



(5) By reserving G.S. 58-58-175 through G.S. 58-58-195 for future codification purposes.

**SECTION 3.** Article 58 of Chapter 58 of the General Statutes is amended by adding a new Part to read:

"Part 5. Viatical Settlements.

**"§ 58-58-200. Short title.**

This Part may be cited as the Viatical Settlements Act.

**"§ 58-58-205. Definitions.**

As used in this Article:

(1) 'Advertising' means any written, electronic, or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including filmstrips, motion pictures, and videos, published, disseminated, circulated, or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to sell a life insurance policy under a viatical settlement contract.

(2) 'Business of viatical settlements' means an activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation, purchasing, investing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating, or in any other manner, of viatical settlement contracts. 'Business of viatical settlements' does not include an activity involving viatical settlement contracts as investments as regulated by Chapter 78A of the General Statutes.

(3) 'Chronically ill' means:

a. Being unable to perform at least two activities of daily living (i.e., eating, toileting, transferring, bathing, dressing, or continence);

b. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment;  
or

c. Having a level of disability similar to that described in sub-subdivision a. of this subdivision as determined by the Secretary of Health and Human Services.

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

a. Whose principal activity related to the transaction is providing funds to effect the viatical settlement or purchase of one or more viaticated policies; and

1           b. Who has an agreement in writing with one or more licensed  
2           viatical settlement providers to finance the acquisition of  
3           viatical settlement contracts.

4           'Financing entity' does not include a nonaccredited investor or viatical  
5           settlement purchaser.

6           (5) 'Fraudulent viatical settlement act' includes:

7           a. Acts or omissions committed by any person who, knowingly  
8           and with intent to defraud, for the purpose of depriving another  
9           of property or for pecuniary gain, commits, or permits its  
10           employees or its agents to engage in acts including:

11           1. Presenting, causing to be presented, or preparing with  
12           knowledge or belief that it will be presented to or by a  
13           viatical settlement provider, viatical settlement broker,  
14           viatical settlement purchaser, financing entity, insurer,  
15           insurance producer, viator, insured or any other person  
16           false material information, or concealing material  
17           information, as part of, in support of, or concerning a  
18           fact material to one or more of the following:

19           I. An application for the issuance of a viatical  
20           settlement contract or insurance policy.

21           II. The underwriting of a viatical settlement contract  
22           or insurance policy.

23           III. A claim for payment or benefit under a viatical  
24           settlement contract or insurance policy.

25           IV. Premiums paid on an insurance policy.

26           V. Payments and changes in ownership or  
27           beneficiary made in accordance with the terms of  
28           a viatical settlement contract or insurance policy.

29           VI. The reinstatement or conversion of an insurance  
30           policy.

31           VII. The solicitation, offer, effectuation, or sale of a  
32           viatical settlement contract or insurance policy.

33           VIII. The issuance of written evidence of viatical  
34           settlement contract or insurance.

35           IX. A financing transaction.

36           2. Employing any device, scheme, or artifice to defraud  
37           related to viaticated policies.

38           b. In the furtherance of a fraud or to prevent the detection of a  
39           fraud, any person commits or permits the person's employees or  
40           agents to:

- 1                   1.    Remove, conceal, alter, destroy, or sequester from the
- 2                                    Commissioner the assets or records of a licensee or other
- 3                                    person engaged in the business of viatical settlements;
- 4                   2.    Misrepresent or conceal the financial condition of a
- 5                                    licensee, financing entity, insurer, or other person;
- 6                   3.    Transact the business of viatical settlements in violation
- 7                                    of laws requiring a license, certificate of authority, or
- 8                                    other legal authority for the transaction of the business of
- 9                                    viatical settlements; or
- 10                  4.    File with the Commissioner or the insurance regulator of
- 11                                    another jurisdiction a document containing false
- 12                                    information or otherwise conceal information about a
- 13                                    material fact from the Commissioner.
- 14                  c.    Embezzlement, theft, misappropriation, or conversion of
- 15                                    monies, funds, premiums, credits, or other property of a viatical
- 16                                    settlement provider, insurer, insured, viator, insurance policy
- 17                                    owner, or any other person engaged in the business of viatical
- 18                                    settlements or insurance; or
- 19                  d.    Attempting to commit, assisting, aiding, or abetting in the
- 20                                    commission of, or conspiracy to commit, the acts or omissions
- 21                                    specified in this subdivision.
- 22                  (6)   'Policy' means an individual or group life insurance policy, group life
- 23                                    insurance certificate, group life insurance contract, or any other
- 24                                    arrangement of life insurance affecting the rights of a resident of this
- 25                                    State or bearing a reasonable relation to this State, regardless of
- 26                                    whether delivered or issued for delivery in this State.
- 27                  (7)   'Related provider trust' means a titling trust or other trust established
- 28                                    by a licensed viatical settlement provider or a financing entity for the
- 29                                    sole purpose of holding the ownership or beneficial interest in
- 30                                    purchased policies in connection with a financing transaction.
- 31                  (8)   'Special purpose entity' means a corporation, partnership, trust, limited
- 32                                    liability company, or other similar entity formed solely to provide
- 33                                    either directly or indirectly access to institutional capital markets for a
- 34                                    financing entity or licensed viatical settlement provider.
- 35                  (9)   'Terminally ill' means having an illness or sickness that can reasonably
- 36                                    be expected to result in death in 24 months or fewer.
- 37                  (10) 'Viatical settlement broker' or 'broker' means a person that on behalf of
- 38                                    a viator and for a fee, commission, or other valuable consideration
- 39                                    offers or attempts to negotiate viatical settlement contracts between a
- 40                                    viator and one or more viatical settlement providers. The term does not
- 41                                    include an attorney, certified public accountant, or a financial planner
- 42                                    accredited by a nationally recognized accreditation agency who is

- 1                    retained to represent the viator and whose compensation is not paid  
2                    directly or indirectly by the viatical settlement provider or purchaser.
- 3            (11) 'Viatical settlement contract' means a written agreement establishing  
4                    the terms under which compensation or anything of value will be paid,  
5                    which compensation or value is less than the expected death benefit of  
6                    the policy, in return for the viator's assignment, transfer, sale, devise,  
7                    or bequest of the death benefit or ownership of any portion of the  
8                    policy. A viatical settlement contract also includes a contract for a loan  
9                    or other financing transaction with a viator secured primarily by a  
10                   policy, other than a loan by a life insurance company under the terms  
11                   of the life insurance contract, or a loan secured by the cash value of a  
12                   policy. A viatical settlement contract includes an agreement with a  
13                   viator to transfer ownership or change the beneficiary designation at a  
14                   later date regardless of the date that compensation is paid to the viator.
- 15            (12) 'Viatical settlement provider' or 'provider' means a person, other than a  
16                   viator, that enters into or effectuates a viatical settlement contract.  
17                   Viatical settlement provider does not include:
- 18                   a. A bank, savings bank, savings and loan association, credit  
19                   union, or other licensed lending institution that takes an  
20                   assignment of a life insurance policy as collateral for a loan;
- 21                   b. The issuer of a life insurance policy providing accelerated  
22                   benefits under rules adopted by the Commissioner and under  
23                   the contract;
- 24                   c. An authorized or eligible insurer that provides stop-loss  
25                   coverage to a viatical settlement provider, purchaser, financing  
26                   entity, special purpose entity, or related provider trust;
- 27                   d. A natural person who enters into or effectuates no more than  
28                   one agreement in a calendar year for the transfer of life  
29                   insurance policies for any value less than the expected death  
30                   benefit;
- 31                   e. A financing entity;
- 32                   f. A special purpose entity;
- 33                   g. A related provider trust;
- 34                   h. A viatical settlement purchaser; or
- 35                   i. An accredited investor or qualified institutional buyer as  
36                   defined respectively in Regulation D, Rule 501 or Rule 144A of  
37                   the Federal Securities Act of 1933, as amended, and who  
38                   purchases a viaticated policy from a viatical settlement  
39                   provider.
- 40            (13) 'Viatical settlement purchase agreement' or 'purchase agreement'  
41                   means an agreement, entered into by a viatical settlement purchaser, to  
42                   which the viator is not a party, to purchase a life insurance policy or an

1 interest in a life insurance policy, that is entered into for the purpose of  
2 deriving an economic benefit.

3 (14) 'Viatical settlement purchaser' or 'purchaser' means a person who gives  
4 a sum of money as consideration for a life insurance policy or an  
5 interest in the death benefits of a life insurance policy or a person who  
6 owns or acquires or is entitled to a beneficial interest in a trust that  
7 owns a viatical settlement contract or is the beneficiary of a life  
8 insurance policy that has been or will be the subject of a viatical  
9 settlement contract for the purpose of deriving an economic benefit.  
10 'Viatical settlement purchaser' does not include:

11 a. A licensee under this Part;

12 b. An accredited investor or qualified institutional buyer as  
13 defined respectively in Regulation D, Rule 501 or Rule 144A of  
14 the Federal Securities Act of 1933, as amended;

15 c. A financing entity;

16 d. A special purpose entity; or

17 e. A related provider trust.

18 (15) 'Viaticated policy' means a policy that has been acquired by a viatical  
19 settlement provider under a viatical settlement contract.

20 (16) 'Viator' means the owner of a policy or a certificate holder under a  
21 group policy who enters or seeks to enter into a viatical settlement  
22 contract. For the purposes of this Part, a viator shall not be limited to  
23 an owner of a life insurance policy or a certificate holder under a group  
24 policy insuring the life of an individual with a terminal or chronic  
25 illness or condition except where specifically addressed. 'Viator' does  
26 not include:

27 a. A licensee under this Part;

28 b. An accredited investor or qualified institutional buyer as  
29 defined respectively in Regulation D, Rule 501 or Rule 144A of  
30 the Federal Securities Act of 1933, as amended;

31 c. A financing entity;

32 d. A special purpose entity; or

33 e. A related provider trust.

34 **"§ 58-58-210. License requirements.**

35 (a) No person shall operate as a provider or broker without first obtaining a  
36 license from the insurance regulator of the state of residence of the viator. If there is  
37 more than one viator on a single policy and the viators are residents of different states,  
38 the viatical settlement shall be governed by the law of the state in which the viator  
39 having the largest percentage ownership resides or, if the viators hold equal ownership,  
40 the state of residence of one viator agreed upon in writing by all viators.

1 (b) Application for a provider or broker license shall be made to the  
2 Commissioner by the applicant on a form prescribed by the Commissioner, and these  
3 applications shall be accompanied by a fee of one hundred dollars (\$100.00).

4 (c) Licenses may be renewed from year to year on the anniversary date upon  
5 payment of the annual renewal fee of one hundred dollars (\$100.00). Failure to pay the  
6 fees by the renewal date results in expiration of the license.

