

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2/50

2001 SENATE INDUSTRY, BUSINESS AND LABOR

SB 2150

2001 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2150

Senate Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date January 22, 2001

Tape Number	Side A	Side B	Meter #
1	x		33.0 to end
1		x	0 to 6.3
(vote) 1/24/01 1		x	26.5 to 31.6
(April 03/01) 1	x		46.3 to 46.9
Committee Clerk Signature <i>Doris E. Pines</i>			

Minutes:

The meeting was called to order. All committee members present. Hearing was opened on SB 2150 relating to viatical settlement contracts; and to provide a penalty.

SUSAN J. ANDERSON, Legal Counsel, ND Insurance Department. Introduced the bill.

Testimony in favor. Written testimony attached, including amendments and explanatory diagram.

This is a strong consumer protection bill.

SENATOR EVERY: In which instances can they sell before the two year period?

S ANDERSON: The conditions are enumerated in pages 16 and 17 of the bill. This bill and its amendments have been discussed with the viatical industry and with the trade associations, they favor it.

SENATOR KLEIN: We have received written testimony from the Viatical and Life Settlement Assn. of America and from Century Financial opposing this bill. Do you know what is their opposition?

Page 2

Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2150

Hearing Date January 22, 2001.

S ANDERSON: They favor the NCOIL Model which differs from this bill in the definition of viatical settlement, and in the licensing , fraud and disclosure provisions (Comparison memo between NCOIL Model and SB 2150 attached.)

SENATOR KLEIN: Have other states adopted this more beefed-up model?

S ANDERSON: Two. NAIC Model has not gone yet, we anticipate its adoption. Overall four states have beefed-up provisions like we do.

SENATOR TOLLEFSON: How big is this industry in ND?

S ANDERSON: It's difficult to answer, it's a growing industry, Now we have 7 providers and 2 brokers licensed.

PAT WARD, American Council Life Insurance. Submitted letter in favor of this bill from ACLI.

NORM STUHMILLER, Silver Haired Education Assn. Written testimony attached.

TERRY WEIS, In favor of this bill.

JANIS CHENEY, ND Director, AARP. Favors this bill. Written testimony attached.

Hearing closed. . SENATOR KREBSBACH: Motion to adopt amendment. Discussion held
Motion withdrawn.

January 24/01. Tape 1-B-26.5 to 31.2. Committee reconvened. All members present. Committee reviewed amendments proposed by insurance department.

SENATOR ESPEGARD: Move to adopt amendment. SENATOR KLEIN: Second.

Roll call vote: 7 yes; 0 no; 0 absent or not voting.

SENATOR ESPEGARD: Motion: do pass as amended. SENATOR TOLLEFSON: Second.

Roll call vote: 7 yes; 0 no; 0 absent or not voting. Carrier: SENATOR KLEIN.

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Senate Industry, Business and Labor Committee

Bill/Resolution Number SB 2150

Hearing Date January 22, 2001.

April 03/01 Tape 1-A-46.3 to 47.9

Committee reconvened. All members present.

Rep. Jim Kasper, District 46. Amendments require two things: 1) Disclosure of the commission to be paid on viatical settlements, and 2) brokers must disclose all offers received from the viatical settlement companies. It is just additional protection for the consumer, so the broker doesn't take the one that pays the most commission and throws the others away.

Senator Klein: The broker must divulge to whom?

Rep Kasper: The client.

Senator Tollefson: Motion to concur with House amendments. **Senator Espegard**: Second.

Roll call vote: 7 yes; 0 no. Motion carried. Floor assignment: **Senator Klein**.

FISCAL NOTE
 Requested by Legislative Council
 12/26/2000

Bill/Resolution No.: SB 2150

Amendment to:

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.*

	1999-2001 Biennium		2001-2003 Biennium		2003-2005 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues	\$0	\$0	\$0	\$0	\$0	\$0
Expenditures	\$0	\$0	\$0	\$0	\$0	\$0
Appropriations	\$0	\$0	\$0	\$0	\$0	\$0

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

1999-2001 Biennium			2001-2003 Biennium			2003-2005 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

2. Narrative: *Identify the aspects of the measure which cause fiscal impact and include any comments relevant to your analysis.*

No financial impact on agency appropriation is anticipated.

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.*

N/A

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.*

N/A

C. Appropriations: *Explain the appropriation amounts. Provide detail, when appropriate, of the effect on the biennial appropriation for each agency and fund affected and any amounts included in the executive budget. Indicate the relationship between the amounts shown for expenditures and appropriations.*

N/A

Name:	Charles E. Johnson	Agency:	Insurance Department
Phone Number:	328-2440	Date Prepared:	12/28/2000

Roll Call Vote #: /

BILL/RESOLUTION NO. 2150

Committee

☐ Subcommittee on

or

☐ Conference Committee

Legislative Council Amendment Number

Action Taken

Motion Made By

Seconded

DK

[illegible]

Total (Yes) No

Absent

Floor Assignment

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

Date: 1/24/01

Roll Call Vote #: /

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2152

Senate Senate Industry, Business and Labor

Committee

☐ Subcommittee on

or

☐ Conference Committee

Legislative Council Amendment Number

Action Taken

To adopt amendment

Motion Made By

S Espeland

Seconded

By

S. Kern

[illegible]

Total (Yes) 7

No D

Absent ☐

Floor Assignment

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

Date: 1/24/01
Roll Call Vote #: 2

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2150

Senate Senate Industry, Business and Labor Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken DPA

Motion Made By S. Espgaard Seconded By S. Tollefson

Senators	Yes	No	Senators	Yes	No
Senator Mutch - Chairman	✓		Senator Every	✓	
Senator Klein - Vice Chairman	✓		Senator Mathern	✓	
Senator Espgaard	✓				
Senator Krebsbach	✓				
Senator Tollefson	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment S. Klein

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

REPORT OF STANDING COMMITTEE

SB 2150: Industry, Business and Labor Committee (Sen. Mutch, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2150 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "and" with "to amend and reenact subdivision a of subsection 16 of section 10-04-02 of the North Dakota Century Code, relating to viatical settlement contracts;"

Page 1, after line 4, insert:

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

- a. The assignment, transfer, sale, devise, or bequest of a death benefit, life insurance policy, or certificate of insurance by the viator to the viatical settlement provider pursuant to chapter ~~26-1-33.1~~ 26.1-33.2;"

Page 1, underscore lines 7 through 24

Page 2, underscore lines 1 through 29

Page 3, underscore lines 1 through 31

Page 4, underscore lines 1 through 30

Page 5, underscore lines 1 through 31

Page 6, underscore lines 1 through 29

Page 7, underscore lines 1 through 31

Page 8, underscore lines 1 through 29

Page 9, underscore lines 1 through 22

Page 9, line 23, underscore "1. Each", replace "licensee" with "viatical settlement provider", and underscore "shall file with the commissioner on or before March first of each year"

Page 9, underscore lines 24 through 31

Page 10, underscore lines 1 through 11

Page 10, line 12, underscore "viatical settlement broker, insurance company, insurance producer," and remove the third "insurance"

Page 10, line 13, remove "broker," and underscore "information bureau, rating agency, or company, or any other person with"

Page 10, underscore lines 14 through 31

Page 11, underscore lines 1 through 6

Page 11, line 7, underscore "2. a. Names and individual identification data for all viators are" and remove "not subject to"

Page 11, line 8, remove "section 44-04-18 and are private and" and underscore "confidential information and may not be"

Page 11, underscore lines 9 through 28

Page 11, line 29, underscore "e. The viator has the right to rescind a viatical settlement contract", after "contract" insert "within thirty days from the date of the contract or fifteen calendar days after receipt of the viatical settlement proceeds by the viator, whichever is earlier,", and underscore "as provided in"

Page 11, underscore lines 30 and 31

Page 12, underscore lines 1 through 31

Page 13, underscore lines 1 through 30

Page 14, underscore lines 1 through 31

Page 15, underscore lines 1 through 3

Page 15, line 4, underscore "proceeds", after "proceeds" insert ", and any premiums, loans, and loan interest that have been paid by the viatical settlement provider", and underscore the period

Page 15, underscore lines 5 through 31

Page 16, underscore lines 1 through 5

Page 16, after line 5, Insert:

"7. 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 are the responsibility of the viatical settlement licensee, as well as the individual who created or presented the advertisement. Advertisements must be truthful and not misleading in fact or by implication."

Page 16, underscore lines 6 through 9

Page 16, line 10, underscore "1. The policy was issued upon the", replace "owner's" with "viator's", and underscore "exercise of conversion rights arising out of"

Page 16, line 11, underscore "a group", after "group" insert "or individual", underscore "policy", and replace the semicolon with ", if the total of the time covered under the conversion policy plus the time covered under the prior policy is at least twenty-four months. The time covered under a group policy must be calculated without regard to any change in insurance carriers, if the coverage has been continuous and under the same group sponsorship."

Page 16, line 13, underscore "26 U.S.C. 501(c)(3)" and replace the semicolon with an underscored period

Page 16, underscore line 14

Page 16, line 15, underscore "liability company, or partnership" and replace the semicolon with an underscored period

Page 16, underscore lines 16 through 30

Page 17, underscore lines 1 through 5

Page 17, line 6, underscore "or insured's assets;" and after the semicolon insert "or"

Page 17, underscore lines 7 and 8

Page 17, line 9, underscore "reasonable ability to pay the policy premium" and replace "; or" with an underscored period

Page 17, line 10, replace "(9)" with "b." and underscore "The independent evidence must be submitted to the insurer when the"

Page 17, underscore lines 11 through 21

Page 17, remove lines 22 through 27

Page 17, underscore lines 28 through 31

Page 18, underscore lines 1 through 30

Page 18, line 31, underscore "settlement acts are", remove "private and", underscore "confidential", and remove "and are not subject to section 6 of"

Page 19, line 1, remove "article XI of the Constitution of North Dakota or section 44-04-18" and underscore "and are not"

Page 19, underscore lines 2 through 18

Page 19, line 19, underscore "f. Antifraud plans submitted to the commissioner are", remove "privileged and", and underscore "confidential"

Page 19, line 20, remove "and are not subject to section 44-04-18" and underscore "and are not subject to discovery or"

Page 19, underscore lines 21 through 31

Renumber accordingly

Date: 4/23/01
Roll Call Vote #: 1

2001 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2150

Senate Industry, Business and Labor Committee

☐ Subcommittee on _____
or
☐ Conference Committee

Legislative Council Amendment Number _____

Action Taken Do concur

Motion Made By Sen Tollefson Seconded By Sen Espgaard

Senators	Yes	No	Senators	Yes	No
Senator Mutch - Chairman	✓		Senator Every	✓	
Senator Klein - Vice Chairman	✓		Senator Mathern	✓	
Senator Espgaard	✓				
Senator Krebsbach	✓				
Senator Tollefson	✓				

Total (Yes) 7 No 0

Absent 0

Floor Assignment Sen Klein

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

2001 HOUSE INDUSTRY, BUSINESS AND LABOR

SB 2150

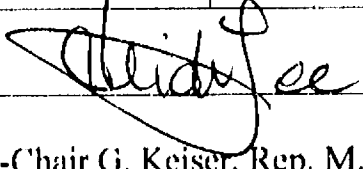
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2150(B)

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 20, 2001

Tape Number	Side A	Side B	Meter #
2	X		39
		X	-8.6
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Rep Kasper: Provided amendments and explained bill.

Rep Jensen: Why not leave in and add the amendments.

Rep Kasper: We can but I would resist that being necessary.

Rep M. Klein: "all offers received", how many companies do you need?

Rep Kasper: It depends on the broker, there is no regulation.

Rep Jensen: Why disclose the information?

Sue Anderson: *Legislative Counsel* That comes from the NAIC model, 3 states have already adopted this. The original offer was to have both in. Commissions vary and providers offer different amounts so that brokers will want to look around.

Rep M. Klein: I think we should leave the amendments in with the current bill.

Page 2

House Industry, Business and Labor Committee

Bill/Resolution Number SB 2150(B)

Hearing Date March 20, 2001

Vice-Chairman Keiser: With this a broker may have their favorite producer and only quote one or two.

Anderson: I can agree with that but it's not something to worry about.

Rep Kasper: This comes down to who you're working with and how much you can trust them and overall a broker is going to want the best deal for his client so he doesn't lose his customers.

Rep Jensen: This allows a consumer to compare shop.

Rep N. Johnson: I move the amendments.

Rep Kasper: I second.

Passed 7-6-2

Vice-Chairman Keiser: I move a do pass as amended.

