

2009 HOUSE INDUSTRY, BUSINESS AND LABOR

HB 1397

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1397

House Industry, Business and Labor Committee

Check here for Conference Committee

Hearing Date: February 2, 2009

Recorder Job Number: 8334

Committee Clerk Signature

Ellen Li Tang

Representative Ruby: Opened the hearing on HB 1397 relating to revisions to viatical settlement law and references to the viatical settlement law and provide a penalty.

Jim Kasper~Representative from District 46. Introduces the HB 1397. I am here to explain and not compare HB 1397 and explains HB 1397.

Karen Tyler~North Dakota Securities Commissioner. I here to ask you to accept certain securities related amendments, see attachment. My focus will be strictly on the investment side of this transaction. I would support HB 1397 with the amendments.

David Klemisch~National Committee Person for North Dakota Association Insurance Financial Advisors. I heard in testimony that you didn't need a bond because it would be duplication in coverage, then later, someone said, when the fraudulent acts were committed and they are usually at the conception of the policy. The thing that we have to understand is when you have errors in omissions insurance would not cover a fraudulent act but a bond would up to \$150,000. Another thing, I heard it mentioned doctrine of insurable interest, sometimes our insurance terminology gets confusing and I wanted to clarify what it means. If I did a STOLI on my life and I want to make a profit on it by selling it, how much do you think I'm going to buy, a little or a lot? If I buy a big policy and use up my doctrine of insurable interest and later in life I want to purchase additional insurance, I can't because the insurance

company won't issue the policy because on every application you have to disclose how much insurance is on your life regardless who the owner is. That's a major problem not having to disclose that somebody who does a STOLI. The last one we always hear that we are afraid we will lose the tax benefit of life insurance. What is a tax benefit? We have a tax deferred growth inside policy and we a tax free death benefit, which is not accurate. If the income tax free death benefit because life insurance is subject to Federal Estate Tax. We always have to refer to it as income tax free benefit. Why do we have that, because for the benefit of a community. In other words, if you buy a municipal bond, you get tax free treatment. So, with life insurance, they look at it the same way, I'm giving it to a widow and orphan to keep them off welfare. I'm saving a business so that they don't go bankrupt. Now, when you talk about insurance in general, then you pay a fee to transfer a risk from you to somebody else. A

STOLI makes it a profit making thing. If I'm looking from the outside, you are buying for the sole purpose to make a profit, my question to you is "why shouldn't it be taxed?". In congress right now, they have "pay go" rules. If I new spending, I have to offset it with revenue, wouldn't this put a bull's eye on life insurance? I want to make it clearer why we say we are afraid of losing the tax benefit of life insurance.

Chairman Keiser: I'm going to read to you the concerns you had that you think that are solved with this bill, but I'm going to read from the other bill. These are disclosures to the owner, just a few of them. Reads disclosures. The reason you are supporting this bill in terms of disclosures, were contained in the previous bill.

Klemisch: Not as in clear language in my opinion.

Bruce Ferguson~American Council of Life Insurers. See testimony attachment.

Vice Chairman Kasper: Turn to page 37. I was looking for the disclosure to the owners, on C, D, & E. What are you comments on those items?

Ferguson: Those are provisions that track any of the provisions found in the NCOIL model with respect to the disclosure the owners regarding the risks associated with life settlements.

Vice Chairman Kasper: It appears that some of the concerns that have been expressed are covered for disclosure to owners in HB 1397. Not all but we have some of them in here.

Ferguson: I do believe some of what you just alluded to tracks what is incorporated in disclosure provisions at the NCOIL model to the extent that the NCOIL model contains additional disclosure that would be helpful to a consumer as well.

Chairman Keiser: Of all the things you have walked through other than the four, which of the others are not in the previous bill?

Ferguson: The only thing is some of the additional disclosures.

(Person didn't identify herself): The Federal government is becoming interested in the impact of STOLI; this is huge business in America. We ask that you do the right thing in either separating or combining this. There was a comment earlier about fact on underwriting; I know it is easy to make determinations based on fact. It becomes very questionable on how you underwrite intent. I would like to speak to the loophole of divorce. They have gone through a divorce because of a disability where they would be in financial ruin if divorce had occurred and left one spouse being able to access the service of Medicaid. Is it right, is it wrong, it's judgmental thing which way that sits, but there are things that drive people to make decisions that would be opposite of their original intent. For North Dakota to have truly have the best law in the country, while the NAIC model was step one, NCOIL was step two, but I think we are missing step three. That is there is no disclosure in any of this for the beneficiary. As we age we have two questions, do we have enough and will it last long enough. If this bill were written properly it would have disclosure for the beneficiary. It's the courts and beneficiary that team up in the final analysis.

Norbert Mayer~North Dakota Association of Insurance and Financial Advisors. I just want to say that some compromising is going to be necessary but I think you can come up with a good bill that would protect our citizens of North Dakota. Our concerns with the previous bill is that does away with the five year moratorium and puts us back to two years and the sixty day rescission period as well as the bonding requirement for the brokers and agents that sell the insurance. We want to do the proper job for North Dakota consumers. At this point we still favor HB 1397 because it does include those provisions.

Jeffery Case~Self from Minot, North Dakota. I received my insurance license in the summer of 1986. I have never written a life insurance policy in the last 23 years, not one policy that would come under this law or the other bill being purposed that would come under the five year moratorium because it was never written, developed with a nonrecourse loan, any guarantee of a life settlement, or life evaluation, period, 100% of every policy I've written. Let's be clear, the only policies we are talking about here today, when we are questioning the two year, five year moratorium, are policies that were written originally with the intent of under course loan, guarantee-able ex-settlement and life evaluation. Two years ago there was a discussion about property rights that issue was disposed of because it was not considered to be an issue at that point in time. I fail to see how it's brought up as an issue today. When a person enters into a life settlement contract whether it's a two or five year moratorium, he or she is agreeing at that moment that that policy will not transfer for that period of time and they understand that. So their property rights are not being violated. So this is not an issue. There was a discussion about changing the terminology today with life settlement. I glad there was a distinction between life settlement and a viatical settlement. I submit to you to leave plan in there. I believe we need to keep the five year moratorium.

Rebecca Ternes~Deputy Insurance Commissioner. I'm here to represent North Dakota Commissioner Adam Hamm's comments. See testimony attachment.

Anyone here to testify in opposition of HB 1397?

John Kelly~ILMA. We would seek the amendment in reference to STOLI definition, in specific the term plan. Say a person with significant means, he went out and for two years, I'm going to go out and pay my premiums and in three to five years, I feel like selling it, I'll sell it, that would be quite available under your existing law. He could not do it under your definition of STOLI. He at one point had a plan and that's the problem with the use of the term "plan". The tax status inside buildup is an insurance carrier not consumer issue. It is not a time for a consumer to pay income tax on a death benefit of insurance. I urge you not to follow this. I would rather have the NCOIL list as a consumer because it truly makes sure that the person knows what they are getting and is more protective.

Vice Chairman Kasper: Jack, could you go to page 18 at the bottom on line 30, we are talking about the definition of stranger originated life insurance, I point out it was a discussion but wasn't acted upon, under the definition of STOLI, that would not be a STOLI?

Kelly: If you reference the primary definition, stranger originated life definition mean a practice or a plan to initiate an insurance policy for the benefit for the third party investor at the time of the origination. It doesn't say "end", there's a period there. If you strike the provision of "plan" there, what you clearly intended, it captured right below, if you had the agreement and you went out with that original agreement, it's a STOLI. But the problem is in the drafting in the first sentence, the use of the term plan from someone who wants to litigate something in the future point of time; I could litigate off of that. Unfortunately, there are people who look out for the use of words like that and challenge that policy.

Doug Head~Life Insurance Settlement Association. Thanks for recognizing the issues of the life settlement and viatical settlements. I want to talk about jurisdiction. This keeps you from selling a STOLI in the secondary market but the proposal does not have one really serious element that Chairman Keiser's bill has at the bottom of 25, and that is disclosure to insurer which allows them in a full page and one half the opportunity not get engaged in North Dakota in selling a policy that would be inappropriately issues and is sold. This is the tool that the NCOIL model offers to insurers to allow to fight STOLI at inception and by definition stranger originated life insurance doesn't happen in our market place, it incurs at inception of a policy. It's easy to fall into the trap of being accused of doing a STOLI when in fact that consumer had no intent of doing so. NCOIL model offer us a way to insurer to address the policies they do not want to sell at inception and that's the solution for North Dakota.

Unfortunately the Kasper bill goes after consumers in a punitive manner later on. The so called moratorium, we call it a ban, on bonds, to get a price, there were zero settlements in North Dakota last year. On rescission, it has been used in only one way and that is to allow to back door each other on the offer.

Vice Chairman Kasper: What percentage of litigation of life settlement contracts are premium financed policies compared to any other contract?

Head: My understanding there is 105 cases involving STOLI. I only know of three or four and about one half involve premium finance.

Chairman Keiser: Anyone here to testify in neutral? Closes the hearing on HB 1397.

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1397

House Industry, Business and Labor Committee

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Hearing Date: February 16, 2009

Recorder Job Number: 9548

Committee Clerk Signature *Ellen DeTangy*

Chairman Keiser: Opened the committee work session on HB 1397.

Vice Chairman Kasper: Motions a Do Not Pass.

Representative Ruby: Second.

Chairman Keiser: Further discussion.

Voting roll call was taken on HB 1397 for a Do Not Pass with 12 ayes, 0 nays, 1 absent and Representative Schneider is the carrier.

Date: Feb 16-2009

Roll Call Vote # 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1397

House House, Business & Labor Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Do Not Pass As Amended

Motion Made By Kasper Seconded By Ruby

Representatives	Yes	No	Representatives	Yes	No
Chairman Keiser	7		Representative Amerman	7	
Vice Chairman Kasper	7		Representative Boe		
Representative Clark	7		Representative Gruchalla	7	
Representative N Johnson	7		Representative Schneider	7	
Representative Nottestad	7		Representative Thorpe	7	
Representative Ruby	7				
Representative Sukut	7				
Representative Vigesaa	7				

Total (Yes) 12 No 0

Absent 1

Floor Assignment Schneider

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

REPORT OF STANDING COMMITTEE

HB 1397: Industry, Business and Labor Committee (Rep. Kelser, Chairman)
recommends **DO NOT PASS** (12 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).
HB 1397 was placed on the Eleventh order on the calendar.

2009 TESTIMONY

HB 1397

House Bill 1397

Testimony of North Dakota Securities Commissioner Karen Tyler

Before the House Industry, Business and Labor Committee

February 2, 2009

Mr. Chairman and members of the Committee, good morning. I am Karen Tyler, the state Securities Commissioner. I am here to provide information regarding, and ask you to accept, certain securities related amendments to HB 1397.

