

SENATE BILL 742

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2001 Regular Session
1r2557

By: **Senator Kelley**

Introduced and read first time: February 2, 2001

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Insurance - Viatical Settlement Providers and Viatical Settlement Brokers**

3 FOR the purpose of requiring viatical settlement providers and viatical settlement
4 brokers to register with the Insurance Commissioner under certain
5 circumstances; establishing certain registration requirements; requiring viatical
6 settlement providers and viatical settlement brokers to make certain disclosures
7 in a certain manner to viators under certain circumstances; providing for
8 renewal of registrations; authorizing the Insurance Commissioner to deny a
9 registration to an applicant or refuse to renew, suspend, or revoke a registration
10 under certain circumstances; authorizing the Commissioner to impose a certain
11 penalty or require restitution under certain circumstances; establishing certain
12 violations of this Act; defining certain terms; and generally relating to viatical
13 settlement providers and viatical settlement brokers under insurance.

14 BY adding to

15 Article - Insurance

16 Section 8-601 through 8-609, inclusive, to be under the new subtitle "Viatical
17 Settlement Providers and Viatical Settlement Brokers"

18 Annotated Code of Maryland

19 (1997 Volume and 2000 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article - Insurance**

23 **SUBTITLE 6. VIATICAL SETTLEMENT PROVIDERS AND VIATICAL SETTLEMENT**
24 **BROKERS.**

25 8-601.

26 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS

27 INDICATED.

1 (B) "POLICY" MEANS AN INDIVIDUAL OR GROUP POLICY, GROUP CERTIFICATE,
2 CONTRACT, OR ARRANGEMENT OF LIFE INSURANCE THAT AFFECTS THE RIGHTS OF A
3 RESIDENT OF THE STATE OR THAT BEARS A REASONABLE RELATION TO THE STATE,
4 REGARDLESS OF WHETHER DELIVERED OR ISSUED FOR DELIVERY IN THE STATE.

5 (C) (1) "VIATICAL SETTLEMENT BROKER" MEANS A PERSON THAT ON
6 BEHALF OF A VIATOR AND FOR A FEE, COMMISSION, OR OTHER VALUABLE
7 CONSIDERATION OFFERS OR ATTEMPTS TO NEGOTIATE VIATICAL SETTLEMENT
8 CONTRACTS BETWEEN A VIATOR AND ONE OR MORE VIATICAL SETTLEMENT
9 PROVIDERS.

10 (2) "VIATICAL SETTLEMENT BROKER" DOES NOT INCLUDE AN
11 ATTORNEY, CERTIFIED PUBLIC ACCOUNTANT, OR FINANCIAL PLANNER ACCREDITED
12 BY A NATIONALLY RECOGNIZED ACCREDITATION AGENCY, WHO IS RETAINED TO
13 REPRESENT THE VIATOR AND WHOSE COMPENSATION IS NOT PAID DIRECTLY OR
14 INDIRECTLY BY THE VIATICAL SETTLEMENT PROVIDER.

15 (D) (1) "VIATICAL SETTLEMENT CONTRACT" MEANS A WRITTEN
16 AGREEMENT THAT ESTABLISHES THE TERMS UNDER WHICH COMPENSATION OR
17 ANYTHING OF VALUE WILL BE PAID, WHICH COMPENSATION OR VALUE IS LESS
18 THAN THE EXPECTED DEATH BENEFIT OF THE POLICY, IN RETURN FOR THE
19 VIATOR'S ASSIGNMENT, TRANSFER, SALE, DEVISE, OR BEQUEST OF THE DEATH
20 BENEFIT OR OWNERSHIP OF ANY PART OF THE POLICY.

21 (2) "VIATICAL SETTLEMENT CONTRACT" INCLUDES:

22 (I) A CONTRACT FOR A LOAN OR OTHER FINANCING TRANSACTION
23 WITH A VIATOR SECURED PRIMARILY BY A POLICY, OTHER THAN A LOAN BY A LIFE
24 INSURER UNDER THE TERMS OF THE POLICY OR A LOAN SECURED BY THE CASH
25 VALUE OF A POLICY; AND

26 (II) AN AGREEMENT WITH A VIATOR TO TRANSFER OWNERSHIP OR
27 CHANGE THE BENEFICIARY DESIGNATION AT A LATER DATE REGARDLESS OF THE
28 DATE THAT COMPENSATION IS PAID TO THE VIATOR.

29 (E) (1) "VIATICAL SETTLEMENT PROVIDER" MEANS A PERSON, OTHER THAN
30 A VIATOR, THAT ENTERS INTO OR EFFECTUATES A VIATICAL SETTLEMENT
31 CONTRACT.