7 (d) The applicant shall provide information on forms required by the  
8 Commissioner. The Commissioner may require the applicant to fully disclose the  
9 identity of all stockholders, partners, officers, members, and employees; and the  
10 Commissioner may refuse to issue a license in the name of a legal entity if not satisfied  
11 that any officer, employee, stockholder, partner, or member of the legal entity who may  
12 materially influence the applicant's conduct meets the standards of this Part.

13 (e) A license issued to a legal entity authorizes all partners, officers, members,  
14 and designated employees to act as providers or brokers, as applicable, under the  
15 license; and all those persons shall be named in the application and any supplements to  
16 the application.

17 (f) Upon the filing of an application and the payment of the license fee, the  
18 Commissioner shall investigate each applicant and issue a license if the Commissioner  
19 finds that the applicant:

20 (1) If a provider, has provided a detailed plan of operation.

21 (2) Is competent and trustworthy and intends to act in good faith in the  
22 capacity involved by the license applied for.

23 (3) Has a good business reputation and has had experience, training, or  
24 education so as to be qualified in the business for which the license is  
25 applied.

26 (4) If a legal entity, provides a certificate of good standing from the state  
27 of its domicile.

28 (g) The Commissioner shall not issue a license to a nonresident applicant unless a  
29 written designation of an agent for service of process is filed and maintained with the  
30 Commissioner or the applicant has filed with the Commissioner the applicant's written  
31 irrevocable consent that any action against the applicant may be commenced against the  
32 applicant by service of process on the Commissioner.

33 (h) A provider or broker shall provide to the Commissioner new or revised  
34 information about officers, ten percent (10%) or more stockholders, partners, directors,  
35 members, or designated employees within 20 days after any change in the constituent  
36 membership of that respective category of persons.

37 **"§ 58-58-215. License revocation and denial.**

38 The Commissioner may suspend, revoke, or refuse to issue or renew the license of a  
39 provider or broker if the Commissioner finds that:

40 (1) There was any material misrepresentation in the application for the  
41 license;

- 1           (2) The licensee or any officer, partner, member, or key management  
2 personnel has been convicted of fraudulent or dishonest practices, is  
3 subject to a final administrative action, or is otherwise shown to be  
4 untrustworthy or incompetent;
- 5           (3) The provider demonstrates a pattern of unreasonable payments to  
6 viators;
- 7           (4) The licensee or any officer, partner, member, or key management  
8 personnel has been found guilty of, or has pleaded guilty or nolo  
9 contendere to, any felony, or to a misdemeanor involving fraud or  
10 moral turpitude, regardless of whether a judgment of conviction has  
11 been entered by the court;
- 12           (5) The provider has entered into any viatical settlement contract that has  
13 not been approved pursuant to this Part;
- 14           (6) The provider has failed to honor contractual obligations set out in a  
15 viatical settlement contract;
- 16           (7) The licensee no longer meets the requirements for initial licensure;
- 17           (8) The provider has assigned, transferred, or pledged a viaticated policy  
18 to a person other than a provider licensed in this State, viatical  
19 settlement purchaser, an accredited investor, or qualified institutional  
20 buyer as defined respectively in Regulation D, Rule 501 or Rule 144A  
21 of the Federal Securities Act of 1933, as amended, financing entity,  
22 special purpose entity, or related provider trust; or
- 23           (9) The licensee or any officer, partner, member, or key management  
24 personnel has violated any provision of this Part.

25 **"§ 58-58-220. Approval of viatical settlement contracts and disclosure statements.**

26 A person shall not use a contract or provide to a viator a disclosure statement form in  
27 this State unless filed with and approved by the Commissioner. The Commissioner shall  
28 disapprove a contract form or disclosure statement form if, in the Commissioner's  
29 opinion, the contract or provisions contained therein are unreasonable, contrary to the  
30 interests of the public, or otherwise misleading or unfair to the viator. The  
31 Commissioner may also require the submission of advertising material.

32 **"§ 58-58-225. Reporting requirements and privacy.**

33           (a) Each licensee shall file with the Commissioner on or before June 1 of each  
34 year an annual statement containing such information as the Commissioner prescribes  
35 by administrative rule.

36           (b) Except as otherwise allowed or required by law, a provider, broker, insurance  
37 company, insurance producer, information bureau, rating agency or company, or any  
38 other person with actual knowledge of an insured's identity shall not disclose that  
39 identity as an insured, or the insured's financial or medical information, to any other  
40 person unless the disclosure:



- 1           (1) Is necessary to effect a viatical settlement between the viator and a  
2           provider and the viator and insured have provided prior written  
3           consent to the disclosure;
- 4           (2) Is provided in response to an investigation or examination by the  
5           Commissioner or any other governmental officer or agency or pursuant  
6           to the requirements of G.S. 58-58-270;
- 7           (3) Is a term of or condition to the transfer of a policy by one provider to  
8           another provider;
- 9           (4) Is necessary to permit a financing entity, related provider trust, or  
10          special purpose entity to finance the purchase of policies by a provider  
11          and the viator and insured have provided prior written consent to the  
12          disclosure;
- 13          (5) Is necessary to allow the provider or broker or its authorized  
14          representatives to make contacts for the purpose of determining health  
15          status; or
- 16          (6) Is required to purchase stop-loss coverage.

17 **"§ 58-58-230. Examinations.**

18          (a) The Commissioner may conduct an examination of a licensee as often as the  
19          Commissioner considers appropriate.

20          (b) An examination under this Part shall be conducted in accordance with the  
21          Examination Law.

22          (c) In lieu of an examination of any foreign or alien person licensed under this  
23          Part, the Commissioner may accept an examination report on the licensee prepared by  
24          the appropriate viatical settlement regulator for the licensee's state of domicile or port-  
25          of-entry state.

26          (d) When making an examination under this Part, the Commissioner may retain  
27          attorneys, appraisers, independent actuaries, independent certified public accountants, or  
28          other professionals and specialists as examiners, the reasonable cost of which shall be  
29          borne by the licensee that is the subject of the examination.

30 **"§ 58-58-235. Record retention requirements.**

31          (a) A person licensed under this Part shall retain copies for five years of all:

32               (1) Proposed, offered, or executed contracts, purchase agreements,  
33               underwriting documents, policy forms, and applications from the date  
34               of the proposal, offer, or execution of the contract or purchase  
35               agreement, whichever is later.

36               (2) Checks, drafts, or other evidence and documentation related to the  
37               payment, transfer, deposit, or release of funds from the date of the  
38               transaction.

39               (3) Other records and documents related to the requirements of this Part.

40          (b) This section does not relieve a person of the obligation to produce these  
41          documents to the Commissioner after the retention period has expired if the person has  
42          retained the documents.

1       (c) Records required to be retained by this section must be legible and complete  
2 and may be retained in paper, photograph, microprocessor, magnetic, mechanical, or  
3 electronic media, or by any process that accurately reproduces or forms a durable  
4 medium for the reproduction of a record.

5 **"§ 58-58-240. Investigative authority of the Commissioner.**

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

8 **"§ 58-58-245. Disclosure.**

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

- 14           (1) There are possible alternatives to contracts including any accelerated  
15 death benefits or policy loans offered under the viator's policy.
- 16           (2) Some or all of the proceeds of the viatical settlement may be taxable  
17 under federal income tax and state franchise and income taxes, and  
18 assistance should be sought from a professional tax advisor.
- 19           (3) Proceeds of the viatical settlement could be subject to the claims of  
20 creditors.
- 21           (4) Receipt of the proceeds of a viatical settlement may adversely affect  
22 the viator's eligibility for Medicaid or other government benefits or  
23 entitlements, and advice should be obtained from the appropriate  
24 government agencies.
- 25           (5) The viator has the right to rescind a contract for 10 business days after  
26 the receipt of the viatical settlement proceeds by the viator, as  
27 provided in G.S. 58-58-250(h). If the insured dies during the rescission  
28 period, the settlement contract shall be deemed to have been rescinded,  
29 subject to repayment of all viatical settlement proceeds and any  
30 premiums, loans, and loan interest to the provider or purchaser.
- 31           (6) Funds will be sent to the viator within three business days after the  
32 provider has received the insurer or group administrator's  
33 acknowledgment that ownership of the policy or interest in the  
34 certificate has been transferred and the beneficiary has been  
35 designated.
- 36           (7) Entering into a contract may cause other rights or benefits, including  
37 conversion rights and waiver of premium benefits that may exist under  
38 the policy, to be forfeited by the viator. Assistance should be sought  
39 from a financial adviser.
- 40           (8) Disclosure to a viator shall include distribution of a brochure  
41 describing the process of viatical settlements. The NAIC's form for the  
42 brochure shall be used unless the Commissioner develops one.

1           (9)    The disclosure document shall contain the following language: 'All  
2           medical, financial, or personal information solicited or obtained by a  
3           provider or broker about an insured, including the insured's identity or  
4           the identity of family members, a spouse or a significant other may be  
5           disclosed as necessary to effect the viatical settlement between the  
6           viator and the provider. If you are asked to provide this information,  
7           you will be asked to consent to the disclosure. The information may be  
8           provided to someone who buys the policy or provides funds for the  
9           purchase. You may be asked to renew your permission to share  
10          information every two years.'

11          (10)   The insured may be contacted by either the provider or broker or its  
12          authorized representative for the purpose of determining the insured's  
13          health status. This contact is limited to once every three months if the  
14          insured has a life expectancy of more than one year, and no more than  
15          once per month if the insured has a life expectancy of one year or less.

16          (b)    A provider shall provide the viator with at least the following disclosures no  
17          later than the date the contract is signed by all parties. The disclosures shall be  
18          conspicuously displayed in the contract or in a separate document signed by the viator  
19          and the provider or broker, and provide the following information:

20               (1)    State the affiliation, if any, between the provider and the issuer of the  
21               insurance policy to be viaticated.

22               (2)    The document shall include the name, address, and telephone number  
23               of the provider.

24               (3)    A broker shall disclose to a prospective viator the amount and method  
25               of calculating the broker's compensation. The term 'compensation'  
26               includes anything of value paid or given to a broker for the placement  
27               of a policy.

28               (4)    If an insurance policy to be viaticated has been issued as a joint policy  
29               or involves family riders or any coverage of a life other than the  
30               insured under the policy to be viaticated, the viator shall be informed  
31               of the possible loss of coverage on the other lives under the policy and  
32               shall be advised to consult with his or her insurance producer or the  
33               insurer issuing the policy for advice on the proposed viatical  
34               settlement.

35               (5)    State the dollar amount of the current death benefit payable to the  
36               provider under the policy. If known, the provider shall also disclose  
37               the availability of any additional guaranteed insurance benefits, the  
38               dollar amount of any accidental death and dismemberment benefits  
39               under the policy, and the provider's interest in those benefits.

40               (6)    State the name, business address, and telephone number of the  
41               independent third-party escrow agent and the fact that the viator or

1 owner may inspect or receive copies of the relevant escrow or trust  
2 agreements or documents.

