

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

House Bill 217 (Delegate Brown)
Economic Matters

Insurance - Viatical Settlement Providers and Viatical Settlement Brokers

This bill provides for registration of “viatical settlement providers” and “viatical settlement brokers” by the Maryland Insurance Administration (MIA).

Fiscal Summary

State Effect: Special fund expenditures could increase by \$20,000 in FY 2003 to upgrade MIA’s computer licensing system. Special fund revenues could increase beginning in FY 2003 from registration and renewal fees. Any such increase is assumed to be minimal.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: Under the bill, a “viatical settlement contract” is a written agreement that establishes the terms under which an insurance policy holder or owner (a “viator”) will receive compensation in exchange for an assignment, sale, transfer, devise, or bequest of the death benefit or ownership of the insurance policy. A “viatical settlement broker” is one who for a fee on, and on behalf of a viator, offers or attempts to negotiate viatical settlement contracts. Attorneys, certified public accountants, or accredited financial planners are excluded from the bill’s provisions. A “viatical settlement provider” is one who agrees to pay compensation to the viator under the viatical settlement contract.

A viatical settlement broker owes a fiduciary duty to a viator and must provide the viator with the disclosures required under the bill. A viator may not be limited to an owner or certificate holder of a policy that insures the life of an individual with a terminal or chronic illness or condition. The bill: (1) authorizes a viatical settlement provider or viatical settlement broker to contact the insured to determine the insured's health status; and (2) limits the contact depending on the life expectancy of the insured.

The viator has the right to rescind a contract for 15 calendar days after receipt of the settlement proceeds subject to repayment of the proceeds and any premiums and loan interest paid by the viatical settlement provider. If the insured dies during the rescission period, the viatical settlement contract is deemed to have been rescinded subject to repayment of all proceeds and any premiums, loans, and loan interest to the viatical settlement provider.

Applicants for registration as viatical settlement brokers and providers must pay a \$250 registration fee to MIA. Registration as a viatical settlement broker or provider lasts two years and may be renewed for a fee of \$50.

Violators of the bill are subject to: (1) suspension or revocation of a registration under the bill; (2) a penalty of up to \$125,000 imposed by MIA; and/or (3) restitution to any person who has suffered financial injury because of the violation.

The bill allows a viatical settlement provider or a viatical settlement broker transacting business in the State on October 1, 2002 to continue to transact business in the State without being registered until the Commissioner approves or disapproves the provider's or broker's application for registration if: (1) the provider or broker applies for registration no later than 30 days after the date the Commissioner makes applications available; and (2) the provider or broker complies with all other provisions of the bill.

Current Law: Viatical settlement brokers and providers are not licensed or regulated by MIA.

Background: A viatical settlement broker or provider facilitates the sale of a life insurance policy from an AIDS victim or other terminally ill patient to an investor at a discount. The investor then recovers the face value of the policy after the policyholder's death. Meanwhile, the terminally ill seller secures much-needed income in the final years of life when employment is unlikely and medical bills are staggering. In general, viatical settlements are a secondary market for life insurance policies.

The bill reflects provisions of the Viatical Settlements Model Act, which was released in December 2000 by the National Association of Insurance Commissioners.

State Revenues: Special fund revenues for MIA would increase by \$250 in fiscal 2003 for each person who registers under the bill. The number of potential registrants under the bill cannot be accurately estimated. Revenues in the out-years would reflect the two-year registration cycle.

General fund revenues could increase due to the bill's penalty provisions. Any such increase cannot be accurately estimated, but is assumed to be minimal.

State Expenditures: Special fund expenditures for MIA could increase by \$20,000 in fiscal 2003 to cover the cost of computer upgrades required for the bill's registration provisions. Assuming that the number of potential registrants is small, the bill's requirements could be handled with MIA's existing personnel. However, additional resources could be required if industry growth is significant.

Additional Information

Prior Introductions: A substantially similar bill, SB 742, passed third reading in the Senate during the 2001 session and received an unfavorable report from the House Economic Matters Committee.

Cross File: SB 165 (Senator Kelley, *et al.*) – Finance.

Information Source(s): Maryland Insurance Administration, Department of Legislative Services

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