

BY: Finance Committee

AMENDMENTS TO SENATE BILL NO. 742

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 5, after the first semicolon insert “providing that this Act applies only to certain contracts between viators and viatical settlement providers;”; in line 12, after the first semicolon insert “allowing viatical settlement providers and viatical settlement brokers transacting business in this State on the effective date of this Act to continue to transact business in this State without being registered until a certain time under certain circumstances;”; and in line 16, strike “8-609” and substitute “8-610”.

AMENDMENT NO. 2

On page 1, after line 27, insert:

“(B) “CREDIT ENHANCER” INCLUDES AN AUTHORIZED INSURER THAT PROVIDES TO A VIATICAL SETTLEMENT PROVIDER STOP LOSS COVERAGE, AN ANNUITY POLICY, AN INSURANCE POLICY, OR SIMILAR COVERAGE.

(C) “FINANCING ENTITY” MEANS A PERSON:

(1) THAT IS AN UNDERWRITER, A PLACEMENT AGENT, A LENDER, A PURCHASER OF SECURITIES, A PURCHASER OF A POLICY OR CERTIFICATE FROM A VIATICAL SETTLEMENT PROVIDER, A CREDIT ENHANCER, OR AN ENTITY THAT HAS A DIRECT OWNERSHIP INTEREST IN A POLICY OR CERTIFICATE THAT IS THE SUBJECT OF A VIATICAL SETTLEMENT CONTRACT; AND

(2) (I) WHOSE PRINCIPAL ACTIVITY RELATED TO THE TRANSACTION IS PROVIDING FUNDS TO EFFECT THE VIATICAL SETTLEMENT OR PURCHASE OF ONE OR MORE VIATICATED POLICIES;

(Over)

(II) THAT HAS AN AGREEMENT IN WRITING WITH ONE OR MORE REGISTERED VIATICAL SETTLEMENT PROVIDERS TO FINANCE THE ACQUISITION OF VIATICAL SETTLEMENT CONTRACTS; OR

(III) THAT IS A QUALIFIED INSTITUTIONAL BUYER, AS THAT TERM IS DEFINED IN RULE 144A OF THE FEDERAL SECURITIES ACT OF 1933.”.

AMENDMENT NO. 3

On page 2, in lines 1, 5, 15, 29, and 36, strike “(B)”, “(C)”, “(D)”, “(E)”, and “(F)”, respectively, and substitute “(D)”, “(G)”, “(H)”, “(I)”, and “(J)”, respectively; after line 4, insert:

“(E) “RELATED PROVIDER TRUST” MEANS A TITLING TRUST OR OTHER TRUST THAT:

(1) IS ESTABLISHED BY A REGISTERED VIATICAL SETTLEMENT PROVIDER OR A FINANCING ENTITY FOR THE SOLE PURPOSE OF HOLDING THE OWNERSHIP OR BENEFICIAL INTEREST IN PURCHASED POLICIES IN CONNECTION WITH A FINANCING TRANSACTION; AND

(2) HAS A WRITTEN AGREEMENT WITH THE REGISTERED VIATICAL SETTLEMENT PROVIDER UNDER WHICH:

(I) THE VIATICAL SETTLEMENT PROVIDER IS RESPONSIBLE FOR ENSURING COMPLIANCE WITH ALL STATUTORY AND REGULATORY REQUIREMENTS; AND

(II) THE TRUST AGREES TO MAKE ALL RECORDS AND FILES RELATED TO VIATICAL SETTLEMENT TRANSACTIONS AVAILABLE TO THE COMMISSIONER AS IF THOSE RECORDS AND FILES WERE MAINTAINED DIRECTLY BY THE REGISTERED VIATICAL SETTLEMENT PROVIDER.

(F) “SPECIAL PURPOSE ENTITY” MEANS A CORPORATION, PARTNERSHIP, TRUST, LIMITED LIABILITY COMPANY, OR OTHER SIMILAR ENTITY FORMED SOLELY TO PROVIDE, EITHER DIRECTLY OR INDIRECTLY, ACCESS TO INSTITUTIONAL

CAPITAL MARKETS FOR A FINANCING ENTITY OR A REGISTERED VIATICAL SETTLEMENT PROVIDER.”;

and after line 28, insert:

“(3) “VIATICAL SETTLEMENT CONTRACT” DOES NOT INCLUDE A CONTRACT ENTERED INTO OR EFFECTUATED BETWEEN A VIATICAL SETTLEMENT PROVIDER AND A FINANCING ENTITY, A RELATED PROVIDER TRUST, OR A SPECIAL PURPOSE ENTITY.”.

AMENDMENT NO. 4

On page 3, in line 1, strike “(G)” and substitute “(K)”; after line 2, insert:

“8-602.

THIS SUBTITLE APPLIES ONLY TO A VIATICAL SETTLEMENT CONTRACT BETWEEN A VIATOR AND A VIATICAL SETTLEMENT PROVIDER.”;

in line 3, strike “8-602.” and substitute “8-603.”; in line 4, before “A” insert “(A)”; after line 6, insert:

“(B) EMPLOYEES AND AGENTS OF A REGISTERED VIATICAL SETTLEMENT PROVIDER OR A REGISTERED VIATICAL SETTLEMENT BROKER SHALL NOT BE REQUIRED TO BE SEPARATELY REGISTERED EXCEPT IN ACCORDANCE WITH REGULATIONS ADOPTED BY THE COMMISSIONER.”;

in line 7, strike “8-603.” and substitute “8-604.”; in line 12, strike “8-604.” and substitute “8-605.”; in line 21, strike “8-605.” and substitute “8-606.”; and in line 25, strike “SUBSECTION” and substitute “SUBSECTIONS (B) AND”.

On page 6, in line 23, strike “8-606.” and substitute “8-607.”.

On page 7, in lines 1, 20, and 28, strike “8-607.”, “8-608.”, and “8-609.”, respectively, and substitute “8-608.”, “8-609.”, and “8-610.”, respectively.

(Over)

AMENDMENT NO. 5

On page 4, in line 15, after “VIATOR” insert “, SUBJECT TO REPAYMENT OF ALL VIATICAL SETTLEMENT PROCEEDS AND ANY PREMIUMS AND LOAN INTEREST PAID BY THE VIATICAL SETTLEMENT PROVIDER”.

AMENDMENT NO. 6

On page 6, in line 2, after “OTHER” insert “THAN”.

On page 7, in line 6, after “(1)” insert “KNOWINGLY”.

On page 8, in line 6, strike “RETURN” and substitute “DELIVER”; after line 9, insert:

“SECTION 3. AND BE IT FURTHER ENACTED, That, in the absence of an order by the Commissioner to the contrary, a viatical settlement provider or a viatical settlement broker transacting business in this State on the effective date of this Act may continue to transact business in this State without being registered, as required under Section 1 of this Act, until the Commissioner approves or disapproves the viatical settlement provider’s or viatical settlement broker’s application for registration if:

(a) the viatical settlement provider or viatical settlement broker applies for registration no later than 30 days after the date the Commissioner makes available viatical settlement provider or viatical settlement broker registration applications; and

(b) the viatical settlement provider or viatical settlement broker complies with all other provisions of this Act.”;

and in line 10, strike “3.” and substitute “4.”.