

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1127 Session of
1999

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MARCH 29, 1999

REFERRED TO COMMITTEE ON INSURANCE, MARCH 29, 1999

AN ACT

1 Providing for viatical settlements and for powers and duties of
2 the Insurance Department.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

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

8 Section 2. Definitions.

9 The following words and phrases when used in this act shall
10 have the meanings given to them in this section unless the
11 context clearly indicates otherwise:

12 "Commissioner." The Insurance Commissioner of the
13 Commonwealth.

14 "Department." The Insurance Department of the Commonwealth.

15 "Financing entity." An underwriter, placement agent, lender,
16 purchaser of securities, purchaser of a policy or certificate

1 from a viatical settlement provider, credit enhancer or any
2 person that may be a party to a viatical settlement contract and
3 that has a direct ownership in a policy or certificate that is
4 the subject of a viatical settlement contract but whose sole
5 activity related to the transaction is providing funds to effect
6 the viatical settlement and who has an agreement in writing with
7 a licensed viatical settlement provider to act as a participant
8 in a financing transaction.

9 "Financing transaction." A transaction in which a licensed
10 viatical settlement provider or a financing entity obtains
11 financing for viatical settlement contracts, viaticated policies
12 or interest therein, including, without limitation, any secured
13 or unsecured financing, any securitization transaction or any
14 securities offering either registered or exempt from
15 registration under Federal and State securities law or any
16 direct purchase or interests in a policy or certificate if the
17 financing transaction complies with Federal and State securities
18 law.

19 "Person." A legal entity, including, but not limited to, an
20 individual, partnership, limited liability company, association,
21 trust, corporation or other legal entity.

22 "Viatical settlement broker." A person who on behalf of a
23 viator and for a fee, commission or other valuable consideration
24 offers or attempts to negotiate viatical settlements between a
25 viator and one or more viatical settlement providers.

26 Irrespective of the manner in which the viatical settlement
27 broker is compensated, a viatical settlement broker is deemed to
28 represent only the viator and owes a fiduciary duty to the
29 viator to act according to the viator's instructions and in the
30 best interest of the viator. The term does not include an

1 attorney, accountant or financial planner retained to represent
2 the viator whose compensation is paid directly by or at the
3 direction of the viator.

4 "Viatical settlement contract." A written agreement entered
5 into between a viatical settlement provider and a viator. The
6 agreement shall establish the terms under which the viatical
7 settlement provider will pay compensation or anything of value,
8 which compensation or value is less than the expected death
9 benefit of the insurance policy or certificate, in return for
10 the viator's assignment, transfer, sale, devise or bequest of
11 the death benefit or ownership of all or a portion of the
12 insurance policy or certificate of insurance to the viatical
13 settlement provider. The term also includes a contract for a
14 loan or other financial transaction secured primarily by an
15 individual or group life insurance policy, other than a loan by
16 a life insurance company pursuant to the terms of the life
17 insurance contract, or a loan secured by the cash value of a
18 policy.

19 "Viatical settlement provider." A person, other than a
20 viator, who enters into a viatical settlement contract. The term
21 shall include a person who obtains financing from a financing
22 entity for the purchase, acquisition, transfer or other
23 assignment of one or more viatical settlement contracts,
24 viaticated policies or interest therein or otherwise sells,
25 assigns, transfers, pledges, hypothecates or otherwise disposes
26 of one or more viatical settlement contracts, viaticated
27 policies or interests therein. The term shall not include:

28 (1) a bank, savings bank, savings and loan association,
29 credit union or other licensed lending institution that takes
30 an assignment of a life insurance policy as collateral for a

1 loan;

2 (2) the issuer of a life insurance policy providing
3 accelerated death benefits pursuant to the contract; or

4 (3) a natural person who enters into no more than one
5 agreement in a calendar year for the transfer of life
6 insurance policies for any value less than the expected death
7 benefit.

8 "Viatical settlement representative." A person who is an
9 authorized agent of a licensed viatical settlement provider or
10 viatical settlement broker, as applicable, who acts or aids in
11 any manner in the solicitation of a viatical settlement. The
12 term shall not include:

13 (1) an attorney, accountant or a person exercising a
14 power of attorney granted by a viator; or

15 (2) a person who is retained to represent a viator and
16 whose compensation is paid by or at the direction of the
17 viator regardless of whether the viatical settlement is
18 consummated.

