

**NORTH CAROLINA GENERAL ASSEMBLY**

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** HB 359 (2<sup>nd</sup> Edition)

**SHORT TITLE:** Viatical Settlements Rewrite-AB

**SPONSOR(S):** Representative Dockham and Hurley

<b>FISCAL IMPACT</b>					
	<b>Yes (X)</b>	<b>No ( )</b>	<b>No Estimate Available ( )</b>		
	<b><u>FY 2001-02</u></b>	<b><u>FY 2002-03</u></b>	<b><u>FY 2003-04</u></b>	<b><u>FY 2004-05</u></b>	<b><u>FY 2005-06</u></b>
<b>REVENUES</b>					
<b>General Fund</b>					
<b>Dept of Insurance</b>	<b>\$17,750</b>	<b>\$18,450</b>	<b>\$19,150</b>	<b>\$19,850</b>	<b>\$20,550</b>
<b>EXPENDITURES</b>					
<b>Department of Correction</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>Judicial Branch</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>POSITIONS:</b>					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b> Department of Insurance, Department of Correction, Judicial Branch					
<b>EFFECTIVE DATE:</b> October 1, 2001.					

**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, viatical settlement brokers, and viatical settlement investment agents 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, brokers, and investment agents. 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. Viatical settlement investment agents are not currently regulated. However, the Department estimates that each of the 63 viatical brokers has access to at least 2 investment agents and therefore, they estimate there are potentially 126 investment agents that would be licensed in North Carolina. We have not estimated the number of new viatical settlement investment agent licenses each year because we believe that actual experience with the licensure requirement is needed to determine the true ratio of brokers to agents.

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*

<b>Type of License</b>	<b>FY 02</b>		<b>FY 03</b>		<b>FY 04</b>		<b>FY 05</b>		<b>FY 06</b>	
Providers at \$100/year <i>Assumes 2 new licenses per year</i>	15	\$1,500	17	\$1,700	19	\$1,900	21	\$2,100	23	\$2,300
Brokers * <i>Assumes 10 new licenses per year</i>	73	\$3,650	83	\$4,150	93	\$4,650	103	\$5,150	113	\$5,650
Agents at \$100/year <i>Assumes 0 new licenses per year</i>	126	\$12,600	126	\$12,600	126	\$12,600	126	\$12,600	126	\$12,600
<b>Total</b>		\$17,750		\$18,450		\$19,150		\$19,850		\$20,550

\* 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 suggest 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.

**TECHNICAL CONSIDERATIONS:**

**FISCAL RESEARCH DIVISION 733-4910**  
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**Approved By:** James D. Johnson

**DATE:** July 10, 2001



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