The proposed amendments to HB 1397 seek to conform our definitions section (10-04-02) to evolved industry terminology and also to remove from chapter 26.1-33.3 in the insurance code, language governing the offer and sale of securities.

I know you are all aware that through evolution in the industry, a new variation of a life insurance settlement developed in which the policy owner was not terminally ill, and in addition to viatical settlements, life settlements were established. The changes to our definitions section reflect this evolution. The definitions of viatical settlements and life settlements, for purposes of the Securities Act, are identical so they have been combined to read "viatical or life settlement". The amendments on page 7 and 9 all reflect this change.

The remaining amendments to page 41 – 44 of the bill, remove language that pertains to the offer and sale of securities. This language is found under a section of the chapter titled “Disclosure to viator”, but in fact does not relate to disclosures to a viator. The language we seek to remove sets forth required disclosures that must be made by a securities issuer, broker-dealer and securities agent to an investor upon selling a viatical or life settlement investment...disclosure requirements that are already established, appropriately so, under the securities regulatory structure.

The amendment also removes language in the insurance code that establishes governance over and the right to rescind a securities transaction.

Viatical and Life Settlement investments are securities. Because viatical and life settlement investments are securities, the companies selling them must register as issuers and/or broker dealers with the Securities Department, the individuals selling the investments must register as securities agents with the Department, and the securities themselves must be registered with the Department.

The full spectrum of laws, rules and regulations established by State and Federal securities regulatory authority applies to the sale of viatical and life settlement

securities. This authority includes disclosure requirements, anti-fraud authority, governance of sales practices, authority to conduct examinations and investigations, authority to take enforcement actions, authority to issue orders including cease and desist, rescission, restitution, suspension and revocation, and the authority to assess penalties. Securities regulators hold the same authority over this type of securities transaction as over any other.

In 1999 the North Dakota Legislature passed legislation establishing the regulation of viatical settlement investments under the ND Securities Act. We have long recognized that there are unique risks associated with viatical and life settlement securities which is why disclosure requirements under the securities regulatory structure are so extensive. These disclosure provisions address not only what must be disclosed at the point of sale and post-sale to the investor, but also what must be included in the offering document to achieve securities registration approval before any sales can even take place. Requirements include but are not limited to:

- Audited Financial Statements of the Viatical/Life issuer

- Established Income and Net Worth thresholds to determine investor suitability

- Escrow Agents, Agreements and Report

- Compensation to Issuer, Agent and other parties



All Material Risk Factors

History of Issuer and its operations

Use of Proceeds by Issuer

Any Litigation involving Issuer and any Material Transactions

Post Sale disclosure requirements

And of course, as a threshold matter, under securities law all registered persons selling securities are bound by either suitability standards or a fiduciary duty – a violation of either is grounds for rescinding a securities transaction.



I think it is also important to relay to the committee information about viatical and life settlement related complaints received by the Department. Since 2001, we have had a total of 6 investor complaints, so averaging less than 1 per year. All cases involved unregistered activity of entities and agents selling into the state.

We currently have 1 enforcement action pending involving a large viatical and life settlement firm and an out of state broker who sold 9 contracts to a Fargo couple. The securities were not registered, and neither the firm nor the broker were registered. We issued a cease and desist order and an order for penalty and





restitution. At this time we are in settlement negotiations but plan to move to hearing if the matter is not resolved shortly.

We are not clear why this language pertaining to the regulation of securities was included in the bill that was addressed last session. There was not then and is not now a regulatory gap to fill on the securities side of a viatical or life settlement transaction.

I would ask that you accept the proposed securities related amendments to HB 1397.



Rep. Keiser
Tyler
Testimony

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1397

Page 4, line 22, overstrike "investment" and insert immediately thereafter
"institutional"

Page 7, line 13, after "contract" insert "or viatical settlement contract"

Page 7, line 16, replace "Life settlement contract" with "The term"

Page 7, line 19, remove "life settlement"

* Page 9, line 1, remove the overstrike over "viatical" and insert immediately
thereafter "or"

Page 41, replace lines 7 through 30 with:

~~5. A viatical settlement provider or its viatical settlement investment agent shall provide the viatical settlement purchaser with at least the following disclosures prior to the date the viatical settlement purchase agreement is signed by all parties. The disclosures shall be conspicuously displayed in any viatical purchase contract or in a separate document signed by the viatical settlement purchaser and viatical settlement provider or viatical settlement investment agent, and shall make the following disclosure to the viatical settlement purchaser:~~

~~— a. The purchaser will receive no returns, such as dividends and interest, until the insured dies and a death claim payment is made.~~

~~— b. The actual annual rate of return on a viatical settlement contract is dependent upon an accurate projection of the insured's life expectancy, and the actual date of the insured's death. An annual "guaranteed" rate of return is not determinable.~~

~~— c. The viaticated life insurance contract should not be considered a liquid purchase since it is impossible to predict the exact timing of its maturity and the funds probably are not available until the death of the insured. There is no established secondary market for resale of these products by the purchaser.~~

~~— d. The purchaser may lose all benefits or may receive substantially reduced benefits if the insurer goes out of business during the term of the viatical investment.~~

~~— e. The purchaser is responsible for payment of the insurance premium or other costs related to the policy, if required by the terms of the viatical purchase agreement. These payments may reduce the purchaser's return. If a party other~~

~~than the purchaser is responsible for the payment, the name and address of that party also shall be disclosed.~~

~~— f. The purchaser is responsible for payment of the insurance premiums or other costs related to the policy if the insured returns to health. Disclose the amount of such premiums, if applicable.~~

~~— g. State the name, business address, and telephone number of the independent third party providing escrow services and the relationship to the broker.~~

~~— h. The amount of any trust fees or other expenses to be charged to the viatical settlement purchaser shall be disclosed.~~

~~— i. State whether the purchaser is entitled to a refund of all or part of the purchaser's investment under the settlement contract if the policy is later determined to be null and void.~~

~~— j. Disclose that group policies may contain limitations or caps in the conversion rights, additional premiums may have to be paid if the policy is converted, name the party responsible for the payment of the additional premiums and, if a group policy is terminated and replaced by another group policy, state that there may be no right to convert the original coverage.~~

~~— k. Disclose the risks associated with policy contestability including the risk that the purchaser will have no claim or only a partial claim to death benefits should the insurer rescind the policy within the contestability period.~~

~~— l. Disclose whether the purchaser will be the owner of the policy in addition to being the beneficiary, and if the purchaser is the beneficiary only and not also the owner, the special risks associated with that status including the risk that the beneficiary may be changed or the premium may not be paid.~~

~~— m. Describe the experience and qualifications of the person who determines the life expectancy of the insured, such as in-house staff, independent physicians, and specialty firms that weigh medical and actuarial data; the information this projection is based on; and the relationship of the projection maker to the viatical settlement provider, if any.~~

~~— n. Disclosure to an investor shall include distribution of a brochure describing the process of investment in viatical settlements. The national association of insurance commissioner's form for the brochure shall be used unless one is developed by the commissioner.~~

~~— 6. A viatical settlement provider or its viatical settlement investment agent shall provide the viatical settlement purchaser with at least the following~~

~~disclosures no later than at the time of the assignment, transfer or sale of all or a portion of an insurance policy. The disclosures shall be contained in a document signed by the viatical settlement purchaser and viatical settlement provider or viatical settlement investment agent, and shall make the following disclosures to the viatical settlement purchaser:~~

~~— a. Disclose all the life expectancy certifications obtained by the provider in the process of determining the price paid to the viator.~~

~~— b. State whether premium payments or other costs related to the policy have been escrowed. If escrowed, state the date upon which the escrowed funds will be depleted and whether the purchaser will be responsible for payment of premiums thereafter and, if so, the amount of the premiums.~~

~~— c. State whether premium payments or other costs related to the policy have been waived. If waived, disclose whether the investor will be responsible for payment of the premiums if the insurer that wrote the policy terminates the waiver after purchase and the amount of those premiums.~~

~~— d. Disclose the type of policy offered or sold, such as whole life, term life, universal life, or a group policy certificate, any additional benefits contained in the policy, and the current status of the policy.~~

~~— e. If the policy is term insurance, disclose the special risks associated with term insurance, including the purchaser's responsibility for additional premiums if the viator continues the term policy at the end of the current term.~~

~~— f. State whether the policy is contestable.~~

~~— g. State whether the insurer that wrote the policy has any additional rights that could negatively affect or extinguish the purchaser's rights under the viatical settlement contract, what these rights are, and under what conditions these rights are activated.~~

~~— h. State the name and address of the person responsible for monitoring the insured's condition. Describe how often the monitoring of the insured's condition is done, how the date of death is determined, and how and when this information will be transmitted to the purchaser.~~

~~— 7. The viatical settlement purchase agreement is voidable by the purchaser at any time within three days after the disclosures mandated by subsections 5 and 6 are received by the purchaser.~~

Page 42, remove lines 1 through 31

Page 43, remove lines 1 through 30



Page 44, remove lines 1 through 7



STATEMENT SUPPORTING HOUSE BILL 1397

BY

J. BRUCE FERGUSON

AMERICAN COUNCIL OF LIFE INSURERS

BEFORE THE

STATE OF NORTH DAKOTA

HOUSE INDUSTRY, BUSINESS AND LABOR COMMITTEE

REPRESENTATIVE GEORGE KEISER, CHAIRMAN

FEBRUARY 2, 2009

Good morning, Mr. Chairman and members of the Committee. My name is Bruce Ferguson, and I am Senior Vice President, State Relations for the American Council of Life Insurers (ACLI). ACLI is a national trade association comprised of 340 member life insurers which account for over 90 percent of the life insurance coverage in the State of North Dakota.

I am here this morning to testify in strong support for House Bill 1397, which would update North Dakota's viatical settlement law to make it among the strongest in the nation to prohibit stranger-originated life insurance (STOLI). STOLI is practice where speculators aim to circumvent your state's insurable interest law and abuse the vital social purpose of life insurance.

Accompanying this testimony is brochure entitled "STOLI: The Problem and the Appropriate State Response" which has been prepared by ACLI, the National Association of Insurance and Financial Advisors (NAIFA), and the Association for Advanced Life Underwriting (AALU). The brochure summarizes why STOLI represents a threat to both consumers and the life insurance industry.

Of course, the STOLI issue is not a new issue for this Committee. In 2007, North Dakota became the first state in the nation to enact legislation addressing STOLI based on model legislation adopted by the National Association of Insurance Commissioners, under the leadership of former Insurance Commissioner Jim Poolman. Since that time, much has happened. STOLI promoters have developed new and sophisticated schemes to circumvent the law through the use of trusts that give the appearance of insurable interest. Unfortunately, when the onion is peeled back the same speculators are there, financing the policy, owning a beneficial interest in the policy through the trust, and profiting when the insured dies.

Under the leadership of your very own Representative George Keiser, the National Conference of Insurance Legislators (NCOIL) updated its own model legislation to address STOLI transactions conducted through trusts and other schemes.

