

**SENATE BILL NO. 2268**

Introduced by

Senators Klein, Hacker, Heitkamp

Representatives Ekstrom, N. Johnson, Keiser

1 A BILL for an Act to create and enact chapter 26.1-33.3 of the North Dakota Century Code,  
2 relating to viatical settlement contracts; to amend and reenact subdivision a of subsection 21 of  
3 section 10-04-02 of the North Dakota Century Code, relating to the definition of viatical  
4 settlement contract; to repeal chapter 26.1-33.2 of the North Dakota Century Code, relating to  
5 viatical settlement contracts; and to provide a penalty.

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

7 **SECTION 1. AMENDMENT.** Subdivision a of subsection 21 of section 10-04-02 of the  
8 North Dakota Century Code is amended and reenacted as follows:

9 a. The assignment, transfer, sale, devise, or bequest of a death benefit, life  
10 insurance policy, or certificate of insurance by the viator to the viatical  
11 settlement provider pursuant to chapter ~~26.1-33.2~~ 26.1-33.3;

12 **SECTION 2.** Chapter 26.1-33.3 of the North Dakota Century Code is created and  
13 enacted as follows:

14 **26.1-33.3-01. Definitions.**

- 15 1. "Advertising" means any written, electronic, or printed communication or any  
16 communication by means of recorded telephone messages or transmitted on radio,  
17 television, the internet, or similar communications media, including film strips,  
18 motion pictures, and videos, published, disseminated, circulated, or placed directly  
19 before the public, in this state, for the purpose of creating an interest in or inducing  
20 a person to purchase or sell, assign, devise, bequest, or transfer the death benefit  
21 or ownership of a life insurance policy pursuant to a viatical settlement contract.  
22 2. "Business of viatical settlements" means an activity involved in, but not limited to,  
23 the offering, soliciting, negotiating, procuring, effectuating, purchasing, investing,  
24 financing, monitoring, tracking, underwriting, selling, transferring, assigning,

- 1           pledging, hypothocating, or in any other manner, acquiring an interest in a life  
2           insurance policy by means of a viatical settlement contract or other agreement.
- 3        3. "Chronically ill" means:
- 4           a. Being unable to perform at least two activities of daily living, such as eating,  
5           toileting, transferring, bathing, dressing, or continence;
- 6           b. Requiring substantial supervision to protect the individual from threats to  
7           health and safety due to severe cognitive impairment; or
- 8           c. Having a level of disability similar to that described in subdivision a as  
9           determined by the secretary of health and human services.
- 10       4. a. "Financing entity" means an underwriter, placement agent, lender, purchaser  
11       of securities, purchaser of a policy or certificate from a viatical settlement  
12       provider, credit enhancer, or any entity that has a direct ownership in a policy  
13       or certificate that is the subject of a viatical settlement contract, but:
- 14           (1) Whose principal activity related to the transaction is providing funds to  
15           effect the viatical settlement or purchase of one or more viaticated  
16           policies; and
- 17           (2) Who has an agreement in writing with one or more licensed viatical  
18           settlement providers to finance the acquisition of viatical settlement  
19           contracts.
- 20        b. "Financing entity" does not include a nonaccredited investor or a viatical  
21        settlement purchaser.
- 22       5. "Fraudulent viatical settlement act" includes:
- 23           a. Acts or omissions committed by any person who, knowingly or with intent to  
24           defraud, for the purpose of depriving another of property or for pecuniary gain,  
25           commits, or permits its employees or its agents to engage in acts including:
- 26           (1) Presenting, causing to be presented or preparing with knowledge or  
27           belief that it will be presented to or by a viatical settlement provider,  
28           viatical settlement broker, viatical settlement purchaser, viatical  
29           settlement investment agent, financing entity, insurer, insurance  
30           producer, or any other person, false material information, or concealing

- 1 material information, as part of, in support of or concerning a fact  
2 material to one or more of the following:
- 3 (a) An application for the issuance of a viatical settlement contract or  
4 insurance policy;
  - 5 (b) The underwriting of a viatical settlement contract or insurance  
6 policy;
  - 7 (c) A claim for payment or benefit pursuant to a viatical settlement  
8 contract or insurance policy;
  - 9 (d) Premiums paid on an insurance policy, or as a result of a viatical  
10 settlement purchase agreement;
  - 11 (e) Payments and changes in ownership or beneficiary made in  
12 accordance with the terms of a viatical settlement contract,  
13 viatical settlement purchase agreement or insurance policy;
  - 14 (f) The reinstatement or conversion of an insurance policy;
  - 15 (g) The solicitation, offer, effectuation, or sale of a viatical settlement  
16 contract, insurance policy, or viatical settlement purchase  
17 agreement;
  - 18 (h) The issuance of written evidence of a viatical settlement contract,  
19 viatical settlement purchase agreement or insurance; or
  - 20 (i) A financing transaction;
- 21 (2) Employing any plan, financial structure, device, scheme, or artifice to  
22 defraud related to viaticated policies; and
- 23 (3) Failing to disclose to an insurer a plan, transaction or series of  
24 transactions as required pursuant to section 26.1-33.3-09;
- 25 b. In the furtherance of a fraud or to prevent the detection of a fraud any person  
26 commits or permits its employees or its agents to:
- 27 (1) Remove, conceal, alter, destroy, or sequester from the commissioner  
28 the assets or records of a licensee or other person engaged in the  
29 business of viatical settlements;
  - 30 (2) Misrepresent or conceal the financial condition of a licensee, financing  
31 entity, insurer, or other person;

- 1                   (3) Transact the business of viatical settlements in violation of laws  
2                   requiring a license, certificate of authority, or other legal authority for the  
3                   transaction of the business of viatical settlements; or
- 4                   (4) File with the commissioner or the equivalent chief insurance regulatory  
5                   official of another jurisdiction a document containing false information or  
6                   otherwise conceal information about a material fact from the  
7                   commissioner;
- 8                   c. Embezzlement, theft, misappropriation, or conversion of moneys, funds,  
9                   premiums, credits, or other property of a viatical settlement provider, insurer,  
10                  insured, viator, insurance policyowner, or any other person engaged in the  
11                  business of viatical settlements or insurance;
- 12                  d. Recklessly entering into, negotiating, brokering, or otherwise dealing in a  
13                  viatical settlement contract, the subject of which is a life insurance policy that  
14                  was obtained by presenting false information concerning any fact material to  
15                  the policy or by concealing, for the purpose of misleading another, information  
16                  concerning any fact material to the policy, if the person or the persons  
17                  intended to defraud the policy's issuer, the viatical settlement provider or the  
18                  viator. "Recklessly" means engaging in the conduct in conscious and clearly  
19                  unjustifiable disregard of a substantial likelihood of the existence of the  
20                  relevant facts or risks, such disregard involving a gross deviation from  
21                  acceptable standards of conduct;
- 22                  e. Facilitating the change of state of ownership of a policy or certificate or the  
23                  state of residency of a viator to a state or jurisdiction that does not have a law  
24                  similar to this chapter for the express purposes of evading or avoiding the  
25                  provisions of this chapter; or
- 26                  f. Attempting to commit, assisting, aiding, or abetting in the commission of, or  
27                  conspiracy to commit the acts or omissions specified in this subsection.
- 28                  6. "Person" means a natural person or a legal entity, including an individual,  
29                  partnership, limited liability company, association, trust, or corporation.

- 1           7. "Policy" means an individual or group policy, group certificate, contract, or  
2           arrangement of life insurance owned by a resident of this state, regardless of  
3           whether delivered or issued for delivery in this state.
- 4           8. "Related provider trust" means a titling trust or other trust established by a licensed  
5           viatical settlement provider or a financing entity for the sole purpose of holding the  
6           ownership or beneficial interest in purchased policies in connection with a financing  
7           transaction. The trust must have a written agreement with the licensed viatical  
8           settlement provider under which the licensed viatical settlement provider is  
9           responsible for ensuring compliance with all statutory and regulatory requirements  
10           and under which the trust agrees to make all records and files related to viatical  
11           settlement transactions available to the commissioner as if those records and files  
12           were maintained directly by the licensed viatical settlement provider.
- 13          9. "Special purpose entity" means a corporation, partnership, trust, limited liability  
14           company, or other similar entity formed solely to provide either directly or indirectly  
15           access to institutional capital markets:
- 16           a. For a financing entity or licensed viatical settlement provider; or
- 17           b. (1) In connection with a transaction in which the securities in the special  
18                purposes entity are acquired by the viator or by "qualified institutional  
19                buyers" as defined in rule 144 adopted under the Securities Act of  
20                1933, as amended; or
- 21                (2) The securities pay a fixed rate of return commensurate with established  
22                asset-backed institutional capital markets.
- 23          10. "Terminally ill" means having an illness or sickness that can reasonably be  
24           expected to result in death in twenty-four months or less.
- 25          11. "Viatical settlement broker" means a person who working exclusively on behalf of a  
26           viator and for a fee, commission, or other valuable consideration, offers or attempts  
27           to negotiate viatical settlement contracts between a viator and one or more viatical  
28           settlement providers or one or more viatical settlement brokers. Notwithstanding  
29           the manner in which the viatical settlement broker is compensated, a viatical  
30           settlement broker is deemed to represent only the viator, and not the insurer or the  
31           viatical settlement provider, and owes a fiduciary duty to the viator to act according

1           to the viator's instructions and in the best interest of the viator. The term does not  
2           include an attorney, certified public accountant, or a financial planner accredited by  
3           a nationally recognized accreditation agency, who is retained to represent the  
4           viator and whose compensation is not paid directly or indirectly by the viatical  
5           settlement provider or purchaser.

6           12. a. "Viatical settlement contact" means a written agreement between a viator and  
7           a viatical settlement provider or any affiliate of the viatical settlement provider  
8           establishing the terms under which compensation or anything of value is or  
9           will be paid, which compensation or value is less than the expected death  
10           benefits of the policy, in return for the viator's present or future assignment,  
11           transfer, sale, devise, or bequest of the death benefit or ownership of any  
12           portion of the insurance policy or certificate of insurance.

13           b. "Viatical settlement contract" includes a premium finance loan made for a life  
14           insurance policy by a lender to a viator on, before, or after the date of  
15           issuance of the policy if:

16           (1) The loan proceeds are not used solely to pay:

17                   (a) Premiums for the policy; or

18                   (b) The costs of the loan, including interest, arrangement fees,  
19                   utilization fees and similar fees closing costs, legal fees and  
20                   expenses, trustee fees and expenses, and third-party collateral  
21                   provider fees and expenses, including fees payable to letter of  
22                   credit issuers;

23           (2) The viator or the insured receives on the date of the premium finance  
24           loan a guarantee of a future viatical settlement value of the policy; or

25           (3) The viator or the insured agrees on the date of the premium finance  
26           loan to sell the policy or any portion of its death benefit on any date  
27           following the issuance of the policy.

