

**1999 HOUSE INDUSTRY, BUSINESS AND LABOR**

**HB 1145**

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB 1145

Industry, Business and Labor

Conference Committee

Hearing Date Jan. 13, 1999

Tape Number	Side A	Side B	Meter #
2	x		2
Committee Clerk Signature <i>Lisa Horner</i>			

Minutes:

HB 1145 Viatical settlement contracts and foreign currency contracts.

Chairman Berg opened the hearing on HB 1145.

Mr. Syver Vinje, Securities Commissioner, testified in support of the bill. The proposed legislation protects consumers from fraudulent acts.

(see attached written testimony)

Discussion and questions followed. Representative Ekstrom asked what the state of Minn. is doing with this topic. Mr. Vinje did not know.

Mr. Tom Foley, ND Insurance Commission, brought everyone up to date on the topic of Viatical.

Young people needed cash and assigned life insurance contracts. It was organized capital venture. In June 1996, companies needed investors. Policies of ill people were sold with expectation of people not living. However, people are living longer than expected. Aids people are involved many times. There are two categories of people with policies, under 24 months and

over 24 months. Policies sold for over 24 months, include a tax issue. There is a third category, those people who own life insurance policies on their lives, but their health is not impaired.

Category four, is people who don't own life insurance policies on themselves but can sell their policy. Older people can buy policies for 2 million dollars and sell them for a few thousand dollars. Underwriting some policies costs less than others. There are two years to prove fraud when a policy is sold to a ill person and no tests were done before the policy was sold. This is called "jet screening". Representative Keiser clarified the issue of bill which was to register viatical contracts and protect investors. Representative Klein asked why an emergency clause was not used. Mr. Vinje said it doesn't appear necessary.

Mr. Matthew Barenberg, Enforcement Division, Attorney General Office, explained the bill and what will happen if bill is not approved.

Chairman Berg closed the hearing on the bill.

Moved by Representative Kempenich for do pass, Second by Representative Lemieux

By roll vote, 15 voting yes, 0 no, motion carried.

Representative Kempenich will carry the bill.

Date: 1-13-99  
Roll Call Vote #: 1

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1145

House Industry, Business and Labor Committee

Subcommittee on \_\_\_\_\_  
or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken do pass

Motion Made By Kempenich Seconded By Lemieux

Representatives	Yes	No	Representatives	Yes	No
Chair - Berg	/		Rep. Thorpe		
Vice Chair - Kempenich	/				
Rep. Brekke	/				
Rep. Eckstrom	/				
Rep. Froseth	/				
Rep. Glasheim	/				
Rep. Johnson	/				
Rep. Keiser	/				
Rep. Klein	/				
Rep. Koppang	/				
Rep. Lemieux	/				
Rep. Martinson	/				
Rep. Severson	/				
Rep. Stefonowicz	/				

Total (Yes) 14 No 0

Absent 1

Floor Assignment Kempenich

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

REPORT OF STANDING COMMITTEE (410)  
January 15, 1999 9:54 a.m.

Module No: HR-09-0672  
Carrier: Kempenich  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

HB 1145: Industry, Business and Labor Committee (Rep. Berg, Chairman) recommends **DO PASS** (14 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1145 was placed on the Eleventh order on the calendar.

**1999 SENATE INDUSTRY, BUSINESS AND LABOR**  
**HB 1145**

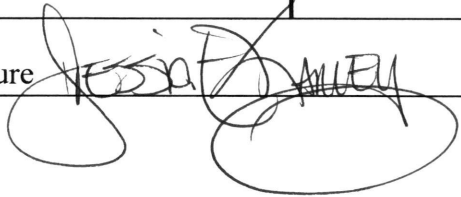
1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1145

Senate Industry, Business and Labor Committee

Conference Committee

Hearing Date February 9, 1999

Tape Number	Side A	Side B	Meter #
2	x		0-2420
Committee Clerk Signature 			

Minutes:

Senator Mutch opened the hearing on HB1145. All senators were present.

Syver Vinje testified in support of HB1145. His testimony is included. Senator Mutch asked him how much it cost to get a license. Mr. Vinje told him that it costs \$100 for a firm or \$60 for a person.

Dave Foley testified in support of HB1145.

Senator Mutch closed the hearing on HB1145.

Senator Sand motioned for a do pass committee recommendation on HB1145. Senator

Thompson seconded his motion. The motion carried with a 6-0-1 vote.

Senator Klein will carry the bill.

Date: 2/9/99  
 Roll Call Vote #: 1 SR302995

**1999 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
~~HOUSE~~ **BILL/RESOLUTION NO. 1145**

Senate INDUSTRY, BUSINESS AND LABOR COMMITTEE Committee

Subcommittee on \_\_\_\_\_  
 or  
 Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken Do Pass

Motion Made By SANO Seconded By THOMPSON

Senators	Yes	No	Senators	Yes	No
Senator Mutch	X				
Senator Sand	X				
Senator Krebsbach	X				
Senator Klein	X				
Senator Mathern	X				
Senator Heitkamp					
Senator Thompson	X				

Total (Yes) 6 No 0

Absent 1

Floor Assignment KLEIN



REPORT OF STANDING COMMITTEE (410)  
February 15, 1999 2:00 p.m.