ACLI strongly believes that the best legislation to combat STOLI can be achieved by combining provisions of existing North Dakota law with provisions from the NCOIL Life Settlements Model Act. That is the purpose of House Bill 1397.

House Bill 1397:

- Retains the limited 5-year settlement prohibition in existing law, which targets transactions with the characteristics of STOLI, such as non-recourse premium financing ("free" insurance), settlement guarantees and life expectancy evaluations. Protects consumer property rights by permitting settlements at any time for causes such as chronic or terminal illness, death of spouse, divorce, disability and bankruptcy. (Page 48, line 19 through Page 50, line 4.)
- Defines "STOLI" to mean a practice or plan to initiate a life insurance policy for the benefit of a third party investor that, at the time of policy origination, has no insurable interest in the insured. Includes within the definition of STOLI trusts that are created to give the appearance of insurable interest. (Page 18, line 25 through Page 19, line 6.) Makes STOLI a fraudulent settlement act. (Page 12, lines 9-10)
- Makes it a fraudulent settlement act for any person to fail to disclose to an insurer when requested by the insurer that the prospective insured has undergone a life expectancy evaluation by any person other than the insurer in connection with the issuance of the policy. (Page 12, lines 11-13.)
- Requires life settlement providers to report information to the insurance commissioner so the commissioner can detect and stop STOLI transactions. (Page 28, lines 20-29.)
- Prohibits a person from issuing, soliciting, marketing or otherwise promoting the purchase of an insurance policy for the purpose of or with an emphasis on settling the policy. (Page 51, lines 20-21.)
- Prohibits abusive premium financing agreements designed to force the insured to hand over the policy to the STOLI financier who is paying the premiums for the policy. (Page 51, line 22 through Page 52, line 3.)

With these changes, North Dakota's anti-STOLI law will become the strongest in the nation to stop STOLI transactions while preserving the lawful uses of viatical and life settlements. For these reasons, we respectfully ask the Committee for a "Do Pass" Recommendation for House Bill 1397.



● STOLI:

The Problem and the Appropriate State Response



AALU, NAIFA, and ACLI believe that stranger-originated life insurance ("STOLI") represents a threat to both consumers and the life insurance industry. The intended purpose of life insurance is to protect the financial futures of families and businesses, not to make strangers money. This is a story that state legislators across the country should understand. We also believe there is an appropriate state by state legislative response to this problem. This primer addresses three important topics:

Part I. Why is STOLI a problem?

Part II. What is the most effective state by state response?

Part III. What are the myths being spread by those who would like to see STOLI continue?

Part I: Why is STOLI a Problem?

To understand why STOLI is a problem, one needs to address some key questions. They are as follows:

QUESTION: What is stranger-originated life insurance ("STOLI")?

ANSWER: STOLI is a contrived transaction designed to evade state insurable interest and other laws and allow investors to use life insurance to profit from the deaths of people they don't know. In STOLI schemes, investors entice seniors to take out policies, with the intent to transfer most of the benefit to those investors who then profit when they die. The sooner the policyholder dies, the greater the investor's profit. In effect, STOLI promotes wagering on human life. Also, STOLI threatens to expose consumers to unexpected taxes, loss of privacy, and inability to obtain needed life insurance in the future.



How does STOLI work?

- Investors, such as hedge funds, induce senior citizens to purchase life insurance. The seniors purchase the policies in their own names but agree to an arrangement where the investors, after a period of time (usually the expiration of a two-year contestability period), get beneficial ownership of the policy.
- The seniors receive some financial inducement for this: be it an upfront payment, a portion of the profit when policies are sold or a small continuing interest in the death benefit.
- Investors often agree to finance the premiums with a loan that does not require repayment, but instead transfer of the policy.
- The investors typically profit by collecting the death benefits after the seniors die. The sooner the seniors die, the higher the profit.

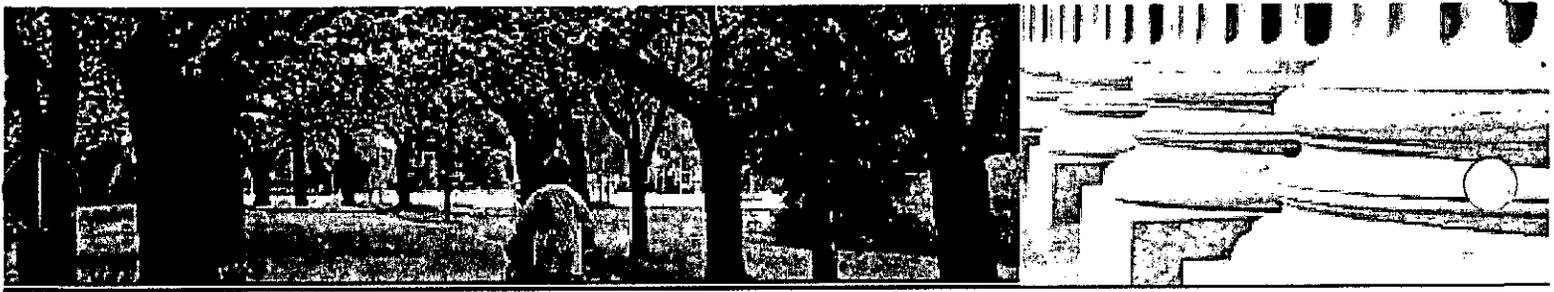


What are the risks to consumers?

- Senior citizens participating in these arrangements may not be aware that the income, including the cost of insurance coverage during the "free period," is generally taxable and they may receive substantially less compensation than expected.
- The seniors may not be aware that the life insurance policies may be far more valuable to them as estate protection rather than as a scheme for making a quick buck.
- The prevalence of STOLI may even increase costs of legitimate policies, since companies have to devote significant resources to detect these schemes, which both increases the cost and time that it takes to issue policies to legitimate purchasers.
- Seniors participating in STOLI may use up their insurance capacity and be unable to purchase life insurance in the future for estate planning and other legitimate needs.
- Through these transactions, seniors will be giving permission for someone to "check periodically" if they are still alive.
- Seniors need to be aware that any misstatements or lies on the application, including those questions completed by an agent that they acknowledge with their signature, could have adverse consequences. This includes the voiding of the insurance contract. Indeed, there are also many legal issues associated with STOLI. For example, STOLI applicants who mislead insurance companies on the policy applications could face legal liability or the risks of litigation.

Wagering on human life

- Life insurance is designed to help families and businesses cope financially following the unexpected death of a loved one, a business owner, or a key employee. Beneficiaries should have an interest in the insureds' continued lives, not their early demise. With STOLI schemes, investors are betting that the early demise of an insured will lead to a profitable payday.
- Our nation decided long ago to prohibit wagering on human life, which is exactly what STOLI represents.



What is wrong with STOLI?

STOLI violates the essential social purpose of life insurance, which is protection. Life insurance protects families from the unexpected death of a breadwinner; or businesses from the financial consequences of the death of an owner or key employee. Life insurance is not meant to be used as a vehicle for financial speculation on human life. The essential social purpose of life insurance is enshrined in state insurable interest laws and numerous rulings by the United States Supreme Court. STOLI undermines the integrity of life insurance and flouts the public policy concerns voiced by state legislatures and the Supreme Court.

What is the difference between life settlements and STOLI?

The crucial factor is whether all the rules were followed from the start, including the existence of an insurable interest at the time the policy is issued. In a life settlement, the policy was purchased for its intended use—to protect family members or a small business from the risk of a premature death. But after the policy is purchased, something changes in the life of the policy owner which leads him or her to decide that the policy is no longer needed. This could be the death of the intended beneficiary, divorce or the need for immediate cash due to illness or other loss. In such cases, the policy owner may decide to sell the policy to a third party. The life insurance industry does not support the enactment of laws that prevent transactions where the policy was acquired in good faith.

But in STOLI transactions, the life insurance policies are not acquired in good faith. The parties intend at the outset that the investors, who have no insurable interest in the insured, receive the death benefit, directly or indirectly, depending on how the deal is structured. These transactions violate public policy interests and can be summed up in concerns expressed by the United States Supreme Court as far back as 1876 that life insurance should not be used as a vehicle for wagering on human life. "Any person has a right to procure an insurance on his own life and assign it to another, provided it be not done by way of cover for a wager policy." *Connecticut Mutual Life v. Schaefer*, 94 U.S. 457 (1876).

How are consumers hurt by STOLI transactions?

Consumers participating in STOLI deals face many potential pitfalls. First, they may not be aware that the income from STOLI transactions is generally taxable and that numerous legal fees and other expenses must be paid before the deal is complete. Thus, consumers may receive substantially less than they expect.

In addition, consumers may not be aware that life insurance may be far more valuable to them as estate protection rather than as an immediate income gimmick. Indeed, consumers participating in STOLI may use up their insurance capacity and be unable to purchase life insurance in the future for estate planning and other legitimate needs.

There are also many legal issues associated with STOLI. For example, STOLI applicants who mislead insurance companies on the policy applications could face the risks of litigation and potential legal liability to insurers, settlement companies, lenders or investors.

How is the insurance industry harmed by STOLI?

Life insurance and annuity products, by their nature, establish a long-term relationship between insurance companies and their policyholders. We have already seen though, that when a STOLI scandal erupts, it is the life insurance industry's reputation that unfairly takes the hit. And so it is the established life insurance industry that suffers the potential loss of reputation while being stuck with cleaning up the STOLI mess. The life insurance industry wants to be proactive and enact laws to address STOLI before consumers are harmed and our reputations sullied. Companies also have to devote significant resources to detect these schemes, which both increases the cost and time that it takes to issue policies to legitimate purchasers.

Part II. The Most Effective State by State Response to STOLI

AALU, NAIFA, and ACLI strongly support enactment of legislation to address the abuses occurring in the marketplace today from stranger-originated life insurance ("STOLI"). We believe the best legislation can be achieved by combining provisions from the NAIC Viatical Settlements Model Act with provisions from the NCOIL Life Settlements Model Act. The best way to accomplish this is to use the provisions and format of the NAIC Model Act as the basis for the legislation.