28           c. "Viatical settlement contract" does not include:

29           (1) A policy loan or accelerated death benefit made by the insurer pursuant  
30           to the policy's terms;

- 1                   (2) A loan based on the cash surrender value of a policy made by a bank  
2                   or other licensed financial institution in which the lender takes an  
3                   assignment of a life insurance policy solely as collateral for a loan or, if  
4                   there is a default on such loan and the policy is transferred, the further  
5                   assignment of such a policy by the lender;
- 6                   (3) A loan made by a lender that does not violate chapter 26.1-20.1,  
7                   provided that the premium finance loan is not described in  
8                   subdivision b;
- 9                   (4) An agreement in which all the parties are closely related to the insured  
10                   by blood or law or have a lawful substantial economic interest in the  
11                   continued life, health, and bodily safety of the person insured, or are  
12                   trusts established primarily for the benefit of such parties;
- 13                   (5) Any designation, consent, or agreement by an insured who is an  
14                   employee of an employer in connection with the purchase by the  
15                   employer, or trust established by the employer, of life insurance on the  
16                   life of the employee;
- 17                   (6) A bona fide business succession planning arrangement:
- 18                   (a) Between one or more shareholders in a corporation or between a  
19                   corporation and one or more of its shareholders or one or more  
20                   trusts established by its shareholders;
- 21                   (b) Between one or more partners in a partnership or between a  
22                   partnership and one or more of its partners or one or more trusts  
23                   established by its partners; or
- 24                   (c) Between one or more members in a limited liability company or  
25                   between a limited liability company and one or more of its  
26                   members or one or more trusts established by its members;
- 27                   (7) An agreement entered into by a service recipient, or a trust established  
28                   by the service recipient, and a service provider, or a trust established by  
29                   the service provider, who performs significant services for the service  
30                   recipient's trade or business; or

1                   (8) Any other contract, transaction, or arrangement exempted from the  
2                   definition of viatical settlement contract by the commissioner based on  
3                   a determination that the contract, transaction, or arrangement is not of  
4                   the type intended to be regulated by this chapter.

5           13. "Viatical settlement investment agent" means a person who is an appointed or  
6           contracted agent of a licensed viatical settlement provider who solicits or arranges  
7           the funding for the purchase of a viatical settlement by a viatical settlement  
8           purchaser and who is acting on behalf of a viatical settlement provider.

9           a. A viatical settlement investment agent shall not have any contact directly or  
10           indirectly with the viator or insured or have knowledge of the identity of the  
11           viator or insured.

12           b. A viatical settlement investment agent is deemed to represent the viatical  
13           settlement provider of whom the viatical settlement investment agent is an  
14           appointed or contracted agent.

15           14. a. "Viatical settlement provider" means a person, other than a viator, that enters  
16           into or effectuates a viatical settlement contract with a viator resident in this  
17           state.

18           b. "Viatical settlement provider" does not include:

19           (1) A bank, savings bank, savings and loan association, credit union, other  
20           licensed lending institution, or premium finance company making  
21           premium finance loans and exempted by the commissioner from the  
22           licensing requirement under the premium finance laws, that takes an  
23           assignment of a life insurance policy solely as collateral for a loan;

24           (2) The issuer of the life insurance policy;

25           (3) An authorized or eligible insurer that provides stop-loss coverage or  
26           financial guaranty insurance to a viatical settlement provider, purchaser,  
27           financing entity, special purpose entity, or related provider trust;

28           (4) A natural person who enters into or effectuates no more than one  
29           agreement in a calendar year for the transfer of life insurance policies  
30           for any value less than the expected death benefit;

31           (5) A financing entity;



- 1                   (6) A special purpose entity;  
2                   (7) A related provider trust;  
3                   (8) A viatical settlement purchaser; or  
4                   (9) Any other person that the commissioner determines is not the type of  
5                   person intended to be covered by the definition of viatical settlement  
6                   provider.
- 7           15. "Viatical settlement purchase agreement" means a contract or agreement, entered  
8           into by a viatical settlement purchaser, to which the viator is not a party, to  
9           purchase a life insurance policy or an interest in a life insurance policy, that is  
10           entered into for the purpose of deriving an economic benefit.
- 11          16. a. "Viatical settlement purchaser" means a person who provides a sum of money  
12           as consideration for a life insurance policy or an interest in the death benefits  
13           of a life insurance policy, or a person who owns or acquires or is entitled to a  
14           beneficial interest in a trust that owns a viatical settlement contract or is the  
15           beneficiary of a life insurance policy that has been or will be the subject of a  
16           viatical settlement contract, for the purpose of deriving an economic benefit.
- 17          b. "Viatical settlement purchaser" does not include:
- 18               (1) A licensee under this chapter;  
19               (2) An accredited investor or qualified institutional buyer as defined,  
20               respectively, in rule 501(a) or rule 144A adopted under the Federal  
21               Securities Act of 1933, as amended;  
22               (3) A financing entity;  
23               (4) A special purpose entity; or  
24               (5) A related provider trust.
- 25          17. "Viaticated policy" means a life insurance policy or certificate that has been  
26           acquired by a viatical settlement provider pursuant to a viatical settlement contract.
- 27          18. a. "Viator" means the owner of a life insurance policy or a certificate holder  
28           under a group policy who resides in this state and enters or seeks to enter  
29           into a viatical settlement contract. For the purposes of this chapter, a viator  
30           shall not be limited to an owner of a life insurance policy or a certificate holder  
31           under a group policy insuring the life of an individual with a terminal or chronic

1            illness or condition except where specifically addressed. If there is more than  
2            one viator on a single policy and the viators are residents of different states,  
3            the transactions shall be governed by the law of the state in which the viator  
4            having the largest percentage ownership resides or, if the viators hold equal  
5            ownership, the state of residence of one viator agreed upon in writing by all  
6            the viators.

7            b. "Viator" does not include:

8            (1) A licensee under this chapter;

9            (2) Qualified institutional buyer as defined, respectively, in rule 144A  
10           adopted under the Federal Securities Act of 1933, as amended;

11           (3) A financing entity;

12           (4) A special purpose entity; or

13           (5) A related provider trust.

14           **26.1-33.3-02. License and bond requirements.**

15           1. a. A person shall not operate as a viatical settlement provider or viatical  
16           settlement broker without first obtaining a license from the commissioner of  
17           the state of residence of the viator. A person may not operate as a viatical  
18           settlement broker without first obtaining an insurance producer license from  
19           the commissioner.

20           b. A person shall not operate as a viatical settlement investment agent without  
21           first obtaining a license from the commissioner of the state of residence of the  
22           viatical settlement purchaser. If there is more than one purchaser of a single  
23           policy and the purchasers are residents of different states, the viatical  
24           settlement purchase agreement shall be governed by the law of the state in  
25           which the purchaser having the largest percentage ownership resides or, if  
26           the purchasers hold equal ownership, the state of residence of one purchaser  
27           agreed upon in writing by all purchasers.

28           c. The insurer that issued the policy being viaticated shall not be responsible for  
29           any act or omission of a viatical settlement broker or viatical settlement  
30           provider arising out of or in connection with the viatical settlement transaction,  
31           unless the insurer receives compensation for the placement of a viatical

- 1                   settlement contract from the viatical settlement provider or viatical settlement  
2                   broker in connection with the viatical settlement contract.
- 3                   d. A person licensed as an attorney, certified public accountant, or financial  
4                   planner accredited by a nationally recognized accreditation agency, who is  
5                   retained to represent the viator, whose compensation is not paid directly or  
6                   indirectly by the viatical settlement provider, may negotiate viatical settlement  
7                   contracts on behalf of the viator without having to obtain a license as a viatical  
8                   settlement broker.
- 9                   2. Application for a viatical settlement provider or viatical settlement broker license  
10                   shall be made to the commissioner by the applicant on a form prescribed by the  
11                   commissioner, and these applications shall be accompanied by a two hundred fifty  
12                   dollar fee.
- 13                   3. Licenses may be renewed from year to year on the anniversary date upon payment  
14                   of the annual renewal fee of one hundred dollars. Failure to pay the fees by the  
15                   renewal date results in expiration of the license.
- 16                   4. The applicant shall provide information on forms required by the commissioner.  
17                   The commissioner shall have authority, at any time, to require the applicant to fully  
18                   disclose the identity of all stockholders, partners, officers, members, and  
19                   employees, and the commissioner may refuse to issue a license in the name of a  
20                   legal entity if not satisfied that any officer, employee, stockholder, partner or  
21                   member thereof who may materially influence the applicant's conduct meets the  
22                   standards of this chapter.
- 23                   5. A license issued to a legal entity authorizes all partners, officers, members and  
24                   designated employees to act as viatical settlement providers, viatical settlement  
25                   brokers, or viatical settlement investment agents, as applicable, under the license,  
26                   and all those persons shall be named in the application and any supplements to  
27                   the application.
- 28                   6. Upon the filing of an application and the payment of the license fee, the  
29                   commissioner shall make an investigation of each applicant and issue a license if  
30                   the commissioner finds that the applicant:
- 31                   a. If a viatical settlement provider, has provided a detailed plan of operation;

- 1           b. Is competent and trustworthy and intends to act in good faith in the capacity  
2           involved by the license applied for;
- 3           c. Has a good business reputation and has had experience, training or  
4           education so as to be qualified in the business for which the license is applied  
5           for;
- 6           d. (1) If a viatical settlement provider, has demonstrated evidence of financial  
7           responsibility in a format prescribed by the commissioner through either  
8           a surety bond executed and issued by an insurer authorized to issue  
9           surety bonds in this state or a deposit of cash, certificates of deposit or  
10           securities or any combination thereof in the amount of two hundred fifty  
11           thousand dollars.
- 12           (2) If a viatical settlement broker, has demonstrated evidence of financial  
13           responsibility in a format prescribed by the commissioner through either  
14           a surety bond executed and issued by an insurer authorized to issue  
15           surety bonds in this state or a deposit of cash, certificates of deposit, or  
16           securities or any combination thereof in the amount of two hundred fifty  
17           thousand dollars.
- 18           (3) The commissioner shall accept, as evidence of financial responsibility,  
19           proof that financial instruments in accordance with the requirements in  
20           this paragraph have been filed with one or more states where the  
21           applicant is licensed as a viatical settlement provider or viatical  
22           settlement broker.
- 23           (4) The commissioner may ask for evidence of financial responsibility at  
24           any time the commissioner deems necessary.
- 25           (5) Any surety bond issued pursuant to this subdivision shall be in the favor  
26           of this state and shall specifically authorize recovery by the commission  
27           on behalf of any person in this state who sustained damages as the  
28           result of erroneous acts, failure to act, conviction of fraud, or conviction  
29           of unfair practices by the viatical settlement provider or viatical  
30           settlement broker.

- 1           e. If a legal entity, provides a certificate of good standing from the state of its  
2           domicile; and
- 3           f. If a viatical settlement provider or viatical settlement broker, has provided an  
4           antifraud plan that meets the requirements of subsection 7 of section  
5           26.1-33.3-13.
- 6        7. The commissioner shall not issue a license to a nonresident applicant, unless a  
7           written designation of an agent for service of process is filed and maintained with  
8           the commissioner or the applicant has filed with the commissioner, the applicant's  
9           written irrevocable consent that any action against the applicant may be  
10          commenced against the applicant by service of process on the commissioner.
- 11       8. A viatical settlement provider or viatical settlement broker shall provide to the  
12          commissioner new or revised information about officers, ten percent or more  
13          stockholders, partners, directors, members, or designated employees within thirty  
14          days of the change.