19 A viatical settlement representative is deemed to represent only
20 the viatical settlement provider or viatical settlement broker.

21 "Viaticated policy." A life insurance policy or certificate
22 that has been acquired by a viatical settlement provider
23 pursuant to a viatical settlement contract.

24 "Viator." The owner of a life insurance policy or a
25 certificate holder under a group policy insuring the life of an
26 individual with a catastrophic, life-threatening or chronic
27 illness or condition who enters or seeks to enter into a
28 viatical settlement contract.

29 Section 3. License requirements.

30 (a) General rule.--No person may operate as a viatical

1 settlement provider, viatical settlement representative or
2 viatical settlement broker without first obtaining a license
3 from the department.

4 (b) Application.--Application for a viatical settlement
5 provider, viatical settlement representative or viatical
6 settlement broker license shall be made to the commissioner by
7 the applicant on a form prescribed by the department and shall
8 be accompanied by an application fee as determined by the
9 department.

10 (c) Renewal.--A license issued under this section may be
11 renewed biennially upon payment of a renewal fee as determined
12 by the department. Failure to pay the fee or submit the renewal
13 form within the terms prescribed by the department shall be
14 deemed voluntary termination of the license.

15 (d) Full disclosure.--The applicant shall provide
16 information on forms required by the commissioner. The
17 commissioner may, at any time, require the applicant to fully
18 disclose the identity of all stockholders, partners, officers,
19 members and employees, and the commissioner may, in the
20 commissioner's discretion, refuse to issue a license in the name
21 of a legal entity if not satisfied that any officer, employee,
22 stockholder, partner or member thereof who may materially
23 influence the applicant's conduct meets the standards set forth
24 in this act.

25 (e) Authorization.--A license issued to a legal entity
26 authorizes all members, officers and designated employees of the
27 legal entity to act as viatical settlement providers, viatical
28 settlement brokers or viatical settlement representatives as
29 applicable under the license and those persons shall be named in
30 the application and any supplements to the application.

1 (f) Investigation.--Upon the filing of an application and
2 the payment of the license fee, the commissioner shall make an
3 investigation of each applicant and issue a license if the
4 commissioner finds that the applicant:

5 (1) Has provided a detailed plan of operation.

6 (2) Is competent and trustworthy and intends to act in
7 good faith in the capacity involved by the license applied
8 for.

9 (3) Has a good business reputation and has had
10 experience, training or education so as to be qualified in
11 the business for which the license is applied for.

12 (4) If a legal entity, provides a certificate of good
13 standing from the state of its domicile.

14 (g) Hearing.--An applicant who disputes the department's
15 determination concerning licensure may seek a formal
16 administrative hearing before the commissioner under 2 Pa.C.S.
17 Ch. 5 Subch. A (relating to practice and procedure of
18 Commonwealth agencies) and subject to review and appeal in
19 accordance with 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial
20 review of Commonwealth agency action).

21 (h) Nonresident applicant.--The department may not issue a
22 license to a nonresident applicant unless a written designation
23 of an agent for service of process is filed with and maintained
24 by the department.

25 Section 4. License suspension, revocation and denial.

26 The department may suspend, revoke or refuse to renew the
27 license of a viatical settlement provider, viatical settlement
28 representative or viatical settlement broker if the department
29 finds that:

30 (1) there was any material misrepresentation in the

1 application for the license;

2 (2) the licensee or any officer, partner, member or key
3 management personnel of the licensee has been convicted of
4 fraudulent or dishonest practices, is subject to a final
5 administrative action or is otherwise shown to be
6 untrustworthy or incompetent;

7 (3) the viatical settlement provider demonstrates a
8 pattern of unreasonable payments to viators;

9 (4) the licensee has been found guilty of or has pleaded
10 guilty or nolo contendere to any felony or to a misdemeanor
11 involving fraud or moral turpitude, regardless of whether a
12 judgment of conviction has been entered by the court;

13 (5) the viatical settlement provider has entered into
14 any viatical settlement contract that has not been approved
15 under this act;

16 (6) the viatical settlement provider has failed to honor
17 contractual obligations set out in a viatical settlement
18 contract;

19 (7) the licensee no longer meets the requirements for
20 initial licensure;

21 (8) the viatical settlement provider has assigned,
22 transferred or pledged a viaticated policy to a person other
23 than a viatical settlement provider licensed in this
24 Commonwealth or a financing entity; or

25 (9) The licensee has violated any provision of this act
26 or any regulations promulgated by the department.

