

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 359 (4th Edition)

SHORT TITLE: Viatical Settlements Rewrite-AB

SPONSOR(S): Representatives Dockham and Hurley

| FISCAL IMPACT | | | | | |
|--|--------------------------|--------------------------|----------------------------------|--------------------------|--------------------------|
| | Yes (X) | No () | No Estimate Available () | | |
| | <u>FY 2001-02</u> | <u>FY 2002-03</u> | <u>FY 2003-04</u> | <u>FY 2004-05</u> | <u>FY 2005-06</u> |
| REVENUES | | | | | |
| General Fund | | | | | |
| Dept of Insurance | \$0 | \$5,850 | \$6,550 | \$7,250 | \$7,950 |
| EXPENDITURES | | | | | |
| Department of Correction | \$0 | \$0 | \$0 | \$0 | \$0 |
| Judicial Branch | \$0 | \$0 | \$0 | \$0 | \$0 |
| PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Department of Insurance, Department of Correction, Judicial Branch | | | | | |
| EFFECTIVE DATE: April 1, 2002. | | | | | |

BILL SUMMARY:

This bill expands North Carolina's current viatical settlement law to include the regulation of the purchase of a life insurance policy by a third party without regard to the insured's health. Current law only regulates the purchase of a life insurance policy by a third party (the viatical settlement provider) from an insured who has a life threatening or terminal illness. The bill also requires licensure of viatical settlement providers and viatical settlement brokers and provides that any person who commits a fraudulent viatical settlement act is guilty of a Class H felony.

ASSUMPTIONS AND METHODOLOGY:

Licensure:

Under existing law, viatical settlement providers and brokers must register with the Commissioner of the Department of Insurance. Further, viatical brokers are currently licensed as insurance brokers and pay an initial license fee of \$50 and a \$50 annual renewal fee. This bill would require the licensure by the Commissioner of viatical settlement

providers and brokers by July 1, 2002. Licensure requires the submission of an application accompanied by a \$100 application fee. Once a license is issued, it may be renewed annually upon the payment of a \$100 annual renewal fee. Failure to pay the fees would result in expiration of the license.

Based on information provided by the Department of Insurance, there are currently 13 viatical settlement providers registered in North Carolina and 63 registered viatical settlement brokers who are licensed as insurance brokers. Reviewing the six-year history, there have been on average 2 new providers and 10 new brokers registered each year.

Based on the above data, the five-year estimate of the increase in revenue which would result from implementation of this bill is noted in the table below. Please note that the estimate for brokers assumes that the brokers who are currently registered as insurance brokers are actually full time viatical settlement brokers who will convert their licenses from insurance broker license (currently \$50 annually) to viatical settlement broker licenses at \$100 initially and annually thereafter. Thus, the increase in revenue will be \$50 per license because the revenue from the \$100 initial viatical settlement broker license must be reduced by the \$50 loss from payment of the insurance broker license fee.

Estimate of Increase in Revenue from Viatical Settlement Licensure

| Type of License | FY 03 | | FY 04 | | FY 05 | | FY 06 | |
|---|-------|---------|-------|---------|-------|---------|-------|---------|
| Providers | 17 | \$1,700 | 19 | \$1,900 | 21 | \$2,100 | 23 | \$2,300 |
| <i>Assumes 2 new licenses per year</i> | | | | | | | | |
| Brokers * | 83 | \$4,150 | 93 | \$4,650 | 103 | \$5,150 | 113 | \$5,650 |
| <i>Assumes 10 new licenses per year</i> | | | | | | | | |
| Total | | \$5,850 | | \$6,550 | | \$7,250 | | \$7,950 |

* Brokers currently pay \$50/year for insurance broker license. Assumes they will convert their licenses rather than maintain 2 licenses. Thus, increase is based on \$50/license and not \$100/license.

Criminal Penalty:

In addition to adding a licensure requirement, the bill would make it a Class H felony to commit fraudulent viatical settlement acts. Currently, the Department of Insurance works cooperatively with the Federal Bureau of Investigation, U.S. Postal Service, and the Internal Revenue Service to prosecute such acts as federal mail fraud and conspiracy to commit mail fraud crimes. The Department plans to continue prosecuting any revealed violations as federal crimes and will only prosecute as state crimes in the limited situations that the U.S. Attorney General declines to prosecute a case under federal law. The Department reports that there have been only about five federal prosecutions since 1996, and that there are some 25 to 30 cases currently under investigation.

Although the foregoing data suggests that the number of new criminal cases would be relatively small, the Administrative Office of the Courts (AOC) notes that there could be a significant workload demand on judges and prosecutors from even a relatively few cases. Since the criminal cases would be felonies, it can be anticipated that any cases brought

under this new offense would be time-consuming for the courts and vigorously defended. As it relates to the prison system, it is unknown how many offenders might be sentenced under this bill and how many of the defendants federally prosecuted were convicted. The Sentencing Commission notes that if, for example, there were three convictions for the proposed Class H offense, this would result in the need for one additional prison bed the first year and two additional prison beds the second year. Any convictions would impact the Department of Correction (DOC) since any active sentence would create the need for an additional prison bed. (There are no surplus prison beds available for the five-year Fiscal Note horizon and beyond.)

Fiscal Research notes that, currently, fraudulent viatical settlement acts could be prosecuted under N.C.G.S. § 14-100, obtaining property under false pretenses, which carries a Class C felony if the value is over \$100,000 and a Class H felony if the value is \$100,000 or less. Thus, given that the acts could be prosecuted under existing law even in the absence of the Class H felony created by this bill, we believe that the creation of this Class H felony offense would have no fiscal impact on AOC or DOC beyond what is allowed by existing law. The bill in our opinion does not create a new crime but rather a more specific alternative offense for prosecuting an act this is currently criminal. We, therefore, believe that this bill will have no additional fiscal impact on AOC or DOC.

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DATE: September 12, 2001



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