32 (2) "VIATICAL SETTLEMENT PROVIDER" DOES NOT INCLUDE AN
33 INDIVIDUAL WHO ENTERS INTO OR EFFECTUATES NO MORE THAN ONE AGREEMENT
34 IN A CALENDAR YEAR FOR THE TRANSFER OF POLICIES FOR ANY VALUE LESS THAN
35 THE EXPECTED DEATH BENEFIT.

36 (F) (1) "VIATOR" MEANS THE OWNER OR CERTIFICATE HOLDER OF A POLICY
37 WHO ENTERS OR SEEKS TO ENTER INTO A VIATICAL SETTLEMENT CONTRACT.

38 (2) "VIATOR" DOES NOT INCLUDE AN ACCREDITED INVESTOR OR
39 QUALIFIED INSTITUTIONAL BUYER, AS DEFINED IN REGULATION D, RULE 501, OR
40 RULE 144A OF THE FEDERAL SECURITIES ACT.

1 (G) "VIATICATED POLICY" MEANS A POLICY THAT HAS BEEN ACQUIRED BY A
2 VIATICAL SETTLEMENT PROVIDER UNDER A VIATICAL SETTLEMENT CONTRACT.

3 8-602.

4 A PERSON MUST REGISTER WITH THE COMMISSIONER BEFORE THE PERSON
5 ACTS AS OR REPRESENTS ITSELF AS A VIATICAL SETTLEMENT PROVIDER OR
6 VIATICAL SETTLEMENT BROKER IN THE STATE.

7 8-603.

8 AN APPLICANT FOR REGISTRATION SHALL:

9 (1) FILE WITH THE COMMISSIONER AN APPLICATION ON THE FORM
10 THAT THE COMMISSIONER REQUIRES; AND

11 (2) PAY TO THE COMMISSIONER A REGISTRATION FEE OF \$250.

12 8-604.

13 (A) NOTWITHSTANDING THE MANNER IN WHICH THE VIATICAL SETTLEMENT
14 BROKER IS COMPENSATED, A VIATICAL SETTLEMENT BROKER IS DEEMED TO
15 REPRESENT ONLY THE VIATOR AND OWES A FIDUCIARY DUTY TO THE VIATOR TO
16 ACT ACCORDING TO THE VIATOR'S INSTRUCTIONS AND IN THE BEST INTEREST OF
17 THE VIATOR.

18 (B) FOR PURPOSES OF THIS SUBTITLE, A VIATOR MAY NOT BE LIMITED TO AN
19 OWNER OR CERTIFICATE HOLDER OF A POLICY THAT INSURES THE LIFE OF AN
20 INDIVIDUAL WITH A TERMINAL OR CHRONIC ILLNESS OR CONDITION.

21 8-605.

22 (A) BEFORE AN OFFER TO PURCHASE A POLICY CAN BE MADE TO A VIATOR, A
23 VIATICAL SETTLEMENT PROVIDER SHALL:

24 (1) PROVIDE THE VIATOR WITH A DISCLOSURE STATEMENT THAT:

25 (I) CONTAINS THE DISCLOSURES REQUIRED IN SUBSECTION (C) OF
26 THIS SECTION; AND

27 (II) HAS BEEN SIGNED BY THE VIATICAL SETTLEMENT PROVIDER;
28 AND

29 (2) RECEIVE FROM THE VIATOR THE DISCLOSURE STATEMENT SIGNED
30 BY THE VIATOR.

31 (B) BEFORE AN OFFER TO PURCHASE A POLICY CAN BE MADE TO THE VIATOR,
32 A VIATICAL SETTLEMENT PROVIDER SHALL PROVIDE TO THE VIATOR A DISCLOSURE
33 STATEMENT THAT CONTAINS THE FOLLOWING DISCLOSURES:

1 (1) THERE ARE POSSIBLE ALTERNATIVES TO VIATICAL SETTLEMENT
2 CONTRACTS INCLUDING ANY ACCELERATED DEATH BENEFITS OR POLICY LOANS
3 OFFERED UNDER THE VIATOR'S POLICY;

4 (2) SOME OR ALL OF THE PROCEEDS OF THE VIATICAL SETTLEMENT
5 MAY BE TAXABLE UNDER FEDERAL OR STATE INCOME TAX LAW, AND ASSISTANCE
6 SHOULD BE SOUGHT FROM A PROFESSIONAL TAX ADVISOR;

7 (3) PROCEEDS OF THE VIATICAL SETTLEMENT COULD BE SUBJECT TO
8 THE CLAIMS OF CREDITORS;