Module No: SR-30-2995  
Carrier: Klein  
Insert LC: . Title: .

**REPORT OF STANDING COMMITTEE**

**HB 1145: Industry, Business and Labor Committee (Sen. Mutch, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). HB 1145 was placed on the Fourteenth order on the calendar.

**1999 TESTIMONY**

**HB 1145**

HOUSE BILL 1145

TESTIMONY BEFORE THE HOUSE

INDUSTRY, BUSINESS AND LABOR COMMITTEE

WEDNESDAY JANUARY 13, 1999

BY: SECURITIES COMMISSIONER SYVER VINJE

House Bill 1145 will do two basic things. The first will be to define foreign currency contracts as securities under North Dakota law. The second will be to define viatical settlement contracts as securities under North Dakota law.

Due to conflicting rulings by the federal courts, it is important that the legislature make it statutorily clear that in North Dakota, both these financial instruments are considered to be securities, and subject to regulation as such. The reasoning of the Office of Securities Commissioner is set forth below.

Foreign Currency Contracts

A foreign currency contract is an agreement to purchase or sell foreign currency in the future. They are financial derivatives--commodity contracts--in that the currency does not actually change hands. They are usually highly leveraged, and are inherently risky, speculative investments.

Foreign currency contracts can be sold on regulated market exchanges, or through off-exchange transactions. I have brought with me today sales materials and offering documents from two of the off-exchange companies we currently have under investigation, Capital Management International and Foreign Currency International. We will provide complete photo copies for any member who would like to receive one. You will note that these supposedly unrelated companies use sales materials that are virtual copies of each other. It is our understanding that the same materials may be downloaded from the Internet by anyone.

Generally, commodity contracts are regulated on the federal level by the Commodity Futures Trading Commission. The Commodity Futures Trading Commission, however, does not have the statutory authority to regulate "transactions in foreign currency". This was expressed by the 2<sup>nd</sup> Circuit Court of Appeals in CFTC V. Dunn. The CFTC, however, does have regulatory authority over regulated exchanges and all products on such exchanges. As such, the CFTC regulates the foreign currency contracts on regulated exchanges but does not regulate off-exchange transactions.

The NFA (National Futures Association), an industry sponsored self regulatory organization, does not claim jurisdiction for off-exchange transactions, since they are only a member organization and the off-exchange companies do not become members. Thus, there is no self-regulatory organization overseeing off-exchange foreign currency contract companies or the off-exchange foreign currency contract markets.

The sales materials being circulated are from companies that are not regulated by either the CFTC or the NFA.

Under North Dakota law, foreign currency is a commodity. However, according to the unregulated, problematic companies, the Securities Commissioners of the various states also do not have authority with regard to foreign currency contracts because of Dunn. Technically, it can be argued that Dunn does not create or refer to a CFTC exemption under the state commodity act, but it can also be argued that it does. This issue would determine whether these highly risky, inherently speculative, off-exchange foreign currency contracts could legally be sold in North Dakota. This issue has not been litigated. There is no question that on-exchange transactions can be legally sold, and this bill does not effect on-exchange transactions.

Under this bill the off-exchange foreign currency contracts could be sold if registered and sold through registered dealers and salesmen. This would also require sellers to maintain the same sort of document retention policies in force with legitimate brokers, thereby providing a documentary basis for the settlement of disputes between buyers and sellers. It would also provide a means to access company records to determine if fraud or abusive sales practices have occurred.

In recognition of the problems surrounding off-exchange foreign currency transactions, several other states have enacted laws to define these instruments as securities. Among them are Arizona, California, Illinois, New Mexico, Rhode Island, Vermont and Washington. Many other states are considering or planning to introduce similar legislation.

We are aware of no truly legitimate business interests that will be adversely affected by this legislation.

#### Viatical Settlement Contracts

A viatical settlement contract is an investment in a life insurance contract, where the investor does not have what has historically been considered an insurable interest in the insured. These contracts have provided significant social benefit for people with terminal illnesses who need ready cash while they are alive more than they need to leave a significant death benefit to their heirs.

The industry appears to be extending into a secondary market for all life insurance contracts, whether the insured is healthy or not.

We are seeing significant sales practices abuses in the sale of these contracts to investors. Primarily, the sellers are misrepresenting the financial risk involved. I have brought sales literature along for circulation among the committee to demonstrate this point.

Under federal law, pooled interests in viaticated or viatized life contracts are clearly securities. These pooled interests operate in a manner roughly equivalent to mutual funds. According to the DC Circuit, fractionalized interests are not investment contracts under the act if the "management efforts" by the promoter are accomplished prior to the sale. Most securities law commentators think that this was a frankly ridiculous decision. However, until that decision is set aside, there is no federal regulatory framework that applies to fractionalized interests.

There has been no North Dakota case law regarding the viatical issue. The position of the Office of Securities Commissioner is that viatical settlement contracts are securities under the investment contract definition in the North Dakota Securities Act. However, the definition of Investment contract in North Dakota relies heavily on federal law, and federal case law is very important to the interpretation of state law.

