

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

D

HOUSE DRH10118-LT-128 (4/10)

Short Title: Protect Consumers/Life Settlement Transaction. (Public)

Sponsors: Representative Holliman.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE PROTECTION OF CONSUMERS IN LIFE
3 SETTLEMENT TRANSACTIONS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 58 of Chapter 58 of the General Statutes is amended by
6 adding a new Part to read:

7 "Part 6. Life Settlement Transactions.

8 **§ 58-58-320. Definitions.**

9 For the purposes of this Part:

10 (1) "Life settlement contract" means a written agreement establishing the
11 terms under which compensation or anything of value is or will be
12 paid, which compensation or value is less than the expected death
13 benefits of the policy, in return for the owner's present or future
14 assignment, transfer, sale, devise, or bequest of the death benefit or
15 ownership of any portion of the insurance policy or certificate of
16 insurance. However, the minimum value of a life settlement contract
17 shall be greater than the cash surrender value or accelerated death
18 benefit available at the time of an application for the life settlement
19 contract. Except as provided by sub-subdivision (3)c. of this section,
20 "life settlement contract" also includes the transfer for compensation or
21 value of ownership or beneficial interest in a trust or other entity that
22 owns the policy if the trust or other entity was formed or availed of for
23 the principal purpose of acquiring one or more life insurance contracts.

24 "Life settlement contract" includes a premium finance loan made for
25 a life insurance policy by a lender to an owner on, before, or after the
26 date of issuance of the policy if any of the following conditions apply:

- 1 a. The loan proceeds are not used solely to pay (i) premiums for
2 the policy or (ii) the costs of the loan, including, without
3 limitation, interest, arrangement fees, utilization fees and
4 similar fees, closing costs, legal fees and expenses, trustee fees
5 and expenses, and third party collateral provider fees and
6 expenses, including fees payable to letter of credit issuers.
7 b. The owner or the insured receives on the date of the premium
8 finance loan a guarantee of a future life settlement value of the
9 policy.
10 c. The owner or the insured agrees on the date of the premium
11 finance loan to sell the policy or any portion of its death benefit
12 on any date following the issuance of the policy.
13 "Life settlement contract" does not include any of the following:
14 a. A policy loan or accelerated death benefit provision contained
15 in the life insurance policy, whether issued with the original
16 policy or as a rider.
17 b. A loan made by a bank or other licensed financial institution in
18 which the lender takes an interest in a life insurance policy
19 solely to secure repayment of the loan or, if there is a default on
20 the loan and the policy is transferred, the further assignment of
21 the policy by the lender, provided that the default itself is not
22 pursuant to an agreement or understanding with any other
23 person for the purpose of evading regulation under this Part.
24 c. A loan made by a lender that does not violate Article 35 of this
25 Chapter, provided that the premium finance loan is not
26 described in the definition of life settlement contract above.
27 d. An agreement where all the parties are closely related to the
28 insured by blood or law or have a lawful substantial economic
29 interest in the continued life, health, and bodily safety of the
30 person insured, or are trusts established primarily for the benefit
31 of the parties.
32 e. Any designation, consent, or agreement by an insured who is an
33 employee of an employer in connection with the purchase by
34 the employer, or trust established by the employer, of life
35 insurance on the life of the employee.
36 f. A bona fide business succession planning arrangement
37 established by any of the following:
38 1. An agreement between one or more shareholders in a
39 corporation or between a corporation and one or more of
40 its shareholders.
41 2. A trust established by shareholders of a corporation.
42 3. An agreement between one or more partners in a
43 partnership or between a partnership and one or more of
44 its partners.

- 1 4. A trust established by the partners of a partnership.
2 5. An agreement between one or more members of a
3 limited liability company or between a limited liability
4 company and one or more of its members.
5 6. A trust established by the members of a limited liability
6 company.
7 g. An agreement entered into by a service recipient and a service
8 provider, a trust established by the service recipient, or a trust
9 established by the service provider who performs significant
10 services for the service recipient's trade or business.
11 h. Any other contract, transaction, or arrangement exempted from
12 the definition of life settlement contract by the Commissioner
13 based on a determination that the contract, transaction, or
14 arrangement is not of the type intended to be regulated under
15 this Part.
16 (2) "Owner" means the owner of a life insurance policy or a certificate
17 holder under a group policy, with or without a terminal illness, who
18 enters or seeks to enter into a life settlement contract. For the purposes
19 of this Part, an owner shall not be limited to an owner of a life
20 insurance policy or a certificate holder under a group policy that
21 insures the life of an individual with a terminal or chronic illness or
22 condition except where specifically addressed. "Owner" does not
23 include any of the following:
24 a. Any provider or other licensee under this Part.
25 b. A qualified institutional buyer as defined in Rule 144A of the
26 Federal Securities Act of 1933, as amended.
27 c. A financing entity.
28 d. A special purpose entity.
29 e. A related provider trust.
30 (3) "Provider" means a person, other than an owner, who enters into or
31 effectuates a life settlement contract with an owner. "Provider" does
32 not include any of the following:
33 a. Any bank, savings bank, savings and loan association, credit
34 union, or other licensed lending institution which takes an
35 assignment of a life insurance policy or certificate issued
36 pursuant to a group life insurance policy solely as collateral for
37 a loan.
38 b. A premium finance company making premium finance loans
39 and exempted by the Commissioner from the licensing
40 requirement under Article 35 of this Chapter that takes an
41 assignment of a life insurance policy solely as collateral for a
42 loan.
43 c. The issuer of the life insurance policy.