3 (c) If the provider transfers ownership or changes the beneficiary of the  
4 insurance policy, the provider shall communicate the change in ownership or  
5 beneficiary to the insured within 20 days after the change.

6 **"§ 58-58-250. General rules.**

7 (a) A provider entering into a contract shall first obtain:

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

11 (2) A document in which the insured consents to the release of his or her  
12 medical records to a provider or broker and, if the policy being  
13 viaticated has been in effect for less than five years, to the insurance  
14 company that issued the policy covering the life of the insured.

15 (b) Within 20 days after a viator executes documents necessary to transfer any  
16 rights under a policy or within 20 days after entering any agreement, option, promise, or  
17 any other form of understanding, expressed or implied, to viaticate the policy, the  
18 provider shall give written notice to the insurer that issued that policy that the policy has  
19 or will become a viaticated policy. The notice shall be accompanied by the documents  
20 required by subsection (c) of this section.

21 (c) If the policy being viaticated has been in effect for less than five years, the  
22 viatical provider shall deliver a copy of the medical release required under subdivision  
23 (a)(2) of this section, a copy of the viator's application for the contract, the notice  
24 required under subsection (b) of this section, and a request for verification of coverage  
25 to the insurer that issued the policy that is the subject of the viatical settlement. The  
26 NAIC's form for verification shall be used unless the Commissioner develops standards  
27 for verification.

28 (d) The insurer shall respond to a request for verification of coverage submitted  
29 on an approved form by a provider within 30 days after the date the request is received  
30 and shall indicate whether, based on the medical evidence and documents provided, the  
31 insurer intends to pursue an investigation at this time regarding the validity of the  
32 policy.

33 (e) Before or at the time of execution of the contract, the provider shall obtain a  
34 witnessed document in which the viator consents to the contract, represents that the  
35 viator has a full and complete understanding of the contract, that he or she has a full and  
36 complete understanding of the benefits of the policy, acknowledges that he or she is  
37 entering into the contract freely and voluntarily and, for persons with a terminal or  
38 chronic illness or condition, acknowledges that the insured has a terminal or chronic  
39 illness or condition and that the terminal or chronic illness or condition was first  
40 diagnosed after the policy was issued.

41 (f) If a broker performs any of these activities required of the provider, the  
42 provider is deemed to have fulfilled the requirements of this section.

1       (g) All medical information solicited or obtained by any licensee is subject to the  
2 applicable provisions of federal and North Carolina law relating to confidentiality of  
3 medical information.

4       (h) All contracts entered into in this State shall provide the viator with an  
5 unconditional right to rescind the contract for at least 10 business days after the receipt  
6 of the viatical settlement proceeds. If the insured dies during the rescission period, the  
7 contract shall be deemed to have been rescinded, subject to repayment to the provider or  
8 purchaser of all viatical settlement proceeds, and any premiums, loans, and loan interest  
9 that have been paid by the provider or purchaser.

10       (i) The provider shall instruct the viator to send the executed documents required  
11 to effect the change in ownership, assignment, or change in beneficiary directly to the  
12 independent escrow agent. Within three business days after the date the escrow agent  
13 receives the documents, or from the date the provider receives the documents, if the  
14 viator erroneously provides the documents directly to the provider, the provider shall  
15 pay or transfer the proceeds of the viatical settlement into an escrow or trust account  
16 maintained in a state or federally chartered financial institution, the deposits of which  
17 are insured by the Federal Deposit Insurance Corporation (FDIC) or any successor  
18 entity. Upon payment of the settlement proceeds into the escrow account, the escrow  
19 agent shall deliver the original change in ownership, assignment, or change in  
20 beneficiary forms to the provider or related provider trust. Upon the escrow agent's  
21 receipt of the acknowledgment of the properly completed transfer of ownership,  
22 assignment, or designation of beneficiary from the insurance company, the escrow agent  
23 shall pay the settlement proceeds to the viator.

24       (j) Failure to tender consideration to the viator for the contract within the time  
25 required under G.S. 58-58-245(a)(6) renders the contract voidable by the viator for lack  
26 of consideration until the time consideration is tendered to and accepted by the viator.

27       (k) Contacts with the insured for the purpose of determining the health status of  
28 the insured by the provider or broker after the viatical settlement has occurred shall only  
29 be made by the provider or broker licensed in this State or its authorized representatives  
30 and shall be limited to once every three months for insureds with a life expectancy of  
31 more than one year, and to no more than once per month for insureds with a life  
32 expectancy of one year or less. The provider or broker shall explain the procedure for  
33 these contacts at the time the contract is entered into. The limitations set forth in this  
34 subsection shall not apply to any contacts with an insured for reasons other than  
35 determining the insured's health status. Providers and brokers shall be responsible for  
36 the actions of their authorized representatives.

37       (l) Every related provider trust shall have a written agreement with the licensed  
38 viatical settlement provider under which the licensed viatical settlement provider is  
39 responsible for ensuring compliance with all statutory and regulatory requirements and  
40 under which the trust agrees to make all records and files related to viatical settlement  
41 transactions available to the Commissioner as if those records and files were maintained  
42 directly by the licensed viatical settlement provider.

1        (m) Notwithstanding the manner in which a viatical settlement broker is  
2 compensated, a broker is deemed to represent only the viator and owes a fiduciary duty  
3 to the viator to act according to the viator's instructions and in the best interest of the  
4 viator.

5 **"§ 58-58-255. Prohibited practices.**

6        (a) It is a violation of this Part for any person to enter into a contract within a  
7 two-year period commencing with the date of issuance of the policy unless the viator  
8 certifies to the provider that one or more of the following conditions have been met  
9 within the two-year period:

10            (1) The policy was issued upon the viator's exercise of conversion rights  
11 arising out of a policy, provided the total time covered under the  
12 conversion policy plus the time covered under the prior policy is at  
13 least 24 months, or the contestability and suicide time periods have  
14 been waived by the insurer. The time covered under a group policy  
15 shall be calculated without regard to any change in insurance carriers,  
16 provided the coverage has been continuous and under the same group  
17 sponsorship.

18            (2) The viator is a charitable organization exempt from taxation under 26  
19 U.S.C. § 501(c)(3).

20            (3) The viator is not a natural person (e.g., the owner is a corporation,  
21 limited liability company, partnership, etc.).

22            (4) The viator submits independent evidence to the provider that one or  
23 more of the following conditions have been met within the two-year  
24 period:

25            a. The viator or insured is terminally or chronically ill.

26            b. The viator's spouse dies.

27            c. The viator divorces his or her spouse.

28            d. The viator retires from full-time employment.

29            e. The viator becomes physically or mentally disabled and a  
30 physician determines that the disability prevents the viator from  
31 maintaining full-time employment.

32            f. The viator was the insured's employer at the time the policy was  
33 issued and the employment relationship terminated.

34            g. A final order, judgment, or decree is entered by a court of  
35 competent jurisdiction, on the application of a creditor of the  
36 viator, adjudicating the viator bankrupt or insolvent, or  
37 approving a petition seeking reorganization of the viator or  
38 appointing a receiver, trustee, or liquidator to all or a substantial  
39 part of the viator's assets.

40            h. The viator experiences a significant decrease in income that is  
41 unexpected and that impairs the viator's reasonable ability to  
42 pay the policy premium.

1           i.     The viator or insured disposes of his or her ownership interests  
2                 in a closely held corporation.

3         (b)    Copies of the independent evidence described in subdivision (a)(4) of this  
4         section and documents required by G.S. 58-58-250(a) shall be submitted to the insurer  
5         when the provider submits a request to the insurer for verification of coverage. The  
6         copies shall be accompanied by a letter of attestation from the provider that the copies  
7         are true and correct copies of the documents received by the provider.

8         (c)    If the provider submits to the insurer a copy of the owner or insured's  
9         certification described in subdivision (a)(4) and subsection (b) of this section when the  
10         provider submits a request to the insurer to effect the transfer of the policy to the  
11         provider, the copy shall be deemed to conclusively establish that the contract satisfies  
12         the requirements of this section, and the insurer shall timely respond to the request.

13         **"§ 58-58-260. Advertising for viatical settlements.**

14         (a)    The purpose of this section is to provide prospective viators with clear and  
15         unambiguous statements in the advertisement of viatical settlements and to assure the  
16         clear, truthful, and adequate disclosure of the benefits, risks, limitations, and exclusions  
17         of any contract. This purpose is intended to be accomplished by the establishment of  
18         guidelines and standards of permissible and impermissible conduct in the advertising of  
19         viatical settlements to assure that product descriptions are presented in a manner that  
20         prevents unfair, deceptive, or misleading advertising and is conducive to accurate  
21         presentation and description of viatical settlements through the advertising media and  
22         material used by viatical settlement licensees.

23         (b)    This section shall apply to any advertising of contracts or related products or  
24         services intended for dissemination in this State, including Internet advertising viewed  
25         by persons located in this State. Where disclosure requirements are established pursuant  
26         to federal regulation, this section shall be interpreted so as to minimize or eliminate  
27         conflict with federal regulation wherever possible.

28         (c)    Every viatical settlement licensee shall establish and at all times maintain a  
29         system of control over the content, form, and method of dissemination of all  
30         advertisements of its contracts, products, and services. All advertisements, regardless of  
31         by whom written, created, designed, or presented, shall be the responsibility of the  
32         viatical settlement licensee, as well as the individual who created or presented the  
33         advertisement. A system of control shall include regular routine notification, at least  
34         once a year, to agents and others, authorized by the viatical settlement licensee, who  
35         disseminate advertisements of the requirements and procedures for approval before the  
36         use of any advertisements not furnished by the viatical settlement licensee.

37         (d)    Advertisements shall be truthful and not misleading in fact or by implication.  
38         The form and content of an advertisement of a contract shall be sufficiently complete  
39         and clear so as to avoid deception. It shall not have the capacity or tendency to mislead  
40         or deceive. Whether an advertisement has the capacity or tendency to mislead or  
41         deceive shall be determined by the Commissioner from the overall impression that the

1 advertisement may be reasonably expected to create upon a person of average education  
2 or intelligence within the segment of the public to which it is directed.

3 (e) All information required to be disclosed under this Part shall be set out  
4 conspicuously and in close conjunction with the statements to which such information  
5 relates or under appropriate captions of such prominence that it shall not be minimized,  
6 rendered obscure, or presented in an ambiguous fashion or intermingled with the  
7 context of the advertisement so as to be confusing or misleading.

8 (f) An advertisement shall not:

9 (1) Omit material information or use words, phrases, statements,  
10 references, or illustrations if the omission or use has the capacity,  
11 tendency, or effect of misleading or deceiving viators as to the nature  
12 or extent of any benefit, loss covered, premium payable, or state or  
13 federal tax consequence. The fact that the contract offered is made  
14 available for inspection before consummation of the sale, or an offer is  
15 made to refund the payment if the viator is not satisfied or that the  
16 contract includes a 'free look' period that satisfies or exceeds legal  
17 requirements, does not remedy misleading statements.