15       **26.1-33.3-03. License revocation and denial.**

- 16       1. The commissioner may refuse to issue, suspend, revoke or refuse to renew the  
17          license of a viatical settlement provider or viatical settlement broker if the  
18          commissioner finds that:
- 19          a. There was any material misrepresentation in the application for the license;  
20          b. The licensee or any officer, partner, member, or key management personnel  
21          has been convicted of fraudulent or dishonest practices, is subject to a final  
22          administrative action or is otherwise shown to be untrustworthy or  
23          incompetent;
- 24          c. The viatical settlement provider demonstrates a pattern of unreasonable  
25          payments to viators;
- 26          d. The licensee or any officer, partner, member or key management personnel  
27          has been found guilty of, or has pleaded guilty or nolo contendere to, any  
28          felony, or to misdemeanor involving fraud or moral turpitude, regardless of  
29          whether a judgment of conviction has been entered by the court;
- 30          e. The viatical settlement provider has entered into any viatical settlement  
31          contract that has not been approved pursuant to this chapter;

- 1           f. The viatical settlement provider has failed to honor contractual obligations set  
2           out in a viatical settlement contract or a viatical settlement purchase  
3           agreement;
- 4           g. The licensee no longer meets the requirements for initial licensure;
- 5           h. The viatical settlement provider has assigned, transferred, or pledged a  
6           viaticated policy to a person other than a viatical settlement provider licensed  
7           in this state, viatical settlement purchaser, an accredited investor or qualified  
8           institutional buyer as defined respectively in rule 501(a) or rule 144A  
9           promulgated under the Federal Securities Act of 1933, as amended, financing  
10          entity, special purpose entity, or related provider trust; or
- 11          i. The licensee or any officer, partner, member, or key management personnel  
12          has violated any provision of this chapter.
- 13          2. The commissioner may suspend, revoke or refuse to renew the license of a viatical  
14          settlement broker if the commissioner finds that the viatical settlement broker has  
15          violated the provisions of this chapter or has otherwise engaged in bad faith  
16          conduct with on or more viators.
- 17          3. If the commissioner denies a license application or suspends, revokes or refuses to  
18          renew the license of a viatical settlement provider or viatical settlement broker  
19          pursuant to this chapter the commissioner shall conduct a hearing in accordance  
20          with chapter 28-32.

21           **26.1-33.3-04. Approval of viatical settlement contracts and disclosure statements.**

22 A person shall not use a viatical settlement contract form or provide to a viator a disclosure  
23 statement from in this state unless first filed with and approved by the commissioner. The  
24 commissioner shall disapprove a viatical settlement contract form or disclosure statement form  
25 if in the commissioner's opinion, the contract or provisions contained therein fail to meet the  
26 requirement of sections 26.1-33.3-07, 26.1-33.3-09, and 26.1-33.3-12, and subsection 2 of  
27 section 26.1-33.3-13 or are unreasonable, contrary to the interests of the public, or otherwise  
28 misleading or unfair to the viator. At the commissioner's discretion, the commissioner may  
29 require the submission of advertising material.

30           **26.1-33.3-05. Reporting requirements and privacy.**

- 1           1. Each viatical settlement provider shall file with the commissioner on or before  
2           March first of each year an annual statement containing such information as the  
3           commissioner may prescribed by regulation. Such information shall be limited to  
4           only those transactions where the viator is a resident of this state. Individual  
5           transaction data regarding the business of viatical settlements or data that could  
6           compromise the privacy of personal, financial, and health information of the viator  
7           or insured shall be filed with the commissioner on a confidential basis.
- 8           2. Except as otherwise allowed or required by law, a viatical settlement provider,  
9           viatical settlement broker, viatical settlement investment agent, insurance  
10           company, insurance producer, information bureau, rating agency or company, or  
11           any other person with actual knowledge of an insured's identity, shall not disclose  
12           that identity as an insured, or the insured's financial or medical information to any  
13           other person unless the disclosure:
- 14           a. Is necessary to effect a viatical settlement between the viator and a viatical  
15           settlement provider and the viator and insured have provided prior written  
16           consent to the disclosure;
- 17           b. Is necessary to effect a viatical settlement purchase agreement between the  
18           viatical settlement purchaser and a viatical settlement provider and the viator  
19           and insured have provided prior written consent to the disclosure;
- 20           c. Is provided in response to an investigation or examination by the  
21           commissioner or any other governmental officer or agency or pursuant to the  
22           requirements of subsection 3 of section 26.1-33.3-13;
- 23           d. Is a term of or condition to the transfer of a policy by one viatical settlement  
24           provider to another viatical settlement provider;
- 25           e. Is necessary to permit a financing entity, related provider trust or special  
26           purpose entity to finance the purchase of policies by a viatical settlement  
27           provider and the viator and insured have provided prior written consent to the  
28           disclosure;
- 29           f. Is necessary to allow the viatical settlement provider or viatical settlement  
30           broker or their authorized representatives to make contacts for the purpose of  
31           determining health status; or

1           g. Is required to purchase stop-loss coverage or financial guaranty insurance.

2           **26.1-33.3-06. Examination or investigations.**

3           1. Authority, scope and scheduling of examinations.

4           a. (1) The commissioner may conduct an examination under this chapter of a  
5                 licensee as often as the commissioner deems appropriate after  
6                 considering the factors set forth in this subdivision.

7                 (2) In scheduling and determining the nature, scope, and frequency of the  
8                 examinations, the commissioner shall consider such matters as the  
9                 consumer complaints, results of financial statement analyses and  
10                ratios, changes in management or ownership, actuarial opinions, report  
11                of independent certified public accountants, and other relevant criteria  
12                as determined by the commissioner.

13           b. For purposes of completing an examination of a licensee under this chapter,  
14                the commissioner may examine or investigate any person, or the business of  
15                any person, in so far as the examination or investigation is, in the sole  
16                discretion of the commissioner, necessary or material to the examination of  
17                the licensee.

18           c. In lieu of an examination under this chapter of any foreign or alien licensee  
19                licensed in this state, the commissioner may accept an examination report on  
20                the licensee as prepared by the commissioner for the licensee's state of  
21                domicile or port-of-entry state.

22           d. As far as practical, the examination of a foreign or alien insurer shall be made  
23                in cooperation with the insurance supervisory officials of other states in which  
24                the insurer transacts business.

25           2. Record retention requirement.

26           a. A person required to be licensed by this chapter shall for five years retain  
27                copies of all:

28                (1) Proposed, offered or executed contracts, purchase agreements,  
29                underwriting documents, policy forms, and applications from the date of  
30                the proposal, offer or execution of the contract or purchase agreement,  
31                whichever is later;



- 1                   (2) Checks, drafts or other evidence and documentation related to the  
2                   payment, transfer, deposit or release of funds from the date the  
3                   transaction; and
- 4                   (3) Other records and documents related to the requirements of this  
5                   chapter.
- 6                   b. The section does not relieve a person of the obligation to produce these  
7                   documents to the commissioner after the retention period has expired if the  
8                   person has retained the documents.
- 9                   c. Records required to be retained by this section must be legible and complete  
10                  and may be retained in paper, photograph, microprocess, magnetic,  
11                  mechanical, or electronic media, or by any process that accurately reproduces  
12                  or forms a durable medium for the reproduction of a record.
- 13                3. Conduct of examinations.
- 14                a. Upon determining that an examination should be conducted, the  
15                commissioner shall issue an examination warrant appointing one or more  
16                examiners to perform the examination and instructing them as to the scope of  
17                the examination. In conducting the examination, the examiner shall observe  
18                those guidelines and procedures set forth in the examiners handbook adopted  
19                by the national association of insurance commissioners. The commissioner  
20                may also employ such other guidelines or procedures as the commissioner  
21                may deem appropriate.
- 22                b. Every licensee or person from whom information is sought, its officers,  
23                directors and agents shall provide to the examiners timely, convenient, and  
24                free access at all reasonable hours at its offices to all books, records,  
25                accounts, papers, documents, assets, and computer or other recordings  
26                relating to the property, assets, business, and affairs of the licensee being  
27                examined. The officers, directors, employees, and agents of the licensee or  
28                person shall facilitate the examination and aid in the examination so far as it is  
29                in their power to do so. The refusal of a licensee, by its officers, directors,  
30                employees, or agents, to submit to examination or to comply with any  
31                reasonable written request of the commissioner shall be grounds for

1                   suspension or refusal of, or nonrenewal of any license or authority held by the  
2                   licensee to engage in the viatical settlement business or other business  
3                   subject to the commissioner's jurisdiction. Any proceedings for suspension,  
4                   revocation or refusal of any license or authority shall be conducted pursuant  
5                   to this title and chapter 28-32.

6                   c. The commissioner shall have the power to issue subpoenas, to administer  
7                   oaths and to examine under oath any person as to any matter pertinent to the  
8                   examination. Upon the failure or refusal of a person to obey a subpoena, the  
9                   commissioner may petition a court of competent jurisdiction, and upon proper  
10                   showing, the court may enter an order compelling the witness to appear and  
11                   testify or produce documentary evidence. Failure to obey the court order shall  
12                   be punishable as contempt of court.

13                   d. When making an examination under this chapter, the commissioner may  
14                   retain attorneys, appraisers, independent actuaries, independent certified  
15                   public accountants, or other professionals and specialists as examiners, the  
16                   reasonable cost of which shall be borne by the licensee that is the subject of  
17                   the examination.

18                   e. Nothing contained in this chapter shall be construed to limit the  
19                   commissioner's authority to terminate or suspend an examination in order to  
20                   pursue other legal or regulatory action pursuant to the insurance laws of this  
21                   state. Findings of fact and conclusions made pursuant to any examination  
22                   shall be prima facie evidence in any legal or regulatory action.

23                   f. Nothing contained in this chapter shall be construed to limit the  
24                   commissioner's authority to use and, if appropriate, to make public any final or  
25                   preliminary examination report, any examiner or licensee workpapers or other  
26                   documents, or any other information discovered or developed during the  
27                   course of any examination in the furtherance of any legal or regulatory action  
28                   which the commissioner may deem appropriate.

29                   4. Examination reports.