Rep Koppang: I second.

8 yea, 5 nay, 2 absent Carrier Rep Kasper

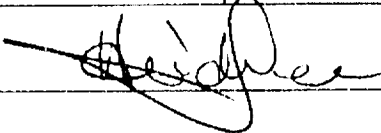
2001 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2150(C)

House Industry, Business and Labor Committee

☐ Conference Committee

Hearing Date March 21, 2001

Tape Number	Side A	Side B	Meter #
1	X		35.5-62.0
Committee Clerk Signature 			

Minutes: Chairman R. Berg, Vice-Chair G. Keiser, Rep. M. Ekstrom, Rep. R. Froelich, Rep. G. Froseth, Rep. R. Jensen, Rep. N. Johnson, Rep. J. Kasper, Rep. M. Klein, Rep. Koppang, Rep. D. Lemieux, Rep. B. Pietsch, Rep. D. Ruby, Rep. D. Severson, Rep. E. Thorpe.

Rep Severson: I move to reconsider previous action.

Rep M. Klein: I second.

Rep Severson: I further wish to amend.

Rep Froseth: I second.

Passed 9-5-1

Rep Severson: I move a do pass as amended.

Rep M. Klein: I second.

12 yea, 2 nay, 1 absent

Carrier Rep Kasper

March 19, 2001

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2150

Page 13, line 13, replace "the amount" with "all offers received including the name of the settlement provider making the offer."

Page 13, remove line 14

Renumber accordingly

18172.0201
Title.0300

Adopted by the Industry, Business and Labor
Committee

March 21, 2001

VR
3/21/01

House IBL Amendments to Eng. SB 2150 3/21/01

Page 13, line 14, after "compensation" insert "and all offers received including the name of the
settlement provider making the offer"

Renumber accordingly

Date: 3-21-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO SB 2150

House Industry, Business and Labor Committee

Legislative Council Amendment Number _____

Action Taken Amend to keep comp.

Motion Made By Severson Seconded By Froseth

Representatives	Yes	No	Representatives	Yes	No
Chairman- Rick Berg		✓	Rep. Jim Kasper		✓
Vice-Chairman George Keiser		✓	Rep. Matthew M. Klein	✓	
Rep. Mary Ekstorm	✓		Rep. Myron Koppang	✓	
Rep. Rod Froelich		✓	Rep. Doug Lemieux		
Rep. Glen Froseth	✓		Rep. Bill Pietsch	✓	
Rep. Roxanne Jensen	✓		Rep. Dan Ruby	✓	
Rep. Nancy Johnson		✓	Rep. Dale C. Severson	✓	
			Rep. Elwood Thorpe	✓	

Total (Yes) 9 No 5

Absent 1

Floor Assignment _____

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

Date: 3-21-01
Roll Call Vote #: 1

2001 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2150

House Industry, Business and Labor Committee

Legislative Council Amendment Number _____

Action Taken Do Pass as Amended

Motion Made By Severson Seconded By M. Klein

Representatives	Yes	No	Representatives	Yes	No
Chairman- Rick Berg	✓		Rep. Jim Kasper	✓	
Vice-Chairman George Keiser		✓	Rep. Matthew M. Klein	✓	
Rep. Mary Ekstorm	✓		Rep. Myron Koppang	✓	
Rep. Rod Froelich	✓		Rep. Doug Lemieux		✓
Rep. Glen Froseth	✓		Rep. Bill Pietsch	✓	
Rep. Roxanne Jensen	✓		Rep. Dan Ruby	✓	
Rep. Nancy Johnson	✓		Rep. Dale C. Severson	✓	
			Rep. Elwood Thorpe		✓

Total (Yes) 12 No 2

Absent 1

Floor Assignment Rep Kasper

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

REPORT OF STANDING COMMITTEE (410)
March 23, 2001 11:36 a.m.

Module No: HR-51-6530
Carrier: Kasper
Insert LC: 18172.0201 Title: .0300

REPORT OF STANDING COMMITTEE

SB 2150, as engrossed: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (12 YEAS, 2 NAYS, 1 ABSENT AND NOT VOTING). Engrossed SB 2150 was placed on the Sixth order on the calendar.

Page 13, line 14, after "compensation" insert "and all offers received including the name of the settlement provider making the offer"

Renumber accordingly

2001 TESTIMONY

SB 2150

SENATE BILL NO. 2150

Presented by: Susan J. Anderson
Legal Counsel
North Dakota Insurance Department

Before: Industry, Business and Labor Committee
Senator Duane Mutch, Chairman

Date: January 22, 2001

TESTIMONY

Good morning, Mr. Chairman and members of the Senate Industry, Business and Labor Committee:

My name is Susan Anderson, Legal Counsel for the North Dakota Insurance Department. I am here today to introduce Senate Bill No. 2150 regarding viatical settlements.

A viatical settlement is where an individual sells his or her life insurance policy to a third party for cash and receives less than the full amount of the death benefit. The buyer becomes the new owner and/or beneficiary of the policy, pays all future premiums, and collects the full amount of the death benefit when the insured dies.

Viatical settlements are complicated transactions and are dually regulated in North Dakota. In 1995, this Legislature passed our existing law relating to the selling of insurance policies to viatical settlement providers and gave authority to the Insurance Commissioner to regulate this side of the industry. Last session this Legislature gave the Securities Commissioner authority to regulate the second side of the transaction - that is the selling of an interest in the individual's policy to the public. I have included a diagram of the viatical settlement transaction to help explain this concept.

In 1995 this Legislature passed our existing law relating to viatical settlements. At that time, the viatical industry was limited to purchasing policies from people that had life threatening or catastrophic illnesses. Our present law reflects that practice. Since that time, the industry has changed and continues to change dramatically. Since the invention of better drugs, patients that had shortened life expectancies are now living longer and their policies are not as profitable to the viatical settlement providers. As such, the viatical settlement industry is now moving to "senior settlements" or "life settlements" whereby an individual, usually an older individual who is no longer in need of their life insurance policy, sells their policy to a viatical settlement provider. Unfortunately, our present law has become outdated and does not regulate life settlements. This industry has been evolving unregulated. We know for a fact that providers and brokers are engaging in the "senior settlements" industry in North Dakota unregulated.

The Department is introducing this bill to specifically address the "senior settlement" situation and to get this industry practice regulated. This is a strong consumer protection bill.

The bill enhances our already existing law and provides stronger consumer protections.

This bill seeks to amend our existing law in a number of different ways:

- Amend the definition of viatical settlement to include and regulate all sales of life insurance policies.
- Provide protection for those selling their policies by requiring certain disclosures no later than the time of application by the viatical settlement provider or broker.
- Provide the unconditional right to rescind the contract for least 30 days after the date of the contract or 15 days from the time of receipt of the proceeds, whichever is less.

- Beef up fraud protections by defining a fraudulent settlement act to include brokers and providers accepting policies that have concealed information for the purpose of viatical settlement contracts. This bill prevents a broker or provider from entering a viatical settlement contract within two years from the issuing of a life insurance policy. These two sections are important because of the rampant insurance fraud that has occurred in this industry.

There are two major fraudulent acts that occur in this industry - "clean sheeting" and "wet paper" transactions. Briefly, clean sheeting is where an individual conceals medical problems on the life insurance application to obtain coverage just below the insurer's non-medical limits. These policies are quickly sold to viatical settlement companies which in turn seek investors who would not have invested in these policies if the risks had been disclosed.

The second fraudulent transaction is the "wet paper" or "wet ink" transaction whereby an individual purchases a policy and quickly turns around and sells the policy to the viatical settlement provider. The individual purchases the policy with the intent to resell the policy at a profit. These purchases are often made by seniors, who are recruited to sell these policies.

- Require that brokers disclose how the broker will be compensated.

I would like to highlight specific sections of the bill.

Definitions

Section 1 of this bill defines a viatical settlement broker, provider, and viatical settlement contract. Importantly, this bill provides a definition for fraudulent viatical settlement acts. As mentioned above, this industry has been plagued by fraud and in response to that concern, this bill specifically defines fraudulent viatical settlement acts and provides authority to the Commissioner to fine individuals who engage in such acts.

License Requirements

This section requires both a viatical settlement broker and provider to hold a license before they may engage in the viatical settlement industry. Our present law was somewhat ambiguous as to who, the broker or the provider or both, had to hold a viatical settlement license. The Department has been requiring both entities to hold such a license with a requisite fee of \$250 and an annual renewal fee of \$150. This section would clarify that practice. It has been the Department's practice to require an applicant for a viatical settlement broker license to obtain an insurance agent's license. An underlying insurance producer license would be required by this bill.

License Revocation and Denial

This section provides reasons why the Commissioner may refuse to issue, revoke, or refuse to renew a license. Many of these items now found in our present law.

Contract and Disclosure Approval

Presently, our law requires that all viatical settlement contracts be approved by this Department. This section of the bill will still require contract approval but additionally will require the approval of the disclosure statements given to viators. Disclosure statements are required to be given and signed by viators pursuant to Section 26.1-33.2-07 of this bill.

Reporting Requirements and Confidentiality

This section is found in our present law.

Examination or Investigations

This section is found in our present law.

Disclosure

Although our present law contains a disclosure section, this bill has substantially increased the amount of disclosure needed to be given to a viator. The Department believes that disclosure is a fundamental protection needed to be given to people seeking to sell their life insurance policy, especially seniors, who are now the target of this industry. A decision

to sell your insurance policy is a major decision and one that should be entered into with as much information as can be obtained. Consequently, this section provides new requirements such as:

- Disclosure be given in writing signed by both the broker or provider and the viator;
- Disclosure be given no later than the time the application for the viatical settlement contract is signed by the parties;
- Funds must be sent within three business days after the viatical settlement provider has received acknowledgment that ownership of the policy has been transferred and the beneficiary has been designated;
- Viators must be informed that certain rights might be forfeited by the viator;
- A brochure must be produced and given to the viator;
- Disclosure that medical, financial, or personal information may be disclosed to others as needed to effect the viatical settlement contract. This is a key disclosure. In order to effect a viatical settlement, many people do not understand that personal information is passed on to investors. The Department believes that this information is crucial to viators who may reconsider the viatical settlement once they understand that personal information is given to investors.
- Disclosure that the insured may be contacted by the viatical provider or broker regarding his or her health status and the limitations on those contacts.

General Rules

This bill provides certain rules that providers and brokers must follow. Our present law has some general rules but this bill introduces new requirements such as:

- Notice to the Insurer that issued the policy that it has or will be viaticated. The notice must be accompanied by a copy of the medical release and a copy of the viator's application for the viatical settlement contract. This is a very important section because communication between the insurer and the viatical company is key to combat fraudulent activities that are occurring in this industry.
- The viator may rescind the contract for at least 30 days from the date of the contract or 15 days from receipt of the proceeds, whichever is earlier.
- The contract can be deemed voidable if the provider does not remit the funds with the specified time period found in Section 26.1-33.2-07.
- Contacts with insureds are limited to once every three months for insureds with a life expectancy of more than one year and no more than once per month for insureds with one year or less.

Prohibited Practices

This section prohibits any person to enter into a viatical settlement contract within the two-year incontestability period. There are listed hardship exceptions to this two-year limitation. If the policy is viaticated within that two-year period, independent medical information must be submitted to the insurer when the viatical settlement provider requests to effect a transfer of the policy to the provider. This is required to weed out any fraudulent activities.

Fraud Prevention and Control

This section is not currently in our law but provides requirements for brokers and providers to prevent fraudulent activities that are occurring in this industry. This section refers back to the definition of fraudulent viatical settlement act. This section requires:

- That a person that is engaged in the viatical settlement industry having knowledge or a reasonable belief that a fraudulent settlement act is being committed or will be committed is under a duty to notify the Commissioner, and

- Gives Immunity to those furnishing information regarding the above.

This section also requires viatical settlement providers and brokers to submit an anti-fraud plan to the Commissioner. The plan must include:

- Fraud investigators - which can be employees;
- Procedures to detect fraud;
- Procedures to report possible fraudulent activities to the Commissioner;
- Plan for anti fraud education and training of underwriters ;
- Anti fraud plans would not be considered an open record.

Civil Remedies

This section would give the Commissioner authority to fine any person under this Act up to \$50,000. A violation of the chapter would be considered an unfair trade practice.

Rulemaking Authority

This section does provide authority to the Commissioner for rulemaking.

AMENDMENTS

The Department has provided you with amendments to Senate Bill No. 2150. The majority of the amendments were discussed and suggested by the viatical industry who support Senate Bill No. 2150.

