodically" if they are still alive.
- Seniors need to be aware that any misstatements or lies on the application, including those questions completed by an agent that they acknowledge with their signature, could have adverse consequences. This includes the voiding of the insurance contract. Indeed, there are also many legal issues associated with STOLI. For example, STOLI applicants who mislead insurance companies on the policy applications could face legal liability or the risks of litigation.

## Wagering on human life

- Life insurance is designed to help families and businesses cope financially following the unexpected death of a loved one, a business owner, or a key employee. Beneficiaries should have an interest in the insureds' continued lives, not their early demise. With STOLI schemes, investors are betting that the early demise of an insured will lead to a profitable payday.
- Our nation decided long ago to prohibit wagering on human life, which is exactly what STOLI represents.



### **What is wrong with STOLI?**

STOLI violates the essential social purpose of life insurance, which is protection. Life insurance protects families from the unexpected death of a breadwinner; or businesses from the financial consequences of the death of an owner or key employee. Life insurance is not meant to be used as a vehicle for financial speculation on human life. The essential social purpose of life insurance is enshrined in state insurable interest laws and numerous rulings by the United States Supreme Court. STOLI undermines the integrity of life insurance and flouts the public policy concerns voiced by state legislatures and the Supreme Court.

### **What is the difference between life settlements and STOLI?**

The crucial factor is whether all the rules were followed from the start, including the existence of an insurable interest at the time the policy is issued. In a life settlement, the policy was purchased for its intended use—to protect family members or a small business from the risk of a premature death. But after the policy is purchased, something changes in the life of the policy owner which leads him or her to decide that the policy is no longer needed. This could be the death of the intended beneficiary, divorce or the need for immediate cash due to illness or other loss. In such cases, the policy owner may decide to sell the policy to a third party. The life insurance industry does not support the enactment of laws that prevent transactions where the policy was acquired in good faith.

But in STOLI transactions, the life insurance policies are not acquired in good faith. The parties intend at the outset that the investors, who have no insurable interest in the insured, receive the death benefit, directly or indirectly, depending on how the deal is structured. These transactions violate public policy interests and can be summed up in concerns expressed by the United States Supreme Court as far back as 1876 that life insurance should not be used as a vehicle for wagering on human life. "Any person has a right to procure an insurance on his own life and assign it to another, provided it be not done by way of cover for a wager policy." *Connecticut Mutual Life v. Schaefer*, 94 U.S. 457 (1876).

### **How are consumers hurt by STOLI transactions?**

Consumers participating in STOLI deals face many potential pitfalls. First, they may not be aware that the income from STOLI transactions is generally taxable and that numerous legal fees and other expenses must be paid before the deal is complete. Thus, consumers may receive substantially less than they expect.

In addition, consumers may not be aware that life insurance may be far more valuable to them as estate protection rather than as an immediate income gimmick. Indeed, consumers participating in STOLI may use up their insurance capacity and be unable to purchase life insurance in the future for estate planning and other legitimate needs.

There are also many legal issues associated with STOLI. For example, STOLI applicants who mislead insurance companies on the policy applications could face the risks of litigation and potential legal liability to insurers, settlement companies, lenders or investors.

### **How is the insurance industry harmed by STOLI?**

Life insurance and annuity products, by their nature, establish a long-term relationship between insurance companies and their policyholders. We have already seen though, that when a STOLI scandal erupts, it is the life insurance industry's reputation that unfairly takes the hit. And so it is the established life insurance industry that suffers the potential loss of reputation while being stuck with cleaning up the STOLI mess. The life insurance industry wants to be proactive and enact laws to address STOLI before consumers are harmed and our reputations sullied. Companies also have to devote significant resources to detect these schemes, which both increases the cost and time that it takes to issue policies to legitimate purchasers.

## Part II. The Most Effective State by State Response to STOLI

AALU, NAIFA, and ACLI strongly support enactment of legislation to address the abuses occurring in the marketplace today from stranger-originated life insurance ("STOLI"). We believe the best legislation can be achieved by combining provisions from the NAIC Viatical Settlements Model Act with provisions from the NCOIL Life Settlements Model Act. The best way to accomplish this is to use the provisions and format of the NAIC Model Act as the basis for the legislation.