27 Section 5. Approval of viatical settlement contracts.

28 (a) General rule.--Any viatical settlement contract proposed
29 to be used by viatical settlement providers in this Commonwealth
30 shall be filed for review with the department. Unless

1 disapproved within 45 days of receipt by the department, the
2 filing shall be effective for use.

3 (b) Disapproval after use.--Any viatical settlement contract
4 approved or effective for use in accordance with subsection (a)
5 may be subsequently disapproved by the department. The
6 department shall notify the viatical settlement provider in
7 writing and provide the opportunity for a hearing as provided in
8 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of
9 Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial
10 review of Commonwealth agency action).

11 (c) Discontinuance of contract.--If following a hearing the
12 commissioner finds that a viatical settlement contract should be
13 disapproved, the commissioner shall order the use of the
14 contract to be discontinued after a date specified in the order.
15 Section 6. Reporting requirements and confidentiality.

16 (a) General rule.--Each viatical settlement provider shall
17 file with the department on or before March 1 of each year an
18 annual statement containing such information as the commissioner
19 by rule may prescribe.

20 (b) Confidentiality.--Except as otherwise allowed or
21 required by law, a viatical settlement provider, viatical
22 settlement representative, viatical settlement broker, insurance
23 company, insurance agent, insurance broker, information bureau,
24 rating agency or company or any other person with actual
25 knowledge of a viator's identity may not disclose that identity
26 as a viator to any other person unless the disclosure:

27 (1) is necessary to effect a viatical settlement between
28 the viator and a viatical settlement provider and the viator
29 has provided prior written consent to the disclosure;

30 (2) is provided in response to an investigation by the

1 commissioner or any other governmental officer or agency; or

2 (3) is a term of or condition to the transfer of a
3 viaticated policy by one viatical settlement provider to
4 another viatical settlement provider or financing entity.

5 (4) Is made by an insurance company in the course of its
6 business, including, without being limited to, activities
7 such as reinsurance transactions, sales or mergers of the
8 insurance company or one or more of its books of business,
9 handling and investigation of claims and conduct of all legal
10 proceedings connected with them, underwriting, litigation and
11 market conduct investigations.

12 Section 7. Examination.

13 (a) General rule.--The department may, when the department
14 deems it reasonably necessary to protect the interests of the
15 public, examine the business and affairs of any licensee or
16 applicant for a license. The department may order any licensee
17 or applicant to produce any records, books, files or other
18 information reasonably necessary to ascertain whether or not the
19 licensee or applicant is acting or has acted in violation of the
20 law or otherwise contrary to the interests of the public. The
21 expenses incurred in conducting any examination shall be paid by
22 the licensee or applicant.

23 (b) Confidentiality.--The names and individual
24 identification data for all viators shall be considered private
25 and confidential information and may not be disclosed by the
26 department unless required by law.

27 (c) Records.--Records of all transactions of viatical
28 settlement contracts shall be maintained by the viatical
29 settlement provider and shall be available to the department for
30 inspection and duplication during reasonable business hours. A

1 viatical settlement provider shall maintain records of each
2 viatical settlement until five years after the death of the
3 insured.

4 Section 8. Disclosure.

5 (a) General rule.--A viatical settlement provider, viatical
6 settlement representative or viatical settlement broker shall
7 disclose the following information to the viator no later than
8 the time of application:

9 (1) Possible alternatives to viatical settlement
10 contracts for individuals with catastrophic, life-threatening
11 or chronic illnesses, including any accelerated death
12 benefits offered under the viator's life insurance policy.

13 (2) Some or all of the proceeds of the viatical
14 settlement may be free from Federal income tax and from State
15 franchise and income taxes, and that assistance should be
16 sought from a professional tax advisor.

17 (3) Proceeds of the viatical settlement may be subject
18 to the claims of creditors.

19 (4) Receipt of the proceeds of a viatical settlement may
20 adversely affect the viator's eligibility for Medicaid or
21 other government benefits or entitlements, and that advice
22 should be obtained from the appropriate government agencies.