The first amendment is to N.D. Cent. Code § 10-04-02 which amends the Securities Department statutes. N.D. Cent. Code § 10-04-02 exempts the sale of insurance policies to viatical settlement providers as a security, and reaffirms the Insurance Department's regulatory authority over this part of the viatical settlement transaction. The amendment inserts the appropriate citation should the bill pass.

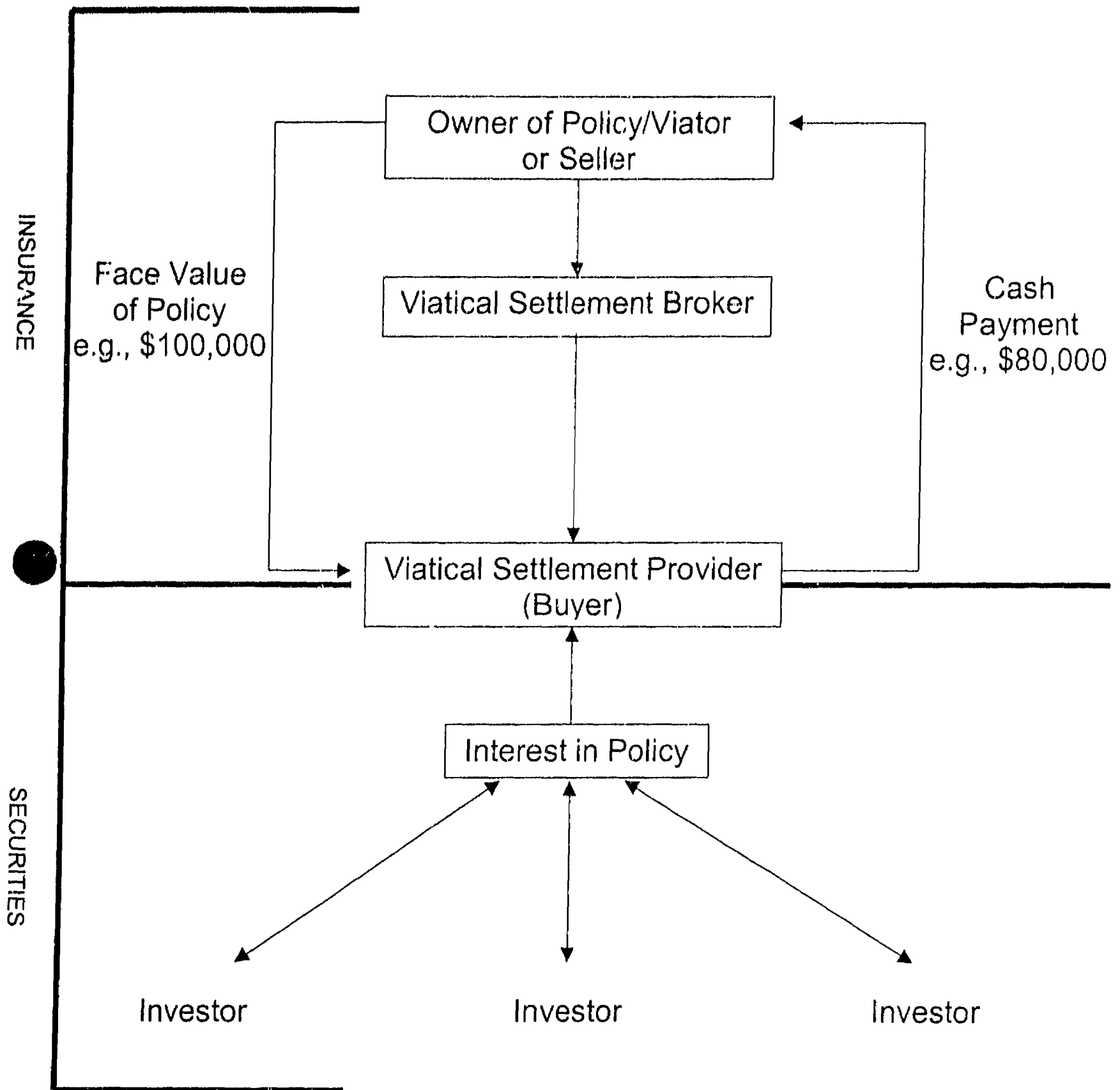
There are also some technical amendments found on:

- Page 4, line 8 - Should specify the "commission of conspiracy" not the "commissioner of conspiracy".
- Page 10, lines 12 and 13 - Removes the term "insurance broker." The term insurance producer which encompasses an insurance broker is already included, so the term "insurance broker" is duplicative language.
- Page 11, lines 7 and 8, and pages 18 and 19 delete the citations to the open records law which is not needed because of the use of the term "confidential" would exempt such documents from the open records law. This was suggested to us from the Attorney General's Office.
- Page 16, after line 5, is moving the advertisement section from the prohibited practices section to the general rules section.
- Page 9, line 23, amends the section on reporting requirements. The information to be reported is information not in the hands of a broker and, therefore, this requirement should be applicable to providers.
- Page 11, line 29, was an oversight by the Legislative Council. The disclosure requirement requires that the viator have the right to rescind the contract within 30 days from the signing of the contract or 15 days from receipt of the proceeds whichever is less.
- Page 15, line 4, amends the rescission section to provide that any benefit the viator received from the viatical settlement if to be paid back to the viatical provider should the viator rescind or undo the settlement.

- Page 16, line 11, amends the exception to the two-year limitation for viaticating policies to accumulate the time of ownership of the policy. For example, if a policy is converted either from a group to individual policy or from one type of individual policy to another type of individual policy, the total aggregate life span of the policy should be considered.

This bill will provide strong consumer protection for the senior citizens of North Dakota and protect against fraudulent activities that occur in this industry. The Department requests a "do pass" on Senate Bill No. 2150.

VIATICAL SETTLEMENT PROCESS



PROPOSED AMENDMENTS TO SENATE BILL NO. 2150

Page 1, line 1, after "to" insert "amend and reenact subdivision a of subsection 16 of section 10-04-02, relating to viatical settlement contracts;"

Page 1, after line 4, insert:

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

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

Page 4, line 8, replace "the commissioner" with "commission"

Page 9, line 23, replace "licensee" with "viatical settlement provider"

Page 10, line 12, remove the third "insurance"

Page 10, line 13, remove "broker,"

Page 11, line 7, remove "not subject to"

Page 11, line 8, remove "section 44-04-18 and are private and"

Page 11, line 29, after "contract" insert "within thirty days from the date of the contract or fifteen calendar days after receipt of the viatical settlement proceeds by the viator, whichever is earlier,"

Page 15, line 4, after "proceeds" and before the period insert ", and any premiums, loans, and loan interest that have been paid by the viatical settlement provider"

Page 16, after line 5, insert:

- "7. 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 must be the responsibility of the viatical settlement licensee, as well as the individual who created or presented the advertisement. Advertisements must be truthful and not misleading in fact or by implication."

Page 16, line 10, replace "owner's" with "viator's"

Page 16, line 11, after "group" insert "or individual" and after policy and before the semicolon insert ", provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least twenty-four 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"

Page 17, line 10, replace "(9)" with "b."

Page 17, remove lines 22 through 27

Page 18, line 31, remove "private and" and remove "and are not subject to section 6 of"

Page 19, line 1, remove "article XI of the Constitution of North Dakota or section 44-04-18"

Page 19, line 19, remove "privileged and"

Page 19, line 20, remove "and are not subject to section 44-04-18 and"

Renumber accordingly



DEPARTMENT OF INSURANCE
STATE OF NORTH DAKOTA

Jim Poolman
Commissioner of Insurance

MEMORANDUM

TO: Senator Duane Mutch, Chairman
Senate Industry, Business and Labor Committee

FROM: Susan J. Anderson, Legal Counsel *SJA*

DATE: January 22, 2001

SUBJECT: Comparison Between NCOIL Model and SB 2150

Attached is a copy of the Comparison of Proposed SB 2150 and the NCOIL Model.

As I mentioned in the hearing today, the NCOIL Model draft and SB 2150 differ in a number of ways including the definition of "viatical settlement". VALSI would like to separate the terms. The Department and the viatical settlement industry believe that viatical settlement contracts occur whenever someone seeks to sell their insurance policy to a third party whether they be seniors or an individual with a life-threatening illness or catastrophic illness; therefore, one term can be used to encapsulate this concept.

The NCOIL Model also does not contain the same degree protections against fraud and required disclosures to individuals selling their life insurance policies.

I hope you find this comparison useful.

SJA/njb
Attachment

Comparison of the Proposed SB 2150 and NCOIL Model

NCOIL MODEL

SB 2150

Includes securities transactions - Limited to insurance side of the transaction

1. Definitions

Def'n of Broker is narrow - includes offering or soliciting from existing law

Def'n of Life Settlement - uses one term "viatical settlement k"

No Def'n of fraudulent act - Defines a fraudulent Act.

2. Licensing Requirements

No requirement of life agent - We require broker to be a life ins. Agent

No req. of bus. Rept. - We require applicant to have experience, training etc.

Holding one out as provider - If you hold yourself out as provider - C felony

3. License Revocation and Denial

Can't not refuse to issue - We can refuse to issue a license if don't meet req.

Reasons differ - We can refuse etc. if fraudulent practices of management

- Provider enters into K not approved
- Provider does not honour K'tual arrangements
- licensee doesn't met the requirements for initial licensing.
- licensee provides materially untrue info. to life insurer.

4. Contract Approval

Contract approval - Approval of contract and disclosure form

5. Reporting requirements

No reporting requirements - Reporting requirements from existing law.

6. Examinations

Must examine - In lieu of exam. We can accept other states exams.

Can't not examine sus. Acts - Can examine suspected fraud. Acts

7. Disclosure

Contains disclosure - Contains more disclosures including:

- brochures with the procedures of viat. Settlements
- medical info etc. passed on to others
- the viator will be contacted by the provider or broker
- name, address of the provider
- possible loss of coverage for others if joint policy

- dollar amount of current death benefit available
- name, address of escrow agent.

No disclosure of other sales

- must inform the viator if provider transfers the policy to others inform of other sales!!

8. General Rule.

No communication with insurer

- Must notify insurer who issued policy that is has viaticated within 20 days and copy medical release. *** Key to weed out fraud!***

No limitation on contact with insured.

- Limits contact with insured depending on life expectancy

9. Prohibited Practices

Less communication with insurer

- If certificate of hardship is sent to insurer and insurer must ok

10. Fraud Prevention

Requires Anti-Fraud Plan

- Requires Anti fraud plan AND Preventive steps

No immunity (no incentive to tell if something is going on)

- Immunity if no actual malice

11. Rule Authority

Restrictive

- Broad.



JOSEPH TESTA
DIRECTOR, STATE RELATIONS
joseph@testa@accli.com

January 19, 2001

VIA ELECTRONIC MAIL (copy to follow via regular mail)

The Honorable Duane Mutch, Chair
Committee on Industry, Business and Labor
North Dakota Senate
600 East Boulevard Avenue
Bismarck, ND 58505

RE: SENATE BILL 2150 (VIATICAL SETTLEMENTS)

Dear Senator Mutch:

I am writing on behalf of the American Council of Life Insurers (ACLI), the nation's largest life insurance trade association, whose 435 member companies hold 73.2 percent of the life insurance in force in the United States and 80.6 percent in North Dakota. On behalf of our member companies, thank you for the opportunity to comment on SB 2150, legislation relating to viatical settlements.

The recent increase in viatical settlement activity nationwide has raised concerns for the life insurance industry. In 1999, the ACLI established a Task Force on Viatical Settlements, which has worked with the National Association of Insurance Commissioners on the development of the NAIC's Viatical Settlements Model Act. We support the latest NAIC Model Act because we believe it provides important protections to consumers and the life insurance industry.

We support SB 2150, which closely tracks those sections of the NAIC Model Act that govern viatical settlement transactions not including the sale of interests in viatical settlement contracts. In addition, the ACLI has noted some substantive differences between SB 2150 and the Model Act relating to, among other things, the definition of "viatical settlement broker" in SB 2150; the specification of broker license fees in SB 2150; and the absence from SB 2150 of language from the Model Act pertaining to advertising, which we understand may be substituted by regulations. None of these issues diminishes our support for SB 2150.

In sum, SB 2150 would enhance existing North Dakota law by providing important protections for parties to viatical settlement transactions. We urge passage of the current bill.

