

Senate Bill 406

By: Senators Hudgens of the 47th, Seabaugh of the 28th, Harp of the 29th, Shafer of the 48th and Moody of the 56th

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 59 of Title 33 of the Official Code of Georgia Annotated, relating to life  
2 settlements, so as to revise certain definitions; to provide additional grounds for the  
3 suspension, revocation, or refusal to renew the license of life insurance producers; to make  
4 editorial revisions; to provide for related matters; to repeal conflicting laws; and for other  
5 purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 59 of Title 33 of the Official Code of Georgia Annotated, relating to life settlements,  
9 is amended by striking paragraphs (5), (8), and (13) and inserting in lieu thereof new  
10 paragraphs (5), (8), and (13) to read as follows:

11 "(5) 'Fraudulent life settlement act' includes:

12 (A) Acts or omissions committed by a person who, knowingly or with intent to defraud,  
13 for the purpose of depriving another of property or for pecuniary gain, commits, engages,  
14 or permits its employees or its agents to engage; in acts including:

15 (i) Presenting, causing to be presented, or preparing with knowledge or belief that it  
16 will be presented to or by a life settlement provider, financing entity, insurer, insurance  
17 producer, or another person; false material information, or concealing material  
18 information, as part of, in support of, or concerning a fact material to one or more of the  
19 following:

20 (I) An application for the issuance of a life settlement contract or policy;

21 (II) The underwriting of a life settlement contract or policy;

22 (III) A claim for payment or benefit pursuant to a life settlement contract or policy;

23 (IV) Premiums paid on a policy;

24 (V) Payments and changes in ownership or beneficiary made in accordance with the  
25 terms of a life settlement contract or policy;

26 (VI) The reinstatement or conversion of a policy;

1 (VII) ~~The~~ In the solicitation, offer, effectuation, or sale of a life settlement contract  
 2 or policy;

3 (VIII) The issuance of written evidence of a life settlement contract or insurance; or

4 (IX) A financing transaction; or

5 (ii) Employing any device, scheme, or artifice to defraud related to purchased policies;  
 6 or

7 (B) ~~In the furtherance of a fraud or to prevent the detection of a fraud a person commits~~  
 8 ~~or permits its employees or its agents to commit any of the following acts:~~ Any of the  
 9 following acts when committed or permitted by any person or its employees or agents in  
 10 the furtherance of a fraud or to prevent the detection of a fraud:

11 (i) Removing, concealing, altering, destroying, or sequestering ~~Remove, conceal, alter,~~  
 12 ~~destroy, or sequester~~ from the Commissioner the assets or records of a licensee or other  
 13 person engaged in the business of life settlements;

14 (ii) Misrepresenting or concealing ~~Misrepresent or conceal~~ the financial condition of  
 15 a licensee, financing entity, insurer, or other person;

16 (iii) Transacting ~~Transact~~ the business of life settlements in violation of laws requiring  
 17 a license, certificate of authority, or other legal authority for the transaction of the  
 18 business of life settlements; or

19 (iv) Filing ~~File~~ with the Commissioner or the chief insurance regulatory official of  
 20 another jurisdiction a document containing false information or otherwise ~~conceal~~  
 21 concealing information about a material fact from the Commissioner;

22 (C) Embezzlement, theft, misappropriation, or conversion of moneys, funds, premiums,  
 23 credits, or other property of a life settlement provider, life insurance producer, insurer,  
 24 insured, seller, policy owner, or another person engaged in the business of life settlements  
 25 or insurance;

26 (D) Recklessly entering into, negotiating, or otherwise dealing in a life settlement  
 27 contract, the subject of which is a policy that was obtained by presenting false  
 28 information concerning a fact material to the policy, or by concealing, for the purpose of  
 29 misleading another, information concerning a fact material to the policy, where the seller  
 30 or the seller's agent intended to defraud the insurance company that issued the policy.  
 31 As used in this subparagraph, 'recklessly' means engaging in the conduct in conscious and  
 32 clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant  
 33 facts or risks, this disregard involving a gross deviation from acceptable standards of  
 34 conduct; or

35 (E) Facilitating the change of state of residency of a policy or seller to avoid the  
 36 provisions of this chapter; or

1     (F) Attempting to commit, assist, aid, or abet in the commission of, or conspiracy to  
 2     commit, the acts or omissions specified in this paragraph."

3     "(8) 'Life settlement provider' means a person, other than a seller, who in this state, from  
 4     this state, or with a seller who is a resident of this state enters into or effectuates a life  
 5     settlement contract. Life settlement provider does not include:

6     (A) A bank, savings bank, savings and loan association, credit union, or other licensed  
 7     lending institution that takes an assignment of a policy as collateral for a loan;

8     (B) The issuer of a policy providing accelerated benefits pursuant to the policy;

9     (C) An authorized or eligible insurer that provides stop-loss coverage to a life settlement  
 10     provider, financing entity, special purpose entity, or related provider trust;

11     (D) A natural person who enters into or effectuates no more than one agreement in a  
 12     calendar year for the transfer of policies for any value less than the expected death  
 13     benefit;

14     (E) A financing entity;

15     (F) A special purpose entity;

16     (G) A related provider trust; or

17     (H) An accredited investor or qualified institutional buyer as defined, respectively, in  
 18     Regulation D, Rule 501, or Rule 144A of the Federal Securities Act of 1933, as amended,  
 19     and who purchases a purchased policy from a life settlement provider."

20     "~~(13) 'Seller' means the owner of a policy who is a resident of this state~~ who enters or seeks  
 21     to enter into a life settlement contract. For the purposes of this chapter, a seller is not  
 22     limited to an owner of a policy insuring the life of an individual with a terminal or chronic  
 23     illness or condition except where specifically addressed. If there is more than one owner  
 24     on a single policy and the owners are residents of different states, the transaction shall be  
 25     governed by the law of the state in which the owner having the largest percentage  
 26     ownership resides or, if the owners hold equal ownership, the state of residence of one  
 27     owner agreed upon in writing by all owners. Seller does not include:

28     (A) A licensee as provided by this chapter, including a life insurance producer;

29     (B) An accredited investor or qualified institutional buyer as defined, respectively, in  
 30     Regulation D, Rule 501, or Rule 144A of the Federal Securities Act of 1933, as amended;

31     (C) A financing entity;

32     (D) A special purpose entity; or

33     (E) A related provider trust."

**SECTION 2.**

1

2 Said chapter is further amended by striking subsection (b) of Code Section 33-59-4, relating  
3 to denial, revocation, suspension, or refusal of licensees, and inserting in lieu thereof a new  
4 subsection (b) to read as follows:

5 "(b) The Commissioner may suspend, revoke, or refuse to renew the license of a life  
6 insurance producer if the Commissioner finds that such life insurance producer has:

7 ~~(1) violated~~ Violated the provisions of this chapter;

8 (2) Received a fee, commission, or other valuable consideration for his or her services  
9 with respect to life settlement transactions that involved unlicensed life settlement  
10 providers or persons who offered or attempted to negotiate on behalf of another person  
11 a life settlement contract and who were not life insurance producers; or

12 (3) Dealt in bad faith with sellers."

13

**SECTION 3.**

14 All laws and parts of laws in conflict with this Act are repealed.