

March 1, 2001

H 359. VIATICAL SETTLEMENTS REWRITE. TO REVISE NORTH CAROLINA'S LAW REGULATING VIATICAL SETTLEMENTS IN ACCORDANCE WITH A MODEL ACT OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. Changes title of GS Ch. 58, Art. 58, to "Life Insurance and Viatical Settlements" and creates new Part 5, the Viatical Settlements Act. Requires viatical settlement providers, brokers, and investment agents to be licensed and sets forth licensing requirements and fees. Prohibits persons convicted of a felony involving dishonesty or breach of trust from participating in the business of viatical settlements. Requires viatical settlement contracts and disclosure statement forms to be filed with and approved by the Comm'r of Insurance. Requires viatical settlement providers, brokers, and investment agents to keep confidential the identity of insureds and their financial and medical information except in specified circumstances. Authorizes Comm'r to investigate or examine any licensee and sets forth procedures for examinations. Immunizes the Comm'r, the Comm'r's representatives, examiners appointed by the Comm'r, and persons who provide information to those people from liability for statements made or conduct performed in good faith while carrying out provisions of the Act. Specifies disclosures viatical settlement providers and brokers must make to viators (persons entering viatical settlement contracts), including disclosures pertaining to alternatives to viatical settlement contracts, the right to rescind the contract within 15 days, and potential adverse consequences of the settlement. Sets forth general rules for viatical settlements that include, among other things, requirements to ensure that a viator consents to the contract, is of sound mind and under no constraint or undue influence. Prohibits any person from entering into a viatical settlement contract within a two-year period after an insurance policy or certificate is issued unless certain conditions are met. Requires advertising for viatical settlements to be truthful and not misleading or deceptive, as determined by the Comm'r. Deems specified representations in advertising as false and misleading and prohibits them. Sets forth additional detailed requirements for advertising. Defines and prohibits fraudulent viatical settlement acts and authorizes Comm'r to investigate when such acts are suspected. Requires those engaged in the viatical settlement business to report to the Comm'r when they know or reasonably believe that a fraudulent viatical settlement act has been or will be committed, and immunizes reporters from liability, unless they acted with actual malice. Requires viatical settlement providers and brokers to have in place specified antifraud initiatives. Provides that a person convicted of a violation of the Act is guilty of a Class H felony and may be ordered to pay restitution in addition to a fine or imprisonment. Makes a violation of the Act an unfair trade practice under GS Ch. 58, Art. 63. Authorizes Comm'r to adopt rules implementing the Act. Effective Oct. 1, 2001.

Intro. by Dockham and Hurley.

Ref. to Insurance	GS 58
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June 19, 2001

H 359. VIATICAL SETTLEMENTS REWRITE. Intro. 3/1/01. House committee substitute makes the following changes to 1st edition. Redefines "fraudulent viatical settlement act" to include acts or omissions committed by a person who knowingly and (was, "or") with intent to defraud, engages in specified behavior. Deletes subdivision making reckless conduct associated with viatical settlement contracts a "fraudulent viatical settlement act." Provides 20 days (was 10) for provider, broker, or investment agent to provide Commissioner new or revised information about officers, stockholders, partners, directors, members, or designated employees. Deletes provisions regarding conduct of examinations, content of examination reports, and confidentiality of examination information and substitutes provision that examinations must be conducted in accordance with the "Examination Law." Limits rules requiring provider to obtain insured's consent to release medical records to the life insurance company, and requiring provider to deliver certain information to insurance company, to situations where policy being viaticated has been in effect for less than five years. Adds provision prohibiting an investment agent from having any direct or indirect contract with the viator or have knowledge of the identity of the viator. Deletes provision requiring viatical settlement contracts and purchase agreement forms and applications to contain a fraud warning. Limits mandatory reporting of fraudulent viatical settlement acts to any person licensed under the Viatical Settlements Act and makes report privileged communication. Rewrites provision granting immunity from liability for persons reporting fraudulent acts to the

Commissioner and deletes provision permitting subject of a report to bring action for libel, slander, or other tort arising out of report. Deletes provision requiring providers and brokers to have antifraud initiatives.

August 1, 2001

H 359. VIATICAL SETTLEMENTS REWRITE. Intro. 3/1/01. House committee substitute makes the following changes to 2nd edition. Adds provision to definition of "business of viatical settlements" in proposed new GS 58-28-205 that definition does not include activity involving viatical settlement contracts as investments as regulated by GS Ch. 78A; makes conforming changes throughout bill. Deletes provision in proposed new GS 58-28-260 concerning specified viatical settlement advertisements considered to be false and misleading on their face. Adds new Part II of bill concerning securities law changes in GS Ch. 78A involving viatical settlement contracts. Changes act's effective date from Oct. 1, 2001, to Jan. 1, 2002.

August 29, 2001

H 359. VIATICAL SETTLEMENTS REWRITE. Intro. 3/1/01. Senate committee substitute makes the following changes to 3rd edition. Adds new GS 58-58-267 to require fraud warning in viatical settlement contracts and in purchase agreement forms and applications for viatical settlements. Adds new GS 58-58-268 requiring viatical settlement providers and brokers to have in place specified antifraud initiatives unless modified by Insurance Comm'r; provides that antifraud plans submitted to Comm'r are privileged and confidential, not public records, and not subject to discovery or subpoena in a civil or criminal action. Revises GS 78A-13 to specify the disclosures required in the offer and sale of viatical settlement contracts and at the time of the assignment, transfer, or sale of an insurance policy underlying a viatical settlement contract (was, as required by rule or order of Sec'y of State). Adds new GS 78A-14 regulating advertising of viatical settlement contracts. Revises GS 78A-49(a) to authorize Sec'y of State to prescribe suitability standards for investments in viatical settlement contracts. Revises GS 78A-56 concerning time in which purchaser of viatical settlement contract may rescind or cancel purchase agreement. Changes effective date from Jan. 1 to April 1, 2002.

September 17, 2001

H 359. VIATICAL SETTLEMENTS REWRITE. Intro. 3/1/01. Senate committee substitute makes the following changes to 4th edition. Specifies in GS 58-58-250(h) that all viatical contracts entered into in NC must provide the viator with an unconditional right to rescind the contract for at least 10 (was, 15) business days after the receipt of the viatical settlement proceeds. Amends required disclosure in GS 58-58-245(a)(5) accordingly. Adds new GS 78A-56(k1) providing for use of a domestic independent escrow agent to hold funds received by issuer pursuant to a viatical settlement purchase agreement during the initial 10-business-day rescission period immediately after the contract is signed by the purchaser. Also provides for later rescission offer by issuer to settlement purchaser if within 90 days after agreement is executed the issuer has not identified a suitable contract and closed the transaction. Specifies other technical rules for notice, and makes technical wording changes.

September 20, 2001

H 359. VIATICAL SETTLEMENTS REWRITE. Intro. 3/1/01. Senate amendment makes the following changes to 5th edition. Redesignates GS 78A-56(k2) as (l) and adds provision defining a "purchaser" as a person who executes a contract of sale, with a seller, for an investment of funds to be used to purchase a viatical settlement contract or contracts.

October 15, 2001

SL 2001-436 (H 359). VIATICAL SETTLEMENTS REWRITE. AN ACT TO REVISE NORTH CAROLINA'S LAW REGULATING VIATICAL SETTLEMENTS IN ACCORDANCE WITH A MODEL ACT OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

Summarized in *Daily Bulletin* 3/1/01, 6/19/01, 8/1/01, 8/29/01, 9/17/01, and 9/20/01. Enacted Oct. 12, 2001. Effective April 1, 2002.