The NAIC model contains the following key features:

- A limited 5-year settlement prohibition targeting transactions with characteristics of STOLI such as non-recourse financing, settlement guarantees, and life expectancy evaluations. (NAIC Model § 11A)
- Protection of consumer property rights by permitting settlements at any time for cause such as death of spouse; divorce; disability; bankruptcy; loss of job; or chronic or terminal illness. It allows settlements after two years when customers purchase policies with their own funds. It would not apply to consumers who want to sell their policies due to a change in life circumstances, such as illness, divorce or the death of the beneficiary. (NAIC Model § 11A)
- Expanded consumer right to rescind a settlement contract to 60 days. (NAIC Model § 10C)
- Settlement reporting requirements to enable regulators to identify and stop STOLI transactions. (NAIC Model § 6A)
- Prohibition of advertising representing that insurance is "free" or "no cost". (NAIC Model §§ 12D and 13E)
- Disclosure to insurers of any plan to originate, renew or finance a policy prior to or within 5 years of policy issue. (NAIC Model § 9)
- Elimination of the "accredited investor" exemption from the definition of "viator", which would otherwise allow transactions involving policy owners with \$1 million or more in net worth to completely escape regulation and engage in "wet ink" STOLI transactions. (NAIC Model § 2T)
- A comprehensive definition of "life settlement contract" which includes policy transfers regardless of when they occur if they include indicia of STOLI, and transfers which do not fall within a legitimate settlement exception, such as non-recourse financing arrangements, debt forgiveness, or settlement guarantees. (NAIC Model § 2N)

AALU, NAIFA, and ACLI recommend inclusion provisions from the NCOIL Model Act, including:

- The broad definition of STOLI to address trust and premium finance STOLI arrangements
- The prohibition of engaging in STOLI transactions
- Reporting and penalty provisions





Part III. Myths and Facts: Stranger-Originated Life Insurance

State legislators have an unprecedented opportunity to take a leading role in protecting consumers from a growing national abuse that threatens to undermine the social purpose of life insurance. This abuse, called stranger-originated life insurance ("STOLI"), uses life insurance as a vehicle for wagering on human life.

STOLI promoters have been spreading misinformation about this issue, particularly the NAIC's proposal. It is vital that legislators have the complete picture.

MYTH: NAIC's proposal would prevent all consumers from selling their life insurance policies for five years.

FACT: The five-year settlement moratorium is strictly limited and would only apply to STOLI transactions. For example, the moratorium would not apply to consumers who purchased their policies with their own funds. It would not apply to consumers who want to sell their policies due to a change in life circumstances, such as illness, divorce or the death of the beneficiary. Suggestions that the NAIC model imposes a blanket five-year moratorium are false.

MYTH: NAIC's proposal unconstitutionally interferes with the property rights of life insurance policy owners.

FACT: The property rights of policy owners are fully protected. The real issue is not property rights, but the authority of state legislators to regulate commercial transactions. Just as legislators, through zoning laws, can limit the use of real property to single-family dwellings as opposed to commercial development, legislators can limit the sale of life insurance policies obtained as STOLI. Every United States Supreme Court decision that has dealt with this issue has clearly recognized the right of legislators to address the public policy concerns that arise from using life insurance as a vehicle for wagering on human life.

MYTH: The life insurance industry is trying to derail the secondary market for life insurance policies.

FACT: Many life insurance companies are themselves participating in the secondary market. These companies believe that the secondary market offers them another opportunity to serve their customers.

Yet, every life insurance company that participates in the secondary market supports the NAIC model and the five-year moratorium. Why? Because they recognize that STOLI threatens to undermine the very purpose of life insurance, which is protection. In fact, the NAIC model protects their investment in the secondary market by targeting only abusive STOLI transactions.

MYTH: Life insurance companies are using STOLI as a stalking horse to undermine all life settlements because they profit from high lapse rates.

FACT: This complaint is a red herring. According to LIMRA International, the lapse rate for the types of policies most likely to be settled is only 10 percent. STOLI has nothing to do with lapses. STOLI is about investors purchasing life insurance policies that were taken out in bad faith. The NAIC model is targeted to these bad faith transactions.

Life insurance is meant to protect individuals and businesses that stand to suffer economic loss following the untimely death of a family member, business owner or key employee. STOLI turns that purpose on its head. STOLI promoters profit from the death of the insured. Combining the best features of the NAIC and NCOIL models will reduce the incentive for STOLI while fully protecting the rights of legitimate policy owners.





Founded in 1957, the Association for Advanced Life Underwriting (AALU) is a professional trade association representing 2,000 life and health insurance agents and financial advisors nationwide. Most members are engaged in complex uses of life insurance such as in business continuation planning, estate planning, charitable planning, retirement planning, deferred compensation and employee benefit planning. The mission of AALU is to promote, preserve and protect advanced life insurance planning for the benefit of its members, their clients, the industry and the general public. AALU's website can be accessed at www.aalu.org.

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(888) 275-0092 Toll-free



Founded in 1890 as the National Association of Life Underwriters, the National Association of Insurance and Financial Advisors (NAIFA) is comprised of 700 state and local associations representing the business interests of 225,000 members and their employees nationwide. Members focus their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. NAIFA's mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members. NAIFA's website can be accessed at www.naifa.org.

2901 Telestar Court
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The American Council of Life Insurers (ACLI) is a Washington, D.C.-based trade association whose 353 member companies account for 93 percent of the life insurance industry's total assets in the United States, 93 percent of life insurance premiums and 94 percent of annuity considerations. In addition to life insurance and annuities, ACLI member companies offer pensions, including 401(k)s, long-term care insurance, disability income insurance and other retirement and financial protection products, as well as reinsurance. ACLI's public website can be accessed at www.acli.com.

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HOUSE BILL NO. 1397

Presented by: Adam Hamm
Commissioner
North Dakota Insurance Department

Before: House Industry, Business and Labor Committee
Representative George Keiser, Chairman

Date: February 2, 2009

TESTIMONY

Good morning, Chairman Keiser and members of the committee. My name is Adam Hamm and I am the Insurance Commissioner. I appear before you today in support of House Bill No. 1397.

This bill amends current law on viatical settlement transactions, known in this bill as life settlements. This bill would add an important feature from the model law adopted by the National Conference of Insurance Legislators in 2007 that addresses abuses known as stranger-originated life insurance. This bill would make our law a hybrid of the best protections for policyholders and investors who enter into life settlements. This hybrid approach has been adopted in other states and it would be the best outcome for North Dakotans as well.

Improvements on Current Law

This bill modernizes the terminology for these transactions. It strengthens the language that prohibits stranger-originated or stranger-owned life insurance, known as STOLI. STOLI has many variations, but a common purpose: to allow outside investors to initiate life insurance coverage on strangers and circumvent state insurable interest laws. North Dakota's insurable interest law is very clear that there must be an insurable

interest, such as ties by family relationship or a business relationship, in place when a life insurance policy is originated. This bill defines STOLI transactions and declares them to be a fraudulent life settlement act. Fraudulent life settlement acts are prohibited. These provisions identify and prohibit STOLI transactions in a way that will make it hard for wrongdoers to find a way around the law.

This bill also closes a loophole in current law for trusts. The definition of a STOLI transaction spells out that purchasers of life settlements cannot use a trust to do what they cannot do themselves. Under this bill, it would be clear that a trust created to give the appearance of an insurable interest and used to initiate policies for investors would violate our insurable interest laws. This provision gives more protection for both insureds and investors.

Retained Language That is Strong Protection for Consumers

This bill also retains features of current law that protect persons who enter into life settlement transactions:

- The five-year waiting period, with exceptions for major life events
- Bond requirement for providers and brokers
- Specific and conspicuous disclosures to investors
- 60-day rescission period

I mentioned in my testimony on House Bill No. 1284, the five-year waiting period is important because it acts as a brake against the sale of a life insurance policy solely to benefit an investor, as opposed to providing life insurance benefits to beneficiaries upon the death of the insured. This bill keeps current exceptions to the five-year waiting period for life events such as a diagnosis of terminal illness, death or divorce of a spouse, retirement, or becoming disabled.



This bill also retains the current rescission period for persons who sell their policies to be able to change their minds and cancel the deal. The current period of 60 days from signing the contract or 30 days from payment of the purchase price gives an appropriate amount of time to reflect and reassess whether selling the policy is really the right thing to do.

This bill also retains the requirement of specific and conspicuous disclosures to investors so that North Dakota investors know the unique aspects of life settlement transactions. These disclosure must be conspicuous and must be stated in a document that the investor signs. Another important protection for North Dakota investors in this bill is retention of the three days “buyers’ remorse” language that allows the investor three days to void the investment in a life settlement agreement.

I urge your support for House Bill No. 1397.



I would be happy to answer any questions. Thank you.

Comparison of HB 1284 and HB1397 on:

- contract requirements
- reporting requirements and privacy
- examination
- advertising
- general rules, but not the 2 year moratorium in HB 1284, which is in a separate comparison document
- authority to adopt regulations – conflict of laws
- prohibited practices, but not the 5 year moratorium in HB 1397, which is in a separate comparison document
- fraud prevention and control
- injunctions, civil remedies, cease and desist
- penalties
- unfair trade practices

This is a summary. It does not include every detail of the contents of both bills.

Contract requirements. No significant differences in content.

Reporting requirements and privacy:

1. HB 1284 treats individual transaction data and information that reasonably could be used to identify the owner or insured in a different way than HB 1397 and current law. HB 1284 prohibits the inclusion of this in the annual report. HB 1284 p. 16 line 11 – 14. HB 1397 and current law call for the filing of this information with the commissioner on a confidential basis. HB 1397 p. 28 line 30 through p. 29 line 2.
2. HB1284 adds a penalty for providers who fail to file an annual statement or to reply within thirty days to a written inquiry by the commissioner. The penalty is not found in HB 1397 or current law. The penalty is up to \$250 per day of delay, not to exceed \$25,000 in the aggregate. HB 1284 p. 16 lines 15 – 20.
3. HB 1284 adds some provisions to the ban on disclosure of the identity of an insured or the insured's financial or medical information. These are not in HB 1397. New language in HB 1284:
 - Allows the disclosure if necessary to effectuate the sale of life settlement contracts as investments, if the owner and insured give prior written consent. HB 1284 p. 16 line 30 through p. 17 line 3.
 - Adds the receiving provider as being subject to the confidentiality requirements where one provider transfers a policy to a receiving provider. HB 1284 p. 17 line 8 – 9.
 - Defines "authorized representative" who makes contacts for purposes of determining health status. HB 1284 p. 17 line 11 – 17.

- HB 1284 eliminates the purchase of financial guaranty insurance as a basis for permissible disclosure. HB 1284 p. 17 line 18. HB 1397 p. 29 line 24.