Sincerely,

Joseph Testa

Mr. Chairman and members of the committee, my name is Norm Stuhlmiller, I am representing the Silver Haired Education Association, an organization that exists to speak for and protect the well being of the senior population of North Dakota by working for legislation that looks out for their wellbeing. That is just what SB 2150 will do.

A viatical settlement can be a good thing and can be used for the advantage of people who need cash to pay for bills that may have accumulated due to life threatening or catastrophic illnesses. There is, however, an issue that needs to be regulated and SB 2150 addresses the issue, that is the "senior Settlement" disclosure issue.

For some reason seniors are vulnerable, maybe because they are too trustful. They were not brought up to be suspicious of anyone and can remember when a promise and a handshake was all that was needed to close a deal. In spite of the fact that radio and tv ads and newspaper articles tell people to make sure they know what they are signing, seniors are still the targets of fraud and deception.

While we were raising our families, we needed life insurance to protect our families in the event of the death of the breadwinner. Once the children have left home, have graduated from college, we no longer need the protection; enter the viatical settlement providers who may be engaging in the "senior settlement" business.

Ms Anderson explained the "senior Settlement" issue well and you don't need me to reiterate what she has already told you. SB 2150 would regulate the industry and would afford consumers protection from fraudulent transactions that are presently being used.

I encourage you to give SB 2150 a "do pass" to protect the senior citizens of this state. Thank you for your time, I would be willing to answer any questions you may have.



NORTH DAKOTA STATE LEGISLATIVE COMMITTEE

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Betty Keegan
P.O. Box 444
Rolla, ND 58367
(701) 477-3637

VICE CHAIR
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Jamestown, ND 58402
(701) 252-0418

SECRETARY
David Braaten
2109 S. 20th Street
Grand Forks, ND 58201
(701) 775-0407

Testimony on SB 2150
Presented to ND Senate Industry, Business and Labor Committee
January 22, 2001

Mr. Chairman, Members of the Committee, my name is Janis Cheney. I am the North Dakota State Director for AARP. I appreciate the opportunity to offer testimony in support of Senate Bill 2150. I regret that an out of state meeting prevents me from attending this hearing in person.

AARP is the nation's leading organization for people 50 and older. It provides information and education, advocacy, and community services through a network of local chapters and experienced volunteers throughout the country. Members have access to a wide range of benefits and services, including *Modern Maturity* magazine and the monthly *Bulletin*.

Viatical agreements can aid many people by providing additional sources of funding for long term care services and therefore, may be of particular interest to older North Dakotans. As with any financial transaction it is absolutely critical that those selecting this option have a complete and clear understanding of how the transaction works.

This legislation provides important consumer protections in the provisions related to disclosure – the information that must be presented to a consumer in the process of the transaction.

AARP believes that ensuring full disclosure of information to consumers on the affect of viatical settlements is an appropriate and necessary measure for state government to take.

I encourage you to give SB 2150 a "DO PASS" recommendation.

**FACSIMILE
TRANSMISSION
FORM**

*Morris, Manning & Martin
a Limited Liability Partnership
1600 Atlanta Financial Center
3343 Peachtree Road, N.E.
Atlanta, Georgia 30326*

Facsimile Number: 404-365-9532

This message is intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone, and return the original message to us at the above address via U.S. Postal Service. Thank you.

TO: North Dakota Senate

NAME: The Honorable Duane Mutch

DATE & TIME: 01/23/01

CONFIRMATION: (701) 328-3373

PAGES TO FOLLOW: 5

FAX NUMBER: (701) 328-1997

FROM: Morris, Manning & Martin, L.L.P.

CHARGE TO:

NAME: Amy L. Atkinson

CLIENT/MATTER: 10458/30201

PHONE: (404) 233-7000

CONFIRMATION TIME:

HR MIN SEC

COMMENTS:

Thank you for delivering this letter to Senator Mutch. Please call me at (404) 504-7776 if you have any questions.

IF YOU HAVE ANY DIFFICULTY WITH THIS TRANSMISSION, PLEASE CALL (404) 233-7000

MORRIS, MANNING & MARTIN

A LIMITED LIABILITY PARTNERSHIP

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MEMBER,
COMMERCIAL LAW AFFILIATES
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ATLANTA, GEORGIA 30328
TELEPHONE 404 255-0900
FACSIMILE 404 255-2117

January 23, 2001

VIA FACSIMILE (701) 328-1997 AND FEDERAL EXPRESS

The Honorable Duane Mutch
North Dakota Senate
600 East Boulevard Avenue
State Capitol
Bismarck, ND 58505

RE: SB 2150
Viatical and Life Settlements

Dear Senator Mutch:

I am writing on behalf of Coventry Financial, LLC ("Coventry") regarding the above-referenced proposed legislation. Coventry is a viatical and life settlement broker licensed in fourteen (14) states. Coventry appreciates your efforts to implement a regulatory framework for life settlements that will fulfill the legislative mandate to permit life settlements in North Dakota while protecting consumers. We offer the following suggestions that track the sequence of the bill:

§ 26.1-33.2-01 (15). **Definitions** Viator means the owner of a life insurance policy or a certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract. For the purposes of this chapter, a viator is not limited to an owner of a life insurance policy insuring the life of an individual with a terminal or chronic illness or condition except where specifically addressed. Viator does not include:

- (1.) A licensee under this Act;
- (2.) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act;
- (3.) A financing entity;
- (4.) A special purpose entity;
- (5.) A related provider trust

MORRIS, MANNING & MARTIN
A LIMITED LIABILITY PARTNERSHIP

January 23, 2001

Page 2

Comment regarding proposed revision: North Dakota Senate Bill 2150 excludes the exemptions to the definition of viator as proposed by the NAIC Viatical Settlements Model Act. Coventry supports the NAIC's definition and seeks the inclusion of those exemptions in the North Dakota bill as those entities provide institutional funding to viatical settlement providers. The exclusion of such exemptions appears to be unintended as regulators generally agree that institutional funding of viatical settlement transactions is preferable to funding by individual investors.

§ 26.1-33.2-02 (9). License Requirements – Penalty. A person may not act or hold oneself out to be a viatical settlement provider unless licensed under this chapter or unless the person has met the criteria set forth in 26.1-33.2-14 (addition of a grace period provision).

Not
applicable
N

Comment regarding proposed revision: Coventry supports North Dakota's requirement that only licensed settlement providers and viatical settlement brokers may transact business in its state. However, Coventry also believes the inclusion of a grace period would allow a legally operating viatical settlement provider or viatical settlement broker to continue to conduct viatical settlement business while their application is pending with the insurance department, provided that their application is submitted to the department by a certain date. We suggest inclusion of language similar to that used in Section 626.99295 of the Florida Viatical Settlement Act:

An unlicensed viatical settlement provider, viatical settlement broker or viatical settlement representative that was legally transacting business in this state on [insert date], may continue to transact such business, in the absence of any orders by the department to the contrary, until the department approves or disapproves the viatical settlement provider's, viatical settlement broker's or viatical settlement representative's application for licensure if the viatical settlement provider, viatical settlement broker, or viatical settlement representative files with the department an application for licensure no later than [insert date], and if the viatical settlement provider, viatical settlement broker or viatical settlement representative complies with all other provisions of this act. Any form for which department approval is required under this part must be filed by [insert date], and may continue to be used until disapproved by the department.

§ 26.1-33.2-03 (1)(h). License revocation and denial. ~~The viatical settlement provider has assigned, transferred, or pledged a viaticated policy to a person other than a viatical settlement provider licensed in this state, financing entity, special purpose entity or related provider trust.~~

Not
applicable
N

Comment regarding proposed deletion: Coventry believes that the assignment, transfer or pledge of a viaticated policy by a viatical settlement provider should only be

MORRIS, MANNING & MARTIN
A LIMITED LIABILITY PARTNERSHIP

January 23, 2001

Page 3

subject to North Dakota rule if the viatical settlement provider assigning, transferring or pledging the viaticated policy is a resident of the state of North Dakota. A viatical settlement provider residing in another state would be subject to that state's jurisdiction. We; therefore, respectfully request that subsection (h) be stricken or amended to apply only to a viatical settlement provider domiciled in the state of North Dakota.

§ 26.11-33.2-04. Approval of viatical settlement applications, viatical settlement contracts and disclosure statements.

1. A viatical settlement provider, viatical settlement broker or viatical settlement representative license shall be issued or denied by the department within [insert number] days of receipt of a completed viatical settlement provider, viatical settlement broker or viatical settlement representative application.

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

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

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

Comment regarding proposed revision: Coventry suggests the inclusion of a specified timeframe within which the insurance department must approve or disapprove a completed application for licensure.

§ 26.1-33.2-07 (2)(c). ~~Disclosure. A viatical settlement broker shall disclose to a prospective viator the amount and method of calculating the broker's compensation.~~

Comment regarding proposed deletion: Coventry believes that it is inappropriate to require disclosure of the amount and method of calculating broker compensation. Insurance agents are not required to disclose the amount and method of calculation of

MORRIS, MANNING & MARTIN
A LIMITED LIABILITY PARTNERSHIP

January 23, 2001

Page 4

commissions and such a disclosure requirement has the effect of making brokers and agents less likely to offer the option of a viatical settlement to their client.

~~§ 26.1-33.2-08 (1)(b). General Rules. Within twenty days after a viator executes documents necessary to transfer any rights under an insurance policy or within twenty days of entering any agreement, option, promise, or any other form of understanding, expressed or implied, to viaticate the policy, the viatical settlement provider must give written notice to the insurer that issued that insurance policy that the policy has or will become a viaticated policy. The notice must be accompanied by the documents required by subdivision c in their entirety.~~

~~§ 26.1-33.2-08 (1)(c). General Rules. The viatical provider must deliver a copy of the medical release required under paragraph 3 of subdivision a and a copy of the viator's application for the viatical settlement contract to the insurer that issued the life insurance policy that is the subject of the viatical transaction along with the notice required under subdivision b.~~

Comment regarding proposed deletions: Coventry believes that it is not necessary for a viatical settlement provider to notify the insurer that issued the policy that the policy is in the process of being viaticated. In effect, providing the insurer with such notice and the viator's medical release and application for the viatical settlement contract allows the insurer an opportunity to underwrite the policy a second time which clearly contradicts the effect of the two-year contestability period. Such requirements delay the closing of a viatical settlement transaction and frustrate viators' efforts to conclude the transaction and obtain access to the settlement funds. Section 26.1-33.2-.09 adequately addresses the attempted sale of policies within the two-year contestability period and provides necessary protection to insurers.

*from
protection*

~~§ 26.1-33.2-09 (1). Prohibited Practices. The policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy;~~

rule 1

Comment regarding proposed revision: Coventry believes that the exclusion of individual policies from the exemption was unintended in the North Dakota proposed legislation and asks that our proposed language be included so that converted individual policies are eligible for viatication. This same exclusion was also an oversight in the initial drafting of NAIC Viatical Settlements Model Act but was eventually amended to include individual policies.

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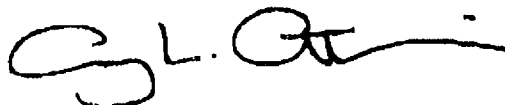
January 23, 2001

Page 5

Coventry appreciates the opportunity to comment on Senate Bill 2150 and anticipates your thoughtful review of its suggestions. Should you have any questions, please do not hesitate to contact me at (404) 504-7776. With best regards.

Sincerely,

MORRIS, MANNING & MARTIN, LLP

A handwritten signature in black ink, appearing to read "A.L. Atkinson", with a stylized flourish at the end.

Amy L. Atkinson

VIATICAL AND LIFE SETTLEMENT ASSOCIATION OF AMERICA
2025 M STREET, NW SUITE 800, WASHINGTON, DC 20036
202-367-1136 FAX 202-367-2136

Jolene Fullerton, Vice President

Tuesday, January 23, 2001

Senator Duane Mutch
North Dakota Senate
600 East Blvd. Avenue
State Capitol
Bismarck, ND 58505
(by FAX 701-328-1997)
dmutch@state.nd.us

Dear Senator Mutch,

RE: ND Senate Bill 2150 - Opposition

Thank you for considering the comments submitted on behalf of the Viatical and Life Settlement Association of America (VLSAA) on January 21, 2001.

It is after 4 p.m. EST and we have just been informed that several amendments have been proposed to Senate Bill 2150 and that a hearing on same is scheduled for tomorrow morning at 10 a.m. We will be unable to obtain a copy of the proposed amendments, circulate them to the appropriate VLSAA Legislative Committee Members and prepare comments by 10 a.m. tomorrow morning.