23 (5) The viator's right to rescind a viatical settlement
24 contract 15 days after the receipt of the viatical settlement
25 proceeds by the viator, as provided in section 9(c).

26 (6) Funds will be sent to the viator within two business
27 days after the viatical settlement provider has received the
28 insurer or group administrator's acknowledgment that
29 ownership of the policy or interest in the certificate has
30 been transferred and the beneficiary has been designated

1 pursuant to the viatical settlement contract.

2 (7) Entering into a viatical settlement contract may
3 cause other rights or benefits, including conversion rights
4 and waiver of premium benefits that may exist under the
5 policy or certificate, to be forfeited by the viator and that
6 assistance should be sought from a financial advisor.

7 (b) Disclosure by viatical settlement provider.--A viatical
8 settlement provider shall disclose the following information to
9 the viator prior to the date the viatical settlement contract is
10 signed by all parties:

11 (1) The affiliation, if any, between the viatical
12 settlement provider and the issuer of an insurance policy to
13 be viaticated.

14 (2) If an insurance policy to be viaticated has been
15 issued as a joint policy or involves family riders or any
16 coverage of a life other than the insured under the policy to
17 be viaticated, the viator shall be informed of the possible
18 loss of coverage on the other lives and be advised to consult
19 with his or her insurance producer or the company issuing the
20 policy for advice on the proposed viatication.

21 (3) The dollar amount of the current death benefit
22 payable to the viatical settlement provider under the policy
23 or certificate.

24 (4) The availability of any additional guaranteed
25 insurance benefits, the dollar amount of any accidental death
26 and dismemberment benefits under the policy or certificate
27 and the viatical settlement provider's interest in those
28 benefits.

29 Section 9. Guidelines.

30 (a) General rule.--A viatical settlement provider entering

1 into a viatical settlement contract shall first obtain:

2 (1) If the viator is the insured, a written statement
3 from a licensed attending physician that the viator is of
4 sound mind and under no constraint or undue influence to
5 enter into a viatical settlement contract.

6 (2) A witnessed document:

7 (i) in which the viator consents to the viatical
8 settlement contract;

9 (ii) acknowledges that the insured has a
10 catastrophic, life-threatening or chronic illness or
11 condition;

12 (iii) represents that the viator has a full and
13 complete understanding of the viatical settlement
14 contract, that he has a full and complete understanding
15 of the benefits of the life insurance policy; and

16 (iv) acknowledges that the viator has entered into
17 the viatical settlement contract freely and voluntarily.

18 (3) A document in which the insured consents to the
19 release of his medical records to a viatical settlement
20 provider or viatical settlement broker.

21 (b) Medical records.--All medical information solicited or
22 obtained by a licensee shall be subject to the applicable
23 provision of State law relating to confidentiality of medical
24 information.

25 (c) Rescission.--Each viatical settlement contract entered
26 into in this Commonwealth shall provide the viator with an
27 unconditional right to rescind the contract for at least 15
28 calendar days from the receipt of the viatical settlement
29 proceeds. If the insured dies during the rescission period, the
30 viatical settlement contract shall be deemed to have been

1 rescinded subject to repayment to the viatical settlement
2 provider of all viatical settlement proceeds.

3 (d) Transfer of proceeds.--Immediately upon the viatical
4 settlement provider's receipt of documents to effect the
5 transfer of the insurance policy, the viatical settlement
6 provider shall pay the proceeds of the viatical settlement to an
7 escrow or trust account in a federally chartered or State-
8 chartered financial institution whose deposits are insured by
9 the Federal Deposit Insurance Corporation (FDIC). The account
10 shall be managed by a trustee or escrow agent independent of the
11 parties to the contract. The trustee or escrow agent shall
12 transfer the proceeds to the viator immediately upon the
13 viatical settlement provider's receipt of acknowledgment of the
14 transfer of the insurance policy.

15 (e) Deadline.--Failure to tender consideration to the viator
16 for the viatical settlement contract within the time disclosed
17 pursuant to section 8(a)(6) renders the viatical settlement
18 contract voidable by the viator for lack of consideration until
19 the time consideration is tendered to and accepted by the
20 viator.

