

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1397

Page 7, line 13, after "contract" insert "or viatical settlement contract"

Page 7, line 16, replace "Life settlement contract" with "The term"

Page 7, line 19, remove "life settlement"

Page 12, line 4, after "(h)" insert "Any application for, the existence of, or any payments related to a loan secured directly or indirectly by an interest in a life insurance policy;

(i)"

Page 12, line 6, overstrike "(i)" and insert immediately thereafter "(j)"

Page 13, line 3, after "d." insert "Misrepresent the state of residence of an owner to be a state or jurisdiction that does not have a law substantially similar to this chapter for the purpose of evading or avoiding the provisions of this chapter;

e."

Page 13, line 7, after "policy" insert "or by concealing, for the purpose of misleading another, information concerning any fact material to the policy"

Page 13, line 13, overstrike "e." and insert immediately thereafter "f."

Page 29, line 2, after the period insert "Every provider that willfully fails to file an annual statement as required in this section, or willfully fails to reply within thirty days to a written inquiry by the commissioner in connection with the requirement, in addition to other penalties provided by this chapter, is subject, upon due notice and opportunity to be heard, to a penalty of up to two hundred fifty dollars per day, of delay, not to exceed twenty-five thousand dollars in the aggregate, for each such failure."

Page 41, replace lines 7 through 30 with:

~~"5. A viatical settlement provider or its viatical settlement investment agent shall provide the viatical settlement purchaser with at least the following disclosures prior to the date the viatical settlement purchase agreement is signed by all parties. The disclosures shall be conspicuously displayed in any viatical purchase contract or in a separate document signed by the viatical settlement purchaser and viatical settlement provider or viatical settlement investment agent, and shall make the following disclosure to the viatical settlement purchaser:~~

~~a. The purchaser will receive no returns, such as dividends and interest, until the insured dies and a death claim payment is made.~~

- b. ~~The actual annual rate of return on a viatical settlement contract is dependent upon an accurate projection of the insured's life expectancy, and the actual date of the insured's death. An annual "guaranteed" rate of return is not determinable.~~
- e. ~~The viaticated life insurance contract should not be considered a liquid purchase since it is impossible to predict the exact timing of its maturity and the funds probably are not available until the death of the insured. There is no established secondary market for resale of these products by the purchaser.~~
- d. ~~The purchaser may lose all benefits or may receive substantially reduced benefits if the insurer goes out of business during the term of the viatical investment.~~
- e. ~~The purchaser is responsible for payment of the insurance premium or other costs related to the policy, if required by the terms of the viatical purchase agreement. These payments may reduce the purchaser's return. If a party other than the purchaser is responsible for the payment, the name and address of that party also shall be disclosed.~~
- f. ~~The purchaser is responsible for payment of the insurance premiums or other costs related to the policy if the insured returns to health. Disclose the amount of such premiums, if applicable.~~
- g. ~~State the name, business address, and telephone number of the independent third party providing escrow services and the relationship to the broker.~~
- h. ~~The amount of any trust fees or other expenses to be charged to the viatical settlement purchaser shall be disclosed.~~
- i. ~~State whether the purchaser is entitled to a refund of all or part of the purchaser's investment under the settlement contract if the policy is later determined to be null and void.~~
- j. ~~Disclose that group policies may contain limitations or caps in the conversion rights, additional premiums may have to be paid if the policy is converted, name the party responsible for the payment of the additional premiums and, if a group policy is terminated and replaced by another group policy, state that there may be no right to convert the original coverage.~~
- k. ~~Disclose the risks associated with policy contestability including the risk that the purchaser will have no claim or only a partial claim to death benefits should the insurer rescind the policy within the contestability period.~~
- l. ~~Disclose whether the purchaser will be the owner of the policy in addition to being the beneficiary, and if the purchaser is the beneficiary only and not also the owner, the special risks associated with that status including the risk that the beneficiary may be changed or the premium may not be paid.~~
- m. ~~Describe the experience and qualifications of the person who determines the life expectancy of the insured, such as in-house staff, independent physicians, and specialty firms that weigh medical and actuarial data; the information this projection is based on; and the relationship of the projection maker to the viatical settlement provider, if any.~~