Therefore, we are hereby respectfully requesting that you delay any further action on SB 2150 until such time as our association committee members can review the proposed amendments and submit our comments for your consideration.

Thank you very much for your continued courtesy in this matter. I may be reached at (800)293-9763 or e-mail at jfullerton@kelcogroup.com.

Sincerely,

Jolene D. Fullerton
Vice President
VLSAA

Jennifer Stabile
<jenns@brinkleymcnerney.com>

To: sibl@state.nd.us
cc:
Subject: Fwd: Comment for hearing on 1-22-2001 re: Senate Bill 2150

01/22/01 03:48 AM

Dear Ms. Perez:

Sorry, but this is the corrected version you should be taking with you to the hearing on the above bill. If you have any questions call me at (954) 522-2200 extn. 65.

Thank you.

Jennifer J. Stabile, Paralegal to
Michael J. McNerney
VLSAA

>Reply-To: <democrat@sundial.net>
>From: "Doug Head" <democrat@sundial.net>
>To: <sibl@state.nd.us>, <dmutch@state.nd.us>
>Cc: <jenns@brinkleymcnerney.com>
>Subject: Comment for hearing on 1-22-2001 re: Senate Bill 2150
>Date: Sun, 21 Jan 2001 12:51:45 -0500
>X-Mailer: Microsoft Outlook 8.5, Build 4.71.2173.0
>Importance: Normal
>
>Ms. Doris Perez
>Committee Clerk
>Committee on Banking
>
>As per your instructions to Jennifer Stabile, attached is our comment on
>Senate Bill 2150.
>
>Thank you for your assistance.
>
>Doug Head
>



- Dear Senator Mutch - January 222.doc

Jennifer Stabile
<jenna@brinkleymcne
rney.com>

To: sibl@state.nd.us
cc:
Subject: NORTH DAKOTA S.B.2150

01/22/01 04:51 AM

Dear Ms. Perez:

The VLSAA was working on viatical legislation comments concurrently for North Dakota and Nebraska. In our haste to get comments to you by the hearing this morning at 9:00 a.m., the preparer of the comment letter, Doug Head, missed a few spelling errors and mistakenly referred to Nebraska when he intended to say North Dakota. Mr. Head is currently in Nebraska at their hearing.

Please accept our apologies for this mistake and accept the attached version as the FINAL VERSION of our comments on the North Dakota bill. Kindly distribute THIS VERSION to the committee members along with a copy of this email which explains such errors.

We have been working very hard to track and follow up viatical legislation introduced at the beginning of this new year and the subsequent hearings/comment periods in several midwestern states and states around the nation. We hope that you will accept our apologies and submit this version of our comments which we fell is important to North Dakota residents.

Very truly yours,
Jennifer J. Stabile, Paralegal to
Michael J. McNerney, Committee Chairman
VLSAA
and for Doug Head, President
(954) 522-2200 extn. 65



- Dear Senator Mutch - January 222.doc

latest update

VIATICAL AND LIFE SETTLEMENT ASSOCIATION OF AMERICA

2025 M STREET, NW SUITE 800, WASHINGTON, DC 20036

202-367-1136 FAX 202-367-2136

Doug Head, President

Sunday, January 21, 2001

Senator Duane Mutch
North Dakota Senate
600 East Blvd. Avenue
State Capitol
Bismarck, ND 58505
(by FAX 701-328-1997)
dmutch@state.nd.us

Dear Senator Mutch,

RE: ND Senate Bill 2150 - Opposition

I write to express the strong opposition of the Viatical and Life Settlement Association of America to Senate Bill 2150. Because the bill was hastily placed on the calendar, last Friday, we are unable to make arrangements to attend. Therefore we are submitting our comments in writing and request that this letter be placed in the record.

The VLSAA represents a large number of industry participants, ranging from institutionally and individually financed providers to brokers and other members of the industry. We are the largest organization so representing the industry and have been active in the deliberations of the National Conference of Insurance Legislators as well as the discussions at the National Association of Insurance Commissioners. We strongly support the NCOIL Model Life Settlements Act and urge the North Dakota Legislature to recognize your long active participation in NCOIL and to use that Model in developing North Dakota Viatical and Life Settlement law. It is available on line at www.ncoil.org.

Last week we wrote to Commissioner Poolman, copying you, and we must assume that this bill has been placed on the calendar at this time because Commissioner Poolman has decided to press ahead with the recommendation of former Commissioner Pomeroy on this matter. Allow us to point out that we have had no direct discussions with either Commissioner Poolman or his staff concerning the development of Senate Bill 2150. We regret that. We also regret that the timing of the announcement of this hearing, and the impossibility of attending, makes it impossible for me or others who might offer you alternative testimony to attend. We trust that our comments herein will be given careful consideration.

We do appreciate the repeal of the unworkable chapters 26.1-33.1 of the Century Code, but we honestly believe SB 2150 is written more poorly than even that unwise law. Chapters 26.1-33.1, as administered, have led, unfortunately to the nearly total withdrawal of our industry from North Dakota. The victims of that withdrawal are North Dakota insured individuals who may wish to realize the value of their property rights, as consumers, in selling their life insurance policies.

Our industry faces strong opposition from life insurers who have recently made their reasons clear in concluding a report by the Life Office Management Association, *Viatical and Life Settlements: The Challenge Facing the Life Insurance Industry*.

"[Life Insurers] will almost certainly see increased persistency of impaired lives, with possible impact on the profitability of their blocks of business."

What this really means for North Dakotans is that Life Insurers will find that sick people and older people will sell their policies to investors, so that the policies stay in force until death. These policies will lapse or be surrendered for little cash value or other insurance products. This will hurt insurance industry profits.

By way of contrast, I would offer you just one most recent comment in the (February, 2001) issue of Consumer Reports, "despite the problems and abuses, viatical settlements can be a godsend". And I will say that SB 2150 will more gravely damage participation by our industry in North Dakota.

Consumer Reports also says: "For all its troubles, the viatical industry fills a real need. In the absence of comprehensive health insurance that covers all costs, viatical settlements have emerged to help critically ill people who may otherwise be rendered destitute paying for medical care".... "If the industry can work out arrangements for life settlements, they may be a source of cash for retired people who don't manage to save enough for their old age." (February, 2001)

I can also tell you again that we strongly support the National Conference of Insurance Legislators Model Viatical Settlements Act, which is available on line at www.ncoil.org. We have worked with Representatives of North Dakota's legislature in developing this Model. We would also note that former Commissioner Pomeroy made a strong effort to lead the nation in opposition to our industry when he served as an activist in the National Association of Insurance Commissioners. Some of his staff carried that cause in committees.

Again, I say that it is the firm belief of the Viatical and Life Settlements Association of America, (VLSAA) that the proposed legislation will have the effect of continuing to discourage any North Dakota resident from entering into a Viatical Settlement and, will cause most participants in our industry association to leave North Dakota or continue to stay away. It might be simpler to present a two line Bill, "The transfer of a life insurance policy for value is prohibited." "Purchase of a life insurance policy as an investment is prohibited"

If there are, as expected, dramatic changes in the Federal inheritance tax laws in the next year, this Bill may damage the interests of tens of thousands of North Dakota residents and may cost them, literally, hundreds of millions of dollars as their policies with big premiums on which they have paid for years become worthless as far as the original reason for purchase, (inheritance tax coverage), but are only redeemable for cash value by insurers.

Please contemplate three points as you review language:

This Bill will sharply damage the legitimate Viatical and Life Settlement industry in North Dakota. The NCOIL Model, available at www.ncoil.org, which we totally support, has not been considered by the Department in drafting this legislation.

We are a small industry, and unable to bring to the table the massive resources of the insurers, but we believe that we reflect the interests of North Dakota insureds as consumers and owners of personal property.

We urge you to carefully consider the implications of this Bill and to leave it on the table until the Department and the other interested Parties can address the concerns of the individuals for whom we are fighting. Those are insured North Dakotans with Life Insurance Policies who wish to realize the value in those policies for themselves. We ask that you place yourself in the position of a willing seller as you consider the language of the Bill.

We also will draw your attention to the fact that our strong support for the carefully drafted NCOIL Model is based on the fact that it is a workable document which will allow North Dakota residents access to willing purchasers of their insurance policies. As Representative Terry Parke of Illinois, President of

NCOIL, said in distributing the Model, the proposal includes "input from the life insurance industry, the viatical and life settlements industry, and state legislators", and "the purpose of the Model is to provide consumer protections and regulate the industry." Representative Parke concluded, "I believe the Model meets this intent". We also want to let you know that we have had no contact or reply from Commissioner Poolman regarding our offer to assist, if possible, in working with staff from the Department to clarify the key decisions and to develop appropriate legislation based on the NCOIL Model for North Dakota.

We address detailed issues in our "detailed comments" which follow. But also have provided some rationale for our view of the proposal. The issues we raise have serious consequences and will affect many North Dakota citizens though they probably do not now realize the implications. In our view, the problems require serious discussion with staff or drafters of the bill. This is a complex and difficult set of issues and the legislature should consider the issues fully, in more extensive committee work, before advancing a bill, which may have a number of highly negative unanticipated consequences. We urge time and caution.

Again, we look forward to working with any designated representatives of the Department or legislature to seek common ground in which we may support an appropriate bill to regulate the industry in North Dakota.

Sincerely,

Doug Head
President
(407)898-4203 - Direct Number

cc. Committee Members, Representative George Keiser (Member of NCOIL)

Detailed Comments of the VLSAA on North Dakota Senate Bill No. 2150

Section 1.

26.1-33.2-01 Definitions

5. *Fraudulent Viatical Settlement Act*

We have a very high degree of concern with the significant alterations of standard insurance fraud terminology used in the Insurance Fraud Law in both NAIC Models, and, we believe, North Dakota Law. The effect is to make many acts, which are not knowingly committed, unlawful. The insertion of the tiny word "or" in the definition in lines 14 and 15 on page 2 of the viatical statute is highly disturbing. It would not be and is not tolerated by insurers in insurance fraud statutes. Those statutes require knowledge AND intent. To us, this small, but significant, change indicates a willingness by the drafters to make our industry, but not the insurance industry responsible for acts which may be committed without knowledge. This, in turn, has made us wary of all of the other language in the proposal.

Read, with the enumerated acts, and with careful attention to the "or's" and "commas" and deleting intervening words which might be excluded by any prosecuting attorney, the following are fraudulent viatical settlement acts in the proposal:

Acts or omissions committed by any person who, knowingly, ...permits its employees or agents to ...present...concealing information...material to a claim for payment pursuant to a viatical settlement contract.

That makes our current business improper in that we might unknowingly have a policy in our files which was improperly obtained from an insurer and our failure to find this, and yet proceed to make a claim on a legitimate enforceable policy, would be improper.

In fact, the following is a fraudulent viatical settlement act:

An act committed by any person who, knowingly, ...permits his or her employees to ...present...a claim for payment pursuant to a ...insurance policy.

That makes making almost any insurance claim improper.

Now, some may argue that "false material information" has to be in the presentation to make the act illegal. But we would note that the presentation could occur completely without the knowledge of the presenting individual, and certainly without the knowledge of an employer and that the material information we are talking about may be "in support of" a twenty-year old policy.

Paragraph (c) of the definition is also troubling. It is especially difficult for anyone who has been in business for any length of time. The language makes it a fraudulent act to present a claim for payment on a policy for which there has been payment made under an earlier viatical settlement, already transacted if we now know that the policy was originally obtained by fraud. We are the victims of the fraud because, in some cases we have unwittingly purchased policies from persons who did obtain policies improperly. They have the money. Yet if we present the claim, having held the policy for a number of years, we may be committing the special crime of "viatical fraud" as defined because the claim is made "in connection with an insurance policy [which] was fraudulently obtained". Even if we have a vague suspicion that the policy was obtained fraudulently, we are guilty, whether that is fact or not. In fact, the insurance laws of North Dakota, like other states, require that a legitimate claim on the life of the deceased be paid. Under the proposal an innocent investor may find that he is charged with fraudulent activity for innocently making a claim on a policy he purchased many years ago. We believe that the sort of language which might work for us and for insured individuals, while getting at the impermissible activity, would be something like:

"Knowingly and with intent to defraud or deceive presents, causes to be presented, or prepares with knowledge or belief that it will be presented to or by an insurer, or any agent of an insurer, any statement as part of, in support of, or in denial of a claim for payment or other benefit pursuant to an insurance policy knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim."

