

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 437

(Senator Bromwell)

Finance

Insurance - Life Settlement Act

This bill provides for licensure of providers, sales agents, and brokers of “life settlement contracts” by the Maryland Insurance Administration (MIA).

Fiscal Summary

State Effect: Special fund expenditures for MIA could increase by \$211,300 in FY 2003, reflecting the bill’s October 1, 2002 effective date. Out-year projections reflect annualization and inflation. Special fund revenues would increase to meet expenditures.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
SF Revenue	\$211,300	\$262,700	\$274,800	\$287,700	\$301,300
SF Expenditure	211,300	262,700	274,800	287,700	301,300
Net Effect	\$0	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: Under the bill, a “life settlement contract” is a written agreement between an owner of a life insurance policy and a life settlement provider that establishes the terms under which the owner will sell, assign, transfer, devise, or bequeath the expected death benefit payable under the policy for compensation that is less than the expected death benefit. A “broker” is a person who, on behalf of an owner and for

compensation, offers or attempts to negotiate a life settlement contract between a policy owner and one or more providers. A “purchaser” is a person who pays compensation for a beneficial interest in a life insurance policy. A “provider” is a person other than the policy owner who enters into a life settlement contract.

A person acting as a provider, sales agent, or broker must obtain a license from the Insurance Commissioner. Banking institutions, purchasers, and individuals who enter into no more than one life settlement agreement per year are exempt from the bill’s provider licensing provisions.

Applicants for licensure must pay a \$150 fee and provide any information requested by the Commissioner. For applicants that are business entities, the Commissioner may require disclosure of each stockholder, member, partner, officer, and employee. Applicants for a life settlement provider’s license must also provide a detailed plan of operation. A license lasts two years and may be renewed for a fee of \$50.

The bill requires that life settlement contract and purchase agreement forms be filed with, and approved by, the Commissioner. Licensees must also file annual statements with the Commissioner and include information required by regulation. Before entering into a life settlement contract with an owner of a policy insuring an individual who is chronically or terminally ill, a provider must obtain: (1) a written statement from a licensed attending physician that the insured is of sound mind and under no constraint or undue influence; (2) a witnessed document in which the insured releases necessary medical records and agrees to allow periodic medical updates; and (3) if the insured is the owner, a witnessed document in which the owner: (a) consents; (b) represents that the owner understands the contract and its benefits completely; (c) acknowledges the owner’s illness; and (d) acknowledges that the contract was entered into freely and voluntarily.

A provider must provide an owner with the required disclosures by the contract’s settlement date. Within three business days after receipt of the documents necessary to effect transfer of ownership, a provider must pay the proceeds to an escrow account managed by an independent escrow agent and located in a State-or federally-chartered financial institution. The escrow agent, in turn, must transfer the proceeds due the owner within three business days after receiving acknowledgment of the transfer of the policy from the insurer. A life settlement contract entered into within the two-year period that begins with the date of the policy’s issuance is void unless specified conditions are met.

Records of all life settlement contracts, purchase agreements, and any related documents must be made available to the Commissioner for inspection during reasonable business hours and maintained by the provider for five years following the insured’s death. The

Commissioner may examine the business and affairs of an applicant or a licensee. The applicant or licensee being examined must pay the cost of the examinations.

The bill prohibits a person from entering into a life settlement contract if the person knows or reasonably should have known that the policy was obtained by means of a false, deceptive, or misleading application. The bill also prohibits the use of deceptive means or practices in the advertisement, offer, or sale of a purchase agreement.

The provisions of the bill may not be waived by an agreement.

Violators of the bill are subject to: (1) suspension, denial, or revocation of a license under the bill; (2) a penalty of up to \$1,500 for each violation; and/or (3) restitution to any person who has suffered financial injury because of the violation.

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

Current Law: Life settlement contract providers, sales agents, and brokers are not currently licensed or regulated by MIA.

Background: The bill reflects provisions of the Life Settlements Model Act, which was released in November 2000 by the National Conference of Insurance Legislators.

State Fiscal Effect: The bill would require MIA to oversee three new license categories within a new field of licensure. Special fund expenditures could increase by an estimated \$211,300 in fiscal 2003, which accounts for the bill's October 1, 2002 effective date. This estimate reflects the cost of hiring one staff attorney, one rate and form analyst, one market conduct examiner, one financial examiner, and one financial analyst to adopt standards and regulations; develop, adopt, and process forms and licensing materials; conduct examinations; and process annual statements required under the bill. It includes salaries, fringe benefits, examiner travel, one-time start-up costs, and ongoing operating expenses.

Salaries and Fringe Benefits	\$193,100
Operating Expenses	<u>18,200</u>
Total FY 2003 State Expenditures	\$211,300

Future year expenditures reflect: (1) full salaries with 3.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Special fund revenues for MIA would increase by \$150 in fiscal 2003 for each person who becomes licensed under the bill and by \$125 for each form filed under the bill. The number of potential licensees and forms filed under the bill cannot be accurately estimated. Revenues in the out-years would reflect industry growth, the two-year licensing cycle, the \$50 license renewal fee, and potential changes in forms on file. MIA is a special fund agency, funded by fee revenues and an assessment on insurers. Any costs associated with the bill not accounted for by licensing and filing fee revenues would be made up through an increase in the assessment on insurers. Special fund revenues would also increase from fees collected to cover the cost of examination under the bill.

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.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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