21 (f) Commissions.--No viatical settlement broker or viatical
22 settlement representative shall receive from a viatical
23 settlement provider a fee, commission or other valuable
24 consideration for services rendered to or in connection with
25 viators resident in this Commonwealth unless the viatical
26 settlement provider is licensed in this Commonwealth.

27 (g) Health status.--

28 (1) Contacts with an insured for the purpose of
29 determining the health status of the insured by the viatical
30 settlement provider, viatical settlement broker or viatical

1 settlement representative after the viatical settlement has
2 occurred may only be made by the viatical settlement provider
3 or broker licensed in this Commonwealth and shall be limited
4 to once every three months for insureds with a life
5 expectancy of more than one year, and to no more than one per
6 month for insureds with a life expectancy of one year or
7 less.

8 (2) The provider or broker shall explain the procedure
9 for these contacts at the time the viatical settlement
10 contract is entered into.

11 (3) The limitations set forth in this subsection shall
12 not apply to any contact with an insured under a viaticated
13 policy for reasons other than determining the insured's
14 health status.

15 (h) Prohibition.--No person who invests in a viaticated
16 policy, including, but not limited to, a participant in a
17 financing transaction, may influence the treatment of the
18 insured's illness.

19 Section 10. Responsibility of department.

20 The commissioner shall:

21 (1) Promulgate regulations implementing this act.

22 (2) Establish standards for evaluating reasonableness of
23 payments under viatical settlement contracts, including, but
24 not limited to, regulation of the amount paid in exchange for
25 assignment, transfer, sale, devise or bequest of a benefit
26 under a life insurance policy.

27 (3) Establish appropriate licensing requirements, fees
28 and standards for continued licensure for viatical settlement
29 providers, representatives and brokers.

30 (4) Require a bond or other mechanism for financial

1 accountability for viatical settlement providers.

2 (5) Adopt rules governing the relationship and
3 responsibilities of both insurers and viatical settlement
4 providers, brokers and representatives during the viatication
5 of a life insurance policy or certificate.

6 Section 11. Miscellaneous provisions.

7 (a) State aid.--A person may not be required as a condition
8 of eligibility for State aid to exercise a viatical settlement
9 or be denied or suffer a reduction in aid as a result of not
10 entering into a viatical settlement.

11 (b) Available resource.--Aid agencies or programs may not
12 consider viatical benefits as an available resource in
13 determining eligibility for public assistance.

14 (c) Income.--A viatical settlement shall not be included in
15 any of the class of taxable income enumerated in Article III of
16 the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform
17 Code of 1971, to determine the tax liability of the viator as
18 defined in this act.

19 Section 12. Unfair trade practices.

20 A violation of this act shall be considered an unfair trade
21 practice and shall be subject to all Commonwealth statutes which
22 address unfair trade practices, including the act of July 22,
23 1974 (P.L.589, No.205), known as the Unfair Insurance Practices
24 Act.

25 Section 13. Enforcement.

26 (a) General rule.--Upon a determination by hearing that this
27 act or any regulations promulgated by the department pursuant to
28 this act have been violated, the commissioner may pursue one or
29 more of the following courses of action:

30 (1) Issue an order requiring the person to cease and

1 desist from engaging in such violation.

2 (2) Suspend, revoke or refuse to renew the license of
3 the offending person or persons.

4 (3) Impose a civil penalty in the amount of \$5,000 for
5 each violation.

6 (b) Additional remedies.--The enforcement remedies imposed
7 under this section are in addition to any other remedies or
8 penalties imposed by any other applicable statute.

9 (c) Hearing.--Before taking any action under this section,
10 the commissioner shall give notice to the person accused of
11 violating this act or regulations promulgated by the department
12 under this act, stating specifically the nature of each alleged
13 violation and fixing a time and place, at least ten days
14 thereafter, for a formal administrative hearing in accordance
15 with 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and
16 procedure of Commonwealth agencies) and subject to review and
17 appeal in accordance with 2 Pa.C.S. Ch. 7 Subch. A (relating to
18 judicial review of Commonwealth agency action). After such
19 hearing or upon failure of the accused to appear at such
20 hearing, the commissioner shall impose any of the above
21 penalties which the commissioner deems appropriate.

22 Section 14. Effective date.

23 This act shall take effect in 180 days.