30                   a. Examination reports shall be comprised of only facts appearing upon the  
31                   books, records or other documents of the licensee, its agents or other persons

- 1           examined, or as ascertained from the testimony of its officers or agent or  
2           other persons examined concerning its affairs, and such conclusions and  
3           recommendations as the examiners find reasonably warranted from the facts.
- 4           b. No later than sixty days following completion of the examination, the examiner  
5           in charge shall file with the commissioner a verified written report of  
6           examination under oath. Upon receipt of the verified report, the commissioner  
7           shall transmit the report to the licensee examined, together with a notice that  
8           shall afford the licensee examined a reasonable opportunity of not more than  
9           thirty days to make a written submission or rebuttal with respect to any  
10           matters contained in the examination report.
- 11           c. If the commissioner determines that regulatory action is appropriate as a  
12           result of an examination, the commissioner may initiate any proceedings or  
13           actions provided by law.
- 14           5. Confidentiality of examination information.
- 15           a. Names and individual identification data for all viators shall be considered  
16           private and confidential information and shall not be disclosed by the  
17           commissioner, unless required by law.
- 18           b. Except as otherwise provided in this chapter, all examination reports, working  
19           papers, recorded information, documents, and copies thereof produced by,  
20           obtained by or disclosed to the commissioner or any other person in the  
21           course of an examination made under this chapter, or in the course of  
22           analysis or investigation by the commissioner of the financial condition or  
23           market conduct of a licensee shall be confidential by law and privileged, shall  
24           not be subject to section 44-04-18 and section 6 of article XI of the  
25           Constitution of North Dakota shall not be subject to subpoena, and shall not  
26           be subject to discovery or admissible in evidence in any private civil action.  
27           The commissioner is authorized to use the documents, materials or other  
28           information in the furtherance of any regulatory or legal action brought as part  
29           of the commissioner's official duties.
- 30           c. Documents, materials or other information, including all working papers, and  
31           copies thereof, in the possession or control of the national association of

- 1           insurance commissioners and its affiliates and subsidiaries shall be  
2           confidential by law and privileged, shall not be subject to subpoena, and shall  
3           not be subject to discovery or admissible in evidence in any private civil action  
4           if they are:
- 5           (1)   Created, produced, or obtained by or disclosed to the national  
6           association of insurance commissioners and its affiliates and  
7           subsidiaries in the course of assisting an examination made under this  
8           chapter, or assisting a commissioner in the analysis or investigation of  
9           the financial condition or market conduct of a licensee; or
- 10          (2)   Disclosed to the national association of insurance commissioners and  
11          its affiliates and subsidiaries under subdivision d by a commissioner.
- 12          (3)   For the purposes of subdivision b, this chapter includes the law of  
13          another state or jurisdiction that is substantially similar to this chapter.
- 14          d.   Neither the commissioner nor any person that received the documents,  
15          material, or other information while acting under the authority of the  
16          commissioner, including the national association of insurance commissioners  
17          and its affiliates and subsidiaries, shall be permitted to testify in any private  
18          civil action concerning any confidential documents, materials, or information  
19          subject to subdivision a.
- 20          e.   In order to assist in the performance of the commissioner's duties, the  
21          commissioner:
- 22          (1)   May share documents, materials or other information, including the  
23          confidential and privileged documents, materials or information subject  
24          to subdivision a, with other state, federal and international regulatory  
25          agencies, with the national association of insurance commissioners and  
26          its affiliates and subsidiaries, and with state, federal and international  
27          law enforcement authorities, provided that the recipient agrees to  
28          maintain the confidentiality and privileged status of the document,  
29          material, communication, or other information;
- 30          (2)   May receive documents, materials, communications, or information,  
31          including otherwise confidential and privileged documents, materials or

1 information, from the national association of insurance commissioners  
2 and its affiliates and subsidiaries, and from regulatory and law  
3 enforcement official of other foreign or domestic jurisdiction, and shall  
4 maintain as confidential or privileged any document, material, or  
5 information received with notice or the understanding that it is  
6 confidential or privileged under the laws of the jurisdiction that is the  
7 source of the document, material, or information; and

8 (3) May enter into agreements governing sharing and use of information  
9 consistent with this subsection.

10 f. No waiver of any applicable privilege or claim of confidentiality in the  
11 documents, materials or information shall occur as a result of disclosure to the  
12 commissioner under this section or as a result of sharing as authorized in  
13 subdivision d.

14 g. A privilege established under the law of any state or jurisdiction that is  
15 substantially similar to the privilege established under this subsection shall be  
16 available and enforced in any proceeding in, and in any court of, this state.

17 h. Nothing contained in this chapter shall prevent or be construed as prohibiting  
18 the commissioner from disclosing the content of an examination report,  
19 preliminary examination report or results, or any matter relating thereto, to the  
20 commissioner of any other state or country, or to law enforcement officials of  
21 this or any other state or agency of the federal government at any time or to  
22 the national association of insurance commissioners, so long as such agency  
23 or office receiving the report or matters relating thereto agrees in writing to  
24 hold it confidential and in a manner consistent with this chapter.

25 6. Conflict of interest.

26 a. An examiner may not be appointed by the commissioner if the examiner,  
27 either directly or indirectly, has a conflict of interest or is affiliated with the  
28 management of or owns a pecuniary interest in any person subject to  
29 examination under this chapter. This section shall not be construed to  
30 automatically preclude an examiner from being:

31 (1) A viator;

- 1                   (2) An insured in a viaticated insurance policy; or
- 2                   (3) A beneficiary in an insurance policy that is proposed to be viaticated.
- 3           b. Notwithstanding the requirements of this clause, the commissioner may retain
- 4                   from time to time, on an individual basis, qualified actuaries, certified public
- 5                   accountants, or other similar individuals who are independently practicing
- 6                   their professions, even though these persons may from time to time be
- 7                   similarly employed or retained by persons subject to examination under this
- 8                   chapter.
- 9           7. Cost of examinations. The expenses incurred in conducting any examination must
- 10                   be paid by the licensee or applicant.
- 11           8. Immunity from liability.
- 12           a. No cause of action shall arise nor shall any liability be imposed against the
- 13                   commissioner, the commissioner's authorized representatives or any
- 14                   examiner appointed by the commissioner for any statements made or conduct
- 15                   performed in good faith while carrying out the provisions of this chapter.
- 16           b. No cause of action shall arise, nor shall any liability be imposed against any
- 17                   person for the act of communicating or delivering information or data to the
- 18                   commissioner or the commissioner's authorized representative or examiner
- 19                   pursuant to an examination made under this chapter, if the act of
- 20                   communication or delivery was performed in good faith and without fraudulent
- 21                   intent or the intent to deceive. This subdivision does not abrogate or modify in
- 22                   any way any common law or statutory privilege or immunity heretofore
- 23                   enjoyed by any person identified in subdivision a.
- 24           c. A person identified in subdivision a or b shall be entitled to an award of
- 25                   attorney's fees and costs if the person is the prevailing party in a civil cause of
- 26                   action for libel, slander, or any other relevant tort arising out of activities in
- 27                   carrying out the provisions of this chapter and the party bringing the action
- 28                   was not substantially justified in doing so. For purposes of this section a
- 29                   proceeding is "substantially justified" if it had a reasonable basis in law or fact
- 30                   at the time that it was initiated.

1           9. Investigative authority of the commissioner. The commissioner may investigate  
2           suspected fraudulent viatical settlement acts and persons engaged in the business  
3           of viatical settlements.

4           **26.1-33.3-07. Disclosure to viator.**

5           1. With each application for a viatical settlement, a viatical settlement provider or  
6           viatical settlement broker shall provide the viator with at least the following  
7           disclosures no later than the time the application for the viatical settlement contract  
8           is signed by all parties. The disclosures shall be provided in a separate document  
9           that is signed by the viator and the viatical settlement provider or viatical settlement  
10           broker, and shall provide the following information:

11           a. There are possible alternatives to viatical settlement contracts including any  
12           accelerated death benefits or policy loans offered under the viator's life  
13           insurance policy.

14           b. That a viatical settlement broker represents exclusively the viator, and not the  
15           insurer or the viatical settlement provider, and owes a fiduciary duty to the  
16           viator, including a duty to act according to the viator's instructions and in the  
17           best interest of the viator.

18           c. Some or all of the proceeds of the viatical settlement may be taxable under  
19           federal income tax and state franchise and income taxes, and assistance  
20           should be sought from a professional tax advisor.

21           d. Proceeds of the viatical settlement could be subject to the claims of creditors.

22           e. Receipt of the proceeds of a viatical settlement may adversely affect the  
23           viator's eligibility for medicaid or other government benefits or entitlements,  
24           and advice should be obtained from the appropriate government agencies.

25           f. The viator has the right to rescind a viatical settlement contract before the  
26           earlier of sixty calendar days after the date upon which the viatical settlement  
27           contract is executed by all parties or thirty calendar days after the viatical  
28           settlement proceeds have been paid to the viator, as provided in subsection 6  
29           of section 26.1-33.3-09. Rescission, if exercised by the viator, is effective  
30           only if both notice of the rescission is given, and the viator repays all proceeds  
31           and any premiums, loans and loan interest paid on account of the viatical

- 1           settlement within the rescission period. If the insured dies during the  
2           rescission period, the viatical settlement contract shall be deemed to have  
3           been rescinded, subject to repayment by the viator or the viator's estate of all  
4           viatical settlement proceeds and any premiums, loans, and loan interest the  
5           viatical settlement within sixty days of the insured's death.
- 6           g. Funds will be sent to the viator within three business days after the viatical  
7           settlement provider has received the insurer or group administrator's written  
8           acknowledgment that ownership of the policy or interest in the certificate has  
9           been transferred and the beneficiary has been designated.
- 10          h. Entering into a viatical settlement contract may cause other rights or benefits,  
11          including conversion rights and waiver of premium benefits that may exist  
12          under the policy or certificate, to be forfeited by the viator. Assistance should  
13          be sought from a financial adviser.
- 14          i. Disclosure to a viator shall include distribution of a brochure describing the  
15          process of viatical settlements. The national association of insurance  
16          commissioner's form for the brochure shall be used unless another form is  
17          developed or approved by the commissioner.
- 18          j. The disclosure document shall contain the following language: "All medical,  
19          financial or personal information solicited or obtained by a viatical settlement  
20          provider or viatical settlement broker about an insured, including the insured's  
21          identity or the identity of family members, a spouse or a significant other may  
22          be disclosed as necessary to effect the viatical settlement between the viator  
23          and the viatical settlement provider. If you are asked to provide this  
24          information, you will be asked to consent to the disclosure. The information  
25          may be provided to someone who buys the policy or provides funds for the  
26          purchase. You may be asked to renew your permission to share information  
27          every two years."
- 28          k. Following execution of a viatical contract, the insured may be contacted for  
29          the purpose of determining the insured's health status and to confirm the  
30          insured's residential or business street address and telephone number, or as  
31          otherwise provided in this chapter. This contact shall be limited to once every



1                   three months if the insured has a life expectancy of more than one year, and  
2                   no more than once per month if the insured has a life expectancy of one year  
3                   or less. All such contacts shall be made only by a viatical settlement provider  
4                   licensed in the state in which the viator resided at the time of the viatical  
5                   settlement, or by the authorized representative of a duly licensed viatical  
6                   settlement provider.