9 (4) RECEIPT OF THE PROCEEDS OF A VIATICAL SETTLEMENT MAY
10 ADVERSELY AFFECT THE VIATOR'S ELIGIBILITY FOR MEDICAID OR OTHER
11 GOVERNMENT BENEFITS OR ENTITLEMENTS, AND ADVICE SHOULD BE OBTAINED
12 FROM THE APPROPRIATE GOVERNMENT AGENCIES;

13 (5) (I) THE VIATOR HAS THE RIGHT TO RESCIND A VIATICAL
14 SETTLEMENT CONTRACT FOR 15 CALENDAR DAYS AFTER RECEIPT OF THE VIATICAL
15 SETTLEMENT PROCEEDS BY THE VIATOR; AND

16 (II) IF THE INSURED DIES DURING THE RESCISSION PERIOD, THE
17 VIATICAL SETTLEMENT CONTRACT SHALL BE DEEMED TO HAVE BEEN RESCINDED,
18 SUBJECT TO REPAYMENT OF ALL VIATICAL SETTLEMENT PROCEEDS AND ANY
19 PREMIUMS, LOANS, AND LOAN INTEREST TO THE VIATICAL SETTLEMENT PROVIDER;

20 (6) FUNDS WILL BE SENT TO THE VIATOR WITHIN 3 BUSINESS DAYS
21 AFTER THE VIATICAL SETTLEMENT PROVIDER HAS RECEIVED THE INSURER'S OR
22 GROUP ADMINISTRATOR'S ACKNOWLEDGMENT THAT OWNERSHIP OF OR INTEREST
23 IN THE POLICY HAS BEEN TRANSFERRED AND THE BENEFICIARY HAS BEEN
24 DESIGNATED;

25 (7) ENTERING INTO A VIATICAL SETTLEMENT CONTRACT MAY CAUSE
26 OTHER RIGHTS OR BENEFITS, INCLUDING CONVERSION RIGHTS AND WAIVER OF
27 PREMIUM BENEFITS THAT MAY EXIST UNDER THE POLICY, TO BE FORFEITED BY THE
28 VIATOR, AND ASSISTANCE SHOULD BE SOUGHT FROM A FINANCIAL ADVISER; AND

29 (8) (I) THE INSURED MAY BE CONTACTED BY EITHER THE VIATICAL
30 SETTLEMENT PROVIDER OR THE VIATICAL SETTLEMENT BROKER OR ITS
31 AUTHORIZED REPRESENTATIVE FOR THE PURPOSE OF DETERMINING THE
32 INSURED'S HEALTH STATUS; AND

33 (II) THIS CONTACT IS LIMITED TO:

34 1. ONCE EVERY 3 MONTHS IF THE INSURED HAS A LIFE
35 EXPECTANCY OF MORE THAN 1 YEAR; AND

36 2. NOT MORE THAN ONCE PER MONTH IF THE INSURED HAS
37 A LIFE EXPECTANCY OF 1 YEAR OR LESS.

1 (C) (1) DISCLOSURE TO A VIATOR SHALL ALSO INCLUDE DISTRIBUTION OF A
2 BROCHURE THAT DESCRIBES THE PROCESS OF VIATICAL SETTLEMENTS.

3 (2) THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
4 FORM FOR THE BROCHURE SHALL BE USED UNLESS A BROCHURE IS DEVELOPED BY
5 THE COMMISSIONER.

6 (D) THE DISCLOSURE DOCUMENT SHALL CONTAIN THE FOLLOWING
7 LANGUAGE: "ALL MEDICAL, FINANCIAL, OR PERSONAL INFORMATION SOLICITED OR
8 OBTAINED BY A VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT
9 BROKER ABOUT AN INSURED, INCLUDING THE INSURED'S IDENTITY OR THE
10 IDENTITY OF FAMILY MEMBERS, A SPOUSE, OR A SIGNIFICANT OTHER MAY BE
11 DISCLOSED AS NECESSARY TO EFFECT THE VIATICAL SETTLEMENT BETWEEN THE
12 VIATOR AND THE VIATICAL SETTLEMENT PROVIDER. IF YOU ARE ASKED TO PROVIDE
13 THIS INFORMATION, YOU WILL BE ASKED TO CONSENT TO THE DISCLOSURE. THE
14 INFORMATION MAY BE PROVIDED TO SOMEONE WHO BUYS THE POLICY OR
15 PROVIDES FUNDS FOR THE PURCHASE. YOU MAY BE ASKED TO RENEW YOUR
16 PERMISSION TO SHARE INFORMATION EVERY 2 YEARS."

