



Hundredth Legislature - Second Session - 2008
Introducer's Statement of Intent
LB 853

Chairperson: Rich Pahls
Committee: Banking, Commerce and Insurance
Date of Hearing: January 29, 2008

The following constitutes the reasons for this bill and the purposes which are sought to be accomplished thereby:

LB 853 is a bill introduced by the Banking, Commerce and Insurance Committee, at the request of the Nebraska Department of Insurance, and does the following:

- (1) The bill specifies that rulemaking by the Director of Insurance under the Community Development Assistance Act is discretionary rather than mandatory (Section 13-206) (Section 1 of the bill).
- (2) The bill limits the requirement that insurance policies contain a description of the structure of the insurer writing the policy to policies written by assessment insurers. (Section 44-349) (Section 2 of the bill).
- (3) The bill increases the penalties imposed for violation of Neb. Rev. Stat. § 44-354 and § 44-355 by making them Unfair Trade Practices, thereby standardizing those penalties and procedures. The bill changes the fine for violations of Neb. Rev. Stat. § 44-353 from a minimum of twenty dollars and a maximum of one hundred dollars to a fine not to exceed one hundred dollars. (Section 44-356) (Section 3 of the bill)
- (4) The bill clarifies that the mandate for temporomandibular joint disorder, Neb. Rev. Stat. §44-789 only applies to temporomandibular joint disorder. (Section 44-789) (Section 4 of the bill).
- (5) The bill revises the Viatical Settlements Act. The bill provides for, clarifies, and amends definitions, including the definition of “fraudulent viatical settlement act” to facilitate the change of state of ownership of a policy, or the state of residency to a state that does not have a similar law to the Act, and extends the definition of “special purpose entity” to transactions in which the securities are acquired by the viator or by a qualified institutional buyer or when the securities pay a fixed rate of return. The bill amends the definition of “viatical settlement broker” to add a life insurance producer as a person to be considered a viatical settlement broker. The bill expands the definition of “viatical settlement contract” to include premium finance loans made for a life insurance policy if the viator receives a guaranteed future viatical settlement value or the viator agrees to sell the policy following policy issuance. The bill excludes from the definition of “viatical settlement contract” (a) loan the proceeds of which are used solely to pay: (i) premiums

for the policy; and (ii) the costs of the loan, (b) a loan made by licensed financial institution in which the lender takes an interest in a life insurance policy to secure repayment of a loan or (c) an agreement where all of the parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health and bodily safety of the person insured, or are trusts established primarily for the benefit of such parties. The bill amends the definition of “viatical settlement provider” to clarify that a viatical provider is a person that enters into a viatical settlement contract with a viator that is a resident in this state. The amendment grants authority to the director to exclude other persons from the definition. The bill amends the definition of “viator” to clarify that, if there is more than one viator and the viators are residents of different states, the transaction will be governed by the law of the state in which the viator having the largest percentage of ownership resides.

The bill permits a life insurance producer to operate as a viatical settlement broker and permits a person licensed as an attorney, certified public accountant, or financial planner representing the viator to negotiate on behalf of a viator without a viatical settlement broker’s license. The bill requires a viatical settlement provider or broker to demonstrate evidence of financial responsibility of \$250,000. The bill requires a viatical settlement broker to complete 15 hours of training every other year, except that a life insurance producer who is operating as a viatical settlement broker is not subject to this requirement.

The bill grants the director of insurance authority to suspend, revoke, or refuse to renew the license of a viatical settlement broker or a life insurance producer operating as viatical settlement broker if such person has engaged in bad faith conduct with one or more viators. The bill specifies what information a viatical settlement provider is to include in his or her annual statement to the director. The bill specifies factors that the director is to consider when trying to determine whether it is appropriate to make an examination of a licensee under the Act.

The bill requires additional disclosure requirements for viatical settlement brokers and providers. The bill extends the time within which a viator has the right to rescind a viatical settlement contract from fifteen calendar days to the earlier of sixty calendar days after the contract was executed, or thirty days after the viatical settlement proceeds have been paid.

The bill requires an insurer to accept a request for verification of coverage made using an NAIC form. The bill requires all viatical settlement contracts to give the viator the absolute right to rescind a contract.

The bill increases the period in which a life insurance policy may not be sold from two years after its date of issuance to five years after its date of issuance unless the viator can meet one of the enumerated exceptions. The bill repeals exceptions to the five year period for charitable organizations, viators that are not natural persons and who are the insured’s employer, and viators experiencing a significant decrease in income. The bill requires insurers to respond to completed requests for change in ownership of a policy within thirty days.

The bill prohibits a viatical settlement broker from knowingly soliciting an offer from, effectuating a viatical settlement with, or making a sale to any viatical settlement purchaser, financing entity, or related provider trust that is controlling, controlled by, or under common control with such viatical settlement broker. Any violation of these provisions is deemed a fraudulent viatical settlement act. The bill prohibits a viatical settlement provider from entering into a viatical settlement contract unless the viatical settlement advertising materials have been filed with the director. Such marketing materials may not expressly reference that the insurance is “free” for any period of time and the bill restrict the term “free” in connection with the sale or financing of a life insurance.

The bill clarifies that, except for a fraudulent viatical settlement act committed by the viator, the enforcement provisions and penalties do not apply to a viator. The bill grants rulemaking authority to the director to establish standards for evaluating the reasonableness of discount rates used to determine the amount paid for a policy insuring the life of a person who is chronically ill or terminally ill. The bill clarifies that a violation of this act, including the commission of a fraudulent viatical settlement act, is an unfair trade practice. (Sections 44-1101, 44-1102, 44-1103, 44-1104, 44-1105, 44-1106, 44-1107, 44-1108, 44-1109, 44-1110, 44-1111, 44-1112, 44-1113, 44-1114, and 44-1115) (Sections 5 through 21 of the bill)

- (6) The bill adopts a new section granting the Director of Insurance rulemaking authority to establish standards under the Unfair Insurance Trade Practices Act to protect members of the United States Armed Forces from dishonest and predatory insurance sales practices. (Section 23 of the bill).
- (7) The bill streamlines the standards applicable to insurance producer continuing education and prelicensure education, licensure fees and long-term care producer training effective dates. (Sections 44-32,106, 44-3901, 44-3902, 44-3904, 44-3909, 44-3910, 44-3911, 44-4064, and 44-4521) (Sections 24 through 32 of the bill).
- (8) The bill amends the Insurers and Health Organizations Risk-Based Capital Act to adopt a trend test standard that is set out in the life risk-based capital instructions and to adopt a trend test for the Director of Insurance to apply to the risk-based capital levels for property and casualty insurers. (Sections 44-6009 and 44-6016) (Sections 33 and 34 of the bill).
- (9) The bill specifies for the purposes of the Property and Casualty Insurance Rate and Form Act that the Director of Insurance may disapprove an insurer filing if the insurer fails to provide requested information. (Section 44-7508.02) (Section 35 of the bill).
- (10) The bill grants the Director of Insurance authority to adopt rules and regulations allowing insurers to submit to the jurisdiction of the director for the purpose of financial conglomerate supervision and adopt standards for such rulemaking by the director. (Section 36 of the bill).

Principal Introducer:

**Rich Pahls, Chairperson
Committee on Banking, Commerce and Insurance**