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

12           a. The affiliation, if any, between the viatical settlement provider and the issuer  
13           of the insurance policy to be viaticated;

14           b. The document shall include the name, business address, and telephone  
15           number of the viatical settlement provider;

16           c. Any affiliations or contractual arrangements between the viatical settlement  
17           provider and the viatical settlement purchaser, including the amount and  
18           method of calculating the provider's compensation. The term "compensation"  
19           includes anything of value paid or given to a viatical settlement broker for the  
20           placement of a policy;

21           d. If an insurance policy to be viaticated has been issued as a joint policy or  
22           involves family riders or any coverage of a life other than the insured under  
23           the policy to be viaticated, the viator shall be informed of the possible loss of  
24           coverage on the other lives under the policy and shall be advised to consult  
25           with the viator's insurance producer or the insurer issuing the policy for advice  
26           on the proposed viatical settlement;

27           e. State the dollar amount of the current death benefit payable to the viatical  
28           settlement provider under the policy or certificate. If known, the viatical  
29           settlement provider shall also disclose the availability of any additional  
30           guaranteed insurance benefits, the dollar amount of any accidental death and  
31           dismemberment benefits under the policy or certificate, and the extent to

- 1                   which the viator's interest in those benefits will be transferred as a result of  
2                   the viatical settlement contract; and
- 3           f.   State whether the funds will be escrowed with an independent third party  
4                   during the transfer process, and if so, provide the name, business address,  
5                   and telephone number of the independent third party escrow agent, and the  
6                   fact that the viator or owner may inspect or receive copies of the relevant  
7                   escrow or trust agreements or documents.
- 8           3.   A viatical settlement broker shall provide the viator with at least the following  
9                   disclosures no later than the date the viatical settlement contract is signed by all  
10                  parties. The disclosures shall be conspicuously displayed in the viatical settlement  
11                  contract or in a separate document signed by the viator and provide the following  
12                  information:
- 13                  a.   The name, business address, and telephone number of the viatical settlement  
14                        broker;
- 15                  b.   A full, complete, and accurate description of all offers, counteroffers,  
16                        acceptances and rejections relating to the proposed viatical settlement  
17                        contract;
- 18                  c.   A written disclosure of any affiliations or contractual arrangements between  
19                        the viatical settlement broker and any person making an offer in connection  
20                        with the proposed viatical settlement contracts;
- 21                  d.   The amount and method of calculating the broker's compensation, which term  
22                        "compensation" includes anything of value paid or given to a viatical  
23                        settlement broker for the placement of a policy; and
- 24                  e.   If any portion of the viatical settlement broker's compensation, as defined in  
25                        subdivision c, is taken from a proposed viatical settlement offer, the broker  
26                        shall disclose the total amount of the viatical settlement offer and the  
27                        percentage of the viatical settlement offer comprised by the viatical settlement  
28                        broker's compensation.
- 29           4.   If the viatical settlement provider transfers ownership or changes the beneficiary of  
30                   the insurance policy, the provider shall communicate in writing the change in  
31                   ownership or beneficiary to the insured within twenty days after the change.

- 1           5. A viatical settlement provider or its viatical settlement investment agent shall  
2           provide the viatical settlement purchaser with at least the following disclosures  
3           prior to the date the viatical settlement purchase agreement is signed by all parties.  
4           The disclosures shall be conspicuously displayed in any viatical purchase contract  
5           or in a separate document signed by the viatical settlement purchaser and viatical  
6           settlement provider or viatical settlement investment agent, and shall make the  
7           following disclosure to the viatical settlement purchaser:
- 8           a. The purchaser will receive no returns, such as dividends and interest, until the  
9           insured dies and a death claim payment is made.
- 10          b. The actual annual rate of return on a viatical settlement contract is dependent  
11          upon an accurate projection of the insured's life expectancy, and the actual  
12          date of the insured's death. An annual "guaranteed" rate of return is not  
13          determinable.
- 14          c. The viaticated life insurance contract should not be considered a liquid  
15          purchase since it is impossible to predict the exact timing of its maturity and  
16          the funds probably are not available until the death of the insured. There is no  
17          established secondary market for resale of these products by the purchaser.
- 18          d. The purchaser may lose all benefits or may receive substantially reduced  
19          benefits if the insurer goes out of business during the term of the viatical  
20          investment.
- 21          e. The purchaser is responsible for payment of the insurance premium or other  
22          costs related to the policy, if required by the terms of the viatical purchase  
23          agreement. These payments may reduce the purchaser's return. If a party  
24          other than the purchaser is responsible for the payment, the name and  
25          address of that party also shall be disclosed.
- 26          f. The purchaser is responsible for payment of the insurance premiums or other  
27          costs related to the policy if the insured returns to health. Disclose the  
28          amount of such premiums, if applicable.
- 29          g. State the name, business address, and telephone number of the independent  
30          third party providing escrow services and the relationship to the broker.

- 1            h. The amount of any trust fees or other expenses to be charged to the viatical  
2            settlement purchaser shall be disclosed.
- 3            i. State whether the purchaser is entitled to a refund of all or part of the  
4            purchaser's investment under the settlement contract if the policy is later  
5            determined to be null and void.
- 6            j. Disclose that group policies may contain limitations or caps in the conversion  
7            rights, additional premiums may have to be paid if the policy is converted,  
8            name the party responsible for the payment of the additional premiums and, if  
9            a group policy is terminated and replaced by another group policy, state that  
10           there may be no right to convert the original coverage.
- 11           k. Disclose the risks associated with policy contestability including, but not  
12           limited to, the risk that the purchaser will have no claim or only a partial claim  
13           to death benefits should the insurer rescind the policy within the contestability  
14           period.
- 15           l. Disclose whether the purchaser will be the owner of the policy in addition to  
16           being the beneficiary, and if the purchaser is the beneficiary only and not also  
17           the owner, the special risks associated with that status, including, but not  
18           limited to, the risk that the beneficiary may be changed or the premium may  
19           not be paid.
- 20           m. Describe the experience and qualifications of the person who determines the  
21           life expectancy of the insured, such as in-house staff, independent physicians,  
22           and specialty firms that weigh medical and actuarial data; the information this  
23           projection is based on; and the relationship of the projection maker to the  
24           viatical settlement provider, if any.
- 25           n. Disclosure to an investor shall include distribution of a brochure describing the  
26           process of investment in viatical settlements. The national association of  
27           insurance commissioner's form for the brochure shall be used unless one is  
28           developed by the commissioner.
- 29           6. A viatical settlement provider or its viatical settlement investment agent shall  
30           provide the viatical settlement purchaser with at least the following disclosures no  
31           later than at the time of the assignment, transfer or sale of all or a portion of an

- 1           insurance policy. The disclosures shall be contained in a document signed by the  
2           viatical settlement purchaser and viatical settlement provider or viatical settlement  
3           investment agent, and shall make the following disclosures to the viatical  
4           settlement purchaser:
- 5           a.   Disclose all the life expectancy certifications obtained by the provider in the  
6                process of determining the price paid to the viator.
- 7           b.   State whether premium payments or other costs related to the policy have  
8                been escrowed. If escrowed, state the date upon which the escrowed funds  
9                will be depleted and whether the purchaser will be responsible for payment of  
10              premiums thereafter and, if so, the amount of the premiums.
- 11          c.   State whether premium payments or other costs related to the policy have  
12              been waived. If waived, disclose whether the investor will be responsible for  
13              payment of the premiums if the insurer that wrote the policy terminates the  
14              waiver after purchase and the amount of those premiums.
- 15          d.   Disclose the type of policy offered or sold, such as whole life, term life,  
16              universal life or a group policy certificate, any additional benefits contained in  
17              the policy, and the current status of the policy.
- 18          e.   If the policy is term insurance, disclose the special risks associated with term  
19              insurance including the purchaser's responsibility for additional premiums if  
20              the viator continues the term policy at the end of the current term.
- 21          f.   State whether the policy is contestable.
- 22          g.   State whether the insurer that wrote the policy has any additional rights that  
23              could negatively affect or extinguish the purchaser's rights under the viatical  
24              settlement contract, what these rights are, and under what conditions these  
25              rights are activated.
- 26          h.   State the name and address of the person responsible for monitoring the  
27              insured's condition. Describe how often the monitoring of the insured's  
28              condition is done, how the date of death is determined, and how and when  
29              this information will be transmitted to the purchased.

1           7. The viatical settlement purchase agreement is voidable by the purchaser at any  
2           time within three days after the disclosures mandated by subsections 5 and 6 are  
3           received by the purchaser.

4           **26.1-33.3-08. Disclosure to insurer.** Prior to the initiation of a plan, transaction or  
5 series of transactions, a viatical settlement broker or viatical settlement provider shall fully  
6 disclose to an insurer a plan, transaction, or series of transactions, to which the viatical  
7 settlement broker or viatical settlement provider is a party, to originate, renew, continue, or  
8 finance a life insurance policy with the insurer for the purpose of engaging in the business of  
9 viatical settlements at any time prior to, or during the first five years after, issuance of the policy.

10          **26.1-33.3-09. General rules.**

11          1. a. A viatical settlement provider entering into a viatical settlement contract shall  
12           first obtain:

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

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

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

27          c. The viatical provider shall deliver a copy of the medical release required under  
28           paragraph 2 of subdivision a, a copy of the viator's application for the viatical  
29           settlement contract, the notice required under subdivision b, and a request for  
30           verification of coverage to the insurer that issued the life policy that is the  
31           subject of the viatical transaction. The national association of insurance

1                   commissioner's form for verification of coverage shall be used unless another  
2                   form is developed or approved by the commissioner.

3                   d. The insurer shall respond to a request for verification of coverage submitted  
4                   on an approved form by a viatical settlement provider or viatical settlement  
5                   broker within thirty calendar days of the date the request is received and shall  
6                   indicate whether, based on the medical evidence and documents provided,  
7                   the insurer intends to pursue an investigation at this time regarding the validity  
8                   of the insurance contract or possible fraud. The insurer shall accept a request  
9                   for verification of coverage made on a national association of insurance  
10                   commissioner's form or any other form approved by the commissioner. The  
11                   insurer shall accept an original or facsimile or electronic copy of such request  
12                   and any accompanying authorization signed by the viator. Failure by the  
13                   insurer to meet its obligations under this subsection shall be a violation of  
14                   subsection 3 of section 26.1-33.3-10 and section 26.2-33.3-15.

15                   e. Prior to or at the time of execution of the viatical settlement contract, the  
16                   viatical settlement provider shall obtain a witnessed document in which the  
17                   viator consents to the viatical settlement contract, represents that the viator  
18                   has a full and complete understanding of the viatical settlement contract, that  
19                   the viator has a full and complete understanding of the benefits of the life  
20                   insurance policy, acknowledges that the viator is entering into the viatical  
21                   settlement contract freely and voluntarily and, for persons with a terminal or  
22                   chronic illness or condition, acknowledges that the insured has a terminal or  
23                   chronic illness and that the terminal or chronic illness or condition was  
24                   diagnosed after the life insurance policy was issued.

25                   f. If a viatical settlement broker performs any of these activities required of the  
26                   viatical settlement provider, the provider is deemed to have fulfilled the  
27                   requirements of this section.