17 (E) A VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT BROKER
18 SHALL PROVIDE THE VIATOR WITH A COPY OF THE DISCLOSURE STATEMENT SIGNED
19 BY THE VIATOR AND THE VIATICAL SETTLEMENT PROVIDER OR VIATICAL
20 SETTLEMENT BROKER, AT THE TIME THAT AN APPLICATION FOR A VIATICAL
21 SETTLEMENT CONTRACT IS PROVIDED TO THE VIATOR.

22 (F) (1) A VIATICAL SETTLEMENT PROVIDER SHALL PROVIDE THE VIATOR
23 WITH AT LEAST THE DISCLOSURES REQUIRED BY THIS SUBSECTION NO LATER THAN
24 THE DATE THAT THE VIATICAL SETTLEMENT CONTRACT IS SIGNED BY ALL PARTIES.

25 (2) THE DISCLOSURES SHALL BE CONSPICUOUSLY DISPLAYED IN THE
26 VIATICAL SETTLEMENT CONTRACT OR IN A SEPARATE DOCUMENT SIGNED BY THE
27 VIATOR AND THE VIATICAL SETTLEMENT PROVIDER OR VIATICAL SETTLEMENT
28 BROKER.

29 (3) THE DISCLOSURES REQUIRED UNDER THIS SUBSECTION SHALL
30 PROVIDE THE FOLLOWING INFORMATION:

31 (I) A STATEMENT OF THE AFFILIATION, IF ANY, BETWEEN THE
32 VIATICAL SETTLEMENT BROKER, VIATICAL SETTLEMENT PROVIDER, AND THE
33 INSURER THAT ISSUED THE POLICY TO BE VIATICATED;

34 (II) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE
35 VIATICAL SETTLEMENT PROVIDER;

36 (III) A DISCLOSURE BY THE VIATICAL SETTLEMENT BROKER OF THE
37 AMOUNT AND METHOD OF CALCULATING THE VIATICAL SETTLEMENT BROKER'S
38 COMPENSATION, INCLUDING ANYTHING OF VALUE PAID OR GIVEN TO A VIATICAL
39 SETTLEMENT BROKER FOR THE PLACEMENT OF A POLICY;

1 (IV) IF THE POLICY TO BE VIATICATED HAS BEEN ISSUED AS A
2 JOINT POLICY OR INVOLVES FAMILY RIDERS OR ANY COVERAGE OF A LIFE OTHER
3 THE INSURED UNDER THE POLICY TO BE VIATICATED, THE VIATOR SHALL BE
4 INFORMED OF THE POSSIBLE LOSS OF COVERAGE ON THE OTHER LIVES UNDER THE
5 POLICY AND SHALL BE ADVISED TO CONSULT WITH AN INSURANCE PRODUCER OR
6 THE INSURER ISSUING THE POLICY FOR ADVICE ON THE PROPOSED VIATICAL
7 SETTLEMENT;

8 (V) 1. THE DOLLAR AMOUNT OF THE CURRENT DEATH BENEFIT
9 PAYABLE TO THE VIATICAL SETTLEMENT PROVIDER UNDER THE POLICY; AND

10 2. IF KNOWN, THE AVAILABILITY OF ANY ADDITIONAL
11 GUARANTEED INSURANCE BENEFITS, THE DOLLAR AMOUNT OF ANY ACCIDENTAL
12 DEATH AND DISMEMBERMENT BENEFITS UNDER THE POLICY, AND THE VIATICAL
13 SETTLEMENT PROVIDER'S INTEREST IN THOSE BENEFITS; AND

14 (VI) 1. THE NAME, BUSINESS ADDRESS, AND TELEPHONE
15 NUMBER OF THE INDEPENDENT THIRD PARTY ESCROW AGENT; AND

16 2. THE FACT THAT THE VIATOR OR OWNER MAY INSPECT OR
17 RECEIVE COPIES OF THE RELEVANT ESCROW OR TRUST AGREEMENTS OR
18 DOCUMENTS.

19 (G) IF THE VIATICAL SETTLEMENT PROVIDER TRANSFERS OWNERSHIP OR
20 CHANGES THE BENEFICIARY OF THE POLICY, THE VIATICAL SETTLEMENT PROVIDER
21 SHALL COMMUNICATE THE CHANGE IN OWNERSHIP OR BENEFICIARY TO THE
22 INSURED WITHIN 20 DAYS AFTER THE CHANGE.

23 8-606.

24 (A) A REGISTRATION EXPIRES AT THE END OF EVERY OTHER YEAR ON THE
25 ANNIVERSARY OF THE REGISTRATION UNLESS IT IS RENEWED AS PROVIDED IN THIS
26 SECTION.

