

HOUSE BILL NO. 1145

Introduced by

Industry, Business, and Labor Committee

(At the request of the Securities Commissioner)

1 A BILL for an Act to create and enact a new subsection to section 10-04-02 of the North Dakota
2 Century Code, relating to viatical settlement contracts; and to amend and reenact subsections 5
3 and 13 of section 10-04-02 of the North Dakota Century Code, or in the alternative to amend
4 and reenact subsections 8 and 15 of section 10-04-02 of the North Dakota Century Code,
5 relating to viatical settlement contracts and foreign currency contracts.

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

7 **SECTION 1. AMENDMENT.** If House Bill No. 1144 does not become effective,
8 subsections 5 and 13 of section 10-04-02 of the North Dakota Century Code are amended and
9 reenacted as follows:

- 10 5. "Issuer" means every person who issues or proposes to issue any security, except
11 that:
- 12 a. With respect to certificates of deposit, voting-trust certificates, collateral trust
13 certificates, certificates of interest, or shares in an unincorporated investment
14 trust, whether or not of the fixed, restricted management, or unit type, issuer
15 means the person or persons performing the acts and assuming the duties of
16 depositor or manager pursuant to the provisions of the trust or other
17 agreement or instrument under which such securities are issued.
 - 18 b. With respect to equipment trust certificates or like securities, issuer means the
19 person by whom the equipment or property is or is to be used.
 - 20 c. With respect to fractional interests in oil, gas, or other mineral rights, issuer
21 means the owner of any such right or any interest in such rights, whether
22 whole or fractional, which are created for the purpose of sale.
 - 23 d. With respect to a fractional or pooled interest in a viatical settlement contract,
24 issuer means the person who creates, for the purpose of sale, the fractional or

1 pooled interest. The issuer of a viatical settlement contract that is not
2 fractionalized or pooled means the person effecting the transactions with the
3 investors in such contracts.

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

22 **SECTION 2. AMENDMENT.** Subsections 8 and 15 of section 10-04-02 of the North
23 Dakota Century Code as amended by House Bill No. 1144, as approved by the fifty-sixth
24 legislative assembly, are amended and reenacted as follows:

25 8. "Issuer" means every person who issues or proposes to issue any security, except
26 that:
27 a. With respect to certificates of deposit, voting-trust certificates, collateral trust
28 certificates, certificates of interest, or shares in an unincorporated investment
29 trust, whether or not of the fixed, restricted management, or unit type, issuer
30 means the person or persons performing the acts and assuming the duties of

- 1 depositor or manager pursuant to the provisions of the trust or other
2 agreement or instrument under which such securities are issued.
- 3 b. With respect to equipment trust certificates or like securities, issuer means the
4 person by whom the equipment or property is or is to be used.
- 5 c. With respect to fractional interests in oil, gas, or other mineral rights, issuer
6 means the owner of any such right or any interest in such rights, whether
7 whole or fractional, which are created for the purpose of sale.
- 8 d. With respect to a fractional or pooled interest in a viatical settlement contract,
9 issuer means the person who creates, for the purpose of sale, the fractional or
10 pooled interest. The issuer of a viatical settlement contract that is not
11 fractionalized or pooled means the person effecting the transactions with the
12 investors in such contracts.
- 13 15. "Security" means any note; stock; treasury stock; bond; debenture; evidence of
14 indebtedness; certificate of interest or participation in any profit-sharing agreement;
15 certificate of interest or participation in an oil, gas, or mining title or lease or in
16 payments out of production under such a title or lease; collateral trust certificate;
17 preorganization certificate or subscription; transferable share; investment contract;
18 viatical settlement contract or a fractionalized or pooled interest therein; program,
19 contract, or other arrangement in which persons invest in a common enterprise the
20 returns of which depend to any extent upon inducing other persons to participate or
21 invest in the enterprise; investment of money or money's worth including goods
22 furnished or services performed in the risk capital of a venture with the expectation
23 of profit or some other form of benefit to the investor where the investor has no
24 direct control over the investment or policy decisions of the venture; voting-trust
25 certificate; certificate of deposit for a security; foreign currency commodity contract,
26 as used in chapter 51-23; or beneficial interest in title to property, profits, or
27 earnings; or, in general, any interest or instrument commonly known as a
28 "security"; or any certificate of interest or participation in, temporary or interim
29 certificate for, receipt for, guarantee of, or warrant or right to subscribe to or
30 purchase, any of the foregoing.

1 **SECTION 3.** A new subsection to section 10-04-02 of the North Dakota Century Code
2 is created and enacted as follows:

3 "Viatical settlement contract" means an agreement for the purchase, sale,
4 assignment, transfer, devise, or bequest of any portion of the death benefit or
5 ownership of a life insurance policy or certificate, for consideration that is less than
6 the expected death benefit of the life insurance policy or certificate.

7 "Viatical settlement contract" does not include:

- 8 a. The assignment, transfer, sale, devise, or bequest of a death benefit, life
9 insurance policy, or certificate of insurance by the viator to the viatical
10 settlement provider pursuant to chapter 26.1-33.1;
11 b. The assignment of a life insurance policy to a bank, savings bank, savings
12 and loan association, credit union, or other licensed lending institution as
13 collateral for a loan; or
14 c. The exercise of accelerated benefits pursuant to the terms of a life insurance
15 policy issued in accordance with the insurance laws of this state.