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BILL



ANALYSIS

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House Bill 4501 (Substitute H-6 as passed by the House)
Sponsor: Representative Gerald Law
House Committee: Insurance
Senate Committee: Financial Services

Date Completed: 4-30-96

CONTENT

The bill would create a new act to regulate the sale and purchase of “viatical settlement contracts” (i.e., agreements for the sale of a life insurance policy’s death benefits). The bill would do all of the following:

- Prohibit a person from acting as a “provider” of a viatical settlement contract (i.e., from buying death benefits) without first registering with the Insurance Commissioner.
- Require a provider to disclose certain information to the “viator” of a viatical settlement contract (i.e., the policy holder).
- Specify certain requirements of a viatical settlement contract and of those entering into a contract.
- Provide that violation of the bill would be a felony punishable by up to one year’s imprisonment, a maximum fine of \$5,000, or both.

Definitions

“Viatical settlement contract” would mean a written agreement entered into between a provider and a viator, in which the provider agreed to pay the viator consideration in an amount less than the expected death benefit of the viator’s life insurance policy or certificate in return for the viator’s assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the policy to the provider.

“Provider” would mean a person who entered into a viatical settlement contract with a viator, but would not include a financial lending institution that took a policy as collateral for a loan; the issuer of a policy providing accelerated benefits under the Insurance Code (MCL 500.602); or an individual who entered into no more than one viatical settlement contract in a calendar year for the transfer of a policy for any value less than the expected death benefit.

“Viator” would mean the owner or holder of a life insurance policy or certificate, who had a catastrophic or life-threatening illness or condition and who entered into a viatical settlement contract.

Registration

A person could not act as a provider or enter into or solicit a viatical settlement contract without first registering with the Insurance Commissioner on a form provided by the Commissioner. The

Commissioner could require the applicant to disclose fully the identity of all stockholders, partners, officers, and employees.

The Commissioner could order a provider or applicant to produce records, books, files, or other information necessary to determine the qualifications of the applicant or whether the provider was or had acted in violation of the bill. A provider would have to maintain records of all transactions of contracts and make the records available to the Commissioner for inspection during reasonable business hours. A provider or applicant would have to pay the expenses incurred in conducting an examination.

The Insurance Commissioner could revoke the registration of a provider if the Commissioner found any of the following:

- There was a misrepresentation in the application for registration.
- The provider had been fraudulent or engaged in dishonest practices.
- The provider demonstrated a pattern of unreasonable payments to policy owners.
- The provider had been convicted of a felony or any misdemeanor that involved criminal fraud.
- The provider had violated a provision of the bill.

In addition to revoking a provider's registration, the Commissioner could do any of the following:

- Order payment of a civil fine of up to \$500 for each violation.
- If the person knew or reasonably should have known that he or she was in violation of the bill, order payment of a civil fine of not more than \$2,500 for each violation.
- Issue a cease and desist order.

Disclosure of Information

A provider would have to disclose all of the following information to a viator, no later than the date the contract was signed by the viator:

- Options, other than a viatical settlement contract, for a person with a catastrophic or life-threatening illness, including accelerated benefits offered by the issuer of the policy.
- That some or all of the contract consideration could be taxable, and that assistance should be sought from a personal tax advisor.
- That the contract consideration could be subject to the claims of creditors.
- That receipt of the contract consideration could adversely affect the viator's eligibility for government benefits or entitlements.
- The viator's right to rescind the contract within 30 days after the date the contract was executed or within 15 days after the viator received the contract consideration, whichever was less.
- The date by which the contract consideration would be available to the viator and the source of the consideration.

A provider would have to file with the Insurance Commissioner a copy of all disclosure information provided to a viator.

Viatical Settlement Contract

A provider entering into a contract with a viator would have to obtain both a written statement from a physician that the viator was of sound mind and under no constraint or undue influence and a

document, signed by the viator, that stated all of the following:

- Consent to the contract.
- Acknowledgment of the catastrophic or life-threatening illness.
- Representation that the viator had a full and complete understanding of both the contract and the benefits of the life insurance policy.
- A release of the medical records and acknowledgment that the contract had been entered into freely and voluntarily. (The provider would have to keep confidential all medical records received.)

A viatical settlement contract entered into in Michigan would have to contain a provision giving the viator the right to rescind the contract for at least 30 days after the date the contract was signed, or 15 days after the viator received the contract consideration, whichever was less.

Upon receiving from the viator the documents to effect the transfer of the policy, a provider would have to deposit the contract consideration in an escrow or trust account managed by a State- or Federally chartered financial institution, pending acknowledgment of the transfer by the life insurance policy's issuer. The financial institution would have to transfer the contract consideration to the viator immediately upon receiving acknowledgment of the transfer from the insurer. Failure by the provider to tender the contract consideration in this manner would render the viatical settlement contract void.

If a life insurance policy provided for double or additional indemnity in case of accidental death, and accidental death occurred, the provider would be entitled only to the face amount of the policy. Any amounts payable under the policy that exceeded the policy's face amount would have to be paid to the beneficiary designated by the viator or, if no beneficiary were designated, to the viator's estate.

Any offer to purchase a life insurance policy or certificate from a viator would have to be transmitted to the insurer that provided the life insurance policy. The insurer would have 10 days from the date of receipt to advise the viator of other alternatives that might be available under the policy. The notice would have to be transmitted by the provider of the viatical settlement contract.

Legislative Analyst: P. Affholter

FISCAL IMPACT

This bill would allow the Commissioner to order the payment of civil fines against a provider who was found to be in violation of the proposed act. Any additional revenue realized from the imposition of these fines would revert to the Bureau to be used to fund its administration. It is difficult to determine the exact amount of revenue these fines would generate as there is no way to predict the number of providers who would be found in violation.

The bill is expected to have only a minimal fiscal impact, if any, on the criminal justice system. To the extent that violators were prosecuted, convicted, and sanctioned, costs would increase. While there are no data available on the number of potential violators, it is not expected to be significant.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.