

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 15 days after the
26 receipt of the viatical settlement proceeds by the viator, as provided in
27 G.S. 58-58-250(h). If the insured dies during the rescission period, the
28 settlement contract shall be deemed to have been rescinded, subject to
29 repayment of all viatical settlement proceeds and any premiums, loans,
30 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 15 days after the receipt of the
6 viatical settlement proceeds. If the insured dies during the rescission period, the contract
7 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 purchase contract or in a separate document
34 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 purchaser remits consideration pursuant to the purchase agreement,
37 the purchaser shall be provided the following written disclosures:
38 a. The name, principal business, and mailing addresses, and
39 telephone number of the issuer;
40 b. The suitability standards for prospective purchasers as set forth
41 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 purchaser shall receive the
28 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
37 the purchase agreement for any reason by giving written notice of
38 rescission or cancellation to the issuer or the issuer's agent within 10
39 business days after (i) the date on which the purchase agreement for
40 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

1 sale of all or a portion of an insurance policy on which the viatical
2 settlement contract is based."

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

4 "(a) Any person who willfully violates any provision of this Chapter except G.S.
5 78A-8, 78A-9, 78A-11, ~~or~~ 78A-12, 78A-13, or 78A-14 or who willfully violates any
6 rule or order under this Chapter, or who willfully violates G.S. 78A-9 knowing the
7 statement made to be false or misleading in any material respect, shall upon conviction
8 be punished as a Class I felon; but no person may be imprisoned for the violation of any
9 rule or order if he proves that he had no knowledge of the rule or order. Any person who
10 willfully violates G.S. 78A-8, 78A-11, ~~or~~ 78A-12, 78A-13, or 78A-14 shall, upon
11 conviction be punished as a Class H felon."

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

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

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

18 "**§ 78A-66. Jurisdictional limitations.**

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

21 22 **PART III. MISCELLANEOUS PROVISIONS**

23
24 **SECTION 15.** The Revisor of Statutes shall cause to be printed along with
25 this act such official comments as the Revisor deems appropriate.

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

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

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