- 1 d. Any natural person who enters into or effectuates no more than
2 one agreement in a calendar year for the transfer of a life
3 insurance policy or certificate issued pursuant to a group life
4 insurance policy for compensation or anything of value less
5 than the expected death benefit payable under the policy.
6 e. A purchaser of a life settlement.
7 f. Any authorized or eligible insurer that provides stop-loss
8 coverage or financial guaranty insurance to a provider,
9 purchaser, financing entity, special purpose entity, or related
10 provider trust.
11 g. A financing entity.
12 h. A special purpose entity.
13 i. A related provider trust.
14 j. A broker.
15 k. An accredited investor or qualified institutional buyer as
16 defined respectively in Regulation D, Rule 501, or Rule 144A
17 of the Federal Securities Act of 1933, as amended, who
18 purchases a life settlement policy from a life settlement
19 provider.

20 **"§ 58-58-325. Prohibited practices.**

21 It is a violation of this Part for any person to enter into a life settlement contract at
22 any time before the application or issuance of a policy that is the subject of the life
23 settlement contract or within a five-year period commencing with the date of issuance
24 of the insurance policy or certificate unless the owner certifies to the provider that one
25 or more of the following conditions have been met within the five-year period:

- 26 (1) The policy was issued upon the owner's exercise of conversion rights
27 arising out of a group or individual policy, provided the total of the
28 time covered under the conversion policy plus the time covered under
29 the prior policy is at least 24 months. The time covered under a group
30 policy shall be calculated without regard to any change in insurance
31 carriers, provided the coverage has been continuous and under the
32 same group sponsorship.
33 (2) The owner is a charitable organization exempt from taxation under 26
34 U.S.C. § 501(c)(3).
35 (3) The owner is not a natural person.
36 (4) The owner submits independent evidence to the provider that one or
37 more of the following conditions have been met within the five-year
38 period:
39 a. The insured is terminally or chronically ill.
40 b. The owner's spouse dies.
41 c. The owner divorces his or her spouse.
42 d. The owner retires from full-time employment.

- 1 e. The owner becomes physically or mentally disabled and a
2 physician determines that the disability prevents the owner from
3 maintaining full-time employment.
- 4 f. The owner was the insured's employer at the time the policy or
5 certificate was issued and the employment relationship
6 terminated.
- 7 g. A final order, judgment, or decree is entered by a court of
8 competent jurisdiction, on the application of a creditor of the
9 owner, adjudicating the owner bankrupt or insolvent or
10 approving a petition that seeks reorganization of the owner or
11 that appoints a receiver, trustee, or liquidator to all or a
12 substantial part of the owner's assets.
- 13 h. The owner experiences a significant decrease in income that is
14 unexpected and that impairs the owner's reasonable ability to
15 pay the policy premium.
- 16 i. The owner or insured disposes of his or her ownership interests
17 in a closely held corporation.
- 18 j. The owner enters into a life settlement contract more than two
19 years after the date of issuance of a policy and, with respect to
20 the policy, at all times prior to the date that is two years after
21 policy issuance, both of the following conditions are met:
- 22 1. Policy premiums have been funded exclusively with
23 unencumbered assets, including an interest in the life
24 insurance policy being financed only to the extent of its
25 net cash surrender value.
- 26 2. There is no agreement or understanding with any other
27 person to guarantee any such liability or to purchase, or
28 stand ready to purchase, the policy, including through an
29 assumption or forgiveness of the loan.

30 **"§ 58-58-330. Exceptions.**

31 This Part does not apply to contracts or transactions exempted pursuant to rules
32 adopted by the Commissioner where the Commissioner determines the protections of
33 this Part are not necessary.

34 **"§ 58-58-335. Administrative rules.**

35 The Commissioner may adopt administrative rules pursuant to this Part for the
36 protection of consumers in life settlement transactions.

37 **"§ 58-58-340. Injunctions; civil remedies; cease and desist orders.**

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

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

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

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

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

19 **"§ 58-58-345. Unfair trade practices.**

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

21 **SECTION 2.** The title of Article 58 of Chapter 58 of the General Statutes
22 reads as rewritten:

23 "Article 58.

24 ~~Life Insurance and Viatical Settlements.~~

25 Life Insurance, Viatical Settlements, and Life Settlements."

26 **SECTION 3.** This act becomes effective October 1, 2007.