Examination

1. HB 1284 and HB 1397 describe different circumstances under which the commissioner may examine a licensee or an applicant. HB 1284 states the commissioner may examine a licensee or an applicant “when the commissioner deems it reasonably necessary to protect the interests of the public.” HB 1284 p. 17 line 25 -26. HB 1397 states the commissioner may examine a licensee (applicant not stated) “as often as the commissioner deems appropriate after considering the factors set forth” followed by a list of factors. HB 1397 p. 29 line 30 through p. 30 line 6.
2. HB 1284 adds a ban on disclosure of the identity of an owner or insured not included in HB 1397 or current law. HB 1284 p. 18 line 7 – 9.
3. HB 1284 and HB 1397 set out different recordkeeping requirements under the examination caption as to who must keep records, what must be kept, and how long. HB 1284 states “Records of all consummated transactions and life settlement contracts must be maintained by the provider for three years after the death of the insured and must be available to the commissioner for inspection...” HB 1284 p. 18 line 10 -12. HB 1397 requirements apply to “a person licensed by this chapter” which would include brokers. The retention period is 5 years. There is a list of what must be kept. The person may have to produce the documents to the commissioner after the retention period if the person has retained the documents. Records must be legible and complete. HB 1397 p. 30 line 19 through p. 31 line 7.
4. The 2 bills have slightly different language about the examiner using guidelines and procedures set forth in an examiners’ handbook. HB 1284 is generic (“handbook adopted by a national organization”) at p. 18 line 19. HB 1397 refers to the handbook adopted by NAIC at p. 31 line 14.
5. HB 1284 allows the licensee or applicant being examined to request a hearing on any matter in dispute within 30 days of receiving the examination report. HB 1284 p. 20 line 6.
6. HB 1284 adds that disclosure of names and individual identification data for owner, purchasers, and insureds, may be made to “another regulator” and as allowed under § 26.1-03-19.4 [examinations; disclosure to other state insurance departments, law enforcement] as well as required by law. HB 1284 p. 20 line 12 - 13.
7. HB 1284 adds that the licensee may have access to all documents used to make the report. HB 1284 p. 20 line 24-25.
8. HB 1284 omits and HB 1397 retains current law addressing confidentiality and nonproduction of documents in the possession of the NAIC, prohibition on the commissioner testifying, waiver of privilege or claim of confidentiality, and related matters. HB 1397 p. 33 line 27 through p. 35 line 24.

Advertising

HB 1284 p. 22 line 4 – 15.

HB 1397 p. 52 line 13 – 22.

There is virtually no overlap in the provisions on advertising. HB 1284 allows brokers and providers to engage in advertising in compliance with the commissioner's rules applicable to life insurers or to brokers and providers licensed under this chapter. HB 1284 also provides substantive do's and don'ts for ads. HB 1397 focuses on the licensee needing a system of control over ads and what the system of control must be.

HB 1284 allows the commissioner to require the submission of advertising material. This provision is found in the "contract requirements" section of the bill. HB 1284 p. 15 line 30 – 31.

HB 1284 declares it to be a violation for a provider to enter into a life settlement contract "unless the promotional, advertising, and marketing materials, as may be prescribed by regulation, have been filed with the commissioner." HB 1284 p. 32 line 25 – 29. HB 1284 also declares a violation for the "inclusion of any reference in the marketing materials that would cause an owner to reasonably believe that the insurance is free for any period of time." HB 1284 p. 32 line 29 – 31. This content is in the Prohibited Practices section.

General rules

HB 1284 p. 27 line 8 through p. 30 line 26

HB 1397 p. 44 line 21 through p. 48 line 16

As stated at the top of this document, this document does not address the 2 year moratorium that is addressed in HB 1284 "General rules" on page 29 line 14 through p. 30 line 26. See separate comparison document on 2 year/5 year moratorium.

1. HB 1284 limits the requirement of obtaining a physician's statement on the owner being of sound mind to situations where the owner is the insured and is terminally or chronically ill. HB 1284 p. 27 line 9. HB 1284 qualifies release of the insured's medical records to the insurance company that issued the policy by adding "if the policy was issued less than 2 years from the date of application for a settlement contract." HB 1284 p. 27 line 14 – 16.
2. HB 1284 omits language of HB 1397 and current law declaring an insurer's failure to meet its obligations of response to a request for verification of coverage to be a violation. HB 1397 p. 45 line 25 – 28.
3. HB 1284 adds language that if a broker performs the verification of coverage activities required of the provider [on p. 27 line 18], the provider is deemed to have fulfilled the requirements of subsection 1 of section 26.1-33.4-08. That subsection is found on p. 22 line 17 through p. 24 line 31 and is the list of items (a) through (r) that must be disclosed to the owner. It is not clear whether the broker would have any duty to make the disclosures to the owner, where the provider is deemed to have made the disclosures by the broker's act. This language is addressed in the comparison document on disclosures. HB 1397 does not have comparable deemer language implicating the disclosures to the owner.
4. HB 1284 adds language requiring that any fee paid to a broker be computed as a percentage of the offer and not the face value of the policy; permitting the broker to reduce the fee; and requiring the broker to disclose to the owner anything of

value paid or given to the broker which relates to a life settlement contract. HB 1284 p. 29 line 10-16.

5. HB 1284 omits language in 1397 describing the role of the escrow agent in the settlement process. HB 1284 p. 28 line 28 through p. 29 line 3. HB 1397 p. 47 line 4 – 25.

Authority to adopt regulations – Conflict of laws

HB 1284 p. 30 line 28 through p. 31 line 19

HB 1397 p. 59 line 12 – 27.

1. HB 1284 is broad, general language conferring authority on the commissioner to adopt rules. It omits language in HB 1397 specifically permitting the commissioner to adopt rules establishing standards for evaluating the reasonableness of payments under life settlement contracts for persons who are terminally or chronically ill.
2. HB 1284 adds conflict of laws language not found in HB 1397 or current law. HB 1284 p. 30 line 30 through p. 31 line 19. This language anticipates the situation where there are multiple owners of a policy who live in different states; a provider from this state who enters a life settlement contract with an owner who is a resident of another state; and where laws that apply to an owner and a purchaser (investor) conflict.

Prohibited practices

HB 1284 p. 31 line 21 through p. 33 line 6.

HB 1397 p. 48 line 19 through p. 52 line 10.

HB 1397 and current law contain 2 sections addressing prohibited practices: Section 26.1-33.3-10 Prohibited Practices and Section 26.1-33.3-11 Prohibited practices and conflicts of interest.

As stated at the top of this document, this document does not address the 5 year moratorium that is addressed in HB 1397 “Prohibited practices” on page 48 line 20 through p. 50 line 17. See separate comparison document on 2 year/5 year moratorium. Advertising content of HB 1284 on prohibited practices is discussed above under Advertising.

HB 1284 adds these provisions not found in HB 1397:

1. It is unlawful for any person to enter a life settlement contract if the person knows or should know that the policy was obtained by means of a false, deceptive, or misleading application. HB 1284 p. 31 line 22 – 24.
2. It is unlawful for any person to engage in any transaction, practice, or course of business if the person knows or reasonably should know that the intent was to avoid the notice requirements of this chapter. HB 1284 p. 31 line 25 - 27.
3. It is unlawful for any person to engage in any fraudulent act or practice in connection with any transaction relating to any settlement involving an owner who is a resident of North Dakota. HB 1284 p. 31 line 28 - 29.

HB 1284 states that a violation of the Prohibited Practices section is a fraudulent life settlement act (p. 33 line 6) which is prohibited at HB 1284 p. 33 line 8.

The two bills are the same regarding prohibited practices:

1. New language that a person may not issue, solicit, market, or promote the purchase of a policy for the purpose of or with emphasis on settling the policy. HB 1284 p.31 line 30 - 31. HB 1397 p. 51 line 20 – 21.
2. New language that a person may not enter a premium finance agreement where amounts are paid in addition to the amounts required to pay principal, interest, and service charges related to premiums. Such amounts must be remitted to the owner upon determination of the overpayment. HB 1284 p. 32 line 1 – 14. HB 1397 p. 51 line 22 through p. 52 line 3.
3. Regarding common control: Under HB 1397, a broker may not make a settlement with a provider controlling, controlled by, or under common control with the broker unless the relationship is disclosed to the owner. HB 1397 p. 51 line 4 – 9. A provider may not make a settlement if anything of value will be paid to a broker that is controlling, controlled by, or under common control with the provider, unless the relationship is disclosed to the owner. HB 1397 p. 51 line 10 - 17. A violation of either is a fraudulent settlement act. HB 1397 p. 51 line 18 – 19. HB 1284 prohibits these acts without any provision for saving by disclosure to the owner. HB 1284 p. 32 line 15 – 24.

HB 1397 contains these provisions not in HB 1284:

1. Upon receipt of a request for change of ownership of a policy, the insurer must respond within 30 days with acknowledgement or specifying reasons why the change cannot be processed. HB 1397 p. 50 line 24 -27.
2. A broker may not make a settlement with a provider controlling, controlled by, or under common control with the broker unless the relationship is disclosed to the owner. HB 1397 p. 51 line 4 – 9. A provider may not make a settlement if anything of value will be paid to a broker that is controlling, controlled by, or under common control with the provider, unless the relationship is disclosed to the owner. HB 1397 p. 51 line 10 - 17. A violation of either is a fraudulent settlement act. HB 1397 p. 51 line 18 – 19. HB 1284 prohibits these acts without any provision for saving by disclosure to the owner. HB 1284 p. 32 line 15 – 24.
3. It is unlawful for an insurer to engage in an act that restricts, limits, or impairs the lawful transfer of ownership of a policy to effectuate a life settlement contract. HB 1397 p. 52 line 7 – 10.

Fraud prevention and control

HB 1284 p. 33 line 7 through p. 36 line 26.

HB 1397 p. 52 line 25 through p. 56 line 30.

The two bills have almost completely the same content.

HB 1284 adds language, not in HB 1397, that this chapter does not preempt, supersede, or limit any provision of any state securities law or any rule, order, or notice issued thereunder. HB 1284 p. 35 line 22 -23.

HB 1397 provides that an award of attorney fees to a prevailing party in a tort action for malicious fraud reporting does not apply to a person furnishing information concerning that person's own fraudulent life settlement acts. HB 1397 p. 54 line 25 – 27.

Injunctions – civil remedies – cease and desist; penalties

HB 1284 p. 36 line 27 through p. 38 line 5

HB 1397 p. 57 line 3 through p. 59 line 4

The two bills are essentially the same regarding injunctions, civil remedies, and cease and desist.

HB 1284 adds language not found in HB 1397:

1. That if a court finds a willful violation of this chapter, the court may award statutory damages in addition to actual damages in an amount up to three times the actual damage award. HB 1284 p. 37 line 19 – 21.
2. The provisions of this chapter may not be waived by agreement. Page 37 line 21 - 22.
3. A choice of law provision may not be utilized to prevent the application of this chapter to any settlement in which a party to the settlement is a North Dakota resident. Page 37 line 22 – 24.

The penalty language is shorter in HB 1284. Both bills state a maximum civil penalty of \$50,000 per violation. The language of HB 1284 is not completely clear about the maximum civil penalty.

HB 1397 includes these provisions not found in HB 1284 regarding penalties:

1. Restitution to persons aggrieved may be ordered by the commissioner and must be ordered in addition to fine or imprisonment under criminal proceedings. Page 57 line 28 – 30 through p. 58 line 5.
2. Except for a fraudulent life settlement act committed by an owner, the enforcement provisions and penalties do not apply to an owner. Page 58 line 6 – 8.
3. Sentencing and classification of offenses and statute of limitations. Page 58 line 9 through p. 59 line 4.

