

SB 74-FN – AS INTRODUCED

2011 SESSION

11-1042
01/10

SENATE BILL **74-FN**

AN ACT relative to the life settlements act.

SPONSORS: Sen. Bragdon, Dist 11

COMMITTEE: Commerce

ANALYSIS

This bill makes various changes to the life settlements act.

Explanation: Matter added to current law appears in **bold italics**.
 Matter removed from current law appears [~~in brackets and struck through~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eleven

AN ACT relative to the life settlements act.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Life Settlements Act; Definitions. Amend RSA 408-D:2, XVI to read as follows:

2 XVI. "Stranger-originated life insurance" or "STOLI" means [~~a practice or plan~~] **an act or**
3 **agreement** to initiate a life insurance policy for the benefit of a third party investor who, at the time
4 of policy origination, has no insurable interest in the insured. STOLI practices include but are not
5 limited to cases in which life insurance is purchased with resources or guarantees from or through a
6 person, or entity who, at the time of policy inception, could not lawfully initiate the policy himself,
7 herself, or itself, and where, at the time of inception, there is an arrangement or agreement, whether
8 verbal or written, to directly or indirectly transfer the ownership of the policy and/or the policy
9 benefits to a third party. Trusts that are created to give the appearance of insurable interest and are
10 used to initiate policies for investors violate insurable interest laws and the prohibition against
11 wagering on life. STOLI arrangements do not include **otherwise lawful life settlement contracts**
12 **or** those practices set forth in RSA 408-D:2, XI(b)(2).

13 2 Life settlements Act; Licenses. Amend RSA 408-D:3, VI(a)(4) to read as follows:

14 (4) Has demonstrated evidence of financial responsibility in a format prescribed by
15 the commissioner through [~~either~~] **a notice of errors and omission insurance**, a surety bond
16 executed and issued by an insurer authorized to issue surety bonds in this state, or a deposit of cash,
17 certificates of deposit, or securities or any combination thereof in the amount of [~~\$250,000~~] **\$100,000**.

18 3 Life Settlements Act; Reporting Requirements and Privacy. Amend RSA 408-D:6, I to read as
19 follows:

20 I. Each life settlement provider shall file with the commissioner on or before March 1 of each
21 year an annual statement containing such information as the commissioner may prescribe by rule.
22 **Such information shall be limited to only those transactions where the viator is a resident**
23 **of this state.** Individual transaction data regarding the business of life settlements or data that
24 could compromise the privacy of personal, financial, and health information of the viator or insured
25 shall be filed with the commissioner on a confidential basis.

26 4 Life Settlements Act; Life Insurer Disclosure to Viator. RSA 408-D:8 is repealed and
27 reenacted to read as follows:

28 408-D:8 Notice to Policyholder Required.

29 I. Life insurers shall provide the written notice required by paragraph II to a policyholder, if
30 an insured is age 60 or older or is known by the insurer to be terminally ill or chronically ill, and if:

31 (a) The policyholder requests the surrender, in whole or in part, of a policy;

1 (b) The policyholder requests an accelerated death benefit under a policy;

2 (c) The insurer sends notice to the policyholder that the policy may lapse; provided,
3 however, that the insurer shall not be required to include the notice required by this paragraph to
4 the policyholder more than one time within a 12-month period from the date of the first notice of
5 lapse of the policy; or

6 (d) At any other time that the commissioner may require by rule.

7 II. The commissioner shall develop the written notice, adopted by rule pursuant to RSA 541-
8 A, to apprise policyholders of alternatives to the lapse or surrender of a policy and of the
9 policyholder's rights as a holder of a policy related to the disposition of a policy. The notice shall be
10 developed at no cost to insurers or other licensees and shall be written in lay terms.

11 III. The written notice shall include, but not be limited to, the following:

12 (a) A statement explaining that life insurance is a critical part of a broader financial
13 plan.

14 (b) A statement explaining that there are alternatives to the lapse or surrender of a
15 policy.

16 (c) A general description of the following alternatives to the lapse or surrender of a policy:

17 (1) Accelerated death benefits available under the policy or as a rider to the policy.

18 (2) The assignment of the policy as a gift.

19 (3) The replacement of the policy.

20 (4) The maintenance of the policy pursuant to the terms of the policy or a rider to the
21 policy, or through life settlement contract.

22 (5) The maintenance of the policy through loans issued by an insurer or a third
23 party, using the policy or the cash surrender value of the policy as collateral for the loan.

24 (6) Conversion of the policy from a term policy to a permanent policy.

25 (7) Conversion of the policy in order to obtain long-term care health insurance
26 coverage or a long-term care benefit plan.

27 (d) A statement explaining that life insurance, life settlements, or other alternatives to
28 the lapse or surrender of the policy described in the notice may or may not be available to a
29 particular policy owner depending on a number of circumstances, including the age and health
30 status of the insured or the terms of a life insurance policy, and that policyholders should contact
31 their financial advisor, insurance agent, broker, or attorney to obtain further advice and assistance.

32 IV. A violation of this section shall be deemed an unfair trade practice pursuant to RSA 417:4.

33 5 Life Settlements Act; General Rules. Amend RSA 408-D:11, I(a)(2) to read as follows:

34 (2) A document in which the insured consents to the release of his or her medical
35 records to a licensed life settlement provider, life settlement producer, and ***if the policy was issued***
36 ***less than 2 years from the date of application for a viatical settlement contract***, the
37 insurance company that issued the life insurance policy covering the life of the insured.