We urge you to correct the oversight and to restore the element of intent to the definition of the fraud. We would also urge, if our firms guilty of employee inaccuracies which may be material to ascertain that there was some awareness on our part of that false material. It is a fact that consumers sometimes apply for life insurance policies improperly. When they do and when the contestable period, (in which the insurer has every opportunity to challenge the policy and to request information), passes, these policies will result, if premiums are paid, in a claim. If there was a false material statement in the application, presentation of the policy for viatication alone, whether initiated by the insured or his agent, will require us to determine if the original applicant committed insurance fraud. This will occur though the insurer has no obligation to share underwriting criteria or other information regarding the original policy, including no obligation to share the original application for insurance so that we can determine it to be the same as that presented by the viator. In short the responsible person, the person liable for any fraud with criminal sanctions and licensing sanctions is not the insurer who has been and continues to collect premiums, but us. If the insurer or his agent has been sloppy, willfully negligent, or greedy for premiums, that fact would now be our responsibility in the proposed Senate Bill.

Another example of wording we find difficult to understand is:

Fraudulent viatical settlement act...includes knowingly concealing material information "concerning a fact material to a financing transaction". What does that mean, given that a "financing transaction" is not defined?

Or:

Fraudulent viatical settlement act...includes knowingly concealing material information "concerning a fact material in the solicitation, offer...or sale of ...an insurance policy". Does that mean that insurers, covered under other sections of the law could be guilty of "fraudulent viatical settlement acts" if their employees are not telling them of policy flaw?

Standard fraud statutes are quite explicit and make clear that no guilt accrues if there is innocence in knowledge and intent. The Viatical statute, uniquely, would seem to make an innocent person guilty without knowledge or intent. We oppose the language as written. The phrase "knowingly and with intent" or "knowingly and willfully" runs through all fraud law. We seek similar protection without which we

cannot reasonably do business. We would be happy to work with the Legislature or the Commissioner to suggest alternative language that is not so threatening to our industry, given a little time to do so.

We are disturbed by the inclusion of the act of transacting business without a license in the activities of "fraud" and wonder if the provision concerning "laws" in section 2. 5. B. 3 will apply to laws as they may be interpreted in other states and that this will, in turn apply in North Dakota.

We suggest that most, if not all, of the acts appropriately covered in this "Viatical Fraud" definition are, in fact, covered in North Dakota insurance fraud statutes and that they could be applied by simple reference to that language. If the statute wishes to define Viatical Fraud, the acts defined in the insurance fraud statute should suffice by simple reference to the definition of Viatical Settlement Contract.

Additionally, we note that "agent" is not defined in the Viatical Act, so it may be almost anyone associated with our industry, or could be simply the registered agents of the insurance industry for whom insurers claim no responsibility in many cases. We note that, unlike the insurance statutes, we are to be held accountable for "permitting" agents and employees to do improper things. This, also, is a word we do not really understand and on which we seek clarification because it may range in interpretation from "directing" all the way to "innocently and unknowingly allowing".

We believe that the proposed definition further extends to a variety of items not included in the prohibited insurance fraud. These are documents for which the insurance fraud code contains no counterpart; insurers and their agents have no criminal accountability to prevent or ascertain false information regarding many of these documents or activities. All of these documents may lead to charges of fraud, if they are presented. And the persons charged may well be innocent North Dakota insureds simply trying to sell their policies, without knowledge of a materially false piece of information, presented in their name.

The proposal would require the viatical industry to review all documents, insurance company policies and practices, and many other aspects of the business for accuracy and materiality. Insurance statutes generally contain language like "any statement as part of, in support of, or in denial of a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false, incomplete, or misleading information concerning any fact or thing material to a claim". This is a far narrower definition than the long list of and activities which the viatical industry is expected to verify under this proposal, and for which we would have severe liability. Again, we suggest simple reference to insurance code.

The definition of a fraudulent viatical settlement act goes further. It cites additional activities that are labeled "fraud" which again do not address the element of intent or knowledge as in Insurance law. SB 2150 as proposed suggests that guilt will accrue to any person who innocently "furthers" a fraud by removing a document. Again, insurers require the element of knowledge in intent in comparable insurance statutes so as to avoid culpability for mere clerical personnel.

The final paragraph is, again, language unmentioned in the insurance fraud statute. We were particularly startled when this language was introduced beyond the deadline and moved through the NAIC relevant committee, at the request of a North Dakota staffer, despite our failure to be able to understand its intent as perceived by the Insurance Department activist who advocated it. Despite the assertions to us in December that the reference to brokers would be deleted from the NAIC Model, it remains and remains in the proposed SB 2150. We acknowledge that the North Dakota staffer who participated in this process included, at our request, as here, language which would define "recklessly" but we do not understand, and we suggest that the legislature may wish to review, this language for legal propriety.

As you are aware by now, we find this whole definition very troubling. It is not written so as to encourage any viatical settlement activity in North Dakota and may eliminate this valuable option for insured persons in North Dakota. Frankly, our attorneys will advise many of us to continue to stay out of North Dakota. Indeed, it might be simpler and more direct, to simply define a Life Settlement and outlaw it. If this is the intent of the legislature, the law is well crafted, for the entire activity of the industry will be rendered

suspicious if this radical "fraud" clause is applied to our core activities. No legitimate company will operate in any state under that threat. We remain anxious to work with the regulators and other personnel to correct the language so as to achieve your true goals, which we assume to be appropriate regulation of an industry of which you approve.

11. Viatical settlement broker.

This definition contains the phrase, "or advertises the availability of viatical settlements, introduces viators to viatical settlement providers". We oppose this language which is not contained in the NAIC Model and does not correctly identify the circumstances under which various industry participants may act. If an agent, simply acting in his correct capacity happens to say to a client that viatical provider "A" is in the business of viatical settlements, could he not be construed to have "introduced" or "advertised" the settlement. Similar questions plague this definition. The narrowly, and properly constructed NAIC definition or the NCOIL definition should be re-introduced to the bill so as to allow North Dakota businesses to be treated as they are in other states. Uniformity is a new push at the NAIC. Why is the Commissioner's recommendation so different?

13. Viatical Settlement Contract

This definition deletes the phrase "with a viator" contained in two places in the NAIC Model - in lines 19, following transaction, and 22, following agreement. These deletions damage the whole meaning of the paragraph by allowing loose interpretation of later agreements between owning financial entities or special purpose entities or providers to enter into the term "Viatical Settlement Contract". The NAIC included them for this very explicit reason and we oppose deleting them from the North Dakota proposal. They will just confuse potential institutional purchasers of North Dakota policies.

Other Observations

We note that the NAIC Model contemplates the concept of a Viatical Settlement purchaser who might be a North Dakota resident buying two policies from his uncle. Such a situation would involve a purchaser. We urge the legislature to include this definition, unaccountably deleted from this proposal, for regulatory purposes and clarity.

We provide the definition from the NAIC, if that is agreeable to the Commissioner:

"Viatical settlement purchaser" means a person who gives 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. Viatical settlement purchaser does not include:

- (1) A licensee under this Act;
- (2) An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 or Rule 144A of the Federal Securities Act of 1933, as amended;
- (3) A financing entity;
- (4) A special purpose entity; or
- (5) A related provider trust.

26.1-33.2-02 Licensing Requirements

1. North Dakota has failed to recognize the potential for conflict of regulations when there are more than one provider or owner in the policy. The NAIC and NCOIL Model, again, cover this and we would recommend that it be re-introduced so as to protect the interests of viators who may have co-owners in other states, a very common situation. The language should be inserted in line 25.

9. This is extraordinary language which we have not seen in other states or national models. We do not know what it means or what its implications may be for interstate commerce. We note that it is not contained in the NAIC Model or NCOIL Model. The felony provisions exceed the laws of all other states so far as we can determine.

26.1-33.2-03 License Revocation and Denial

1. h. The exclusion of purchasers from the law is carried forward in this paragraph. We suggest that they be brought back into the law and the "purchaser" designation in line 29 from the NAIC Model be re-inserted, to bring this law into the national structure.

2. i. The extraordinary broad language in this paragraph will lead still more providers to withdraw from North Dakota. It is not contained in other national models or in the legislation of other states. We may well provide information that is materially untrue to an insurer without even knowing that fact. Only the insurer may have the relevant alternative set of facts. We may knowingly provide the information but we have no intent of defrauding, or injuring the insurer. If that becomes reason for revocation of a license, it will drive legitimate licensees from the state. We have noted our objections to this general language in the definitional section above.

26.1-33.2-04 Approval of contracts and disclosure statements

The fraud warning in the law has our support. However we want to point out to the Legislature that no such fraud warning exists in the insurance laws of many states and that we are, at this time, unable to determine if it even exists in North Dakota. So we urge the legislature to consider this provision carefully so as to allow for the insurance and viatical laws to coincide. The principle should be that if consumers are not receiving fraud warnings in original purchase, they should not be getting them later, after they have paid many premiums on their policies.

26.1-33.2-05 Reporting

An essential part of any viatical transaction is the fact that the seller/insured will be required to authorize some measure of tracing his health and whereabouts for years. In considering this, the NAIC and NCOIL allowed for such information to be appropriately shared. The proposed Senate Bill 2150 fails to include this language. This would disallow such tracing and make the settlement worthless. Investors would find themselves unable to collect on their investment and could be legislatively deprived of their property. We recommend re-inclusion of the language which follows from the NAIC Model:

(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
So as to allow for the investors to be further protected, similar information will have to be exchanged with re-insurers. For this we recommend inclusion of the following from the NAIC Model.

(7) Is required to purchase stop loss coverage.

26.1-33.2-06 Examination or Investigation

This section is very brief and very strongly worded to give the Commissioner authority to engage in examinations. We seek the same protections which insurers may seek or have obtained in North Dakota law. We note that the brief phrasing of this section gives enormous latitude to the Commissioner whose activities have been reviewed as, in some cases disorganized or abusive, in recent NCOIL reports. This broad wording, and previous activities by the North Dakota Department, may discourage licensees from applying. No time frame is mentioned in the examination provision which may be retroactive to some time prior to licensure or activity. This deeply concerns many possible participants in the market who are not currently licensed.

26.01-33.02-07 Disclosure

The NAIC Model contains a provision for disclosure of viator status checks which may require updated viator consent. This has been deleted from the North Dakota proposal. We are uncertain about the reason for this change, but are concerned that the necessary disclosures be made to long term viators. This question may relate to the adoption of GLBA privacy provisions, of which we may not be aware in North Dakota. We observe that the NCOIL Privacy Act and the NCOIL Viatical Act take a very different view of these issues from that of the NAIC and that we share the view of NCOIL, rather than that of the NAIC.

26.1-33.2-08 General Rules

The provision to protect the viator from intimidation by requiring that the viator has entered into the contract freely, contained in the NAIC Model, is modified in the North Dakota proposal in a manner which turns it on its head. Viators are required to acknowledge with a witness that the condition from which they suffer was diagnosed at a certain date. We believe that this might be a valid consideration, but not that it should be slipped into the back of a provision disguised as a protection. It is, in our view, really little more than a method of intimidating insured individuals and forcing them to retroactively make assurances, which they may be unable to do. Consumers should be outraged by this subtle change infringing on their rights.

We encourage the legislature to alter these provisions in accord with the NAIC Model as follows, striking the additional language:

9. A (2) 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;

The NAIC and North Dakota proposals require the following paragraph, which we believe to be deeply flawed:

- (b) A document in which the insured consents to the release of his or her medical records to a viatical settlement provider, viatical settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.

As we have articulated many times in discussions with legislators and regulators around the nation, the public is increasingly concerned with the possibility of unauthorized release of medical records, personal financial records and other information to persons who are otherwise not entitled to these documents. The proposal contains a provision that has been advanced by the American Council of Life Insurance as a "fraud prevention measure". We agree that it may have that effect, in a unique way, because it will operate as a complete viatical settlement prevention measure. Persons whose medical information is entirely at the disposal of their insurers at the time of the life contract and for two succeeding years, during contest periods, will now, by this act be exposed to new underwriting. NCOIL viewed this as a thinly veiled attempt at post-claims underwriting. In the proposed North Dakota Bill 2150, insurers are entitled to yet another review of personal records, medically private records, simply because the insured individual has chosen to engage in a viatical settlement. This act, and no other act of pledging or otherwise assigning a life insurance policy, to a bank for example, triggers the capacity of the insurers to go to the medical record of innocent North Dakota insureds and to fight their claims, charge fraud, and otherwise harass the insured individual.