### The NAIC model contains the following key features:

- A limited 5-year settlement prohibition targeting transactions with characteristics of STOLI such as non-recourse financing, settlement guarantees, and life expectancy evaluations. (NAIC Model § 11A)
- Protection of consumer property rights by permitting settlements at any time for cause such as death of spouse; divorce; disability; bankruptcy; loss of job; or chronic or terminal illness. It allows settlements after two years when customers purchase policies with their own funds. It would not apply to consumers who want to sell their policies due to a change in life circumstances, such as illness, divorce or the death of the beneficiary. (NAIC Model § 11A)
- Expanded consumer right to rescind a settlement contract to 60 days. (NAIC Model § 10C)
- Settlement reporting requirements to enable regulators to identify and stop STOLI transactions. (NAIC Model § 6A)
- Prohibition of advertising representing that insurance is "free" or "no cost". (NAIC Model §§ 12D and 13E)
- Disclosure to insurers of any plan to originate, renew or finance a policy prior to or within 5 years of policy issue. (NAIC Model § 9)
- Elimination of the "accredited investor" exemption from the definition of "viator", which would otherwise allow transactions involving policy owners with \$1 million or more in net worth to completely escape regulation and engage in "wet ink" STOLI transactions. (NAIC Model § 2T)
- A comprehensive definition of "life settlement contract" which includes policy transfers regardless of when they occur if they include indicia of STOLI, and transfers which do not fall within a legitimate settlement exception, such as non-recourse financing arrangements, debt forgiveness, or settlement guarantees. (NAIC Model § 2N)

### AALU, NAIFA, and ACLI recommend inclusion provisions from the NCOIL Model Act, including:

- The broad definition of STOLI to address trust and premium finance STOLI arrangements
- The prohibition of engaging in STOLI transactions
- Reporting and penalty provisions





## Part III. Myths and Facts: Stranger-Originated Life Insurance

State legislators have an unprecedented opportunity to take a leading role in protecting consumers from a growing national abuse that threatens to undermine the social purpose of life insurance. This abuse, called stranger-originated life insurance ("STOLI"), uses life insurance as a vehicle for wagering on human life.

STOLI promoters have been spreading misinformation about this issue, particularly the NAIC's proposal. It is vital that legislators have the complete picture.

**MYTH:** NAIC's proposal would prevent all consumers from selling their life insurance policies for five years.

**FACT:** The five-year settlement moratorium is strictly limited and would only apply to STOLI transactions. For example, the moratorium would not apply to consumers who purchased their policies with their own funds. It would not apply to consumers who want to sell their policies due to a change in life circumstances, such as illness, divorce or the death of the beneficiary. Suggestions that the NAIC model imposes a blanket five-year moratorium are false.

**MYTH:** NAIC's proposal unconstitutionally interferes with the property rights of life insurance policy owners.

**FACT:** The property rights of policy owners are fully protected. The real issue is not property rights, but the authority of state legislators to regulate commercial transactions. Just as legislators, through zoning laws, can limit the use of real property to single-family dwellings as opposed to commercial development, legislators can limit the sale of life insurance policies obtained as STOLI. Every United States Supreme Court decision that has dealt with this issue has clearly recognized the right of legislators to address the public policy concerns that arise from using life insurance as a vehicle for wagering on human life.



**MYTH:** The life insurance industry is trying to derail the secondary market for life insurance policies.

**FACT:** Many life insurance companies are themselves participating in the secondary market. These companies believe that the secondary market offers them another opportunity to serve their customers.

Yet, every life insurance company that participates in the secondary market supports the NAIC model and the five-year moratorium. Why? Because they recognize that STOLI threatens to undermine the very purpose of life insurance, which is protection. In fact, the NAIC model protects their investment in the secondary market by targeting only abusive STOLI transactions.

**MYTH:** Life insurance companies are using STOLI as a stalking horse to undermine all life settlements because they profit from high lapse rates.

**FACT:** This complaint is a red herring. According to LIMRA International, the lapse rate for the types of policies most likely to be settled is only 10 percent. STOLI has nothing to do with lapses. STOLI is about investors purchasing life insurance policies that were taken out in bad faith. The NAIC model is targeted to these bad faith transactions.

Life insurance is meant to protect individuals and businesses that stand to suffer economic loss following the untimely death of a family member, business owner or key employee. STOLI turns that purpose on its head. STOLI promoters profit from the death of the insured. Combining the best features of the NAIC and NCOIL models will reduce the incentive for STOLI while fully protecting the rights of legitimate policy owners.





Founded in 1957, the Association for Advanced Life Underwriting (AALU) is a professional trade association representing 2,000 life and health insurance agents and financial advisors nationwide. Most members are engaged in complex uses of life insurance such as in business continuation planning, estate planning, charitable planning, retirement planning, deferred compensation and employee benefit planning. The mission of AALU is to promote, preserve and protect advanced life insurance planning for the benefit of its members, their clients, the industry and the general public. AALU's website can be accessed at [www.aalu.org](http://www.aalu.org).

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Founded in 1890 as the National Association of Life Underwriters, the National Association of Insurance and Financial Advisors (NAIFA) is comprised of 700 state and local associations representing the business interests of 225,000 members and their employees nationwide. Members focus their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. NAIFA's mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members. NAIFA's website can be accessed at [www.naifa.org](http://www.naifa.org).

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The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association whose 353 member companies account for 93 percent of the life insurance industry's total assets in the United States, 93 percent of life insurance premiums and 94 percent of annuity considerations. In addition to life insurance and annuities, ACLI member companies offer pensions, including 401(k)s, long-term care insurance, disability income insurance and other retirement and financial protection products, as well as reinsurance. ACLI's public website can be accessed at [www.acli.com](http://www.acli.com).

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