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

30                   3. All viatical settlement contracts entered into in this state shall provide the viator  
31                   with an absolute right to rescind the contract before the earlier of sixty calendar

1           days after the date upon which the viatical settlement contract is executed by all  
2           parties or thirty calendar days after the viatical settlement proceeds have been sent  
3           to the viator as provided in subdivision 6 of section 26.1-33.3-09. Rescission by  
4           the viator may be conditioned upon the viator both giving notice and repaying to  
5           the viatical settlement provider within the rescission period all proceeds of the  
6           settlement and any premiums, loans, and loan interest paid by or on behalf of the  
7           viatical settlement provider in connection with or as a consequence of the viatical  
8           settlement. If the insured dies during the rescission period, the viatical settlement  
9           contract shall be deemed to have been rescinded, subject to repayment to the  
10           viatical settlement provider or purchaser of all viatical settlement proceeds, and  
11           any premiums, loans, and loan interest that have been paid by the viatical  
12           settlement provider or purchaser, which shall be paid within sixty calendar days of  
13           the death of the insured. In the event of any rescission, if the viatical settlement  
14           provider has paid commissions or other compensation to a viatical settlement  
15           broker in connection with the rescinded transaction, the viatical settlement broker  
16           shall refund all such commissions and compensation to the viatical settlement  
17           provider within five business days following receipt of written demand from the  
18           viatical settlement provider, which demand shall be accompanied by either the  
19           viator's notice of rescission if rescinded at the election of the viator, or notice of the  
20           death of the insured if rescinded by reason of the death of the insured within the  
21           applicable rescission period.

22           4. The purchaser shall have the right to rescind a viatical settlement contract within  
23           three days after the disclosures mandated by subsections 4 and 5 of section  
24           26.1-33.3-07 are received by the purchaser.

25           5. The viatical settlement provider shall instruct the viator to send the executed  
26           documents required to effect the change in ownership, assignment, or change in  
27           beneficiary directly to the independent escrow agent. Within three business days  
28           after the date the escrow agent receives the document, or from the date the viatical  
29           settlement provider receives the documents, if the viator erroneously provides the  
30           documents directly to the provider, the provider shall pay or transfer the proceeds  
31           of the viatical settlement into an escrow or trust account maintained in a state or



1 federally chartered financial institution whose deposits are insured by the federal  
2 deposit insurance corporation. Upon payment of the settlement proceeds into the  
3 escrow account, the escrow agent shall deliver the original change in ownership,  
4 assignment, or change in beneficiary forms to the viatical settlement provider or  
5 related provider trust or other designated representative of the viatical settlement  
6 provider. Upon the escrow agent's receipt of the acknowledgment of the properly  
7 completed transfer of ownership, assignment, or designation of beneficiary from  
8 the insurance company, the escrow agent shall pay the settlement proceeds to the  
9 viator.

10 6. Failure to tender consideration to the viator for the viatical settlement contract  
11 within the time set forth in the disclosure pursuant to subdivision g of subsection 1  
12 of section 26.1-33.3-07 renders the viatical settlement contract voidable by the  
13 viator for lack of consideration until the time consideration is tendered to and  
14 accepted by the viator. Funds shall be deemed sent by a viatical settlement  
15 provider to a viator as of the date that the escrow agent either releases funds for  
16 wire transfer to the viator or places a check for delivery to the viator via United  
17 States postal service or other nationally recognized delivery service.

18 7. Contacts with the insured for the purpose of determining the health status of the  
19 insured by the viatical settlement provider or viatical settlement broker after the  
20 viatical settlement has occurred shall only be made by the viatical settlement  
21 provider or broker licensed in this state or its authorized representatives and shall  
22 be limited to once every three months for insureds with a life expectancy of more  
23 than one year, and to no more than once per month for insureds with a life  
24 expectancy of one year or less. The provider or broker shall explain the procedure  
25 for these contacts at the time the viatical settlement contract is entered into. The  
26 limitations set forth in this subsection shall not apply to any contacts with an  
27 insured for reasons other than determining the insured's health status. Viatical  
28 settlement providers and viatical settlement brokers shall be responsible for the  
29 actions of their authorized representatives.

30 **26.1-33.3-10. Prohibited practices.**

- 1           1. It is in violation of this chapter for any person to enter into a viatical settlement  
2           contract at any time prior to the application or issuance of a policy which is the  
3           subject of a viatical settlement contract or within a five-year period commencing  
4           with the date of issuance of the insurance policy or certificate unless the viator  
5           certifies to the viatical settlement provider that one or more of the following  
6           conditions have been met within the five-year period:
- 7           a. The policy was issued upon the viator's exercise of conversion rights arising  
8           out of a group or individual policy, provided the total of the time covered under  
9           the conversion policy plus the time covered under the prior policy is at least  
10           sixty months. The time covered under a group policy shall be calculated  
11           without regard to any change in insurance carriers, provided the coverage has  
12           been continuous and under the same group sponsorship;
- 13           b. The viator submits independent evidence to the viatical settlement provider  
14           that one or more of the following conditions have been met within the five-year  
15           period:
- 16           (1) The viator or insured is terminally or chronically ill;  
17           (2) The viator's spouse dies;  
18           (3) The viator divorces a spouse;  
19           (4) The viator retires from full-time employment;  
20           (5) The viator becomes physically or mentally disabled and a physician  
21           determines that the disability prevents the viator from maintaining  
22           full-time employment; or
- 23           (6) A final order, judgment, or decree is entered by a court of competent  
24           jurisdiction, on the application of a creditor of the viator, adjudicating the  
25           viator bankrupt or insolvent, or approving a petition seeking  
26           reorganization of the viator or appointing a receiver, trustee, or  
27           liquidator to all or a substantial part of the viator's assets; or
- 28           c. The viator enters into a viatical settlement contract more than two years after  
29           the date of issuance of a policy and, with respect to the policy, at all times  
30           prior to the date that is two years after policy issuance, the following  
31           conditions are met:

- 1                   (1) Policy premiums have been funded exclusively with unencumbered  
2                   assets, including an interest in the life insurance policy being financed  
3                   only to the extent of its net cash surrender value, provided by, or fully  
4                   recourse liability incurred by, the insured or a person described in  
5                   paragraph 4 of subdivision c of subsection 12 of section 26.1-33.3-01;  
6                   (2) There is no agreement or understanding with any other person to  
7                   guarantee any such liability or to purchase, or stand ready to purchase,  
8                   the policy, including through an assumption or forgiveness of the loan;  
9                   and  
10                  (3) Neither the insured nor the policy has been evaluated for settlement.  
11                  2. Copies of the independent evidence described in subdivision b of subsection 1 and  
12                  documents required by subsection 1 of section 26.1-33.3-09 shall be submitted to  
13                  the insurer when the viatical settlement provider or other party entering into a  
14                  viatical settlement contract with a viator submits a request to the insurer for  
15                  verification of coverage. The copies shall be accompanied by a letter of attestation  
16                  from the viatical settlement provider that the copies are true and correct copies of  
17                  the documents received by the viatical settlement provider.  
18                  3. If the viatical settlement provider submits to the insurer a copy of the owner or  
19                  insured's certification described in and the independent evidence required by  
20                  subdivision b of subsection 1 when the provider submits a request to the insurer to  
21                  effect the transfer of the policy or certificate to the viatical settlement provider, the  
22                  copy shall be deemed to conclusively establish that the viatical settlement contract  
23                  satisfies the requirements of this section and the insurer shall timely respond to the  
24                  request.  
25                  4. A insurer may not require, as a condition of responding to a request for verification  
26                  of coverage or effecting the transfer of a policy pursuant to a viatical settlement  
27                  contract, that the viator, insured, viatical settlement provider, or viatical settlement  
28                  broker sign any forms, disclosures, consent, or waiver form that has not been  
29                  expressly approved by the commissioner for use in connection with viatical  
30                  settlement contracts in this state.

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

8           **26.1-33.3-11. Prohibited practices and conflicts of interest.**

- 9           1. With respect to any viatical settlement contract or insurance policy, no viatical  
10           settlement broker knowingly shall solicit an offer from, effectuate a viatical  
11           settlement with, or make a sale to any viatical settlement provider, viatical  
12           settlement purchaser, viatical settlement investment agent, financing entity, or  
13           related provider that is controlling, controlled by, or under common control with  
14           such viatical settlement broker.
- 15           2. With respect to any viatical settlement contract or insurance policy, no viatical  
16           settlement provider knowingly may enter into a viatical settlement contract with a  
17           viator, if, in connection with such viatical settlement contract, anything of value will  
18           be paid to a viatical settlement broker that is controlling, controlled by, or under  
19           common control with such viatical settlement provider or the viatical settlement  
20           purchaser, viatical settlement investment agent, financing entity, or related provider  
21           trust that is involved in such viatical settlement contract.
- 22           3. A violation of subsection 1 or 2 shall be deemed a fraudulent viatical settlement  
23           act.
- 24           4. No viatical settlement provider shall enter into a viatical settlement contract unless  
25           the viatical settlement promotional, advertising, and marketing materials, as may  
26           be prescribed by rule, have been filed with the commissioner. In no event shall  
27           any marketing materials expressly reference that the insurance is free for any  
28           period of time. The inclusion of any reference in the marketing materials that  
29           would cause a viator to reasonably believe that the insurance is free for any period  
30           of time shall be considered a violation of this chapter.

1           5. No insurance company, viatical settlement broker, viatical settlement provider or  
2           viatical settlement investment agent shall make any statement or representation to  
3           the applicant or policyholder in connection with the sale or financing of a life  
4           insurance policy to the effect that the insurance is free or without cost to the  
5           policyholder for any period of time unless provided in the policy.

6           **26.1-33.3-12. Advertising for viatical settlements and viatical settlement purchase**  
7 **agreements.** The purpose of this section is to provide prospective viators and viatical  
8 settlement purchasers with clear and unambiguous statements in the advertisement of viatical  
9 settlements and to assure the clear, truthful, and adequate disclosure of the benefits, risks,  
10 limitations, and exclusions of any viatical settlement contract or viatical settlement purchase  
11 agreement bought or sold. This purpose is intended to be accomplished by the establishment  
12 of guidelines and standards of permissible and impermissible conduct in the advertising of  
13 viatical settlements to assure that product descriptions are presented in a manner that prevents  
14 unfair, deceptive, or misleading advertising and is conducive to accurate presentation and  
15 description of viatical settlements through the advertising media and material used by viatical  
16 settlement licensees.

17           1. This section shall apply to any advertising of viatical settlement contracts, viatical  
18           purchase agreements, or related products or services intended for dissemination in  
19           this state, including internet advertising viewed by persons located in this state.  
20           When disclosure requirements are established pursuant to federal regulations, this  
21           section shall be interpreted so as to minimize or eliminate conflict with federal  
22           regulations wherever possible.

23           2. Every viatical settlement licensee shall establish and at all times maintain a system  
24           of control over the content, form, and method of dissemination of all  
25           advertisements of its contracts, products, and services. All advertisements,  
26           regardless of by whom written, created, designed, or presented, shall be the  
27           responsibility of the viatical settlement licensees, as well as the individual who  
28           created or presented the advertisement. A system of control shall include regular  
29           routine notification, at least once a year, to agents and others authorized by the  
30           viatical settlement licensee who disseminate advertisements of the requirements

1           and procedures for approval prior to the use of any advertisements not furnished  
2           by the viatical settlement licensee.