1 6 Life Settlements Act; Prohibited Practices. Amend RSA 408-D:12, II to read as follows:

2 II. It is a violation of this chapter for any person to enter into a life settlement contract at
3 any time prior to the application or issuance of a policy which is the subject of a life settlement
4 contract or within a [5] 2 year period commencing with the date of issuance of the insurance policy or
5 certificate unless the viator certifies to the life settlement provider that one or more of the following
6 conditions have been met within the [5] 2 year period:

7 (a) The policy was issued upon the viator's exercise of conversion rights arising out of a
8 group or individual policy, provided the total of the time covered under the conversion policy plus the
9 time covered under the prior policy is at least [60] 24 months. The time covered under a group policy
10 shall be calculated without regard to any change in insurance carriers, provided the coverage has
11 been continuous and under the same group sponsorship;

12 (b) The viator submits independent evidence to the life settlement provider that one or
13 more of the following conditions have been met within the [5] 2 year period:

14 (1) The viator or insured is terminally or chronically ill;

15 (2) The viator's spouse dies;

16 (3) The viator divorces his or her spouse;

17 (4) The viator retires from full-time employment;

18 (5) The viator becomes physically or mentally disabled and a physician determines
19 that the disability prevents the viator from maintaining full-time employment; ~~or~~

20 (6) A final order, judgment or decree is entered by a court of competent jurisdiction,
21 on the application of a creditor of the viator, adjudicating the viator bankrupt or insolvent, or
22 approving a petition seeking reorganization of the viator or appointing a receiver, trustee, or
23 liquidator to all or a substantial part of the viator assets; or

24 ***(7) The viator experiences a significant decrease in income that is***
25 ***unexpected and impairs the viator's reasonable ability to pay the policy premium; or***

26 (c) The viator enters into a life settlement contract more than 2 years after the date of
27 issuance of a policy and, with respect to the policy, at all times prior to the date that is 2 years after
28 policy issuance, ~~the following conditions are met:~~

29 ~~(1) Policy premiums have been funded exclusively with unencumbered assets,~~
30 ~~including an interest in the life insurance policy being financed only to the extent of its net cash~~
31 ~~surrender value, provided by, or fully recourse liability incurred by, the insured or a person~~
32 ~~described in RSA 408 D:2, IX(e)(5); and~~

33 ~~(2)~~ there is no agreement or understanding with any other person to guarantee any
34 such liability or to purchase, or stand ready to purchase, the policy, including through an assumption
35 or forgiveness of the loan.

36 7 Life Settlements Act; Prohibited Practices. Amend RSA 408-D:12, VII and VIII to read as follows:

1 VII. With respect to any life settlement contract or insurance policy, no life settlement
2 producer knowingly shall solicit an offer from, effectuate a life settlement with or make a sale to any
3 life settlement provider, life settlement purchaser, financing entity or related provider trust that is
4 controlling, controlled by, or under common control with such life settlement producer, ***unless such***
5 ***relationship is disclosed to the viator pursuant to RSA 408-D:9, II(c).***

6 VIII. With respect to any life settlement contract or insurance policy, no life settlement
7 producer knowingly may enter into a life settlement contract with a viator, if, in connection with
8 such life settlement contract, anything of value will be paid to a life settlement producer that is
9 controlling, controlled by, or under common control with such life settlement provider or the life
10 settlement purchaser, financing entity, or related provider trust that is involved in such life
11 settlement contract, ***unless such relationship is disclosed to the viator pursuant to RSA 408-***
12 ***D:9, II(c).***

13 8 New Paragraph; Life Settlements Act; Prohibited Practices. Amend RSA 408-D:12 by
14 inserting after paragraph XI the following new paragraph:

15 XII. No insurer shall:

16 (a) Engage in any transaction, act, or practice that restricts, limits, or impairs the lawful
17 transfer of ownership, change of beneficiary, or assignment of a policy.

18 (b) Make any false or misleading statement for the purpose of dissuading an owner or
19 insured from a lawful life settlement contract.

20 9 New Paragraph; Unfair Insurance Trade Practice. Amend RSA 417:4 by inserting after
21 paragraph XXIII the following new paragraph:

22 XXIV. Failure to Provide Notice. Failure to provide the notice required pursuant to
23 RSA 408-D:8.

24 10 Repeal. The following are repealed:

25 I. RSA 408-D:3, I(b)(4), relative to license and appointment requirements.

26 II. RSA 408-D:3, V, relative to appointment requirements.

27 III. RSA 408-D:9, I(n), relative to disclosure of affiliations.

28 IV. RSA 408-D:10, relative to life settlement provider and life settlement producer disclosure
29 to insurer.

30 11 Effective Date. This act shall take effect 60 days after its passage.

LBAO
11-1042
Revised 02/07/11

SB 74 FISCAL NOTE

AN ACT relative to the life settlements act.

FISCAL IMPACT:

The Insurance Department, Secretary of State and Department of Justice state this bill will have no fiscal impact on state, county, and local expenditures or revenue.

METHODOLOGY:

The Insurance Department, Secretary of State and Department of Justice state this bill makes various changes to the life settlements act. They further state this bill will have no fiscal impact on state, county, and local expenditures or revenue.