In other areas of claims, the ability of insurers to do post-claims underwriting has been the direct outcome of such "fraud fighting" proposals. In California, such provisions led to an immediate drop in Workers Compensation claims, but the Los Angeles Times (August 2000) has reported that this was due to intimidation and other highly unethical conduct by insurers.

We strongly urge you to protect the privacy of North Dakota citizens, those who have paid their insurance premiums for years. They have committed no wrong, but who, with this provision, will find insurers rummaging in their private medical records looking for reasons to contest their policy claims. In fact, I can tell you that these poor North Dakota citizens will find themselves without a market for their policies. Insurers will state that the policies are "under review" and no purchaser will pay for such policies. This is bad public policy and one that North Dakota legislators, as representatives of the people do not want to defend with your constituents, already suspicious of infringements on their privacy.

Linked to the ACLI initiative mentioned above is the language in the last sentence of (1) (b) and much of the language in (1) (c). We believe that these provisions are terrible invasive public policy. They eliminate the rights of the innocent to get at the guilty. No insured individual should have to give up rights by law to obtain rights he already has under an earlier contract. We believe these provisions to be insensitive and anti-consumer.

It is worth pointing out to North Dakota legislators that the NAIC Model also asks for insurers to opine on the validity of the insurance policy underlying the viatical contract when they have acquired all this private information. But Commissioner's proposal eliminates this assurance from the language of the proposal. In a sense, the Commissioner's proposal asks that North Dakota viators give up their contracted rights for nothing. The provision is outrageous in our view and damages the interests of every insured individual in North Dakota by explicitly authorizing insurers to obtain records with which to challenge claims whenever a citizen seeks to assign his policy for value. This is a benefit to corporations at the cost of North Dakota insured individuals.

We recognized that there must be, in this process some finality to this process of investigating and re-investigating the medical records of insured individuals. But we are amazed to find the NAIC Model language, which would produce this result, deleted from the SB 2150 as proposed.

Currently, insurers face requirements to pay on life insurance policies under nearly any circumstance because of their historic practice of denying claims for widows and orphans. They should be able to assure policy purchasers that they have questions about the validity of policies if such questions exist. But the language, "...and [the insurer] 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.", is entirely inadequate. Any insurer may simply reply, "Yes, we intend to pursue an investigation", and the deal will be off. No rational purchaser or Provider will buy such a policy. North Dakotans with legitimate reason to sell their policies will be damaged. In fact the language will create yet more barriers to sales and may destroy the market all by itself. We have no desire to require insurers without claims to assert that they are going to "investigate" insured individuals. Less so if they are going to get access to their medical records to re-underwrite the policies. We know that North Dakota insureds will find this sort of public policy deeply disturbing if it passes.

We pity the regulator who is tasked with explaining this to possible North Dakota viators who have paid premiums for years when they discover that they need to re-prove their eligibility to their carriers in a witnessed document, simply because they wish to pledge their policy for viatication, and that the insurer may indefinitely delay a conclusion while the policy is "under investigation, even after the death of the insured.

Paragraph 4 refers to payment process. We believe that the last sentence of this paragraph is poorly conceived. As in a real estate transaction, the exchange of documents and funds must occur in the offices of the contract specified escrow agent. We believe that the Escrow Agent will be the person receiving the forms, properly completed, from the Insurer and should, at that point, pay the viator. At that point, also, the transfer of ownership forms will be turned over to the Provider. We suggest that the word "provider", in line 16, be changed to "escrow agent" and that "the licensed provider shall instruct" be deleted from line 18.

Contacts with the insured are necessary for many purposes in a viatical transaction. The explicit NAIC provision allowing for these contacts has been deleted from line 3 on page 16 in the Commissioner's proposal and it will have a negative effect on North Dakota insureds who may be viators. The language should be restored.

26.01-33.02-09 **Prohibited practices**

These provisions are carefully constructed and the NAIC recognized this in developing the model. The proposal in SB 2150, for some reason, deletes many of these nuances. For example, the North Dakota proposal, in section (1) deletes the following language at the end of this paragraph:

...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 twenty-four (24) 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;

This protects insured individuals from an otherwise rigorous provision when their carrier may have been

changed in recent years. Deletion of this language is just plain abusive of insured individuals. We do not comprehend its deletion.

Throughout this section the proposed SB 2150 refers to "Owner" when the correct defined term is "Viator". We do not know if this is intentional, and if so do not understand the thinking. It may be an error in drafting.

The exclusion of one paragraph from the NAIC Model astounds us given the many family farms in North Dakota. It is the provision regarding exclusion for "closely held corporations" which must affect many residents of the state.

The oddly placed paragraph 6 in this section is neither a prohibited practice nor a mandate, but would seem to merit a separate provision, as does advertising in the insurance law. We feel that rules for this section should be adopted by the Commissioner, not the legislature, but that there should be rules. The draft provision makes certain persons responsible and we are uncertain of its fuller meaning. We urge caution in adopting this provision without reference to current provisions of insurance law and rule regarding advertising.

26.01-33.02-10 Fraud prevention and Control

We have a continued problem with the assumption of guilt, which prevails in this document. For example the Commissioner's proposal contains the word "anticipated" in line 13 on page 18 which seems to involve seeing into the future. It is an extraordinary word to find in a fraud statute and we would suspect that no comparable language exists in insurance fraud law. We recommend that it be deleted.

It is also extraordinary to us that the provisions allowing us to seek redress from persons maliciously reporting bad activity in our industry to stir up trouble have been deleted. The deletion of this language indicates to us that there may be individuals who wish us harm and seek to have immunity in reporting "possible" or "anticipated" misdeeds with impunity. This is an example of a provision which gives us little confidence in a fair and open market in North Dakota. It is simply unfair. No such provision is in force for insurers, so victimized, under insurance law.

The provisions relating to antifraud plans are generally implemented in our companies. But we have found that they are not in effect in the offices of most insurers. We believe that no such plan requirement is in effect in North Dakota insurance law and note that this plan may give additional support to imposing such a requirement on life insurers, with all of the attending burdens. We do not believe that such a provision should be imposed on our industry without such a provision in insurance law.

26.1-33.2.11 Civil remedies

The fine provisions are a last difficult provision. Though the market in North Dakota is small, and few are licensed or currently wish to be licensed, or will become licensed if other provisions of this law are implemented, North Dakota has suggested the largest fines of any state in the nation for violation of provisions of this chapter. By way of contrast, proposed legislation in another nearby state calls for penalties of "up to \$1000 per violation", rather than North Dakota's \$50,000. Few persons will operate under this sort of obviously excessive provision in the law as administered by a possibly hostile Department.

In sum, this proposed SB 2150 is so negatively worded as to give us pause. Is it not easier for North Dakota to simply outlaw Viatical Settlements and deny North Dakota residents an alternative use to their personal property? That may, indeed be the course sought by the Commissioner in advancing this proposal.

Sincerely,

Doug Head
President

GAWPFILES\CLIENTS\MBC\REGULAN D\Dear Senator Mutch - January 222.doc

Viatical Settlements

*The Emerging Secondary Market
for Life Insurance Policies*

1999



Viatical & Life Settlements Definitions and History

by Stacy J. Braverman, CEBS, HIA, ALHC, MHP

Viaticus, Inc.

overseas travel to see family members. 1/3 of families lose most or all of their savings when the head of the household becomes seriously ill. Increasing health and long term care costs contribute to this statistic.

In the mid to late 1980s this point was clearly evident with the impact of the AIDS epidemic. It was the AIDS epidemic that led to the birth of the viatical industry. By selling their life insurance policies, AIDS patients were able to afford extremely expensive medical treatment, or grant themselves final wishes. The industry had very humanitarian beginnings.

AIDS patients were easy to reach through publications and their life expectancies were easily predicted. In 1990 six companies were participating in the market and it is estimated that the market size was \$50 million dollars.

As treatments for AIDS became more effective, the life expectancies of individuals with AIDS were far less predictable and increased, sometimes dramatically. This led to the demise of some viatical settlement providers and a focus on diversification for those that remained in the industry. The mid 90's saw viatical settlement providers focusing on terminal illnesses other than AIDS such as cancer and heart disease. These patients were more difficult to reach in terms of marketing, which slowed the market somewhat but their life expectancies were more reliably projected. This shift in focus also caused a reduction in average settlement amounts of about 10%.

Life settlements were the next evolution of the viatical settlements industry. In the mid- to late 1990's companies like Viaticus, Inc. began to shift their focus. This shift expanded the concept of viaticals to a new market segment: "healthy" seniors. These insureds are not terminally or catastrophically ill but have moved off the mortality tables since their policies were originally issued due to their increased age and other minor health conditions such as high blood pressure. The policies involved are often larger than those in typical viatical transactions. These policies are generally sold as a result of:

Viatical & Life Settlements Definitions and History

by Stacy J. Braverman, CEBS, HIA, ALHC, MHP

Viaticus, Inc.

- a change in circumstances such as income replacement coverage is no longer needed or an immediate need for cash arises,
- business purposes such as a CEO's retirement when he is covered under a 'key man' policy, or
- estate purposes such as charitable gifts or coverage for estate taxes is no longer needed.

This was a shift from the humanitarian beginning of the industry to more of a financial planning and asset management focus.

The industry participants now include provider companies, brokers, marketing firms and vast producer networks, including attorneys, CPAs and financial planners, making it difficult to determine the true number of participants. At the end of 1999, Conning Insurance Research & Publications estimated the potential market for viatical and life settlements to be \$134 billion dollars. That same year, Viaticus, Inc. wrote nearly 1/2 billion dollars in business. If the Conning report is accurate, we've barely scratched the surface in this industry.

The other large difference in the settlements market is the method of funding the settlements. When the industry first began, almost all settlements were funded with money from individual investors. These investors would provide money to viatical settlement providers in exchange for becoming the beneficiary and in some cases also the policy owner, of a policy that met their preferred characteristics regarding amount, term to maturity, etc. This method of funding involves some risks for investors. They must rely on the viatical provider to make good underwriting decisions and reasonably accurate life expectancy projections. They also must rely on the provider's representations regarding the policy that they are purchasing. Individual investors can purchase whole policies or fractionalized interests in pools of policies. There is some disagreement as to which regulatory agency has jurisdiction over these transactions – the securities division or the insurance department. Many states are moving to define these investments as securities.

Testimony on SB 2150
Presented to ND house Industry, Business and Labor Committee
March 6, 2001

Mr. Chairman and members of the committee, my name is Norm Stuhlmiller, I am representing the Silver Haired Education Association, an organization that exists to speak and protect the wellbeing of the senior population of North Dakota by working for legislation that looks out for their interests. That is just what SB 2150 will do.

A viatical settlement can be a good thing and can be used for the advantage of people who need cash to pay bills that may have accumulated due to life threatening or catastrophic illnesses. There is, however, an issue that needs to be regulated and SB 2150 addresses the issue, that is the "senior Settlement" disclosure issue.

For some reason seniors are vulnerable, maybe because they are too trustful. They were not brought up to be suspicious of anyone and can remember when a promise and a handshake was all that was needed to close a deal. In spite of the fact that radio and tv ads and newspaper articles tell people to make sure they know what they are signing, seniors are still targets for fraud and deception.

While we were raising our families, we needed life insurance to protect our families in the event of the death of the breadwinner. Once the children have left home, have graduated from college, we no longer need the protection; enter the viatical settlement providers who may be engaging in the "senior Settlement" business.

Ms. Anderson explained the "senior Settlement" issue well and you don't need me to reiterate what she has already told you. SB 2150 would regulate the industry and would afford the consumer protection from fraudulent transactions that are presently being used in some instances.

I encourage you to give SB 2150 a "do pass" to protect the citizens of this state. Thank you for your time, I would be willing to answer any questions you may have.

SENATE BILL NO. 2150

Presented by: Susan J. Anderson
Legal Counsel
North Dakota Insurance Department

Before: Industry, Business and Labor Committee
Representative Rick Berg, Chairman

Date: March 6, 2001

TESTIMONY

Good morning, Mr. Chairman and members of the Senate Industry, Business and Labor Committee:

My name is Susan Anderson, Legal Counsel for the North Dakota Insurance Department. I am here today to introduce Senate Bill No. 2150 regarding viatical settlements.

A viatical settlement is where an individual sells his or her life insurance policy to a third party for cash and receives less than the full amount of the death benefit. The buyer becomes the new owner and/or beneficiary of the policy, pays all future premiums, and collects the full amount of the death benefit when the insured dies.