3           3. Advertisements shall be truthful and not misleading in fact or by implication. The  
4           form and content of an advertisement of a viatical settlement contract or viatical  
5           settlement purchase agreement, product, or service shall be sufficiently complete  
6           and clear so as to avoid deception. It shall not have the capacity or tendency to  
7           mislead or deceive. Whether an advertisement has the capacity or tendency to  
8           mislead or deceive shall be determined by the commissioner from the overall  
9           impression that the advertisement may be reasonably expected to create upon a  
10           person of average education or intelligence within the segment of the public to  
11           which it is directed.

12           4. Certain viatical settlement advertisements are deemed false and misleading on  
13           their face and are prohibited. False and misleading viatical settlement  
14           advertisements include the following representations:

15           a. "Guaranteed," "fully secured," "100 percent secured," "fully insured," "secure,"  
16           "safe," "backed by rated insurance companies," "backed by federal law,"  
17           "backed by state law," or "state guaranty funds," or similar representations;

18           b. "No risk," "minimal risk," "low risk," "no speculation," "no fluctuation," or similar  
19           representations;

20           c. "Qualified or approved for individual retirement accounts (IRAs), Roth IRAs,  
21           401(k) plans, simplified employee pensions (SEP), 403(b), Keogh plans, TSA,  
22           other retirement account rollovers," "tax deferred," or similar representations;

23           d. Utilization of the word "guaranteed" to describe the fixed return, annual return,  
24           principal, earnings, profits, investment, or similar representations;

25           e. "No sales charges or fees" or similar representations;

26           f. "High yield," "superior return," "excellent return," "high return," "quick profit," or  
27           similar representations; and

28           g. Purported favorable representations or testimonials about the benefits of  
29           viatical settlement contracts or viatical settlement purchase agreements as an  
30           investment, taken out of context from newspapers, trade papers, journals,

1                   radio and television programs, and all other forms of print and electronic  
2                   media.

3           5.   The information required to be disclosed under this section shall not be minimized,  
4           rendered obscure, or presented in an ambiguous fashion or intermingled with the  
5           text of the advertisement so as to be confusing or misleading.

6           a.   An advertisement shall not omit material information or use words, phrases,  
7           statements, references, or illustrations if the omission or use has the capacity,  
8           tendency, or effect of misleading or deceiving viators, purchasers, or  
9           prospective purchasers as to the nature or extent of any benefit, loss covered,  
10          premium payable, or state or federal tax consequence. The fact that the  
11          viatical settlement contract or viatical settlement purchase agreement offered  
12          is made available for inspection prior to consummation of the sale, or an offer  
13          is made to refund the payment if the viator is not satisfied or that the viatical  
14          settlement contract or viatical settlement purchase agreement includes a  
15          free-look period that satisfies or exceeds legal requirements, does not remedy  
16          misleading statements.

17          b.   An advertisement shall not use the name or title of a life insurance company  
18          or a life insurance policy unless the advertisement has been approved by the  
19          insurer.

20          c.   An advertisement shall not represent that premium payments will not be  
21          required to be paid on the life insurance policy that is the subject of a viatical  
22          settlement contract or viatical settlement purchase agreement in order to  
23          maintain that policy, unless that is the fact.

24          d.   An advertisement shall not state or imply that interest charged on an  
25          accelerated death benefit or a policy loan is unfair, inequitable, or in any  
26          manner an incorrect or improper practice.

27          e.   The words "free," "no cost," " without cost," "no additional cost," "at no extra  
28          cost," or words of similar import shall not be used with respect to any benefit  
29          or service unless true. An advertisement may specify the charge for a benefit  
30          or a service or may state that a charge is included in the payment or use other  
31          appropriate language.

- 1           f. Testimonials, appraisals, or analysis used in advertisements must be genuine;  
2           represent the current opinion of the author; be applicable to the viatical  
3           settlement contract or viatical settlement purchase agreement, product, or  
4           service advertised, if any; and be accurately reproduced with sufficient  
5           completeness to avoid misleading or deceiving prospective viators or  
6           purchasers as to the nature or scope of the testimonials, appraisal, analysis or  
7           endorsement. In using testimonials, appraisals or analysis, a licensee under  
8           this chapter makes as its own all the statements contained therein, and the  
9           statements are subject to all the provisions of this section.
- 10           (1) If the individual making a testimonial, appraisal, analysis or an  
11           endorsement has a financial interest in the party making use of the  
12           testimonial, appraisal, analysis, or endorsement, either directly or  
13           through a related entity as a stockholder, director, officer, employee, or  
14           otherwise, or receives any benefit directly or indirectly other than  
15           required union scale wages, that fact shall be prominently disclosed in  
16           the advertisement.
- 17           (2) An advertisement shall not state or imply that a viatical settlement  
18           contract or viatical settlement purchase agreement, benefit, or service  
19           has been approved or endorsed by a group of individuals, society,  
20           association, or other organization unless that is the fact and unless any  
21           relationship between an organization and the viatical settlement  
22           licensee is disclosed. If the entity making the endorsement or  
23           testimonial is owned, controlled, or managed by the viatical settlement  
24           licensee, or receives any payment or other consideration from the  
25           viatical settlement licensee for making an endorsement or testimonial,  
26           that fact shall be disclosed in the advertisement.
- 27           (3) When an endorsement refers to benefits received under a viatical  
28           settlement contract or viatical settlement purchase agreement, all  
29           pertinent information shall be retained for a period of five years after its  
30           use.



- 1           6. An advertisement shall not contain statistical information unless it accurately  
2           reflects recent and relevant facts. The source of all statistics used in an  
3           advertisement shall be identified.
- 4           7. An advertisement shall not disparage insurers, viatical settlement providers, viatical  
5           settlement brokers, viatical settlement investment agents, insurance producers,  
6           policies, services, or methods of marketing.
- 7           8. The name of the viatical settlement licensee shall be clearly identified in all  
8           advertisements about the licensee or its viatical settlement contract or viatical  
9           settlement purchase agreements, products, or services, and if any specific viatical  
10          settlement contract or viatical settlement purchase agreement is advertised, the  
11          viatical settlement contract or viatical settlement purchase agreement shall be  
12          identified either by form number or some other appropriate description. If an  
13          application is part of the advertisement, the name of the viatical settlement provider  
14          shall be shown on the application.
- 15          9. An advertisement shall not use a trade name, group designation, name of the  
16          parent company of a viatical settlement licensee, name of a particular division of  
17          the viatical settlement licensee, service mark, slogan, symbol, or other devise or  
18          reference without disclosing the name of the viatical settlement licensee, if the  
19          advertisement would have the capacity or tendency to mislead or deceive as to the  
20          true identity of the viatical settlement licensee, or to create the impression that a  
21          company other than the viatical settlement licensee would have any responsibility  
22          for the financial obligation under a viatical settlement contract or viatical settlement  
23          purchase agreement.
- 24          10. An advertisement shall not use any combination of words, symbols, or physical  
25          materials that by their content, phraseology, shape, color, or other characteristics  
26          are so similar to a combination of words, symbols, or physical materials used by a  
27          government program or agency or otherwise appear to be of such a nature that  
28          they tend to mislead prospective viators or purchasers into believing that the  
29          solicitation is in some manner connected with a government program or agency.
- 30          11. An advertisement may state that a viatical settlement licensee is licensed in the  
31          state where the advertisement appears, provided it does not exaggerate that fact

1           or suggest or imply that a competing viatical settlement licensee may not be so  
2           licensed. The advertisement may ask the audience to consult the licensee's web  
3           site or contact the department of insurance to find out if the state requires licensing  
4           and, if so, whether the viatical settlement provider, viatical settlement broker or  
5           viatical settlement investment agent is licensed.

6           12. An advertisement shall not create the impression that the viatical settlement  
7           provider, its financial condition or status, the payment of its claims or the merits,  
8           desirability, or advisability of its viatical settlement contracts or viatical settlement  
9           purchase agreement forms are recommended or endorsed by any government  
10           entity.

11           13. The name of the actual licensee shall be stated in all of its advertisements. An  
12           advertisement shall not use a trade name, any group designation, name of any  
13           affiliate or controlling entity of the licensee, service mark, slogan, symbol or other  
14           device in a manner that would have the capacity or tendency to mislead or deceive  
15           as to the true identity of the actual licensee or create the false impression that an  
16           affiliate or controlling entity would have any responsibility for the financial obligation  
17           of the licensee.

18           14. An advertisement shall not directly or indirectly create the impression that any  
19           division or agency of the state or of the United States government endorses,  
20           approves or favors:

21           a. Any viatical settlement licensee or its business practices or methods of  
22           operation;

23           b. The merits, desirability or advisability of any viatical settlement contract or  
24           viatical settlement purchase agreement;

25           c. Any viatical settlement contract or viatical settlement purchase agreement; or

26           d. Any life insurance policy or life insurance company.

27           15. If the advertiser emphasizes the speed with which the viatication will occur, the  
28           advertising must disclose the average time frame from completed application to the  
29           date of offer and from acceptance of the offer to receipt of the funds by the viator.

1        16. If the advertising emphasizes the dollar amounts available to viators, the  
2                    advertising shall disclose the average purchase price as a percent of face value  
3                    obtained by viators contracting with the licensee during the past six months.

4        **26.1-33.3-13. Fraud prevention and control.**

5        1. Fraudulent viatical settlement acts, interference and participation of convicted  
6                    felons prohibited.

7            a. A person shall not commit a fraudulent viatical settlement act.

8            b. A person shall not knowingly or intentionally interfere with the enforcement of  
9                    the provisions of this chapter or investigations of suspected or actual  
10                  violations of this chapter.

11          c. A person in the business of viatical settlements shall not knowingly or  
12                  intentionally permit any person convicted of a felony involving dishonesty or  
13                  breach of trust to participate in the business of viatical settlements.

14        2. Fraud warning required.

15          a. Viatical settlement contracts and purchase agreement forms and applications  
16                  for viatical settlements, regardless of the form of transmission, must contain  
17                  the following statement or a substantially similar statement:

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

22          b. The lack of a statement as required in subdivision a does not constitute a  
23                  defense in any prosecution for a fraudulent viatical settlement act.

24        3. Mandatory reporting of fraudulent viatical settlement acts.

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

29          b. Any other person having knowledge or a reasonable belief that a fraudulent  
30                  viatical settlement act is being, will be or has been committed may provide to

1                   the commissioner the information required by, and in a manner prescribed by,  
2                   the commissioner.

3           4.   Immunity from liability.

4           a.   No civil liability shall be imposed on and no cause of action shall arise from a  
5                   person's furnishing information concerning suspected, anticipated or  
6                   completed fraudulent viatical settlement acts or suspected or completed  
7                   fraudulent insurance acts, if the information is provided to or received from:

8                   (1)   The commissioner or the commissioner's employees, agents or  
9                   representatives;

10                  (2)   Federal, state or local law enforcement or regulatory officials or their  
11                  employees, agents or representatives;

12                  (3)   A person involved in the prevention and detection of fraudulent viatical  
13                  settlement acts or that person's agents, employees or representatives;

14                  (4)   The national association of insurance commissioners, national  
15                  association of securities dealers, the North American securities  
16                  administrators association, or their employees, agents or  
17                  representatives, or other regulatory body overseeing life insurance,  
18                  viatical settlements, securities or investment fraud; or

19                  (5)   The life insurer that issued the life insurance policy covering the life of  
20                  the insured.