Unfair trade practices

HB 1284 p. 38 line 6 – 7.

HB 1397 p. 59 line 7 – 9.

Both bills declare a violation of this chapter to be an unfair trade practice. HB 1397 specifically includes “the commission of a fraudulent life settlement act.” Page 59 line 7 – 8.

Comparison of HB 1284 and HB1397 on 2 year/5 year moratorium
Insurance Department
February 6, 2009

This is a summary. It does not include every detail of the contents of both bills.

The moratorium is found in HB 1284 in section 26.1-33.4-10(14) on page 29 line 14 through page 30 line 26. This is located in the "General rules" section of the bill. HB 1284 establishes a two (2) year time period during which a person "may not enter a life settlement regardless of the date the compensation is to be provided..." The moratorium does not apply specified circumstances listed below.

The two bills are the same regarding:

Exceptions to the moratorium where one or more conditions are met. The conditions are:

- The policy was issued upon the owner's exercise of conversion rights from a group or individual policy. HB 1284 p. 29 lines 23 - 28, HB 1397 § 26.1-33.3-10(1)(a). **HB 1284 requires a 24 month total time period covered by the conversion policy plus the prior policy. HB 1397 requires a 60 month total time period covered by the conversion policy plus the prior policy.**
- 1. Owner or insured is terminally or chronically ill. HB 1284 p. 29 line 31; HB 1397 §26.1-33.3-10(1)(b)(1);
2. Owner's spouse dies. HB 1284 p. 30 line 5; HB 1397 §26.1-33.3-10(1)(b)(2);
3. Owner divorces spouse. HB 1284 p. 30 line 6; HB 1397 §26.1-33.3-10(1)(b)(3);
4. Owner retires. HB 1284 p. 30 line 7; HB 1397 §26.1-33.3-10(1)(b)(4);
5. Owner becomes disabled. HB 1284 p. 30 line 8 - 10; HB 1397 §26.1-33.3-10(1)(b)(5).

Items 1. through 5 under this bullet are "anytime" exceptions to the moratorium. **HB 1284 adds a sixth item to this list: Owner or insured disposes of ownership interests in a closely held corporation. Bill p. 30 lines 1 - 4.** Copies of evidence for the items in this list must be submitted to the insurer. HB 1284 p. 30 line 16 - 26, HB 1397 §26.1-33.3-10(2) and (3). There are some differences in the details of provisions on notice to the insurer.

- Owner is adjudicated bankrupt or insolvent HB 1284 p. 30 line 11- 15. HB 1397 §26.1-33.3-10(1)(c). **HB 1397 adds, owner adjudicated "in default" at p. 49 line 16.**

HB 1397 and current law address the moratorium at § 26.1-33.3-10(1) found in the bill at page 48 line 20 through page 50 line 4. This is located in the "Prohibited practices" section of the bill. HB 1397 declares a violation for a person to enter a life settlement contract before the application for or issuance of a policy "within a five-year period commencing with the date of issuance of the policy or certificate." HB 1397 contains one exception to the moratorium not in HB 1284: The owner may enter a life settlement

contract more than two (2) years after issuance of the policy, if at all times before that 2 year date, these conditions are met:

1. Policy premiums have been funded exclusively with unencumbered assets provided by the insured;
2. There is no agreement to purchase the policy; and
3. Neither the insured nor the policy has been evaluated for settlement.

HB 1397 § 26.1-33.3-10(1)(d), bill p. 49 line 19 through p. 50 line 4.

HB 1397 has a provision regarding insurer actions when presented with a request to effectuate the transfer of a policy that is not in HB 1284: the insurer must respond in writing within thirty (30) calendar days with acknowledgement that the change has been put into effect or specifying why the change cannot be processed. HB 1397 p. 50 line 22 – 27.

This is a summary. It does not include every detail of the contents of both bills.

I. Disclosures to owners

This is found in HB 1284 in section 26.1-33.4-08, bill p. 22 line 16 through p. 25 line 25. It is organized into these lists:

- What the provider must disclose to the owner no later than the date the settlement contract is signed. There must be a separate document signed by the owner and provider. This list is 18 items (26.1-33.4-08(1)(a) through (r)).

The list of 18 items has these 3 new items that are not found in current law or HB 1397:

- (i) The date by which the funds will be available to the owner and the transmitter of the funds. P. 23 lines 22-23.
- (l) The fact that the commissioner shall require providers and brokers to print separate signed fraud warnings on their applications and on their life settlement contracts the following statement: Any person that knowingly presents false information in an application for insurance or life settlement contract is guilty of a crime and may be subject to fines and confinement in prison.
- (r) The fact that a change of ownership could in the future limit the insured's ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life.

The other 15 items are found in current N.D.C.C. § 26.1-33.3-07 and HB 1397 though some are not in identical form. The main differences are:

- (a) HB 1284 does not list "policy loans offered" as a possible alternative to life settlement contracts. HB 1397 lists this alternative (p. 37 line 17).
- (e) 15 days rescission period in HB 1284 p. 22 line 30 -31. Failure to give written notice of the right of rescission tolls the right of rescission until 30 days after the written notice of right of rescission has been given. Bill p. 29 line 7 – 9. The rescission period is the earlier of 60 days from date of contract signing or 30 days from receipt of the proceeds, under HB 1397 p. 46 line 15 - 20. If the owner dies during the rescission period, there is no stated period during which the owner's estate must pay back the proceeds. Under HB 1397 and current law, the owner's estate must pay back the proceeds within 60 days of the insured's death. Bill p. 46 line 29 - 30 [Rep. Amerman question at hearing 2/2/09] See comparison document on rescission.

"The written disclosures must be conspicuously displayed in any life settlement contract furnished to the owner by a provider, including any

affiliations or contractual arrangements between the provider and the broker.” (26.1-33.4-08(2); found in HB 1284 at p. 25 lines 1 – 3)

Note: HB 1284 provides that if a broker performs the verification of coverage activities required of the provider, the provider is deemed to have fulfilled the requirements of making the 18 disclosures. HB 1284 p. 28 line 9 – 11. As HB 1284 now exists, the provider may not have to make the 18 disclosures items (a) through (r) to the owner if the broker does verification of coverage activities. If this is not the intended result, an amendment could spell out that the broker also make the 18 disclosures to the owner along with the verification of coverage activities.

- What the broker must disclose to the owner and provider no later than the date the settlement contract is signed. This list is 6 items (26.1-33.4-08(3)(a) through (f)). These 6 items have one new item that not is found in current law or HB 1397:

(f) “The failure to provide the disclosures or rights described in this section is deemed an unfair trade practice pursuant to section 26.1-33.4-16.”

Items a, b, c, and d are the same in HB 1397. Item e has minor differences (HB 1284 calls for “a complete reconciliation of the gross offer or bid” to the net proceeds; HB 1397 and current law call for disclosure of the total amount of the offer and percentage comprised by the broker’s compensation).

Disclosures to the owner in HB 1397 are found in section 26.1-33.3-07, bill p. 37 line 8 through p. 41 line 6. HB 1397 retains the language of current N.D.C.C. § 26.1-33.3-07. HB 1397 is organized into these lists:

- What the provider or broker must disclose to owner when application to settle policy is signed. This list is 11 items (N.D.C.C. § 26.1-33.3-07(1)(a) through (k)). These 11 items are all in the HB 1284 list.
- What the provider must disclose to owner when settlement contract is signed. This list is 6 items (N.D.C.C. § 26.1-33.3-07(2)(a) through (f)). **These disclosures must be conspicuously displayed in the contract or in a separate document signed by the owner.** There are 3 items that are not on the HB 1284 list:
 - (c) Any affiliations or contractual arrangements between the provider and investor.
 - (d) If the policy covers any life other than the insured (such as through a joint policy or riders), the owner must be informed of possible loss of coverage on the other lives and advised to consult the owner’s producer or insurer.
 - (e) Dollar amount of the current death benefit payable to the provider.HB 1397 p. 39 line 25 through p. 40 line 9.
- What the broker must disclose to the owner when the settlement contract is signed. This list is 5 items (N.D.C.C. § 26.1-33.3-07(3)(a) through (e)). **This list must be conspicuously displayed in the settlement contract or in a separate document signed by the owner.**

- If the provider transfers ownership or change the beneficiary, the provider must communicate that change to the insured within 20 days. (N.D.C.C. § 26.1-33.3-07(4) p. 41 line 4 - 6)

II. Disclosures to investors

This is not found in HB 1284.

This is found in HB 1397 section 26.1-33.3-07(5) (bill p. 41 line 7 through p. 44 line 7). HB 1397 retains the language of current N.D.C.C. § 26.1-33.3-07(5), (6), and (7) regarding disclosure to investors and investor's right to rescind within 3 days.

HB 1397 is organized into 2 lists:

- What the provider or provider's agent must disclose to the investor prior to signing of the viatical purchase contract (i.e. the settlement contract). This list is 14 items (N.D.C.C. § 26.1-33.3-07(5)(a) through (n)). **This list must be conspicuously displayed in the settlement contract or in a separate document signed by the investor and the provider or provider's agent.**
- What the provider or provider's agent must disclose to the investor no later than at the time of assignment, transfer, or sale of all or a portion of a policy. This list is 8 items (N.D.C.C. § 26.1-33.3-07(6)(a) through (h)). The disclosures must be in a document signed by the investor and the provider or agent. There is no requirement of conspicuous display.

HB 1397 also states the investor's right to rescind the investment within 3 days. N.D.C.C. § 26.1-33.3-07(7).

The amendments proposed by the Securities Commissioner would remove all the disclosures to investors and the right to rescind the investment within 3 days.

III. Disclosures to insurer

HB 1284 addresses "disclosure to insurer" in § 26.1-33.4-09 found in the bill p. 25 line 26 through p. 27 line 6. This is the same caption as HB 1397 §26.1-33.3-08 with different content. The two bills have no common feature under this caption. HB 1284 § 26.1-33.4-09 could be accurately captioned, Disclosures to insurer – disclosures by insurer, since it incorporates disclosures to and by insurers where premium financing exists.

HB 1284 § 26.1-33.4-09 does 4 things:

1. Permits an insurer to inquire whether the proposed owner intends to pay premiums with financing that will use the policy as collateral.
2. If the loan provides funds that can be used for a purpose other than paying premiums, the application must be rejected as a prohibited practice under § 26.1-33.4-12.

