

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 1489  
Committee Substitute Favorable 5/23/07

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

Sponsors:

Referred to:

April 17, 2007

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:

27 a. The loan proceeds are not used solely to pay (i) premiums for  
28 the policy or (ii) the costs of the loan, including, without  
29 limitation, interest, arrangement fees, utilization fees and

1                    similar fees, closing costs, legal fees and expenses, trustee fees  
2                    and expenses, and third-party collateral provider fees and  
3                    expenses, including fees payable to letter of credit issuers.

4                    b. The owner or the insured receives on the date of the premium  
5                    finance loan a guarantee of a future life settlement value of the  
6                    policy.

7                    c. The owner or the insured agrees on the date of the premium  
8                    finance loan to sell the policy or any portion of its death benefit  
9                    on any date following the issuance of the policy.

10                    "Life settlement contract" does not include any of the following:

11                    a. A policy loan or accelerated death benefit provision contained  
12                    in the life insurance policy, whether issued with the original  
13                    policy or as a rider.

14                    b. A loan made by a bank or other licensed financial institution in  
15                    which the lender takes an interest in a life insurance policy  
16                    solely to secure repayment of the loan or, if there is a default on  
17                    the loan and the policy is transferred, the further assignment of  
18                    the policy by the lender, provided that the default itself is not  
19                    pursuant to an agreement or understanding with any other  
20                    person for the purpose of evading regulation under this Part.

21                    c. A loan made by a lender that does not violate Article 35 of this  
22                    Chapter, provided that the premium finance loan is not  
23                    described in the definition of life settlement contract above.

24                    d. An agreement where all the parties are closely related to the  
25                    insured by blood or law or have a lawful substantial economic  
26                    interest in the continued life, health, and bodily safety of the  
27                    person insured, or are trusts established primarily for the benefit  
28                    of the parties.

29                    e. Any designation, consent, or agreement by an insured who is an  
30                    employee of an employer in connection with the purchase by  
31                    the employer, or trust established by the employer, of life  
32                    insurance on the life of the employee.

33                    f. A bona fide business succession planning arrangement  
34                    established by any of the following:

35                    1. An agreement between one or more shareholders in a  
36                    corporation or between a corporation and one or more of  
37                    its shareholders.

38                    2. A trust established by shareholders of a corporation.

39                    3. An agreement between one or more partners in a  
40                    partnership or between a partnership and one or more of  
41                    its partners.

42                    4. A trust established by the partners of a partnership.

- 1                   5.    An agreement between one or more members of a  
2                   limited liability company or between a limited liability  
3                   company and one or more of its members.  
4                   6.    A trust established by the members of a limited liability  
5                   company.  
6                   g.    An agreement entered into by a service recipient and a service  
7                   provider, a trust established by the service recipient, or a trust  
8                   established by the service provider who performs significant  
9                   services for the service recipient's trade or business.  
10                  h.    Any other contract, transaction, or arrangement exempted from  
11                  the definition of life settlement contract by the Commissioner  
12                  based on a determination that the contract, transaction, or  
13                  arrangement is not of the type intended to be regulated under  
14                  this Part.  
15                  (2)   "Owner" means the owner of a life insurance policy or a certificate  
16                  holder under a group policy, with or without a terminal illness, who  
17                  enters or seeks to enter into a life settlement contract. For the purposes  
18                  of this Part, an owner shall not be limited to an owner of a life  
19                  insurance policy or a certificate holder under a group policy that  
20                  insures the life of an individual with a terminal or chronic illness or  
21                  condition except where specifically addressed. "Owner" does not  
22                  include any of the following:  
23                  a.    Any provider or other licensee under this Part.  
24                  b.    A qualified institutional buyer as defined in Rule 144A of the  
25                  Federal Securities Act of 1933, as amended.  
26                  c.    A financing entity.  
27                  d.    A special purpose entity.  
28                  e.    A related provider trust.  
29                  (3)   "Provider" means a person, other than an owner, who enters into or  
30                  effectuates a life settlement contract with an owner. "Provider" does  
31                  not include any of the following:  
32                  a.    Any bank, savings bank, savings and loan association, credit  
33                  union, or other licensed lending institution which takes an  
34                  assignment of a life insurance policy or certificate issued  
35                  pursuant to a group life insurance policy solely as collateral for  
36                  a loan.  
37                  b.    A premium finance company making premium finance loans  
38                  and exempted by the Commissioner from the licensing  
39                  requirement under Article 35 of this Chapter that takes an  
40                  assignment of a life insurance policy solely as collateral for a  
41                  loan.  
42                  c.    The issuer of the life insurance policy.  
43                  d.    Any natural person who enters into or effectuates no more than  
44                  one agreement in a calendar year for the transfer of a life

1 insurance policy or certificate issued pursuant to a group life  
2 insurance policy for compensation or anything of value less  
3 than the expected death benefit payable under the policy.

4 e. A purchaser of a life settlement.

5 f. Any authorized or eligible insurer that provides stop-loss  
6 coverage or financial guaranty insurance to a provider,  
7 purchaser, financing entity, special purpose entity, or related  
8 provider trust.

9 g. A financing entity.

10 h. A special purpose entity.

11 i. A related provider trust.

12 j. A broker.

13 k. An accredited investor or qualified institutional buyer as  
14 defined respectively in Regulation D, Rule 501, or Rule 144A  
15 of the Federal Securities Act of 1933, as amended, who  
16 purchases a life settlement policy from a life settlement  
17 provider."

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

20 "Article 58.

21 ~~Life Insurance and Viatical Settlements.~~

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

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