21           b.   Subdivision a shall not apply to statements made with actual malice. In an  
22                   action brought against a person for filing a report or furnishing other  
23                   information concerning a fraudulent viatical settlement act, the party bringing  
24                   the action shall plead specifically any allegation that subdivision a does not  
25                   apply because the person filing the report or furnishing the information did so  
26                   with actual malice.

27           c.   A person furnishing information as identified in subdivision a shall be entitled  
28                   to an award of attorney's fees and costs if he or she is the prevailing party in a  
29                   civil cause of action for libel, slander or any other relevant tort arising out of  
30                   activities in carrying out the provisions of this chapter and the party bringing  
31                   the action was not substantially justified in doing so. For purposes of this

1                   section a proceeding is "substantially justified" if it had a reasonable basis in  
2                   law or fact at the time that it was initiated. However, such an award does not  
3                   apply to any person furnishing information concerning that person's own  
4                   fraudulent viatical settlement acts.

5                   d. This section does not abrogate or modify common law or statutory privileges  
6                   or immunities enjoyed by a person described in subdivision a.

7                   5. Confidentiality.

8                   a. The documents and evidence provided pursuant to subsection 4 or obtained  
9                   by the commissioner in an investigation of suspected or actual fraudulent  
10                   viatical settlement acts shall be privileged and confidential and shall not be a  
11                   public record and shall not be subject to discovery or subpoena in a civil or  
12                   criminal action.

13                   b. Subdivision a does not prohibit release by the commissioner of documents  
14                   and evidence obtained in an investigation of suspected or actual fraudulent  
15                   viatical settlement acts:

16                   (1) In administrative or judicial proceedings to enforce laws administered  
17                   by the commissioner;

18                   (2) To federal, state or local law enforcement or regulator agencies, to an  
19                   organization established for the purpose of detecting and preventing  
20                   fraudulent viatical settlement acts or to the national association of  
21                   insurance commissioners; or

22                   (3) At the discretion of the commissioner, to a person in the business of  
23                   viatical settlements that is aggrieved by a fraudulent viatical settlement  
24                   act.

25                   c. Release of documents and evidence under subdivision b does not abrogate or  
26                   modify the privilege granted in subdivision a.

27                   6. Other law enforcement or regulatory authority. This chapter shall not:

28                   a. Preempt the authority or relieve the duty of other law enforcement or  
29                   regulatory agencies to investigate, examine and prosecute suspected  
30                   violations of law;

- 1            b. Prevent or prohibit a person from disclosing voluntarily information concerning  
2            viatical settlement fraud to a law enforcement or regulatory agency other than  
3            the insurance department; or
- 4            c. Limit the powers granted elsewhere by the laws of this state to the  
5            commissioner or an insurance fraud unit to investigate and examine possible  
6            violations of law and to take appropriate action against wrongdoers.
- 7            7. Viatical settlement antifraud initiatives.
- 8            a. Viatical settlement providers and viatical settlement brokers shall have in  
9            place antifraud initiatives reasonably calculated to detect, prosecute and  
10           prevent fraudulent viatical settlement acts. At the discretion of the  
11           commissioner, the commissioner may order, or a licensee may request and  
12           the commissioner may grant, such modifications of the following required  
13           initiatives as necessary to ensure an effective antifraud program. The  
14           modifications may be more or less restrictive than the required initiatives so  
15           long as the modifications may reasonably be expected to accomplish the  
16           purpose of this section.
- 17           b. Antifraud initiatives shall include:
- 18           (1) Fraud investigators, who may be viatical settlement provider or viatical  
19           settlement broker employees or independent contractors; and
- 20           (2) An antifraud plan, which shall be submitted to the commissioner. The  
21           antifraud plan shall include, but not be limited to:
- 22           (a) A description of the procedures for detecting and investigating  
23           possible fraudulent viatical settlement acts and procedures for  
24           resolving material inconsistencies between medical records and  
25           insurance applications;
- 26           (b) A description of the procedures for reporting possible fraudulent  
27           viatical settlement acts to the commissioner;
- 28           (c) A description of the plan for antifraud education and training of  
29           underwriters and other personnel; and
- 30           (d) A description or chart outlining the organizational arrangement of  
31           the antifraud personnel who are responsible for the investigation

1 and reporting of possible fraudulent viatical settlement acts and  
2 investigating unresolved material inconsistencies between  
3 medical records and insurance applications.

4 c. Antifraud plans submitted to the commissioner shall be privileged and  
5 confidential and shall not be a public record and shall not be subject to  
6 discovery or subpoena in a civil or criminal action.

7 **26.1-33.3-14. Injunctions - Civil remedies - Cease and desist - Penalty.**

- 8 1. In addition to the penalties and other enforcement provisions of this chapter, if any  
9 person violates this chapter or any regulation implementing this chapter, the  
10 commissioner may seek an injunction in a court of competent jurisdiction and may  
11 apply for temporary and permanent orders that the commissioner determines are  
12 necessary to restrain the person from committing the violation.
- 13 2. Any person damaged by the acts of a person in violation of this chapter may bring  
14 a civil action against the person committing the violation in a court of competent  
15 jurisdiction.
- 16 3. A violation of this chapter attendant to the execution of a viatical settlement  
17 purchase agreement renders the viatical settlement purchase agreement voidable  
18 and subject to rescission by the viatical settlement purchaser, upon return of the  
19 policy received to the viatical settlement provider. Suit for rescission may be  
20 brought in a court of competent jurisdiction or where the alleged violator resides or  
21 has a principal place of business or where the alleged violation occurred.
- 22 4. The commissioner may issue, in accordance with this title and chapter 28-32, a  
23 cease and desist order upon a person that violates any provision of this chapter,  
24 any regulation or order adopted by the commissioner, or any written agreement  
25 entered into with the commissioner.
- 26 5. When the commissioner finds that an activity in violation of this chapter presents  
27 an immediate danger to the public that requires an immediate final order, the  
28 commissioner may issue an emergency cease and desist order reciting with  
29 particularity the facts underlying the findings. The emergency cease and desist  
30 order is effective immediately upon service of a copy of the order on the  
31 respondent and remains effective for ninety days. If the commissioner begins

1           nonemergency cease and desist proceedings, the emergency cease and desist  
2           order remains effective, absent an order by a court of competent jurisdiction  
3           pursuant to this title and chapter 28-32.

4           6. In addition to the penalties and other enforcement provisions of this chapter, any  
5           person who violates this chapter is subject to civil penalties of up to fifty thousand  
6           dollars per violation. Imposition of civil penalties shall be pursuant to an order of  
7           the commissioner issued under this title and chapter 28-32. The commissioner's  
8           order may require a person found to be in violation of this chapter to make  
9           restitution to persons aggrieved by violations of this chapter.

10          7. A person convicted of a violation of this chapter by a court of competent jurisdiction  
11          is governed by chapter 12.1-32. A person convicted of a violation of this chapter  
12          shall be ordered to pay restitution to persons aggrieved by the violation of this  
13          chapter. Restitution shall be ordered in addition to a fine or imprisonment, but not  
14          in lieu of a fine or imprisonment.

15          8. Except for a fraudulent viatical settlement act committed by a viator, the  
16          enforcement provisions and penalties of this section shall not apply to a viator.

17          9. A person convicted of a violation of this chapter by a court of competent jurisdiction  
18          may be sentenced in accordance with subdivision a, b, c, or d based on the greater  
19          of the value of property, services, or other benefit wrongfully obtained or attempted  
20          to obtain; or the aggregate economic loss suffered by any person as a result of the  
21          violation. A person convicted of a fraudulent viatical settlement act must be  
22          ordered to pay restitution to persons aggrieved by the fraudulent viatical settlement  
23          act. Restitution must be ordered in addition to a fine or imprisonment but not in lieu  
24          of a fine or imprisonment. A fraudulent viatical settlement act is:

25           a. A class A felony if the value of a viatical settlement contract is more than  
26           thirty-five thousand dollars;

27           b. A class B felony if the value of a viatical settlement contract is more than two  
28           thousand five hundred dollars but not more than thirty-five thousand dollars;

29           c. A class C felony if the value of a viatical settlement contract is more than five  
30           hundred dollars but not more than two thousand five hundred dollars; or



1           d. A class A misdemeanor if the value of a viatical settlement contract is five  
2                   hundred dollars or less.

3           In any prosecution under this section under subdivisions a, b, c, and d, the value of  
4           the viatical settlement contracts within any six-month period may be aggregated  
5           and the defendant charged accordingly in applying in the provisions of this section;  
6           provided that when two or more offenses are committed by the same person in two  
7           or more counties, the accused may be prosecuted in any county in which one of  
8           the offenses was committed for all of the offenses aggregated under this section.  
9           The applicable statute of limitations provision shall not begin to run until the  
10           insurance company or law enforcement agency is aware of the fraud, but in no  
11           event may the prosecution be commenced later than seven years after the act has  
12           occurred.

13           **26.1-33.3-15. Unfair trade practices.** A violation of this chapter, including the  
14           commission of a fraudulent viatical settlement act, shall be considered an unfair trade practice  
15           under section 26.1-04-03 subject to the penalties contained in that section.

16           **26.1-33.3-16. Authority to promulgate regulations.** The commissioner shall have  
17           the authority to:

- 18           1. Promulgate regulations implementing this chapter;
- 19           2. Establish standards for evaluating reasonableness of payments under viatical  
20           settlement contracts for persons who are terminally or chronically ill. This authority  
21           includes, but is not limited to, regulation of discount rates used to determine the  
22           amount paid in exchange for assignment, transfer, sale, devise or bequest of a  
23           benefit under a life insurance policy insuring the life of a person that is chronically  
24           or terminally ill;
- 25           3. Establish appropriate licensing requirements, fees and standards for continued  
26           licensure for viatical settlement providers, brokers and viatical settlement  
27           investment agents;
- 28           4. Require a bond or other mechanism for financial accountability for viatical  
29           settlement providers and brokers; and

1           5. Adopt rules governing the relationship and responsibilities of both insurers and  
2           viatical settlement providers, viatical settlement brokers and viatical settlement  
3           investment agents during the viatication of a life insurance policy or certificate.

4           **26.1-33.3-17. Effective date.** This chapter takes effect on August 1, 2007. A viatical  
5 settlement provider, viatical settlement broker, or viatical settlement investment agent  
6 transacting business in this state may continue to do so pending approval or disapproval of the  
7 provider, broker, or investment agent's application for a license as long as the application is  
8 filed with the commissioner by August 1, 2007.

9           **SECTION 3. REPEAL.** Chapter 26.1-33.2 of the North Dakota Century Code is  
10 repealed.