27 (B) BEFORE A REGISTRATION EXPIRES, THE REGISTRANT MAY RENEW IT FOR
28 AN ADDITIONAL 2-YEAR TERM, IF THE REGISTRANT:

29 (1) OTHERWISE IS ENTITLED TO BE REGISTERED;

30 (2) FILES WITH THE COMMISSIONER A RENEWAL APPLICATION ON THE
31 FORM THAT THE COMMISSIONER REQUIRES; AND

32 (3) PAYS TO THE COMMISSIONER A RENEWAL FEE OF \$50.

33 (C) AN APPLICATION FOR RENEWAL OF A REGISTRATION SHALL BE
34 CONSIDERED MADE IN A TIMELY MANNER IF IT IS POSTMARKED ON OR BEFORE THE
35 ANNIVERSARY DATE OF THE REGISTRATION OF THE YEAR OF RENEWAL.

1 8-607.

2 SUBJECT TO THE HEARING PROVISIONS OF TITLE 2 OF THIS ARTICLE, THE
3 COMMISSIONER MAY DENY A REGISTRATION TO AN APPLICANT OR REFUSE TO
4 RENEW, SUSPEND, OR REVOKE THE REGISTRATION OF A REGISTRANT IF THE
5 APPLICANT OR REGISTRANT:

6 (1) MAKES A MATERIAL MISSTATEMENT IN AN APPLICATION FOR
7 REGISTRATION;

8 (2) FRAUDULENTLY OR DECEPTIVELY OBTAINS OR ATTEMPTS TO
9 OBTAIN A REGISTRATION FOR THE APPLICANT OR REGISTRANT OR FOR ANOTHER;

10 (3) HAS BEEN CONVICTED OF A FELONY OR OF A MISDEMEANOR
11 INVOLVING MORAL TURPITUDE;

12 (4) IN CONNECTION WITH THE VIATICAL SETTLEMENT CONTRACT AND
13 RELATED INSURANCE APPLICATION, COMMITS FRAUD OR ENGAGES IN ILLEGAL OR
14 DISHONEST ACTIVITIES;

15 (5) HAS OTHERWISE SHOWN A LACK OF TRUSTWORTHINESS OR
16 COMPETENCE TO ACT AS A VIATICAL SETTLEMENT BROKER OR VIATICAL
17 SETTLEMENT PROVIDER; OR

18 (6) VIOLATES ANY PROVISION OF THIS SUBTITLE OR A REGULATION
19 ADOPTED UNDER IT.

20 8-608.

21 INSTEAD OF OR IN ADDITION TO SUSPENDING OR REVOKING A REGISTRATION,
22 THE COMMISSIONER MAY:

23 (1) IMPOSE ON THE HOLDER A PENALTY NOT EXCEEDING \$125,000 FOR
24 EACH VIOLATION OF THIS SUBTITLE;

25 (2) REQUIRE THE HOLDER TO MAKE RESTITUTION TO ANY PERSON
26 THAT HAS SUFFERED FINANCIAL INJURY BECAUSE OF THE VIOLATION OF THIS
27 SUBTITLE.

28 8-609.

29 IT IS A VIOLATION OF THIS SUBTITLE FOR A VIATICAL SETTLEMENT BROKER OR
30 VIATICAL SETTLEMENT PROVIDER TO:

31 (1) VIOLATE ANY PROVISION OF THIS SUBTITLE OR ANY REGULATION
32 ADOPTED UNDER THIS SUBTITLE;

33 (2) FAIL TO REGISTER WITH THE COMMISSIONER IN ACCORDANCE WITH
34 THIS SUBTITLE BEFORE ACTING OR REPRESENTING ITSELF AS A VIATICAL
35 SETTLEMENT BROKER OR VIATICAL SETTLEMENT PROVIDER;

1 (3) FAIL TO PROVIDE A VIATOR WITH A DISCLOSURE STATEMENT IN
2 ACCORDANCE WITH THIS SUBTITLE;

3 (4) FAIL TO ALLOW A VIATOR TO RESCIND A VIATICAL SETTLEMENT
4 CONTRACT UP TO AT LEAST 15 CALENDAR DAYS AFTER THE RECEIPT OF THE
5 VIATICAL SETTLEMENT PROCEEDS BY THE VIATOR; AND

6 (5) FAIL TO RETURN TO A VIATOR THE VIATICAL SETTLEMENT
7 PROCEEDS IN ACCORDANCE WITH THIS SUBTITLE.

8 SECTION 2. AND BE IT FURTHER ENACTED, That nothing in this Act shall
9 affect the jurisdiction of the Securities Commissioner.

10 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2001.