3. If the financing does not violate § 26.1-33.4-12, the insurer may make disclosures no later than the delivery of the policy. The 4 disclosures by the insurer are:
 - Change of ownership could lead to a stranger owning an interest in the insured's life;
 - Change of ownership could lead to future limit on ability to purchase insurance;
 - If more coverage is sought in the future, insured's higher age, health status and other factors may reduce ability to obtain coverage and may result in significantly higher premiums;
 - Consult a professional advisor, since change in ownership in satisfaction of the loan may result in tax consequences to the owner.
4. Permits the insurer to require certifications from the applicant or the insured or both such as :
 - I have entered into an agreement for the future sale of this policy;
 - My loan arrangement provides funds sufficient to pay for some or all premiums, but I have not entered into any agreement by which I am to receive consideration in exchange for procuring this policy; and
 - The borrower has an insurable interest in the insured.

HB 1397 addresses "disclosures to insurer" at 26.1-33.3-08 found at bill p. 44 lines 10 through 18. HB 1397 and current law contain a run on sentence that renders difficult an exact understanding. The gist seems to be, the provider or broker must fully disclose details of the plan to originate, renew, continue, or finance a policy for the purpose of engaging in a settlement before or during the first five years of the policy. In other words, the producer or broker must disclose the prohibited activity to the insurer. § 26.1-33.3-10(1)

Comparison of HB 1284 and HB1397 on rescission period
Insurance Department
February 6, 2009

This is a summary. It does not include every detail of the contents of both bills.

HB 1284 addresses the rescission period at § 26.1-33.4-10 (4) found in the bill p. 28 line 20 – 27. This is in the “General rules” section. Settlement contracts must provide that the owner may rescind the contract on or before fifteen (15) days after the date it is executed by all parties. Failure to give written notice of the right of rescission tolls the right of rescission until 30 days after the written notice of right of rescission has been given. Bill p. 29 line 7 – 9. HB 1397 and current law do not have the provision on tolling the right of rescission.

The two bills are the same regarding:

1. The owner must repay all proceeds and any premiums, loans, and loan interest paid within the rescission period. HB 1284 p. 28 line 22 – 25; HB 1397 p. 46 line 20 - 25.
2. If the insured dies during the rescission period, the contract is deemed rescinded. The owner’s estate must repay all proceeds and any premiums, loans, and loan interest paid. HB 1284 p. 28 line 25 – 27; HB 1397 p. 46 line 25 - 30. **Under HB 1284, if the owner dies during the rescission period, there is no stated period during which the owner’s estate must pay back the proceeds. Under HB 1397 and current law, the owner’s estate must pay back the proceeds within 60 days of the insured’s death. Bill p. 46 line 29 - 30 [Rep. Amerman question at hearing 2/2/09]**
3. A related provision: Notice of the rescission period must be given with other disclosures to the owner no later than the date the settlement contract is signed. HB 1284 p. 22 line 30 through p. 23 line 7. HB 1397 p. 38 line 1 – 13. See comparison document on disclosures.

HB 1397 addresses the rescission period at § 26.1-33.3-09(3) found in the bill on page 46 line 15 through page 47 line 8. The rescission period ends the earlier of 60 days from date of contract signing or 30 days from receipt of the proceeds, under HB 1397 p. 46 line 15 - 20. HB 1397 has additional provisions not found in HB 1284 that address broker refunding of commissions and compensation to the provider. Page 46 line 30 through page 47 line 8.

Comparison of 1284 and 1397 license suspension, revocation, or refusal to renew
Insurance Department
February 6, 2009

This is a summary. It does not include every detail of the contents of both bills.

HB 1284 addresses license suspension, etc. at § 26.1-33.4-03 found in the bill at page 14 line 13 through page 15 line 11. The commissioner shall conduct a hearing before denying a license application or suspending, revoking, or refusing to renew the license of any licensee.

HB 1397 addresses license suspension, etc. at § 26.1-33.3-03 found in the bill at page 26 line 30 through page 28 line 6.

The two bills are the same regarding:

1. The list of 9 items that are grounds for suspension, revocation, or refusal to renew by the commissioner. **Exception: In HB 1397 and current law (p. 27 line 1), this list is also grounds for refusal to issue a license but not in HB 1284 (p. 14 line 1).**
2. The commissioner shall conduct a hearing before denying a license application or suspending, revoking, or refusing to renew the license of any licensee. HB 1284 p. 15 line 9 – 11. HB 1397 p. 28 line 3 – 6, adding that the hearing “shall be in accordance with chapter 28-32.

Comparison of 1284 and 1397 licensing requirements including bond
Insurance Department
February 6, 2009

This is a summary. It does not include every detail of the contents of both bills.

HB 1284 addresses licensing at § 26.1-33.4-02 found in the bill p. 10 line 27 through p. 14 line 12. HB 1284 is different from HB 1397 regarding licensing on these points:

1. Unlike HB 1397 and current law at § 26.1-33-02(1)(a), it does not require a person to hold a producer's license in order to obtain a broker's license.
2. The fee for a license is an amount established by the commissioner. The license and renewal fees for a provider must be reasonable. The license and renewal fees for a broker may not exceed those for an insurance producer. Page 11 line 4 -10.
3. A life insurance producer who has held a resident life producer license for at least one year in North Dakota or the producer's home state is deemed to meet the licensing requirements for broker. The broker must notify the commissioner and pay any applicable fee. Page 11 line 11 - 21.
4. Licenses may be renewed annually on the anniversary date.
5. HB 1284 states "commissioner shall make an investigation of each applicant and may issue a license" (p. 12 line 25), where HB 1397 states "commissioner shall make an investigation of each applicant and issue a license.... (p. 25 line 13). The difference is that in HB 1284, issuance is discretionary if the criteria are met. In HB 1397 and current law, issuance is mandatory if the criteria are met.
6. HB 1284 has no requirement for a provider or broker to furnish a bond or physical deposit as proof of financial responsibility.
7. A provider may not use a person to perform the functions of a broker unless the person is licensed. A broker may not use a person to perform the functions of a provider unless the person is licensed. Page 13 line 27 through page 14 line 3. This creates a duty on the provider not to use an unlicensed broker, as well as the duty on the broker not to act without a license. This also creates a duty on the broker not to use an unlicensed provider, as well as the duty on the provider not to act without a license.
8. A broker must complete 15 hours of training "related to life settlements and life settlement transactions as required by the commissioner" except that a life insurance producer operating as a broker is not subject to this requirement. Page 14 lines 7 - 12.

The two bills are the same regarding:

1. Persons licensed as an attorney, certified public accountant, or financial planner who is retained by the owner may negotiate life settlements on behalf of the owner without a license. HB 1284 p. 11 lines 27 through 31. HB 1397 p. 24 lines 18 through 23.
2. Application forms are prescribed by the commissioner.
3. An insurer may not be responsible for any act or omission of a broker or provider arising out of a life settlement transaction. HB 1284 p. 11 lines 22 through 26. HB 1397 p. 24 lines 11 through 17.

4. Applicants shall submit information as prescribed by the commissioner. HB 1284 p. 12 lines 12 – 15. HB 1397 p. 25 lines 4 – 7.
5. A license issued to an entity authorizes named individuals to act as a licensee. HB 1284 p. 12 lines 20 – 23. HB 1397 p. 25 lines 8 – 11.
6. Standards for issuance of a license, except for commissioner's discretion and bond requirement.
7. Requirement of an antifraud plan. HB 1284 p. 13 lines 5 – 18. HB 1397 p. 56 lines 13 – 27.
8. Nonresidents must designate the commissioner as agent for service of process. HB 1284 p. 13 lines 19 – 23. HB 1397 p. 26 lines 19-23.
9. A provider or broker must provide new or revised information about officers, stockholders, etc. within 30 days of the change. HB 1284 p. 14 lines 4-6. HB 1397 p. 26 lines 24 – 27.

HB 1397 addresses licensing at § 26.1-33.3-02 found in the bill p. 24 line 5 through p. 26 line 27.

1. The application fee for a provider is \$250. The application fee for a broker is \$200. Renewal fee for both is \$100. Page 24 lines 24 – 28.
2. A surety bond or physical deposit in the amount of \$150,000 is required for a broker or provider license. Page 25 line 21 through page 26 line 13.
3. Brokers are not required to get 15 hours of training every 2 years. To get a broker license under current law and HB 1397, the applicant must first have a producer's license. Page 24 lines 8 - 10. Insurance producers are subject to continuing education requirements in N.D.C.C. chapter 26.1-26.

Table of contents of 1284, 1397, and current law

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Section 2	26.1-33.4-01 Definitions	p.1	
	26.1-33.4-02 Licensing requirements	p. 10	
	26.1-33.4-03 License suspension, revocation, or refusal to renew	p. 14	
	26.1-33.4-04 Contract requirements	p. 15	
	26.1-33.4-05 Reporting requirements and privacy	p. 16	
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Section 1	amend N.D.C.C. § 10-04-02	p. 1	
Section 2	26.1-33.3-01. Definitions.	p. 9	
	26.1-33.3-02. License and bond requirements.	P. 24	
	26.1-33.3-03. License revocation and denial.	P. 26	
	26.1-33.3-04. Approval of <u>viatical life</u> settlement contracts and disclosure statements.	P. 28	
	26.1-33.3-05. Reporting requirements and privacy.	P. 28	
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	26.1-33.3-07. Disclosure to <u>viator owner</u> .	P. 37	
	26.1-33.3-08. Disclosure to insurer.	P. 44	
	26.1-33.3-09. General rules.	P. 44	
	26.1-33.3-10. Prohibited practices.	P. 48	
	26.1-33.3-11. Prohibited practices and conflicts of interest.	P. 51	
	26.1-33.3-12. Advertising for <u>viatical life</u> settlements.	P. 52	
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	26.1-33.3-16. Authority to promulgate regulations.	P. 59	
	26.1-33.3-17. Effective date.	P. 59	

This is the table of contents of current law, N.D.C.C. chapter 26.1-33.3

- 26.1-33.3-01. Definitions.
- 26.1-33.3-02. License and bond requirements.
- 26.1-33.3-03. License revocation and denial.
- 26.1-33.3-04. Approval of viatical settlement contracts and disclosure statements.
- 26.1-33.3-05. Reporting requirements and privacy.
- 26.1-33.3-06. Examination or investigations.
- 26.1-33.3-07. Disclosure to viator.
- 26.1-33.3-08. Disclosure to insurer.
- 26.1-33.3-09. General rules.
- 26.1-33.3-10. Prohibited practices.
- 26.1-33.3-11. Prohibited practices and conflicts of interest.
- 26.1-33.3-12. Advertising for viatical settlements.
- 26.1-33.3-13. Fraud prevention and control.
- 26.1-33.3-14. Injunctions - Civil remedies - Cease and desist - Penalty.
- 26.1-33.3-15. Unfair trade practices.
- 26.1-33.3-16. Authority to promulgate regulations.
- 26.1-33.3-17. Effective date.