18 (2) Use the name or title of a life insurance company or a policy unless the  
19 insurer has approved the advertisement.

20 (3) State or imply that interest charged on an accelerated death benefit or a  
21 policy loan is unfair, inequitable, or in any manner an incorrect or  
22 improper practice.

23 (4) State or imply that a contract, benefit, or service has been approved or  
24 endorsed by a group of individuals, society, association, or other  
25 organization unless that is the fact and unless any relationship between  
26 an organization and the viatical settlement licensee is disclosed. If the  
27 entity making the endorsement or testimonial is owned, controlled, or  
28 managed by the viatical settlement licensee, or receives any payment  
29 or other consideration from the viatical settlement licensee for making  
30 an endorsement or testimonial, that fact shall be disclosed in the  
31 advertisement.

32 (5) Contain statistical information unless it accurately reflects recent and  
33 relevant facts. The source of all statistics used in an advertisement  
34 shall be identified.

35 (6) Disparage insurers, providers, brokers, insurance producers, policies,  
36 services, or methods of marketing.

37 (7) Use a trade name, group designation, name of the parent company of a  
38 viatical settlement licensee, name of a particular division of the viatical  
39 settlement licensee, service mark, slogan, symbol, or other device or  
40 reference without disclosing the name of the viatical settlement  
41 licensee, if the advertisement would have the capacity or tendency to  
42 mislead or deceive as to the true identity of the viatical settlement



1 licensee, or to create the impression that a company other than the  
2 viatical settlement licensee would have any responsibility for the  
3 financial obligation under a contract.

4 (8) Use any combination of words, symbols, or physical materials that by  
5 their content, phraseology, shape, color, or other characteristics are so  
6 similar to a combination of words, symbols, or physical materials used  
7 by a government program or agency or otherwise appear to be of such  
8 a nature that they tend to mislead prospective viators into believing  
9 that the solicitation is in some manner connected with a government  
10 program or agency.

11 (9) Create the impression that the provider, its financial condition or  
12 status, the payment of its claims, or the merits, desirability, or  
13 advisability of its contracts are recommended or endorsed by any  
14 government entity.

15 (g) The words 'free', 'no cost', 'without cost', 'no additional cost', 'at no extra cost',  
16 or words of similar import shall not be used with respect to any benefit or service unless  
17 true. An advertisement may specify the charge for a benefit or a service, may state that a  
18 charge is included in the payment, or use other appropriate language.

19 (h) Testimonials, appraisals, or analyses used in advertisements must be genuine;  
20 represent the current opinion of the author; be applicable to the contract, product, or  
21 service advertised, if any; and be accurately reproduced with sufficient completeness to  
22 avoid misleading or deceiving prospective viators as to the nature or scope of the  
23 testimonials, appraisals, analyses, or endorsements. In using testimonials, appraisals, or  
24 analyses, the viatical settlement licensee makes as its own all the statements contained  
25 therein, and the statements are subject to all the provisions of this section.

26 (i) If the individual making a testimonial, appraisal, analysis, or an endorsement  
27 has a financial interest in the provider or related entity as a stockholder, director, officer,  
28 employee, or otherwise, or receives any benefit directly or indirectly other than required  
29 union scale wages, that fact shall be prominently disclosed in the advertisement.

30 (j) When an endorsement refers to benefits received under a contract, all  
31 pertinent information shall be retained for a period of five years after its use.

32 (k) The name of the viatical settlement licensee shall be clearly identified in all  
33 advertisements about the licensee or its contracts, products, or services, and if any  
34 specific contract is advertised, the contract shall be identified either by form number or  
35 some other appropriate description. If an application is part of the advertisement, the  
36 name of the provider or broker shall be shown on the application.

37 (l) An advertisement may state that a viatical settlement licensee is licensed in  
38 the state where the advertisement appears, provided it does not exaggerate that fact or  
39 suggest or imply that a competing viatical settlement licensee may not be so licensed.  
40 The advertisement may ask the audience to consult the licensee's web site or contact the  
41 Department to find out if the state requires licensing and, if so, whether the provider or  
42 broker is licensed.

1       (m) The name of the actual licensee shall be stated in all of its advertisements. An  
2 advertisement shall not use a trade name, any group designation, name of any affiliate  
3 or controlling entity of the licensee, service mark, slogan, symbol, or other device in a  
4 manner that would have the capacity or tendency to mislead or deceive as to the true  
5 identity of the actual licensee or create the false impression that an affiliate or  
6 controlling entity would have any responsibility for the financial obligation of the  
7 licensee.

8       (n) An advertisement shall not directly or indirectly create the impression that  
9 any state or federal governmental agency endorses, approves, or favors:

10           (1) Any viatical settlement licensee or its business practices or methods of  
11 operation;

12           (2) The merits, desirability, or advisability of any contract;

13           (3) Any contract; or

14           (4) Any policy or life insurance company.

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

18       (p) If the advertising emphasizes the dollar amounts available to viators, the  
19 advertising shall disclose the average purchase price as a percent of face value obtained  
20 by viators contracting with the licensee during the past six months.

21 **"§ 58-58-265. Fraudulent viatical settlement acts, interference, and participation**  
22 **of convicted felons prohibited.**

23       (a) A person who commits a fraudulent viatical settlement act is guilty of a Class  
24 H felony.

25       (b) A person shall not knowingly or intentionally interfere with the enforcement  
26 of the provisions of this Part or investigations of suspected or actual violations of this  
27 Part.

28       (c) A person in the business of viatical settlements shall not knowingly or  
29 intentionally permit any person convicted of a felony involving dishonesty or breach of  
30 trust to participate in the business of viatical settlements.

31 **"§ 58-58-267. Fraud warning required.**

32       (a) Viatical settlement contracts and purchase agreement forms and applications  
33 for viatical settlements, regardless of the form of transmission, shall contain the  
34 following statement or a substantially similar statement:

35           'Any person who knowingly presents false information in an application for  
36 insurance or viatical settlement contract or a viatical settlement purchase  
37 agreement is guilty of a felony and may be subject to fines and confinement  
38 in prison.'

39       (b) The lack of a statement as required in subsection (a) of this section does not  
40 constitute a defense in any prosecution for a fraudulent viatical settlement act.

41 **"§ 58-58-268. Viatical settlement antifraud initiatives.**

1       (a) Viatical settlement providers and viatical settlement brokers shall have in  
2 place antifraud initiatives reasonably calculated to detect, prosecute, and prevent  
3 fraudulent viatical settlement acts. At the discretion of the Commissioner, the  
4 Commissioner may order, or a licensee may request and the Commissioner may grant,  
5 such modifications of the following required initiatives as necessary to ensure an  
6 effective antifraud program. The modifications may be more or less restrictive than the  
7 required initiatives so long as the modifications may reasonably be expected to  
8 accomplish the purpose of this section.

9       (b) Antifraud initiatives shall include:

10       (1) Fraud investigators, who may be viatical settlement provider  
11 employees or viatical settlement broker employees or independent  
12 contractors; and

13       (2) An antifraud plan, which shall be submitted to the Commissioner. The  
14 antifraud plan shall include, but not be limited to:

15       a. A description of the procedures for detecting and investigating  
16 possible fraudulent viatical settlement acts and procedures for  
17 resolving material inconsistencies between medical records and  
18 insurance applications;

19       b. A description of the procedures for reporting possible  
20 fraudulent viatical settlement acts to the Commissioner;

21       c. A description of the plan for antifraud education and training of  
22 underwriters and other personnel; and

23       d. A description or chart outlining the organizational arrangement  
24 of the antifraud personnel who are responsible for the  
25 investigation and reporting of possible fraudulent viatical  
26 settlement acts and investigating unresolved material  
27 inconsistencies between medical records and insurance  
28 applications.

29       (c) Antifraud plans submitted to the Commissioner are privileged and  
30 confidential, are not public records, and are not subject to discovery or subpoena in a  
31 civil or criminal action.

32       **§ 58-58-270. Report to Commissioner.**

33       Whenever any person licensed under this Part knows or has reasonable cause to  
34 believe that any other person has violated any provision of this Part, it is the duty of that  
35 person, upon acquiring the knowledge, to notify the Commissioner and provide the  
36 Commissioner with a complete statement of all of the relevant facts and circumstances.  
37 The report is a privileged communication and when made without actual malice does  
38 not subject the person making the report to any liability whatsoever. The Commissioner  
39 may suspend, revoke, or refuse to renew the license of any person who willfully fails to  
40 comply with this section.

41       **§ 58-58-275. Reporting and investigation of suspected viatical settlement**  
42 **fraudulent acts; immunity from liability.**

1       (a) As used in this section, 'Commissioner' includes an employee, agent, or  
2 designee of the Commissioner. A person, or an employee or agent of that person, acting  
3 without actual malice, is not subject to civil liability for libel, slander, or any other cause  
4 of action by virtue of furnishing to the Commissioner, under the requirements of law or  
5 at the direction of the Commissioner, reports or other information relating to any known  
6 or suspected viatical settlement fraudulent act.

7       (b) The Commissioner, acting without actual malice, is not subject to civil  
8 liability for libel or slander by virtue of an investigation of any known or suspected  
9 viatical settlement fraudulent act; or by virtue of the publication or dissemination of any  
10 official report related to any such investigation, which report is published or  
11 disseminated in the absence of fraud, bad faith, or actual malice on the part of the  
12 Commissioner.

13       (c) During the course of an investigation of a known or suspected viatical  
14 settlement fraudulent act, the Commissioner may request any person to furnish copies of  
15 any information relative to the known or suspected viatical settlement fraudulent act.  
16 The person shall release the information requested and cooperate with the  
17 Commissioner under this section.

18 **"§ 58-58-280. Confidentiality.**

19       (a) Information and evidence provided under G.S. 58-58-270 or G.S. 58-58-275  
20 or obtained by the Commissioner in an investigation of suspected or actual fraudulent  
21 viatical settlement acts shall be privileged and confidential, is not a public record, and is  
22 not subject to discovery or subpoena in a civil or criminal action.

23       (b) Subsection (a) of this section does not prohibit release by the Commissioner  
24 of documents and evidence obtained in an investigation of suspected or actual  
25 fraudulent viatical settlement acts:

26           (1) In administrative or judicial proceedings to enforce laws administered  
27           by the Commissioner;

28           (2) To federal, state, or local law enforcement or regulatory agencies, to  
29           an organization established for the purpose of detecting and preventing  
30           fraudulent viatical settlement acts, or to the NAIC; or

31           (3) At the discretion of the Commissioner, to a person in the business of  
32           viatical settlements that is aggrieved by a fraudulent viatical settlement  
33           act.

34       (c) Release of documents and evidence under subsection (b) of this section does  
35 not abrogate or modify the privilege granted in subsection (a) of this section.

36 **"§ 58-58-285. Other law enforcement or regulatory authority.**

37       This Part does not:

38           (1) Preempt the authority or relieve the duty of other law enforcement or  
39           regulatory agencies to investigate, examine, and prosecute suspected  
40           violations of law.