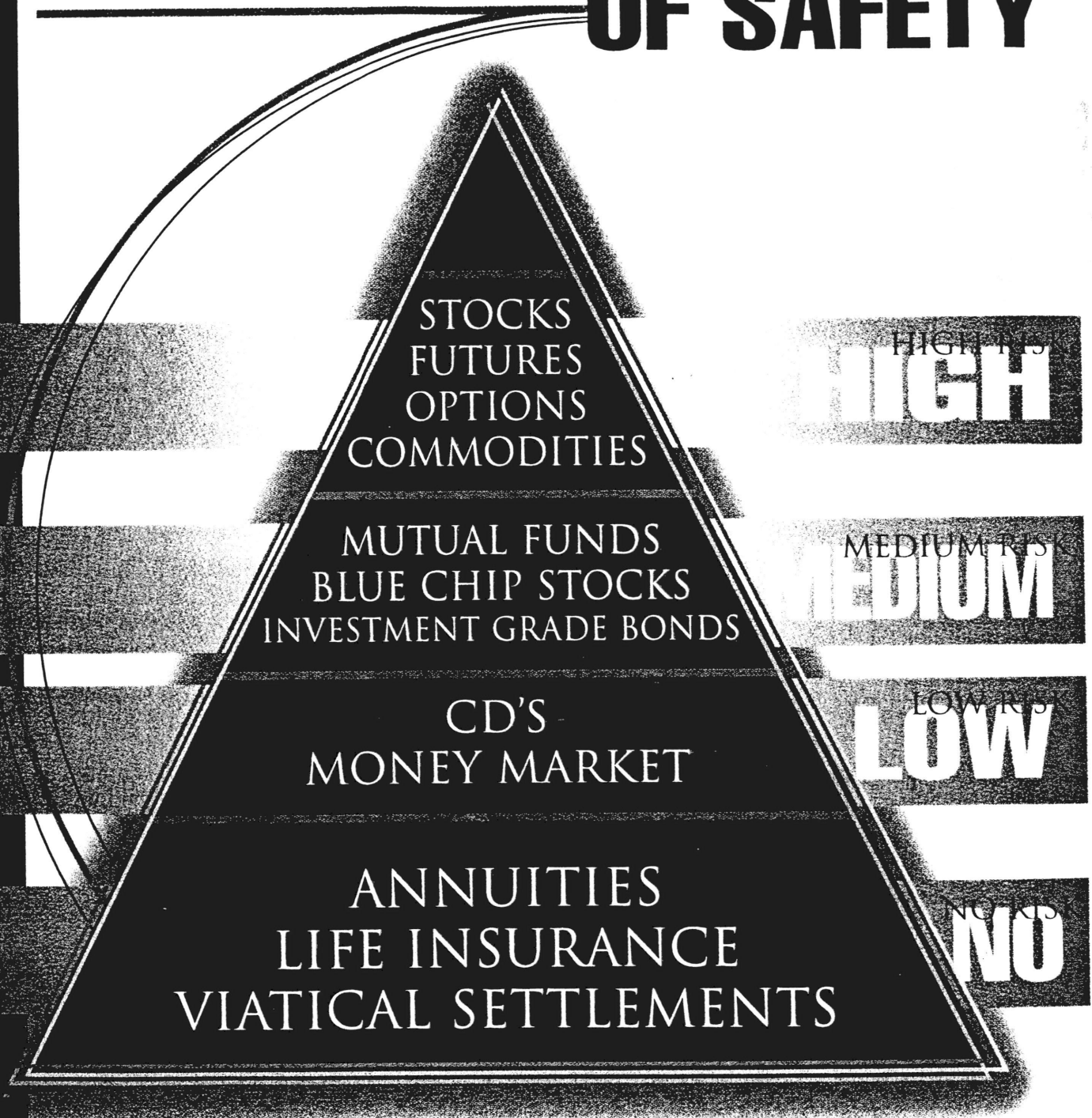
Under this bill viatical settlement contracts would be regulated like any other security. Viatical settlement contracts could be sold if registered or exempted from registration. Agents could either be licensed or exempted from licensing.

The important point of the bill is to provide investor protection by making the sales of these financial instruments subject to the abusive sales practices and anti-fraud provisions of North Dakota securities law.

Other states are contemplating similar legislation, and will watch with great interest what is done in North Dakota. There are currently ongoing discussion by the National Association of Insurance Commissioners, the North American Securities Administrators Association, and various representatives of the viatical industry regarding the regulation of viatical settlement contracts.

While the specific means to do so have not been settled nationally, the legitimate providers of viatical settlements assure me that they want a workable regulatory framework for providing adequate investor disclosure, and preventing fraud and abuse by shady operators. We are currently working with the Viatical Association of America, and we hope to arrive at a mutually agreeable solution. This process may take some time, but in the meanwhile, you can begin to provide adequate investor protection to North Dakota residents through enactment of this bill.

# PYRAMID OF SAFETY



NO RISK - SAFETY OF PRINCIPAL  
A HUMANITARIAN GESTURE