

STORAGE NAME: h1507a.in.doc
DATE: April 12, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
INSURANCE
ANALYSIS**

BILL #: HB 1507
RELATING TO: Viatical settlement contracts
SPONSOR(S): Representative(s) Bennett

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) INSURANCE YEAS 13 NAYS 0
- (2) JUDICIAL OVERSIGHT
- (3) COUNCIL FOR COMPETITIVE COMMERCE
- (4)
- (5)

I. SUMMARY:

A viatical settlement is an agreement under which the owner of a life insurance policy, the "viator," sells the policy to another person, the "viatical settlement provider," in exchange for an up-front payment, which is generally less than the expected death benefit under the policy. The viatical settlement provider buying the policy from the original policy owner takes over premium payments and, upon the death of the original policy owner, collects the death benefit under the policy.

In 1996, Florida established the framework for regulation of the viatical industry by the Department of Insurance (ch. 96-336, L.O.F., creating part XI of chapter 626, F.S.).

HB 1507 would make changes to the Viatical Settlement Act, including:

- Expanding the definition of "viatical settlement provider" to include those engaging in the practice of buying and selling previously viaticated policies. This would bring those trading viaticated policies in the secondary market under Department of Insurance regulation. These viatical settlement providers would be required to be licensed with the Department of Insurance, and would be granted until August 1, 2001 to be licensed.
- Requiring the viatical settlement provider initially effectuating the viatical settlement contract to track the viator.
- Revising current law to specify that viatical settlement providers domiciled in Florida are required to be licensed by the Department of Insurance even if they only viaticate policies with viators in other states and only sell viaticated policies to purchasers in other states.
- Specifying that the addition of a free accelerated death benefit onto a life insurance policy does not make that life insurance policy a health insurance policy.

On April 11, 2001, the Committee on Insurance adopted an amendment that is traveling with the bill. See Section VI. of this analysis for an explanation of the amendment.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1. Less Government Yes No N/A

Those persons buying and selling already viaticated policies would be required to be licensed as a viatical settlement provider by the Department of Insurance.

Viatical settlement providers would be required to track the viator's whereabouts and health and the payment of premiums.

2. Lower Taxes Yes No N/A
3. Individual Freedom Yes No N/A
4. Personal Responsibility Yes No N/A
5. Family Empowerment Yes No N/A

B. PRESENT SITUATION:

Viatical Settlements

A viatical settlement is an agreement under which the owner of a life insurance policy, the "viator," sells the policy to another person, the "viatical settlement provider," in exchange for an up-front payment, which is generally less than the expected death benefit under the policy. The viatical settlement provider buying the policy from the original policy owner takes over premium payments and, upon the death of the original policy owner, collects the death benefit under the policy. The amount paid to the viator could depend on the viator's life expectancy and on market forces.

Regulation of Viatical Settlements

In 1996, Florida established the framework for regulation of the viatical industry by the Department of Insurance (ch. 96-336, L.O.F., creating part XI of chapter 626, F.S.).

COMMON TERMS

A "viator" is the owner of the life insurance policy entering into the viatical settlement contract.

A "viatical settlement provider" is a person or entity entering into a viatical settlement contract with a viator. The term "viatical settlement provider" does not include a financial institution taking an assignment of a policy as collateral for a loan, an insurer with respect to accelerated benefits provisions of life insurance policies, or an individual entering into no more than one viatical settlement contract in a calendar year.

A "viatical settlement broker" is a person or entity arranging viatical transactions between providers and viators.

A "viatical sales agent" is a person locating investors willing to invest in the life insurance policy.

A "viatical settlement contract" is a written agreement between the viatical settlement provider and a viator.

A “viatical settlement purchase agreement” is a contract or agreement entered into by a purchaser, to which the viator is not a party, to purchase a life insurance policy for an economic benefit.

LICENSURE OF PERSONS INVOLVED IN VIATICAL SETTLEMENT TRANSACTIONS

The Department of Insurance licenses and regulates the persons involved in viatical settlement transactions in the primary market, including viatical settlement providers, brokers, and sales agents.

Viatical settlement purchase agreements and viatical settlement contracts effectuated by Florida-domiciled viatical settlement providers, brokers, and sales agents doing business with purchasers or viators residing in other states are subject to Florida law when the purchasers or viators reside in states not regulating viatical settlements.

FILING AND PRIOR APPROVAL OF DOCUMENTS AND FORMS

As a part of a viatical settlement provider’s application for licensure, the viatical settlement provider must submit to the Department of Insurance certain organizational documents, including documents relating to the conduct of the viatical settlement provider’s internal affairs.

Viatical settlement providers must also file their viatical settlement contracts with the Department of Insurance and obtain Department of Insurance approval prior to using them in Florida.

C. EFFECT OF PROPOSED CHANGES:

HB 1507 would make changes to the Viatical Settlement Act, including:

- Expanding the definition of “viatical settlement provider” to include those engaging in the practice of buying and selling already viaticated policies. These people would be required to be licensed with the Department of Insurance, and would be granted until August 1, 2001 to be licensed.
- Requiring the viatical settlement provider initially effectuating the viatical settlement contract to track the viator.
- Revising current law to specify that viatical settlement providers located in the state are required to be licensed by the Department of Insurance even if they only viaticate policies with viators in other states and only sell viaticated policies to purchasers in other states.
- Specifying that adding a free accelerated death benefit on to a life insurance policy does not make it a health insurance policy.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 626.9911, F.S., to expand the definition of “viatical settlement provider” to include persons purchasing, securing, or acquiring viaticated policies or interests in viaticated policies that become the subject of viatical settlement purchase agreements.

Section 2. Amends s. 626.924, F.S., to require the viatical settlement provider initially effectuating the viatical settlement contract with the viator to keep track of the viator. This section specifies that the viatical settlement provider would be required to track the viator’s whereabouts and health status, submission of death claims, and payment of premiums. Although the viatical settlement

provider would be ultimately responsible, this responsibility could be contracted to a third party. The viatical settlement provider would be responsible for tracking the insured even if the viaticated policy is sold to another party.

Section 3. Amends s. 626.99245, F.S., to specify that viatical settlement providers domiciled in Florida would be required to be licensed in Florida, even if the viatical settlement provider deals with out of state viators and purchasers.

Section 4. Creates s. 626.99297, F.S., provides a grace period until August 1, 2001, for unlicensed viatical settlement providers legally doing business in the state.

Section 5. Amends s. 627.601, F.S., to provide that life insurance contracts adding a free accelerated death benefit onto a life insurance policy would not make that life insurance policy a health insurance policy.

Section 6. Provides an effective date of July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some viatical settlement providers not currently licensed would be required to be licensed with the Department of Insurance.

D. FISCAL COMMENTS:

None

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 11, 2001, the Committee on Insurance adopted a "remove everything" amendment by Representative Bennett that is traveling with the bill. This amendment would revise definitions in current law and make other changes to the bill, including:

- Forms used in viatical settlements could be filed with the Department of Insurance by persons other than the viatical settlement provider.
- The disclosure requirements currently applying to viatical settlement providers would be expanded to apply to viatical settlement sales agents and to viatical settlement purchases made on the secondary market;
- Requires the use of a third-party trustee or escrow agent in viatical settlement transactions on the secondary market. Funds could not be released until the 3-day voidable period has expired.

The amendment also would remove the expanded definition of "viatical settlement provider" and the grace period allowed for viatical settlement providers, and remove the provision that life insurance contracts adding a free accelerated death benefit are not health insurance policies.

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VII. SIGNATURES:

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