1           (2) Prevent or prohibit a person from disclosing voluntarily information  
2           concerning viatical settlement fraud to a law enforcement or regulatory  
3           agency other than the Commissioner.

4           (3) Limit the powers granted elsewhere by the laws of this State to the  
5           Commissioner to investigate and examine possible violations of law  
6           and to take appropriate action against wrongdoers.

7 **"§ 58-58-290. Injunctions; civil remedies; cease and desist orders.**

8           (a) In addition to the penalties and other enforcement provisions of this Part, if  
9           any person violates this Part or any rule implementing this Part, the Commissioner may  
10           seek an injunction in a court of competent jurisdiction and may apply for temporary and  
11           permanent orders that the Commissioner determines are necessary to restrain the person  
12           from committing the violation.

13           (b) Any person damaged by the acts of a person in violation of this Part may  
14           bring a civil action against the person committing the violation in a court of competent  
15           jurisdiction.

16           (c) The Commissioner may issue, in accordance with G.S. 58-63-32, a cease and  
17           desist order upon a person that violates any provision of this Part, any rule or order  
18           adopted by the Commissioner, or any written agreement entered into with the  
19           Commissioner. The cease and desist order may be subject to judicial review under G.S.  
20           58-63-35.

21           (d) When the Commissioner finds that an activity in violation of this Part  
22           presents an immediate danger to the public that requires an immediate final order, the  
23           Commissioner may issue an emergency cease and desist order reciting with particularity  
24           the facts underlying the findings. The emergency cease and desist order is effective  
25           immediately upon service of a copy of the order on the respondent and remains effective  
26           for 90 days. If the Commissioner begins nonemergency cease and desist proceedings,  
27           the emergency cease and desist order remains effective, absent an order by a court of  
28           competent jurisdiction in accordance with G.S. 58-63-35.

29           (e) In addition to the penalties and other enforcement provisions of this Part, any  
30           person who violates this Part is subject to G.S. 58-2-70.

31 **"§ 58-58-295. Unfair trade practices.**

32           A violation of this Part is an unfair trade practice under Article 63 of this Chapter.

33 **"§ 58-58-300. Authority to adopt rules.**

34           The Commissioner may:

35           (1) Adopt rules implementing this Part.

36           (2) Establish standards for evaluating reasonableness of payments under  
37           contracts for persons who are terminally or chronically ill, including  
38           standards for the amount paid in exchange for assignment, transfer,  
39           sale, devise, or bequest of a benefit under a policy.

40           (3) Establish appropriate licensing requirements, fees, and standards for  
41           continued licensure for providers.

1           (4) Require a bond or other mechanism for financial accountability for  
2           providers and brokers.

3           (5) Adopt rules governing the relationship and responsibilities of insurers,  
4           providers, and brokers during the viatication of a policy.

5 **"§ 58-58-305. Jurisdictional limitations.**

6           Nothing in this Part affects the North Carolina Securities Act or the jurisdiction of  
7           the North Carolina Secretary of State.

8 **"§ 58-58-310. Effective date.**

9           A provider or broker transacting business in this State, pursuant to G.S. 58-58-42, on  
10          the effective date of this Part may continue to do so pending approval of the provider's  
11          or broker's application for a license as long as the application is filed with the  
12          Commissioner no later than July 1, 2002. If the application is disapproved, then the  
13          provider or broker shall cease transacting viatical business in this State."

14           **SECTION 4.** G.S. 58-33-32(e) reads as rewritten:

15           "(e) Notwithstanding any other provision of this section, a person licensed or  
16           registered as a viatical settlement ~~broker, viatical settlement provider, or viatical~~  
17           ~~settlement representative, broker or provider,~~ as defined in ~~G.S. 58-58-42 (a), G.S.~~  
18           58-58-205, in that person's home state shall receive a nonresident viatical settlement  
19           ~~broker, viatical settlement provider, or viatical settlement representative broker or~~  
20           provider license pursuant to this section. Except for the licensure provisions of this  
21           section, nothing in this section otherwise amends or supersedes any provision of ~~G.S.~~  
22           ~~58-58-42. Part 5 of Article 58 of this Chapter."~~

23           **SECTION 5.** G.S. 58-58-42 is repealed.

24  
25 **PART II. SECURITIES LAWS PROVISIONS**

26  
27           **SECTION 6.** G.S. 78A-2 reads as rewritten:

28 **"§ 78A-2. Definitions.**

29           When used in this Chapter, unless the context otherwise requires:

30           ...

31           (2) "Dealer" means any person engaged in the business of effecting  
32           transactions in securities for the account of others or for his own  
33           account. "Dealer" does not include:

34           a. A salesman,

35           b. A bank, savings institution, or trust company,

36           c. A person who has no place of business in this State if

37           1. He effects transactions in this State exclusively with or  
38           through (i) the issuers of the securities involved in the  
39           transactions, (ii) other dealers, or (iii) banks, savings  
40           institutions, trust companies, insurance companies,  
41           investment companies as defined in the Investment  
42           Company Act of 1940, pension or profit-sharing trusts,

- 1 or other financial institutions or institutional buyers,  
2 whether acting for themselves or as trustees, or
- 3 2. In the case of a person registered as a dealer with the  
4 Securities and Exchange Commission under the  
5 Securities Exchange Act of 1934 and in one or more  
6 states, during any period of 12 consecutive months he  
7 does not effect more than 15 purchases or sales in this  
8 State in any manner with persons other than those  
9 specified in clause 1, whether or not the dealer or any of  
10 the purchasers or sellers is then present in this State, or
- 11 d. An issuer if
- 12 1. The security is exempted under subdivisions (1), (2), (3),  
13 (4), (5), (7), (9), (10), (11), (13), or (14) of G.S. 78A-16,  
14 or the security is a security covered under federal law, or  
15 the transaction is exempted under G.S. 78A-17, except  
16 for G.S. 78A-17(19) if the security is a viatical  
17 settlement contract, or the transaction is in a security  
18 covered under federal law, and such exemption has not  
19 been denied or revoked under G.S. 78A-18, or
- 20 2. The security is registered under this Chapter and it is  
21 offered and sold through a registered dealer, or
- 22 3. All of the following conditions are met: (i) No  
23 commission or other remuneration is paid or given  
24 directly or indirectly for soliciting any prospective  
25 purchaser in this State; (ii) the total amount of the  
26 offering, both within and without this State, does not  
27 exceed two million five hundred thousand dollars  
28 (\$2,500,000); and (iii) the total number of purchasers,  
29 both within and without this State, does not exceed 100.  
30 Provided, however, the Administrator may by rule or  
31 order waive the condition imposed by subdivision (iii)  
32 hereof; or
- 33 4. The security is issued by an open-end management  
34 company that is registered under the Investment  
35 Company Act of 1940 and so long as no sales load is  
36 paid or given, directly or indirectly.
- 37 e. A person who acts as a business broker with respect to a  
38 transaction involving the offer or sale of all of the stock in any  
39 closely held corporation provided that such stock is sold to no  
40 more than one person, as that term is defined herein.
- 41 f. An individual who represents an issuer in effecting transactions  
42 in a security described in sub-subdivision (2)d. of this section or

1 a security covered under federal law, provided no commission  
2 or other special remuneration is paid or given directly or  
3 indirectly for soliciting any prospective purchaser in this State.

4 ...

5 (5) "Issuer" means any person who issues or proposes to issue any  
6 security, except that

7 a. With respect to certificates of deposit, voting-trust certificates,  
8 or collateral-trust certificates, or with respect to certificates of  
9 interest or shares in an unincorporated investment trust not  
10 having a board of directors or persons performing similar  
11 functions or of the fixed, restricted-management, or unit type,  
12 the term "issuer" means the person or persons performing the  
13 acts and assuming the duties of depositor or manager pursuant  
14 to the provisions of the trust or other agreement or instrument  
15 under which the security is issued; and

16 b. With respect to certificates of interest or participation in oil,  
17 gas, or mining titles or leases or in payments out of production  
18 under such titles or leases, there is not considered to be any  
19 "issuer."

20 c. With respect to a viatical settlement contract, "issuer" means a  
21 person involved in creating, offering, transferring, or selling to  
22 an investor any interest in a viatical settlement contract,  
23 including, but not limited to, fractional or pooled interests.

24 ...

25 (11) "Security" means any note; stock; treasury stock; bond; debenture;  
26 evidence of indebtedness; certificate of interest or participation in any  
27 profit-sharing agreement; collateral-trust certificate; preorganization  
28 certificate or subscription; transferable share; investment contract  
29 including without limitation any investment contract taking the form of  
30 a whiskey warehouse receipt or other investment of money in whiskey  
31 or malt beverages; voting-trust certificate; certificate of deposit for a  
32 security; certificate of interest or participation in an oil, gas, or mining  
33 title or lease or in payments out of production under a title or lease;  
34 viatical settlement contract or any fractional or pooled interest in a  
35 viatical settlement contract; or, in general, any interest or instrument  
36 commonly known as a "security," or any certificate of interest or  
37 participation in, temporary or interim certificate for, receipt for  
38 guarantee of, or warrant or right to subscribe to or purchase, any of the  
39 foregoing. "Security" does not include any insurance or endowment  
40 policy, funding agreement, as defined in G.S. 58-7-16, or annuity  
41 contract under which an insurance company promises to pay (i) a fixed  
42 sum of money either in a lump sum or periodically for life or for some



1 other specified period, or (ii) benefits or payments or value that vary so  
2 as to reflect investment results of any segregated portfolio of  
3 investments or of a designated separate account or accounts in which  
4 amounts received or retained in connection with a contract have been  
5 placed if the delivering or issuing insurance company has currently  
6 satisfied the Commissioner of Insurance that it is in compliance with  
7 G.S. 58-7-95.

8 ...

9 (13) "Viatical settlement contract" means an agreement for the purchase,  
10 sale, assignment, transfer, devise, or bequest of all or any portion of  
11 the death benefit or ownership of a life insurance policy or contract for  
12 consideration which is less than the expected death benefit of the life  
13 insurance policy or contract. "Viatical settlement contract" does not  
14 include:

- 15 a. The assignment, transfer, sale, devise, or bequest of a death  
16 benefit of a life insurance policy or contract made by the viator  
17 to an insurance company or to a viatical settlement provider or  
18 broker licensed pursuant to the Viatical Settlements Act (Part 5  
19 of Article 58 of Chapter 58 of the General Statutes);  
20 b. The assignment of a life insurance policy or contract to a bank,  
21 savings bank, savings and loan association, credit union, or  
22 other licensed lending institution as collateral for a loan; or  
23 c. The exercise of accelerated benefits pursuant to the terms of a  
24 life insurance policy or contract and consistent with applicable  
25 law."