Viatical settlements are complicated transactions and are dually regulated in North Dakota. In 1995, this Legislature passed our existing law relating to the selling of insurance policies to viatical settlement providers and gave authority to the Insurance Commissioner to regulate this side of the industry. Last session this Legislature gave the Securities Commissioner authority to regulate the second side of the transaction - that is the selling of an interest in the individual's policy to the public. I have included a diagram of the viatical settlement transaction to help explain this concept.

In 1995 this Legislature passed our existing law relating to viatical settlements. At that time, the viatical industry was limited to purchasing policies from people that had life threatening or catastrophic illnesses. Our present law reflects that practice. Since that time, the industry has changed and continues to change dramatically. Since the invention of better drugs, patients that had shortened life expectancies are now living longer and their policies are not as profitable to the viatical settlement providers. As such, the viatical settlement industry is now moving to "senior settlements" or "life settlements" whereby a healthy individual, usually an older individual who is no longer in need of their life insurance policy, sells their policy to a viatical settlement provider. Unfortunately, our present law has become outdated and does not regulate life settlements. This industry has been evolving unregulated. We know for a fact that providers and brokers are engaging in the "senior settlements" industry in North Dakota unregulated.

The Department is introducing this bill to specifically address the "senior settlement" situation and to get this industry practice regulated. This is a strong consumer protection bill.

The bill enhances our already existing law and provides stronger consumer protections.

This bill seeks to amend our existing law in a number of different ways:

- Amend the definition of viatical settlement to include and regulate all sales of life insurance policies.
- Provide protection for those selling their policies by requiring certain disclosures no later than the time of application by the viatical settlement provider or broker.
- Provide the unconditional right to rescind the contract for least 30 days after the date of the contract or 15 days from the time of receipt of the proceeds, whichever is less.

- Beef up fraud protections by defining a fraudulent settlement act to include brokers and providers accepting policies that have concealed information for the purpose of viaticating the policies. This bill prevents a broker or provider from entering a viatical settlement contract within two years from the issuing of a life insurance policy. These two sections are important because of the rampant insurance fraud that has occurred in this industry.

There are two major fraudulent acts that occur in this industry - "clean sheeting" and "wet paper" transactions. Briefly, clean sheeting is where an individual conceals medical problems on the life insurance application to obtain coverage just below the insurer's non-medical limits. These policies are quickly sold to viatical settlement companies which in turn seek investors who would not have invested in these policies if the risks had been disclosed.

The second fraudulent transaction is the "wet paper" or "wet ink" transaction whereby an individual purchases a policy and quickly turns around and sells the policy to the viatical settlement provider. The individual purchases the policy with the intent to resell the policy at a profit. These purchases are often made by seniors, who are recruited to sell these policies.

- Require that brokers disclose how the broker will be compensated.

I would like to highlight specific sections of the bill.

Definitions

Section 1 of this bill defines a viatical settlement broker, provider, and viatical settlement contract. Importantly, this bill provides a definition for fraudulent viatical settlement acts. As mentioned above, this industry has been plagued by fraud and in response to that concern, this bill specifically defines fraudulent viatical settlement acts and provides authority to the Commissioner to fine individuals who engage in such acts.

License Requirements

This section requires both a viatical settlement broker and provider to hold a license before they may engage in the viatical settlement industry. Our present law was somewhat ambiguous as to who, the broker or the provider or both, had to hold a viatical settlement license. The Department has been requiring both entities to hold such a license with a requisite fee of \$250 and an annual renewal fee of \$150. This section would clarify that practice. It has been the Department's practice to require an applicant for a viatical settlement broker license to obtain an insurance agent's license. An underlying insurance producer license would be required by this bill.

License Revocation and Denial

This section provides reasons why the Commissioner may refuse to issue, revoke, or refuse to renew a license. Many of these items now found in our present law.

Contract and Disclosure Approval

Presently, our law requires that all viatical settlement contracts be approved by this Department. This section of the bill will still require contract approval but additionally will require the approval of the disclosure statements given to viators. Disclosure statements are required to be given and signed by viators pursuant to Section 26.1-33.2-07 of this bill.

Reporting Requirements and Confidentiality

This section is found in our present law.

Examination or Investigations

This section is found in our present law.

Disclosure

Although our present law contains a disclosure section, this bill has substantially increased the amount of disclosure needed to be given to a viator. The Department believes that disclosure is a fundamental protection needed to be given to people seeking to sell their life insurance policy, especially seniors, who are now the target of this industry. A decision

to sell your insurance policy is a major decision and one that should be entered into with as much information as can be obtained. Consequently, this section provides new requirements such as:

- Disclosure be given in writing signed by both the broker or provider and the viator;
- Disclosure be given no later than the time the application for the viatical settlement contract is signed by the parties;
- Funds must be sent within three business days after the viatical settlement provider has received acknowledgment that ownership of the policy has been transferred and the beneficiary has been designated;
- Viators must be informed that certain rights might be forfeited by the viator;
- A brochure must be produced and given to the viator;
- Disclosure that medical, financial, or personal information may be disclosed to others as needed to effect the viatical settlement contract. This is a key disclosure. In order to effect a viatical settlement, many people do not understand that personal information is passed on to investors. The Department believes that this information is crucial to viators who may reconsider the viatical settlement once they understand that personal information is given to investors.
- Disclosure that the insured may be contacted by the viatical provider or broker regarding his or her health status and the limitations on those contacts.

General Rules

This bill provides certain rules that providers and brokers must follow. Our present law has some general rules but this bill introduces new requirements such as:

- Notice to the insurer that issued the policy that it has or will be viaticated. The notice must be accompanied by a copy of the medical release and a copy of the viator's application for the viatical settlement contract. This is a very important section because communication between the insurer and the viatical company is key to combat fraudulent activities that are occurring in this industry.
- The viator may rescind the contract for at least 30 days from the date of the contract or 15 days from receipt of the proceeds, whichever is earlier.
- The contract can be deemed voidable if the provider does not remit the funds with the specified time period found in Section 26.1-33.2-07.
- Contacts with insureds are limited to once every three months for insureds with a life expectancy of more than one year and no more than once per month for insureds with one year or less.

Prohibited Practices

This section prohibits any person to enter into a viatical settlement contract within the two-year incontestability period. There are listed hardship exceptions to this two-year limitation. If the policy is viaticated within that two-year period, independent medical information must be submitted to the insurer when the viatical settlement provider requests to effect a transfer of the policy to the provider. This is required to weed out any fraudulent activities.

Fraud Prevention and Control

This section is not currently in our law but provides requirements for brokers and providers to prevent fraudulent activities that are occurring in this industry. This section refers back to the definition of fraudulent viatical settlement act. This section requires:

- That a person that is engaged in the viatical settlement industry having knowledge or a reasonable belief that a fraudulent settlement act is being committed or will be committed is under a duty to notify the Commissioner, and

- Gives Immunity to those furnishing information regarding the above.

This section also requires viatical settlement providers and brokers to submit an anti-fraud plan to the Commissioner. The plan must include:

- Fraud investigators - which can be employees;
- Procedures to detect fraud;
- Procedures to report possible fraudulent activities to the Commissioner;
- Plan for anti fraud education and training of underwriters ;
- Anti fraud plans would not be considered an open record.

Civil Remedies

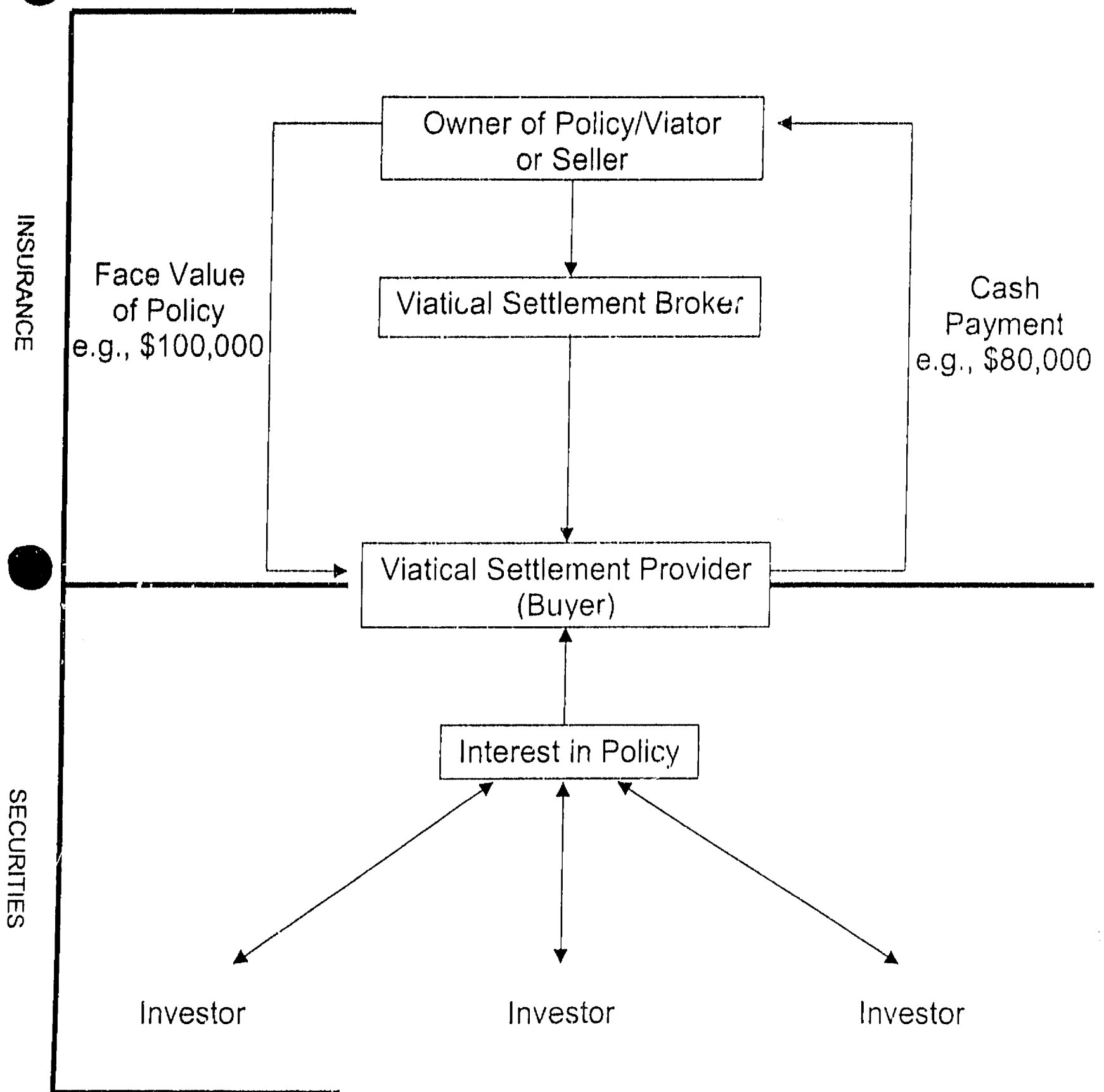
This section would give the Commissioner authority to fine any person under this Act up to \$50,000. A violation of the chapter would be considered an unfair trade practice.

Rulemaking Authority

This section does provide authority to the Commissioner for rulemaking.

This bill will provide strong consumer protection for the senior citizens of North Dakota and protect against fraudulent activities that occur in this industry. The Department requests a "do pass" on Senate Bill No. 2150.

VIATICAL SETTLEMENT PROCESS





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Testimony on SB 2150

Presented to ND House Industry, Business and Labor Committee
March 6, 2001

Mr. Chairm. Members of the Committee, my name is Janis Cheney. I am the North Dakota State Director for AARP. I appreciate the opportunity to offer testimony in support of Senate Bill 2150. I regret that an out of town commitment prevents me from attending this hearing in person.

AARP is the nation's leading organization for people 50 and older. It provides information and education, advocacy, and community services through a network of local chapters and experienced volunteers throughout the country. Members have access to a wide range of benefits and services, including *Modern Maturity* magazine and the monthly *Bulletin*.

Viatical agreements can aid many people by providing additional sources of funding for long term care services and therefore, may be of particular interest to older North Dakotans. As with any financial transaction it is absolutely critical that those selecting this option have a complete and clear understanding of how the transaction works. Viatical and life settlements are complicated matters with great potential to work against the consumer if he or she is not properly informed.

This legislation provides important consumer protections, particularly in the provisions related to disclosure – the information that must be presented to a consumer in the process of the transaction.

AARP believes that ensuring full disclosure of information to consumers on the affect of viatical and life settlements is an appropriate and necessary measure for state government to take.

I encourage you to give SB 2150 a "DO PASS" recommendation.

