

Department of Legislative Services

Maryland General Assembly

2006 Session

FISCAL AND POLICY NOTE

Revised

Senate Bill 689

(Senator Kelley, *et al.*)

Finance

Health and Government Operations

Insurance - Viatical Settlements

This bill establishes new requirements for viatical settlement brokers and insurers relating to viatical settlement transactions.

The bill takes effect July 1, 2006.

Fiscal Summary

State Effect: The bill's requirements could be handled with the existing budgeted resources of the Maryland Insurance Administration (MIA).

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: At the time of each application for a viatical settlement, a viatical settlement broker must provide the viator with a written disclosure that contains at least a description of the services that must be provided by statute.

A viatical settlement broker may not purchase, directly or indirectly, a policy that is the subject of a viatical settlement contract between the broker and a viator through: (1) a person owning or controlling an interest in the broker; or (2) a person in which any interest is owned or controlled by the broker.

A broker must submit to the viator all offers, counter-offers, acceptances, and rejections within 72 hours after receiving them. A written disclosure regarding the broker's compensation must also be provided within 72 hours.

The brochure that the broker must provide to a viator must contain a description of the broker's fiduciary duty under Maryland law to the viator.

An insurer must respond to a request for verification of coverage submitted by a viatical settlement provider or viatical settlement broker within 30 days after receiving the request if the request is received with a signed authorization from the viator and a "verification of coverage for life insurance policies" form. The Commissioner must adopt the form, by regulation, that appears in the model adopted by the National Association of Insurance Commissioners. An insurer may not, for responding to such a request, charge a fee that exceeds \$50.

The insurer may send an acknowledgement of receipt of a request for verification, containing specified information, to the viator and, if the viator is not the insured, the insured.

The bill does not affect the jurisdiction of the Securities Commissioner, whose office is in the Office of the Attorney General.

Current Law: 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.

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

A viatical settlement contract and a viatical settlement application must contain a statement warning of penalties for submitting false information. The submission of false information is a fraudulent insurance act.

Before an offer to purchase a policy can be made to a viator, the viatical settlement provider must provide a disclosure statement to the viator and must receive it back signed by the viator. The disclosure must include specified information. The disclosure must include the distribution of a brochure that describes the viatical settlement process. A

viatical settlement provider must also provide the viator with additional disclosures no later than the date that the viatical settlement contract is signed by all parties, including a disclosure by the broker of the amount and method of calculating the broker's compensation, including anything of value paid or given to the broker for the placement of a policy.

Background: A viatical settlement broker or provider facilitates the sale of a life insurance policy from a terminally ill patient or other person 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.

Additional Information

Prior Introductions: None.

Cross File: HB 1386 (Delegate Barve, *et al.*) – Health and Government Operations.

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

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