26 **SECTION 7.** Article 2 of Chapter 78A of the General Statutes is amended  
27 by adding two new sections to read:

28 **"§ 78A-13. Disclosures required in offer and sale of viaticals.**

29 (a) Disclosures Required Prior to Signing of Purchase Agreement or Transfer of  
30 Consideration. – The following disclosures shall be required in the offer and sale of  
31 viatical settlement contracts, whether such offer and sale is pursuant to an exemption  
32 from registration or pursuant to the registration of such securities, and shall be  
33 conspicuously displayed in each viatical settlement purchase agreement or in a separate  
34 document signed by the viatical settlement purchaser and by the issuer or its sales agent:

- 35 (1) Disclosures prior to payment of consideration. – On or before the date  
36 the viatical settlement purchaser remits consideration pursuant to the  
37 purchase agreement, the viatical settlement purchaser shall be provided  
38 the following written disclosures:  
39 a. The name, principal business, and mailing addresses, and  
40 telephone number of the issuer;  
41 b. The suitability standards for prospective purchasers as set forth  
42 by rule or order promulgated by the Administrator;

- 1           c.    A description of the issuer's type of business organization and  
2           the state in which the issuer is organized or incorporated;
- 3           d.    A brief description of the business of the issuer;
- 4           e.    If the issuer retains ownership or becomes the beneficiary of the  
5           insurance policy, an audit report from an independent certified  
6           public accountant together with a balance sheet and related  
7           statements of income, retained earnings, and cash flows that  
8           reflect the issuer's financial position, the results of the issuer's  
9           operations, and the issuer's cash flows as of a date within six  
10          months before the date of the initial issuance of the securities  
11          described in this subdivision. The financial statements shall be  
12          prepared in conformity with generally accepted accounting  
13          principles. If the date of the audit report is more than 120 days  
14          before the date of the initial issuance of the securities described  
15          in this subdivision, the issuer shall provide unaudited interim  
16          financial statements;
- 17          f.    The names of all directors, officers, partners, members, or  
18          trustees of the issuer;
- 19          g.    A description of any order, judgment, or decree that is final as  
20          to the issuing entity of any state, federal, or foreign  
21          governmental agency or administrator, or of any state, federal,  
22          or foreign court of competent jurisdiction (i) revoking,  
23          suspending, denying, or censuring, for cause, any license,  
24          permit, or other authority of the issuer or of any director,  
25          officer, partner, member, trustee, or person owning or  
26          controlling, directly or indirectly ten percent (10%) or more of  
27          the outstanding interest or equity securities of the issuer, to  
28          engage in the securities, commodities, franchise, insurance, real  
29          estate, or lending business or in the offer or sale of securities,  
30          commodities, franchises, insurance, real estate, or loans, (ii)  
31          permanently restraining, enjoining, barring, suspending, or  
32          censuring any such person from engaging in or continuing any  
33          conduct, practice, or employment in connection with the offer  
34          or sale of securities, commodities, franchises, insurance, real  
35          estate, or loans, (iii) convicting any such person of, or pleading  
36          nolo contendere by any such person to, any felony or  
37          misdemeanor involving a security, commodity, franchise,  
38          insurance, real estate, or loan, or any aspect of the securities,  
39          commodities, franchise, insurance, real estate, or lending  
40          business, or involving dishonesty, fraud, deceit, embezzlement,  
41          fraudulent conversion, or misappropriation of property, or (iv)  
42          holding any such person liable in a civil action involving breach

- 1                   of a fiduciary duty, fraud, deceit, embezzlement, fraudulent  
2                   conversion, or misappropriation of property. This subdivision  
3                   does not apply to any order, judgment, or decree that has been  
4                   vacated or overturned or is more than 10 years old;
- 5                   h. Notice of the purchaser's right to rescind or cancel the  
6                   investment and receive a refund;
- 7                   i. A statement to the effect that any projected rate of return to the  
8                   purchaser from the purchase of a viatical settlement contract or  
9                   any fractionalized or pooled interest therein is based on an  
10                  estimated life expectancy for the person insured under the life  
11                  insurance policy; that the return on the purchase may vary  
12                  substantially from the expected rate of return based upon the  
13                  actual life expectancy of the insured that may be less than, may  
14                  be equal to, or may greatly exceed the estimated life  
15                  expectancy; and that the rate of return would be higher if the  
16                  actual life expectancy were less than, and lower if the actual life  
17                  expectancy were greater than, the estimated life expectancy of  
18                  the insured at the time the viatical settlement contract was  
19                  closed;
- 20                  j. A statement that the purchaser should consult with his or her tax  
21                  advisor regarding the tax consequences of the purchase of the  
22                  viatical settlement contract or any fractionalized or pooled  
23                  interest therein; and
- 24                  k. Any other information as may be prescribed by rule or order of  
25                  the Administrator.
- 26                  (2) Disclosures prior to closing. – At least five business days prior to the  
27                  date the purchase agreement is signed, the viatical settlement  
28                  purchaser shall receive the following written disclosures:
- 29                  a. The name, address, and telephone number of the issuing  
30                  insurance company and the name, address, and telephone  
31                  number of the state or foreign country regulator of the insurance  
32                  company;
- 33                  b. The total face value of the insurance policy and the percentage  
34                  of the insurance policy the purchaser will own;
- 35                  c. The insurance policy number, issue date, and type;
- 36                  d. If a group insurance policy, the name, address, and telephone  
37                  number of the group and, if applicable, the material terms and  
38                  conditions of converting the policy to an individual policy,  
39                  including the amount of increased premiums;
- 40                  e. If a term insurance policy, the term and the name, address, and  
41                  telephone number of the person who will be responsible for  
42                  renewing the policy if necessary;

- 1           f.    Whether the insurance policy is beyond the state statute for  
2           contestability and the reason therefor;
- 3           g.    The insurance policy premiums and terms of premium  
4           payments;
- 5           h.    The amount of the purchaser's money that will be set aside to  
6           pay premiums;
- 7           i.    The name, address, and telephone number of the person who  
8           will be the insurance policy owner and the person who will be  
9           responsible for paying premiums;
- 10          j.    The date on which the purchaser will be required to pay  
11          premiums and the amount of the premium, if known;
- 12          k.    A statement of risk factors associated with investment in  
13          viatical settlement contracts, including, but not limited, to the  
14          following:
- 15                1.    The purchaser will receive no returns (i.e., dividends and  
16                interest) until the insured dies.
- 17                2.    The actual annual rate of return on a viatical settlement  
18                contract is dependent upon an accurate projection of the  
19                insured's life expectancy, and the actual date of the  
20                insured's death. An annual 'guaranteed' rate of return is  
21                not determinable.
- 22                3.    The viaticated life insurance contract should not be  
23                considered a liquid purchase since it is impossible to  
24                predict the exact timing of its maturity and the funds  
25                probably are not available until the death of the insured.  
26                There is no established secondary market for resale of  
27                these products by the purchaser.
- 28                4.    The purchaser may lose all benefits or may receive  
29                substantially reduced benefits if the insurer goes out of  
30                business during the term of the viatical investment.
- 31                5.    The purchaser is responsible for payment of the  
32                insurance premium or other costs related to the policy, if  
33                required by the terms of the viatical purchase agreement.  
34                These payments may reduce the purchaser's return. If a  
35                party other than the purchaser is responsible for the  
36                payment, the name and address of that party also shall be  
37                disclosed.
- 38                6.    If the purchaser is responsible for payment of the  
39                insurance premiums or other costs related to the policy  
40                or if the insured returns to health, the amount of the  
41                premiums, if applicable.

- 1                   7.    The name and address of any person providing escrow  
2                   services and the relationship to the issuer.
- 3                   8.    The amount of any trust fees or other expenses to be  
4                   charged to the viatical settlement purchaser shall be  
5                   disclosed.
- 6                   9.    Whether the purchaser is entitled to a refund of all or  
7                   part of his or her investment under the settlement  
8                   contract if the policy is later determined to be null and  
9                   void.
- 10                  10.   A disclosure that group policies may contain limitations  
11                  or caps in the conversion rights; that additional  
12                  premiums may have to be paid if the policy is converted;  
13                  the name of the party responsible for the payment of the  
14                  additional premiums; and, if a group policy is terminated  
15                  and replaced by another group policy, that there may be  
16                  no right to convert the original coverage.
- 17                  11.   A disclosure of the risks associated with policy  
18                  contestability including, but not limited to, the risk that  
19                  the purchaser will have no claim or only a partial claim  
20                  to death benefits should the insurer rescind the policy  
21                  within the contestability period.
- 22                  12.   A disclosure of whether the purchaser will be the owner  
23                  of the policy in addition to being the beneficiary, and if  
24                  the purchaser is the beneficiary only and not also the  
25                  owner, the special risks associated with that status,  
26                  including, but not limited to, the risk that the beneficiary  
27                  may be changed or the premium may not be paid.
- 28                  13.   The experience and qualifications of the person who  
29                  determines the life expectancy of the insured, i.e.,  
30                  in-house staff, independent physicians, and specialty  
31                  firms that weigh medical and actuarial data; the  
32                  information this projection is based on; and the  
33                  relationship of the projection maker to the viatical  
34                  settlement provider, if any.
- 35                  14.   Disclosure to an investor shall include distribution of a  
36                  brochure describing the process of investment in viatical  
37                  settlements. The NAIC's form for the brochure shall be  
38                  used unless the Administrator prescribes one by rule or  
39                  order.
- 40                  1.    Any other information as may be prescribed by rule or order of  
41                  the Administrator.

1       **(b) Disclosures Required Upon Assignment or Sale of Underlying Insurance**  
2 **Policy.** – The issuer shall provide the viatical settlement purchaser with at least the  
3 **following disclosures no later than at the time of the assignment, transfer, or sale of all**  
4 **or a portion of an insurance policy underlying the viatical settlement contract, and the**  
5 **disclosure shall be contained in a document signed by the viatical settlement purchaser**  
6 **and by the issuer or its sales agent:**

- 7           **(1) Disclose all the life expectancy certifications obtained by the provider**  
8           **in the process of determining the price paid to the viator.**
- 9           **(2) State whether premium payments or other costs related to the policy**  
10           **have been escrowed. If escrowed, state the date upon which the**  
11           **escrowed funds will be depleted; whether the purchaser will be**  
12           **responsible for payment of premiums thereafter and, if so, the amount**  
13           **of the premiums; and the name and address of the escrow agent.**
- 14           **(3) State whether premium payments or other costs related to the policy**  
15           **have been waived. If waived, disclose whether the investor will be**  
16           **responsible for payment of the premiums if the insurer that wrote the**  
17           **policy terminates the waiver after purchase and the amount of those**  
18           **premiums.**
- 19           **(4) Disclose the type of policy offered or sold, i.e., whole life, term life,**  
20           **universal life, or a group policy certificate, any additional benefits**  
21           **contained in the policy, and the current status of the policy.**
- 22           **(5) If the policy is term insurance, disclose the special risks associated**  
23           **with term insurance including, but not limited to, the purchaser's**  
24           **responsibility for additional premiums if the viator continues the term**  
25           **policy at the end of the current term.**
- 26           **(6) State whether the policy is contestable.**
- 27           **(7) State whether the insurer that wrote the policy has any additional rights**  
28           **that could negatively affect or extinguish the purchaser's rights under**  
29           **the viatical settlement contract, what these rights are, and under what**  
30           **conditions these rights are activated.**
- 31           **(8) State the name and address of the person responsible for monitoring**  
32           **the insured's condition. Describe how often the monitoring of the**  
33           **insured's condition is done, how the date of death is determined, and**  
34           **how and when this information will be transmitted to the purchaser."**

35 **"§ 78A-14. Advertising of Viatical Settlement Contracts.**

36       **(a) The purpose of this section is to provide prospective viatical settlement**  
37 **purchasers with clear and unambiguous statements in the advertisement of viatical**  
38 **settlement contracts and to assure the clear, truthful, and adequate disclosure of the**  
39 **benefits, risks, limitations, and exclusions of any contract or purchase agreement offered**  
40 **or sold. This purpose is intended to be accomplished by the establishment of guidelines**  
41 **and standards of permissible and impermissible conduct in the advertising of viatical**  
42 **settlement contracts to assure that product descriptions are presented in a manner that**

1 prevents unfair, deceptive, or misleading advertising and is conducive to accurate  
2 presentation and description of viatical settlement contracts through the advertising  
3 media and material used by issuers of viatical settlement contracts and their sales  
4 agents.

