STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2373 By: Ramsey

AS INTRODUCED

An Act relating to insurance; creating the Viatical Settlements Act; defining terms; prohibiting acting as a viatical settlement provider without a license; providing for applications for license and fee; requiring disclosure of certain information; providing for authorization of certain persons; providing for an investigation by the Insurance Commissioner; prohibiting licensing of a nonresident; limiting transfers of viatical agreements; authorizing the Commissioner to suspend licenses for certain acts; listing acts; providing for an administrative hearing; requiring approval of a viatical settlement contract; requiring submission of an annual statement; authorizing the Commissioner to examine the business and affairs of a licensee; providing for confidentiality of identity of a viator; providing for inspection of transactions; requiring disclosure of certain information to a viator; requiring a viatical settlement provider to obtain certain documentation; providing time period for refunds; providing for transfer of insurance policy; stating authority of the Commissioner; stating acts which constitute an unfair viatical settlement practice;

providing penalty for violation of unfair viatical settlement practice; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4041 of Title 36, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Viatical Settlements Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4042 of Title 36, unless there is created a duplication in numbering, reads as follows:

For purposes of this act, the following definitions shall apply:

1. "Commissioner" means the Insurance Commissioner;

2. "Person" means any natural or artificial entity including, but not limited to, individuals, partnerships, associations, trusts, or corporations;

3. "Viatical settlement broker" means an individual, partnership, corporation, or other entity who or which for another and for a fee, commission, or other valuable consideration offers or advertises the availability of viatical settlements, introduces viators to viatical settlement providers, or offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers. "Viatical settlement broker" does not include an attorney, accountant, or financial planner retained to represent the viator whose compensation is not paid by the viatical settlement provider;

4. "Viatical settlement contract" means a written agreement entered into between a viatical settlement provider and a person owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life-threatening illness or condition. The agreement shall establish the terms under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyowner's assignment, transfer, sale, devise, or bequest of death benefit or ownership of the insurance policy or certificate to the viatical settlement provider;

5. "Viatical settlement provider" means an individual, partnership, corporation, or other entity that enters into an agreement with a person owning a life insurance policy or who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life-threatening illness or condition, under the terms of which the viatical settlement provider pays compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the policyowner's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider. Viatical settlement provider does not include:

a. any bank, savings bank, savings and loan association, credit union, or other licensed lending institution which takes an assignment of a life insurance policy as collateral for a loan,

b. the issuer of a life insurance policy providing accelerated benefits, or

c. any natural person who enters into no more than one agreement in a calendar year for the transfer of life

insurance policies for any value less than the expected death benefit; and

6. "Viator" means the owner of a life insurance policy insuring the life of a person with a catastrophic or life-threatening illness or condition or the certificate holder who enters into an agreement under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4043 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. No individual, partnership, corporation, or other entity may act as a viatical settlement provider or enter into or solicit a viatical settlement contract without first having obtained a license from the Insurance Commissioner.

B. Application for a viatical settlement provider license shall be made to the Commissioner by the applicant on a form prescribed by the Commissioner, and the application shall be accompanied by a fee of One Hundred Dollars ($100.00).

C. Licenses may be renewed from year to year on the anniversary date upon payment of the annual renewal fee of Five Hundred Dollars ($500.00). Failure to pay the fee within the terms prescribed shall result in the automatic revocation of the license.

D. The applicant shall provide such information as the Commissioner may require on forms prepared by the Commissioner. The Commissioner shall have authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, and employees, and the Commissioner may, in the exercise of discretion, refuse to issue a license in the name of any

firm, partnership, corporation, or other entity if not satisfied that any officer, employee, stockholder, or partner thereof who may materially influence the applicant's conduct meets the standards of this act.

E. A license issued to a firm, partnership, corporation, or other entity authorizes all members, officers, and designated employees to act as viatical settlement providers under the license, and all such persons must be named in the application and any supplements to the application.