CONVERSION TABLE – HB 1284 AND HB 1397

Items to be Disclosed to Owner

HB 1397 26.1-33.3-07	HB 1284 26.1-33.4-08	HB 1284 26.1-33.4-08	HB 1397 26.1-33.3-07
(1) a	a	a	(1) a
b	o	b	(1) c
c	b	c	(1) d
d	c	d	(1) e
e	d	e	(1) f
f	e	f	(1) g
g	f	g	(1) h
h	g	h	(3) d
i	j	i	no counterpart
j	k	j	(1) i
k	m	k	(1) j
		l	no counterpart
		m	(1) k
(2) a	n	n	(2) a
b	p	o	(1) b
c	no counterpart	p	(2) b
d	no counterpart	q	(2) f
e	no counterpart	r	no counterpart
f	q		

Comparison of HB 1284 and HB1397 on definitions
Insurance Department
February 6, 2009

This is a summary of definitions related to points brought out in testimony at the hearing on February 2, 2009. It does not include every detail of the contents of both bills.

HB 1284 addresses definitions at § 26.1-33.4-01 found in the bill p. 1 line 23 through p. 10 line 26.

HB 1397 addresses definitions at § 26.1-33.3-01 found in the bill page 9 line 30 through page 24 line 2.

The two bills are the same regarding:

1. Definition of STOLI, which is not in current law. There are small differences in the two bills on STOLI definition.

HB 1284 p. 10 line 13 – 24:

“Stranger-originated life insurance” is a practice or plan to initiate a life insurance policy for the benefit of a third-party investor that at the time of policy origination has no insurable interest in the insured. Stranger-originated life insurance practices include cases in which life insurance is purchased with resources or guarantees from or through a person that at the time of policy inception could not lawfully initiate the policy on its own, and where at the time of inception there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy or the policy benefits or both to a third party. Trusts that are created to give the appearance of insurable interest, and are used to initiate policies for investors, violate insurable interest laws and the prohibition against wagering on life. Stranger-originated life insurance arrangements do not include those practices set forth in subdivision b of subsection 11[“Life settlement contract’ does not include...[items 1 through 9]”].”

HB 1397 defines STOLI at p. 18 line 25 – p. 19 line 6. Overstrikes and underscores show the difference from HB 1284.

“Stranger-originated life insurance” is a practice or plan to initiate a life insurance policy for the benefit of a third-party investor that, at the time of policy origination, has no insurable interest in the insured. Stranger-originated life insurance practices include cases in which life insurance is purchased with resources or guarantees from or through a person that on its own, at the time of policy inception, could not lawfully initiate the policy ~~on its own~~, and where in which, at the time of policy inception, there is an arrangement or agreement, whether verbal or written, to directly or indirectly transfer the ownership of the policy or the policy benefits or both to a third party. Trusts that are created to give the appearance of insurable interest, and are used to initiate policies for investors, violate insurable interest laws and the prohibition against wagering on life. Stranger-originated life insurance arrangements

do not include those practices set forth in subdivision c of subsection 7 [“Life settlement contract’ does not include...[items 1 through 8]”].”

Jack Kelly’s proposed amendment would delete “plan” from the first line of each definition of STOLI.

2. Definition of “life settlement contract” which is “viatical settlement contract” in current law. Most of the language is the same but there are some differences in the 2 bills on definition of “life settlement contract.”

HB 1284 p. 5 line 26 through page 6 line 7.

“Life settlement contract’ means a written agreement entered between a provider and an owner establishing the terms under which compensation or anything of value will be paid, which compensation or thing of value is less than the expected death benefit of the insurance policy or certificate, in return for the owner’s assignment, transfer, sale, devise, or bequest of the death benefit or any portion of an insurance policy or certificate of insurance for compensation; provided, however, that the minimum value of a life settlement contract must be greater than a cash surrender value or accelerated death benefit available at the time of an application for a life settlement contract. The term includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life on an individual residing in this state.”

HB 1397 defines “life settlement contract” at p. 13 line 17 through p. 14 line 11. Overstrikes and underscores show the difference from HB 1284.

“Life settlement contract’ means a written agreement ~~entered between a provider and an owner~~ between an owner and a provider or any affiliate of the provider establishing the terms under which compensation or anything of value is or will be paid, which compensation or ~~thing of~~ value is less than the expected death ~~benefit~~ benefits of the insurance policy ~~or certificate~~, in return for the owner’s present or future assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of an ~~the~~ insurance policy or certificate of insurance ~~for compensation~~; ~~provided, however, that the minimum value of a life settlement contract must be greater than a cash surrender value or accelerated death benefit available at the time of an application for a life settlement contract.~~ The term . “Life settlement contract” also includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life on ~~an individual~~ a person residing in this state.”

In both bills, the definition of “life settlement contract” goes on with language on what “life settlement contract” includes. It is mostly the same language in both bills

(HB 1284 p. 6 line 8 – 20. HB 1397 p. 13 line 28 through p. 14 line 11, except that HB 1284 add a provision that “life settlement contract” also includes a written agreement for a loan or other lending transaction, secured primarily by an individual or group life insurance policy. HB 1284 p. 6 line 9 -10.

3. The list of 9 items in HB 1284 and the list of 8 items in HB 1397, regarding what “life settlement contract does not include”.

1. Both list policy loan or accelerated death benefit. HB 1284 p. 6 line 22 – 24; HB 1397 p. 14 line 12 – 14.
2. Both list bank loans, if not used to evade regulation. **This is partly, but not totally, a complete match.** HB 1284 item (3) on p. 6 line 25 may be included in HB 1397 item (2) on p. 14 line 15 – 22. Whether these two treatments of the subject are the same or different could be determined by a person conversant with the details of premium financing or the use of life insurance as collateral for a loan.
3. Both list a loan made by a lender that does not violate N.D.C.C. chapter 26.1-20.1 [Insurance Premium Finance Companies]. HB 1284 p. 7 line 1 – 3. HB 1397 p. 14 line 23 -25. Both bills contain a cross reference to another part of the definition but the language referenced is not the same.
4. Both list an agreement where parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life of the insured. HB 1284 p. 7 line 4 – 8. HB 1397 p. 14 line 26 -29.
5. Both list employer-purchased insurance on the life of an employee. HB 1284 p. 7 line 9 -12. HB 1397 p. 14 line 30 through p. 15 line 2.
6. Both list bona fide business succession planning arrangement. HB 1284 p. 7 line 13 – 23. HB 1397 p. 15 line 4 – 13.
7. Both list agreement with a service provider or service provider’s trust who performs significant services for the service recipient’s trade or business. HB 1284 p. 7 line 24 – 27. HB 1397 p. 15 line 14 – 17.
8. Both list any other contract, transaction or arrangement that the commissioner determines is not of the type intended to be regulated by this chapter. HB 1284 p. 7 line 28 -30. HB 1397 p. 15 line 18 -21. **HB 1284 appears to be missing the word “exempted” after “arrangement” on page 7 line 28.**

4. Both bills throughout update the terminology to “life settlement” replacing the current terminology “viatical settlement”.

5. Definition of “fraudulent life settlement act”. HB 1284 p. 3 line 10 through page 5 line 16. HB 1397 p. 11 line 11 through p. 13 line 14.

This is substantially the same in both bills. Both bills state “any practice or plan which involves stranger-originated life insurance” is a fraudulent life settlement act. HB 1284 p. 4 line 6-7. HB 1397 p. 12 line 9-10. This is not in current law.

Both bills prohibit the presenting or preparing of false material information, or the concealing of material information, in a list of actions. HB 1284 p. 3 line 20 through p. 4 line 7. HB 1397 p. 11 line 16 through p. 12 line 6. The bills have the same list for items (a) through (h).

The bills have different content in item (i). HB 1284 item (i) states “(i) Any application for, the existence of, or any payments related to a loan secured directly or indirectly by any interest in a life insurance policy....” HB 1397 states “(i) A financing transaction.”

Both bills add as a fraudulent life settlement act the failure to disclose to the insurer, when requested by the insurer, that the prospective insured has undergone a life expectancy evaluation. HB 1284 p. 4 line 8 – 12. HB 1397 line 11 – 14.

Both bills prohibit the employing of any device, scheme or artifice in violation of state insurable interest laws in the solicitation, application or issuance of a policy. HB 1284 does this in the definition of “fraudulent life settlement act” p. 4 line 15 – 17. HB 1397 does this as a prohibited practice p. 52 line 4 – 6.

HB 1284 adds that it is a fraudulent life settlement act to “misrepresent the state of residence of an owner to be a state or jurisdiction that does not have a law substantially similar to this chapter for the purpose of evading or avoiding the provisions of this chapter.” HB 1284 p. 5 line 14 – 16. This language is not in the HB 1397 list on p. 13 ending at line 14.

6. New definitions in HB 1284. HB 1284 adds these definitions on p. 5 line 17 - 25, that are not in HB 1397:

- “Insured” p. 5 line 17 - 18
- “Life expectancy” p. 5 line 19 - 22
- “Life insurance producer” p. 5 line 23 - 25
- “Premium finance loan” p. 8 line 22- 24
- “Purchased policy” p. 9 line 19-20
- “Purchaser” p. 9 line 21 - 25

HB 1284 and HB 1397 both add these definitions that are not in current law:

- “Broker”. The definition is substantially the same in both bills.
- “Owner” HB 1284 p. 8 line 3 – 14. HB 1397 p. 16 line 24 through p. 17 line 10. The definitions differ slightly. Both definitions have the same list of 5 items for what “owner” does not include. HB 1284 p. 8 line 8 - 14. HB 1397 p. 17 line 4 – 10.

HB 1284 states: “‘Owner’ means the owner of a life insurance policy or a certificate holder under a group policy, with or without terminal illness, who enters or seeks to enter a life settlement contract.” Bill p. 8 line 3 – 5.

HB 1397 states: “‘Owner’ means the owner of a life insurance policy or a certificate holder under a group policy, ~~with or without a terminal illness, and who~~ that resides in this state and enters or seeks to enter a life settlement contract.” Bill p. 16 line 24 – 26.

The HB 1397 definition of “owner” includes a declaration of which state’s law governs when there is more than one owner on a single policy and the owner are residents of different states. HB 1397 p. 16 line 29 through p. 17 line 3. HB 1284 has the same language in its Conflict of Laws section in that bill p. 30 line 30 through p. 31 line 5.

- “Settled policy” The definition is the same in both bills.

Definitions in HB 1284 and 1397 that are in current law:

- “Provider” known in current law as “viatical settlement provider”. HB 1284 p. 8 line 25 through p. 9 line 18. HB 1397 p. 17 line 14 through p. 18 line 3. Both bills have a list of items that “provider” does not include. HB 1397 does not have HB 1284’s items j. and k. HB 1284 does not have HB 1397’s number 10.

Definitions in HB 1397 that are not in current law and are not in HB 1284:

- “Life settlement investment agent” HB 1397 p. 15 line 22 through p. 16 line 3.
- “Life settlement purchase agreement” HB 1397 p. 16 line 4 – 8.
- “Life settlement purchaser” HB 1397 p. 16 line 9 - 23