5 (b) This section shall apply to any advertising of viatical settlement contracts  
6 intended for dissemination in this State, including Internet advertising viewed by  
7 persons located in this State. Where disclosure requirements are established pursuant to  
8 federal regulation, this section shall be interpreted so as to minimize or eliminate  
9 conflict with federal regulation wherever possible.

10 (c) Every person offering or selling viatical settlement contracts shall establish  
11 and, at all times, maintain a system of control over the content, form, and method of  
12 dissemination of all advertisements of these securities. All advertisements, regardless of  
13 by whom written, created, designed, or presented, shall be the responsibility of the  
14 issuer. A system of control shall include regular routine notification, at least once a  
15 year, to agents and others authorized by the issuer who disseminate advertisements of  
16 the requirements and procedures for approval before the use of any advertisements not  
17 furnished by the issuer.

18 (d) Advertisements shall be truthful and not misleading in fact or by implication.  
19 The form and content of an advertisement of a contract or purchase agreement, product,  
20 or service shall be sufficiently complete and clear so as to avoid deception. It shall not  
21 have the capacity or tendency to mislead or deceive. Whether an advertisement has the  
22 capacity or tendency to mislead or deceive shall be determined by the Administrator  
23 from the overall impression that the advertisement may be reasonably expected to create  
24 upon a person of average education or intelligence within the segment of the public to  
25 which it is directed.

26 (e) Certain viatical settlement contract advertisements are deemed false and  
27 misleading on their face and are prohibited. False and misleading viatical settlement  
28 advertisements include, but are not limited to, the following representations:

- 29 (1) 'Guaranteed', 'fully secured', '100 percent secured', 'fully insured',  
30 'secure', 'safe', 'backed by rated insurance companies', 'backed by  
31 federal law', 'backed by state law', or 'state guaranty funds', or similar  
32 representations;
- 33 (2) 'No risk', 'minimal risk', 'low risk', 'no speculation', 'no fluctuation', or  
34 similar representations;
- 35 (3) 'Qualified or approved for individual retirement accounts (IRAs), Roth  
36 IRAs, 401(k) plans, simplified employee pensions (SEP), 403(b),  
37 Keogh plans, TSA, other retirement account rollovers', 'tax deferred',  
38 or similar representations;
- 39 (4) Utilization of the word 'guaranteed' to describe the fixed return, annual  
40 return, principal, earnings, profits, investment, or similar  
41 representations;
- 42 (5) 'No sales charges or fees' or similar representations;

1           (6) 'High yield', 'superior return', 'excellent return', 'high return', 'quick  
2           profit', or similar representations;

3           (7) Purported favorable representations or testimonials about the benefits  
4           of contracts or purchase agreements as an investment, taken out of  
5           context from newspapers, trade papers, journals, radio and television  
6           programs, and all other forms of print and electronic media.

7           (f) All information required to be disclosed under this section shall be set out  
8           conspicuously and in close conjunction with the statements to which such information  
9           relates or under appropriate captions of such prominence that it shall not be minimized,  
10           rendered obscure or presented in an ambiguous fashion, or intermingled with the  
11           context of the advertisement so as to be confusing or misleading.

12           (g) An advertisement shall not:

13           (1) Omit material information or use words, phrases, statements,  
14           references, or illustrations if the omission or use has the capacity,  
15           tendency, or effect of misleading or deceiving purchasers or  
16           prospective purchasers as to the nature or extent of any benefit, loss  
17           covered, premium payable, or state or federal tax consequence. The  
18           fact that the contract or purchase agreement offered is made available  
19           for inspection before consummation of the sale, or an offer is made to  
20           refund the payment if the purchaser is not satisfied or that the contract  
21           or purchase agreement includes a 'free look' period that satisfies or  
22           exceeds legal requirements, does not remedy misleading statements.

23           (2) Use the name or title of a life insurance company or a policy unless the  
24           insurer has approved the advertisement.

25           (3) Represent that premium payments will not be required to be paid on  
26           the policy that is the subject of a contract or purchase agreement in  
27           order to maintain that policy, unless that is the fact.

28           (4) State or imply that interest charged on an accelerated death benefit or a  
29           policy loan is unfair, inequitable, or in any manner an incorrect or  
30           improper practice.

31           (5) State or imply that a contract or purchase agreement, benefit, or  
32           service has been approved or endorsed by a group of individuals,  
33           society, association, or other organization unless that is the fact and  
34           unless any relationship between an organization and the seller or its  
35           agents is disclosed. If the entity making the endorsement or testimonial  
36           is owned, controlled, or managed by the seller or its agents, or receives  
37           any payment or other consideration from the seller or its agents for  
38           making an endorsement or testimonial, that fact shall be disclosed in  
39           the advertisement.

40           (6) Contain statistical information unless it accurately reflects recent and  
41           relevant facts. The source of all statistics used in an advertisement  
42           shall be identified.



- 1           (7) Disparage insurers, providers, brokers, dealers, salesmen, insurance  
2           producers, policies, services, or methods of marketing.
- 3           (8) Use a trade name, group designation, name of the parent company of  
4           an issuer, name of a particular division of the issuer, service mark,  
5           slogan, symbol, or other device or reference without disclosing the  
6           name of the issuer, if the advertisement would have the capacity or  
7           tendency to mislead or deceive as to the true identity of the issuer, or  
8           to create the impression that a company other than the issuer would  
9           have any responsibility for the financial obligation under a contract or  
10          purchase agreement.
- 11          (9) Use any combination of words, symbols, or physical materials that by  
12          their content, phraseology, shape, color, or other characteristics are so  
13          similar to a combination of words, symbols, or physical materials used  
14          by a government program or agency or otherwise appear to be of such  
15          a nature that they tend to mislead prospective purchasers into believing  
16          that the solicitation is in some manner connected with a government  
17          program or agency.
- 18          (10) Create the impression that the issuer, its financial condition or status,  
19          the payment of its claims, or the merits, desirability, or advisability of  
20          its contracts or purchase agreement forms are recommended or  
21          endorsed by any government entity.
- 22          (h) The words 'free', 'no cost', 'without cost', 'no additional cost', 'at no extra cost',  
23          or words of similar import shall not be used with respect to any benefit or service unless  
24          true. An advertisement may specify the charge for a benefit or a service, may state that a  
25          charge is included in the payment, or use other appropriate language.
- 26          (i) Testimonials, appraisals, or analysis used in advertisements must be genuine;  
27          represent the current opinion of the author; be applicable to the contract or purchase  
28          agreement, product, or service advertised, if any; and be accurately reproduced with  
29          sufficient completeness to avoid misleading or deceiving prospective purchasers as to  
30          the nature or scope of the testimonials, appraisals, analysis, or endorsement. In using  
31          testimonials, appraisals, or analysis, the issuer makes as its own all the statements  
32          contained therein, and the statements are subject to all the provisions of this section.
- 33          (j) If the individual making a testimonial, appraisal, analysis, or an endorsement  
34          has a financial interest in the issuer or related entity as a stockholder, director, officer,  
35          employee, or otherwise, or receives any benefit directly or indirectly other than required  
36          union scale wages, that fact shall be prominently disclosed in the advertisement.
- 37          (k) When an endorsement refers to benefits received under a contract or purchase  
38          agreement, all pertinent information shall be retained for a period of five years after its  
39          use.
- 40          (l) The name of the issuer shall be clearly identified in all advertisements about  
41          the issuer or its contract or purchase agreements, products, or services, and if any  
42          specific contract or purchase agreement is advertised, the contract or purchase

1 agreement shall be identified either by form number or some other appropriate  
2 description. If an application is part of the advertisement, the name of the issuer shall be  
3 shown on the application.

4 (m) An advertisement may state that issuer is registered in the state where the  
5 advertisement appears, provided it does not exaggerate that fact or suggest or imply that  
6 a competing issuer may not be so licensed. The advertisement may ask the audience to  
7 consult the issuer's web site or contact the department of insurance and/or the state  
8 securities regulatory agency to find out if the state requires licensing or registration and,  
9 if so, whether the issuer or its sales agents are licensed.

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

16 (o) An advertisement shall not directly or indirectly create the impression that  
17 any state or federal governmental agency endorses, approves, or favors:

18 (1) Any issuer or its business practices or methods of operation;

19 (2) The merits, desirability, or advisability of any contract or purchase  
20 agreement;

21 (3) Any contract or purchase agreement; or

22 (4) Any policy or life insurance company.

23 (p) If the advertiser emphasizes the speed with which the viatication will occur,  
24 the advertising must disclose the average time frame from completed application to the  
25 date of offer and from acceptance of the offer to receipt of the funds by the viator."

26 **SECTION 8.** G.S. 78A-17 reads as rewritten:

27 **"§ 78A-17. Exempt transactions.**

28 Except as otherwise provided in this Chapter, the~~The~~ following transactions are  
29 exempted from G.S. 78A-24 and G.S. 78A-49(d):

30 ...

31 (19) Any offer or sale of any viatical settlement contract or any  
32 fractionalized or pooled interest therein by the issuer in a transaction  
33 that meets all of the following criteria:

34 a. The underlying viatical settlement transaction with the viator  
35 was not in violation of any applicable state or federal law; and

36 b. The offer and sale of such contract or interest therein is  
37 conducted in accordance with such conditions as the  
38 Administrator requires by rule or order, including conditions  
39 governing advertising, suitability standards, financial  
40 statements, the investor's right of rescission, and the disclosure  
41 of information to offerees and purchasers.