- n. ~~Disclosure to an investor shall include distribution of a brochure describing the process of investment in viatical settlements. The national association of insurance commissioners' form for the brochure shall be used unless one is developed by the commissioner.~~
6. ~~A viatical settlement provider or its viatical settlement investment agent shall provide the viatical settlement purchaser with at least the following disclosures no later than at the time of the assignment, transfer or sale of all or a portion of an insurance policy. The disclosures shall be contained in a document signed by the viatical settlement purchaser and viatical settlement provider or viatical settlement investment agent, and shall make the following disclosures to the viatical settlement purchaser:~~
- a. ~~Disclose all the life expectancy certifications obtained by the provider in the process of determining the price paid to the viator.~~
  - b. ~~State whether premium payments or other costs related to the policy have been escrowed. If escrowed, state the date upon which the escrowed funds will be depleted and whether the purchaser will be responsible for payment of premiums thereafter and, if so, the amount of the premiums.~~
  - c. ~~State whether premium payments or other costs related to the policy have been waived. If waived, disclose whether the investor will be responsible for payment of the premiums if the insurer that wrote the policy terminates the waiver after purchase and the amount of those premiums.~~
  - d. ~~Disclose the type of policy offered or sold, such as whole life, term life, universal life, or a group policy certificate, any additional benefits contained in the policy, and the current status of the policy.~~
  - e. ~~If the policy is term insurance, disclose the special risks associated with term insurance, including the purchaser's responsibility for additional premiums if the viator continues the term policy at the end of the current term.~~
  - f. ~~State whether the policy is contestable.~~
  - g. ~~State whether the insurer that wrote the policy has any additional rights that could negatively affect or extinguish the purchaser's rights under the viatical settlement contract, what these rights are, and under what conditions these rights are activated.~~
  - h. ~~State the name and address of the person responsible for monitoring the insured's condition. Describe how often the monitoring of the insured's condition is done, how the date of death is determined, and how and when this information will be transmitted to the purchaser.~~
7. ~~The viatical settlement purchase agreement is voidable by the purchaser at any time within three days after the disclosures mandated by subsections 5 and 6 are received by the purchaser."~~

Page 42, remove lines 1 through 31

Page 43, remove lines 1 through 30

Page 44, remove lines 1 through 7

Page 49, line 9, overstrike "divorces a spouse;"

Page 49, line 10, overstrike "(4) The" and remove "owner"

Page 49, line 11, overstrike "(5)" and insert immediately thereafter "(4)"

Page 50, after line 30 insert:

- "6. It is unlawful for any person to:
- a. Enter a life settlement contract if the person knows or reasonably should have known that the life insurance policy was obtained by means of a false, deceptive, or misleading application for such policy.
  - b. Engage in any transaction, practice, or course of business if the person knows or reasonably should have known that the intent was to avoid the notice requirements of this chapter.
  - c. Engage in any fraudulent act or practice in connection with any transaction relating to any settlement involving an owner who is a resident of this state.
  - d. With respect to a provider, enter a life settlement contract unless the life settlement promotional, advertising, and marketing materials, as may be prescribed by rule, have been filed with the commissioner. In no event may any marketing materials expressly reference that the insurance is "free" for any period of time. The inclusion of any reference in the marketing materials that would cause an owner to reasonably believe that the insurance is free for any period of time is a violation of this chapter.
  - e. With respect to any life insurance producer, insurance company, broker, or provider, make any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy."

Page 55, line 24, after "b." insert "Preempt, supersede, or limit any provision of any state securities law or any rule, order, or notice issued thereunder;

c."

Page 55, line 27, overstrike "c." and insert immediately thereafter "d."

Page 57, line 24, after the period insert "In the event of a willful violation of this chapter, the trial court may award statutory damages in addition to actual damages in an additional amount up to three times the actual damage award. The provisions of this chapter may

not be waived by agreement. A choice of law provision may not be used to prevent the application of this chapter to any settlement in which a party to the settlement is a resident of this state."

Page 59, after line 4 insert:

"10. For criminal liability purposes, a person that commits a fraudulent life settlement act is guilty of committing insurance fraud."

Renumber accordingly