

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 439

(Senator Kelley)

Finance

Health and Government Operations

Insurance - Viatical Settlement Providers and Viatical Settlement Brokers

This bill requires registration of “viatical settlement providers” and “viatical settlement brokers” with the Maryland Insurance Administration (MIA).

Fiscal Summary

State Effect: Minimal special fund revenue increase beginning in FY 2005 from registration and renewal fees. Assuming that the number of potential registrants is small, the bill’s requirements could be handled with MIA’s existing personnel.

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 policyholder 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 an insurance producer who is licensed to sell life insurance and, for a fee and on behalf of a viator, offers or attempts to negotiate viatical settlement contracts. Attorneys, certified public accountants, and accredited financial planners are excluded from the bill’s provisions. A “viatical settlement provider” is a person that agrees to pay compensation to the viator under the viatical settlement contract.

A viatical settlement broker owes a fiduciary duty to a viator, and a viatical settlement provider 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 who is terminally or chronically ill. 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 If the insured dies during the rescission period, the viatical settlement contract is deemed to have been rescinded subject to repayment of all proceeds and any premiums, loans, and loan interest to the viatical settlement provider.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 registration fee set by the Commissioner 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 Commissioner may also deny an application for registration or refuse to renew a registration.

The bill requires a viatical settlement contract and application to contain a statement warning of penalties for submitting false information. The bill also makes the submission of false information a fraudulent insurance act and requires a viatical settlement provider to have an antifraud plan in place.

A person is prohibited from entering into a viatical settlement contract within two years of the date of issuance of the policy unless specified conditions apply.

The bill allows a viatical settlement provider or a viatical settlement broker transacting business in the State on October 1, 2004 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. An individual who is not licensed to sell life insurance may act as a viatical settlement broker if the individual: (1) prior to October 1, 2004 has negotiated viatical settlement contracts for at least one year; (2) by November 1, 2004 registers with the Commissioner

as a viatical settlement broker; and (3) by October 1, 2005 becomes an insurance producer licensed to sell life insurance.

The bill requires the Commissioner to report to the Senate Finance Committee and the House Health and Government Operations Committee one year from the date registration applications are made available on whether the bill's registration fee is adequate.

Current Law: Viatical settlement brokers and providers are not licensed or regulated by MIA. The Securities Commissioner in the Office of the Attorney General has jurisdiction to regulate viatical settlements as they are sold to third parties as investment opportunities.

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: The bill authorizes the Commissioner to establish the registration fee. Special fund revenues for MIA would increase by the amount of the fee in fiscal 2005 for each person that 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 and the \$50 renewal fee.

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: An identical bill, SB 182, passed third reading in the Senate during the 2003 session. It was referred to the Health and Government Operations Committee in the House, where no further action was taken after it was heard. Similar bills were introduced in the 2001 and 2002 sessions. SB 165 of 2002 and SB 742 of 2001 passed third reading in the Senate and received unfavorable reports from the House Economic Matters Committee. HB 217 of 2001 received an unfavorable report from the House Economic Matters Committee.

Cross File: None.

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

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