1                   The Administrator may establish a fee to recover costs for any filing  
2                   required by such rules, not to exceed five hundred dollars (\$500.00)."

3                   **SECTION 9.** G.S. 78A-27(b) reads as rewritten:

4                   "(b) A registration statement under this section shall contain the following  
5 information and be accompanied by the following documents in addition to the  
6 information specified in G.S. 78A-28(c) and the consent to service of process required  
7 by G.S. 78A-63(f):

8                   ...

9                   (12) A copy of any prospectus, pamphlet, circular, form letter,  
10 advertisement, or other sales literature intended as of the effective date  
11 to be used in connection with the offering; if the security is a viatical  
12 settlement contract, the prospectus and advertising shall comply with  
13 G.S. 78A-13 and G.S. 78A-14 relating to the offering of viatical  
14 settlement contracts;".

15                   **SECTION 10.** G.S. 78A-49 reads as rewritten:

16                   "**§ 78A-49. Rules, forms, orders, and hearings.**

17                   (a) The Administrator may from time to time make, amend, and rescind such  
18 rules, forms, and orders as are necessary to carry out the provisions of this Chapter,  
19 including rules and forms governing registration statements, applications, and reports,  
20 and defining any terms, whether or not used in this Chapter, insofar as the definitions  
21 are not inconsistent with the provisions of this Chapter. For the purpose of rules and  
22 forms the Administrator may classify securities, persons, and matters within his  
23 jurisdiction, and prescribe different requirements for different classes. In order to  
24 protect the investing public, the Administrator may by rule or order prescribe suitability  
25 standards for investments in viatical settlement contracts.

26                   (b) No rule, form, or order may be made, amended, or rescinded unless the  
27 Administrator finds that the action is necessary or appropriate in the public interest or  
28 for the protection of investors and consistent with the purposes fairly intended by the  
29 policy and provisions of this Chapter. In prescribing rules and forms the Administrator  
30 may cooperate with the securities administrators of the other states and the Securities  
31 and Exchange Commission with a view to effectuating the policy of this statute to  
32 achieve maximum uniformity in the form and content of registration statements,  
33 applications, and reports wherever practicable.

34                   (c) The Administrator may by rule or order prescribe (i) the form and content of  
35 financial statements required under this Chapter, (ii) the circumstances under which  
36 consolidated financial statements shall be filed, and (iii) whether any required financial  
37 statements shall be certified by independent or certified public accountants. All financial  
38 statements shall be prepared in accordance with generally accepted accounting  
39 practices.

40                   (d) The Administrator may by rule or order require the filing of any prospectus,  
41 pamphlet, circular, form letter, advertisement, or other sales literature or advertising  
42 communication addressed or intended for distribution to prospective investors, unless

1 the security or transaction is exempted by G.S. 78A-16 or 78A-17 (except ~~78A-17(9),~~  
2 ~~(17))~~78A-17(9), (17), and (19)) and such exemption has not been denied or revoked  
3 under G.S. 78A-18 or the security is a security covered under federal law or the  
4 transaction is with respect to a security covered under federal law.

5 (e) All rules and forms of the Administrator shall be published.

6 (f) No provision of this Chapter imposing any liability applies to any act done or  
7 omitted in good faith in conformity with any rule, form, or order of the Administrator,  
8 notwithstanding that the rule, form, or order may later be amended or rescinded or be  
9 determined by judicial or other authority to be invalid for any reason.

10 (g) Every hearing in an administrative proceeding shall be public unless the  
11 Administrator in his discretion grants a request joined in by all the respondents that the  
12 hearing be conducted privately."

13 **SECTION 11.** G.S. 78A-56 reads as rewritten:

14 "**§ 78A-56. Civil liabilities.**

15 (a) Any person who:

16 (1) Offers or sells a security in violation of G.S. 78A-8(1), 78A-8(3),  
17 78A-10(b), 78A-12, 78A-13, 78A-14, 78A-24, or 78A-36(a), or of any  
18 rule or order under G.S. 78A-49(d) which requires the affirmative  
19 approval of sales literature before it is used, or of any condition  
20 imposed under G.S. 78A-27(d) or 78A-28(g), or

21 (2) Offers or sells a security by means of any untrue statement of a  
22 material fact or any omission to state a material fact necessary in order  
23 to make the statements made, in the light of the circumstances under  
24 which they were made, not misleading (the purchaser not knowing of  
25 the untruth or omission), and who does not sustain the burden of proof  
26 that he did not know, and in the exercise of reasonable care could not  
27 have known, of the untruth or omission,

28 is liable to the person purchasing the security from him, who may sue either at law or in  
29 equity to recover the consideration paid for the security, together with interest at the  
30 legal rate from the date of payment, costs, and reasonable attorneys' fees, less the  
31 amount of any income received on the security, upon the tender of the security, or for  
32 damages if he no longer owns the security. Damages are the amount that would be  
33 recoverable upon a tender less the value of the security when the purchaser disposed of  
34 it and interest at the legal rate as provided by G.S. 24-1 from the date of disposition.

35 ...

36 (k) The purchaser of a viatical settlement contract may rescind or cancel the  
37 purchase agreement for any reason by providing written notice of rescission or  
38 cancellation to the issuer or the issuer's agent, by certified mail, return receipt requested,  
39 within 10 business days after each of the following: (i) the date on which the purchase  
40 agreement for the viatical settlement contract is signed by the purchaser, and (ii) the  
41 date of actual notice to the purchaser of the assignment, transfer, or sale of all or a  
42 portion of an insurance policy on which the viatical settlement contract is based. Notice

1 of rescission is effective upon deposit in the United States mail. The notice of rescission  
2 need not take a particular form and is sufficient if it expresses the intention of the  
3 purchaser to rescind the transaction. For purposes of this subsection and subsection (k1)  
4 of this section only, the rescission period of 10 business days following the purchaser's  
5 signing of the purchase agreement shall also be known as the "initial 10-day rescission  
6 period."

7 (k1) Immediately upon receipt of any consideration by an issuer or its agent  
8 pursuant to a viatical settlement purchase agreement, the issuer or its agent shall deliver  
9 the consideration to a domestic independent escrow agent. For purposes of this section,  
10 'domestic independent escrow agent' means an escrow agent, located in this State, and  
11 not affiliated with the issuer, its affiliate, its officers or directors, or its promoter, or any  
12 agents thereof. The domestic independent escrow agent shall maintain the funds  
13 received, in their entirety, in an escrow account or trust account located in this State, for  
14 the initial 10-day rescission period following the signing of the purchase agreement, as  
15 provided in subsection (k) of this section, unless the domestic independent escrow  
16 agent, prior to the completion of the initial 10-day rescission period, receives notice of  
17 the purchaser's cancellation or rescission of the purchase agreement in accordance with  
18 this section. If the purchase agreement is rescinded or cancelled within the initial 10-day  
19 rescission period, the domestic independent escrow agent shall immediately deliver the  
20 funds, in their entirety along with any interest earned on the funds during the time in  
21 which the funds were held in escrow, to the purchaser upon receiving notice, by  
22 certified mail, from the issuer or its agent that the purchase agreement has been  
23 rescinded or cancelled by the purchaser. If the purchase agreement has not been  
24 rescinded or cancelled within the initial 10-day rescission period, the domestic  
25 independent escrow agent shall release the funds to the issuer or its agent in a manner to  
26 be determined by agreement between the issuer and the domestic independent escrow  
27 agent. Until the funds become available for release by the domestic independent escrow  
28 agent to the issuer upon the expiration of the initial 10-day rescission period without  
29 rescission or cancellation by the purchaser, the funds are not subject to claims by  
30 creditors of the issuer, its affiliates, or associates.

31 (l) Within 90 days after the sale or execution of a contract of sale for an  
32 investment of funds intended to be used to purchase a viatical settlement contract or  
33 contracts, the seller shall provide the purchaser with a rescission offer in accordance  
34 with rules prescribed by the Administrator, if, within that period, there has not been the  
35 identification of each and every viatical settlement contract acceptable to the purchaser  
36 which has been or shall be purchased for the investment. The purchaser may accept the  
37 rescission offer within 10 business days after receiving it. Acceptance of the rescission  
38 offer is effective upon compliance by the purchaser with the procedural requirements  
39 for notice of rescission or cancellation by a viatical settlement purchaser set forth in  
40 subsection (k) of this section. The seller shall keep a record of the rescission offer and  
41 its acceptance or rejection for at least three years after providing that offer and shall  
42 provide that record to the Administrator at the Administrator's request. For purposes of

1 this subsection only, "purchaser" means a person who executes a contract of sale, with a  
2 seller, for an investment of funds to be used to purchase a viatical settlement contract or  
3 viatical settlement contracts when, at the time of execution of the contract, each and  
4 every viatical settlement contract to be purchased pursuant to the investment has not  
5 been identified."

6 **SECTION 12.** G.S. 78A-57(a) reads as rewritten:

7 "(a) Any person who willfully violates any provision of this Chapter except G.S.  
8 78A-8, 78A-9, 78A-11, ~~or~~ 78A-12, 78A-13, or 78A-14 or who willfully violates any  
9 rule or order under this Chapter, or who willfully violates G.S. 78A-9 knowing the  
10 statement made to be false or misleading in any material respect, shall upon conviction  
11 be punished as a Class I felon; but no person may be imprisoned for the violation of any  
12 rule or order if he proves that he had no knowledge of the rule or order. Any person who  
13 willfully violates G.S. 78A-8, 78A-11, ~~or~~ 78A-12, 78A-13, or 78A-14 shall, upon  
14 conviction be punished as a Class H felon."

15 **SECTION 13.** G.S. 78A-63(a) reads as rewritten:

16 "(a) Sections 78A-8, 78A-10, 78A-13, 78A-14, 78A-24, 78A-31, 78A-36(a), and  
17 78A-56 apply to persons who sell or offer to sell when (i) an offer to sell is made in this  
18 State, or (ii) an offer to buy is made and accepted in this State."

19 **SECTION 14.** Article 8 of Chapter 78A of the General Statutes is amended  
20 by adding a new section to read:

21 "**§ 78A-66. Jurisdictional limitations.**

22 Nothing in this Chapter affects the Viatical Settlements Act or the jurisdiction of the  
23 North Carolina Department of Insurance."

### 24 25 **PART III. MISCELLANEOUS PROVISIONS**

26  
27 **SECTION 15.** The Revisor of Statutes shall cause to be printed along with  
28 this act such official comments as the Revisor deems appropriate.

29 **SECTION 16.** The headings to the parts of this act are a convenience to the  
30 reader and are for reference only. The headings do not expand, limit, or define the text  
31 of this act.

32 **SECTION 17.** If any provision of this act or its application is held invalid,  
33 the invalidity does not affect other provisions or applications of this act that can be  
34 given effect without the invalid provisions or applications, and to this end the provisions  
35 of this act are severable.

36 **SECTION 18.** This act becomes effective April 1, 2002.