F. Upon filing an application and payment of the license fee, the Commissioner shall investigate each applicant and may issue a license if the Commissioner finds that the applicant:

1. Has provided a detailed plan of operation;

2. Is competent and trustworthy and intends to act in good faith in the capacity for which licensure is sought;

3. Has a good business reputation and has had experience, training, or education so as to be qualified in the business for which licensure is sought; and

4. If the applicant is a corporation, is incorporated under the laws of this state or is a foreign corporation authorized to transact business in this state.

G. The Commissioner shall not issue any license to any nonresident applicant, unless a written designation of an agent for service of process is filed and maintained with the Commissioner or the applicant has filed with the Commissioner the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the Commissioner.

H. Viatical settlement transfers shall only be made between an approved Oklahoma insurance company and an Oklahoma-approved viatical settlement provider.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4044 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner shall have the right to suspend, revoke, or refuse to renew the license of any viatical settlement provider if the Commissioner finds that:

1. There was any misrepresentation in the application for the license;

2. The holder of the license has been guilty of fraudulent or dishonest practices, is subject to final administrative actions, or is otherwise shown to be untrustworthy or incompetent to act as a viatical settlement provider;

3. The licensee demonstrates a pattern of unreasonable payments to policyowners;

4. The licensee has been convicted of a felony or any misdemeanor of which criminal fraud is an element; or

5. The licensee has violated any of the provisions of this act.

B. Before the Commissioner shall deny a license application or suspend, revoke, or refuse to renew the license of a viatical settlement provider, the Commissioner shall conduct a hearing in accordance with the Administrative Procedures Act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4045 of Title 36, unless there is created a duplication in numbering, reads as follows:

No viatical settlement provider may use any viatical settlement contract in this state unless it has been filed with and approved by the Commissioner. Any viatical settlement contract form filed with the Commissioner shall be deemed approved if it has not been disapproved within sixty (60) days of the filing. The Commissioner shall disapprove a viatical settlement contract form if, in the Commissioner's opinion, the contract or any of its provisions are

unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the policyowner.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4046 of Title 36, unless there is created a duplication in numbering, reads as follows:

Each licensee shall file with the Commissioner on or before March 1 of each year an annual statement containing such information as the Commissioner by rule may prescribe.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4047 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. The Commissioner may, when the Commissioner deems it reasonably necessary to protect the interest of the public, examine the business and affairs of any licensee or applicant for a license. The Commissioner shall have the authority to order any licensee or applicant to produce any records, books, files, or other information reasonably necessary to ascertain whether or not the licensee or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. The expenses incurred in conducting any examination shall be paid by the licensee or applicant.

B. Names and individual identification data for all viators shall be considered confidential information and shall not be disclosed by the Commissioner, unless required by law.

C. Records of all transactions of viatical settlement contracts shall be maintained by the licensee and shall be available to the Commissioner for inspection during reasonable business hours.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4048 of Title 36, unless there is created a duplication in numbering, reads as follows:

A viatical settlement provider shall disclose the following information to the viator no later than the date the viatical settlement contract is signed by all parties:

1. Possible alternative to viatical settlement contracts for persons with catastrophic or life-threatening illnesses including, but not limited to, accelerated benefits offered by the issuer of the life insurance policy;

2. That some or all of the proceeds of the viatical settlement may be taxable and that assistance should be sought from a personal tax advisor;

3. That the viatical settlement could be subject to creditors' claims;

4. That receipt of a viatical settlement may adversely affect the recipients' eligibility for Medicaid or other government benefits or entitlements, and that advice should be obtained from the appropriate agencies;

5. The policyowner's right to rescind a viatical settlement contract within thirty (30) days of the date it is executed by all parties or fifteen (15) days of the receipt of the viatical settlement proceeds by the viator, whichever is less, as provided in subsection C of Section 9 of this act; and

6. The date by which the funds will be available to the viator and the source of the funds.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4049 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. A viatical settlement provider entering into a viatical settlement contract with any person with a catastrophic or life-threatening illness or condition shall first obtain:

1. A written statement from a licensed attending physician that the person is of sound mind and under no constraint or undue influence; and

2. A witnessed document in which the person:

a. consents to the viatical settlement contract,

b. acknowledges the catastrophic or life-threatening illness,

c. represents a full and complete understanding of the viatical settlement contract,

d. represents a full and complete understanding of the benefits of the life insurance policy,

e. releases medical records, and

f. acknowledges that the viatical settlement contract has been entered into freely and voluntarily.

The witness, as required in this paragraph, shall be a disinterested third party.

B. All medical information solicited or obtained by any licensee shall be subject to the applicable provisions of state law relating to confidentiality of medical information.

C. All viatical settlement contracts entered into in this state shall contain an unconditional refund provision of at least thirty (30) days from the date of the contract, or fifteen (15) days of the receipt of the viatical settlement proceeds, whichever is less.

D. Immediately upon receipt from the viator of documents to effect the transfer of the insurance policy, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a bank approved by the Commissioner, pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent shall be required to transfer the proceeds due to the viator immediately upon receipt of acknowledgment of the transfer from the insurer.

E. Failure to tender the viatical settlement by the date disclosed to the viator renders the contract null and void.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4050 of Title 36, unless there is created a duplication in numbering, reads as follows:

The Commissioner shall have the authority to:

1. Promulgate rules implementing the provisions of this act;

2. Establish standards for evaluating reasonableness of payments under viatical settlement contracts. This authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy;

3. Establish appropriate licensing requirements and fees for agents and brokers; and

4. Require a bond in an amount to be set by the Commissioner.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4051 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. Including but not limited to, the following acts by a viatical settlement provider or broker shall constitute an unfair viatical settlement practice:

1. Failing to fully disclose to a viator, benefits, coverages, or other provisions of any viatical settlement contract when such benefits, coverages, or other provisions are pertinent to the contract;

2. Knowingly misrepresenting to a viator pertinent facts relating to the viatical settlement contract at issue;

3. Failing to adopt and implement reasonable standards for prompt payment of amounts arising under its viatical settlement contracts;

4. Not attempting in good faith to effectuate prompt, fair, and equitable payment of amounts arising under its viatical settlement contracts;

5. Requesting a viator to sign a release that extends beyond the subject matter that gave rise to the viatical settlement contract;

6. Issuing checks or drafts in partial settlement of a loss or claim under a specified coverage which contain language which releases an insurer or its insured from its total liability;

7. Compelling, without just cause, policyowners to institute suits to recover amounts due under its insurance policies or insurance contracts by offering substantially less than the amounts ultimately recovered in suits brought by them, when such policyholders have made claims for amounts reasonably similar to the amounts ultimately recovered;

8. Failing to maintain a complete record of all complaints which it has received during the preceding three (3) years or since the date of its last examination by the Commissioner, whichever time is shorter. This record shall indicate the total number of complaints, their classification, the nature of each complaint, the disposition of each complaint, and the time it took to process each complaint. For the purposes of this paragraph, "complaint" means any written communication primarily expressing a grievance;

9. Entering into a viatical settlement contract where the subject life insurance policy or certificate was issued by the viatical settlement provider; and

10. Offering or advertising the availability of viatical settlements or negotiating a viatical settlement contract with policyowners or certificate holders issued by the principal viatical settlement provider.

B. Any viatical settlement provider or broker who violates any provision of this section shall be subject, after notice and hearing by the Insurance Commissioner, to a civil fine of not less than One Thousand Dollars ($1,000.00) for a nonwillful violation or Five Thousand Dollars ($5,000.00) for a willful violation for each

occurrence. Enforcement of the fine shall be in the same manner in which civil judgments may be enforced. Any fines collected by the Insurance Commissioner shall be deposited in the Insurance Commissioner's Revolving Fund.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4052 of Title 36, unless there is created a duplication in numbering, reads as follows:

No viatical settlement provider transacting business in this state may continue to do so after the effective date of this act unless it is in compliance with this act.

SECTION 13. This act shall become effective July 1, 1998.

SECTION 14. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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