



Ninety-Seventh Legislature - First Session - 2001
Committee Statement
LB 52

Hearing Date: January 23, 2001
Committee On: Banking, Commerce and Insurance

Introducers: (Landis)
Title: Adopt the Viatical Settlements Act

Roll Call Vote – Final Committee Action:

- Advanced to General File
 - X Advanced to General File with Amendments
 - Indefinitely Postponed
-

Vote Results:

7	Yes	Senators Landis, Tyson, Aguilar, Bourne, Bruning, Jensen, Smith
	No	
	Present, not voting	
1	Absent	Senator Kremer

Proponents:

Senator David Landis
 Tim Wagner
 Sam Baird
 Janis McKenzie
 Paul O’Hara

Representing:

Introducer
 NE Dept. of Insurance
 NE Dept. of Banking & Finance
 NE Insurance Federation
 NE Assn. of Trial Attorneys

Opponents:

Doug Head
 Mark Levy

Representing:

Viatical & Life Settlement Assn. of America
 Viatical & Life Settlement Assn. of America

Neutral:

Tip O’Neill

Representing:

Assn. of Independent Colleges & Universities

Summary of purpose and/or changes:

LB 52 would enact the Viatical Settlements Act in order to provide for state regulation of viatical settlement contracts.

The bill would provide, section by section, as follows:

- Section 1. Designates sections 1 to 16 of the bill as the “Viatical Settlements Act”.
 - Section 2. Defines terms.
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- Section 3. Requires viatical settlement providers and brokers to obtain a license from the Department of Insurance before conducting business. Specifies license requirements, fees, and expiration date.
- Section 4. Authorizes the Director of Insurance to suspend, revoke, or refuse to issue or renew a license if a licensee violate standards set forth in this section.
- Section 5. Requires filing and approval of viatical settlement contracts and disclosure forms by the Department of Insurance.
- Section 6. Obligates licensees to file annual statements with the Department of Insurance. Prohibits licensees from disclosing an insured's identity or financial or medical information to another person, with limited exceptions.
- Section 7. Authorizes the Director of Insurance to conduct a financial or market conduct examination of licensees. Requires licensees to maintain certain records for five years. Sets standards for the conduct of such examinations.
- Section 8. Requires disclosure of specified information to viators.
- Section 9. Requires viatical settlement providers to obtain a release of medical records from the insured and a physician's statement that the viator is of sound mind and under no undue influence. Obligates viatical settlement providers to give the insurer notice of transactions. Permits viators to rescind the contract for any reason within fifteen days after receipt. Imposes deadlines for transfer of the viatical proceeds, requiring an escrow account and agent be used for the transfer. Limits contacts with the viator by the viatical settlement provider after the transaction.
- Section 10. Prohibits entering into a viatical settlement contract within two years from the date the life insurance policy was issued unless the viator is a charitable organization or not a natural person, or the viator is terminally or chronically ill, retired, divorced his or her spouse, became physically or mentally disabled preventing employment, is declared bankrupt, disposed ownership in a closely held corporation, had an income reduction that impaired the ability to pay the premium, or had his or her spouse die.
- Section 11. Sets forth requirements for advertisement of viatical settlement contracts.
- Section 12. Prohibits fraudulent viatical settlement acts. Mandates reporting to the Director of Insurance of suspected fraud. Protects certain persons that report suspected fraud from civil liability. Requires filing of an anti-fraud plan.
- Section 13. Authorizes the Director of Insurance to obtain an injunction for violation of the act. Establishes a private cause of action for persons damaged by violations of the act. Allows the director to impose an administrative fine for violations of the act.

Authorizes prosecution of a fraudulent viatical settlement act as either a civil or a criminal violation. Makes a criminal violation a Class III misdemeanor.

- Section 14. Authorizes the Director of Insurance to adopt and promulgate regulations and regulations to carry out the act.
- Section 15. Provides that a violation of the act is an unfair trade practice under the Unfair Trade Practices Act (sections 44-1521 to 44-1535).
- Section 16. Requires viatical settlement providers and brokers to apply for a license from the Department of Insurance by July 1, 2002. Allows such persons to do business until a decision is made on their application.
- Section 17. Amends the Securities Act of Nebraska at 8-1101 to include viatical settlement contracts in the definition of a security. Defines viatical settlement contract.
- Section 18. Amends 8-1110 of the Securities Act of Nebraska to exempt certain viatical settlement contracts from the registration requirements imposed on securities. Included are transactions made by a viator with an insurer, transactions with persons that do not enter into more than one transaction a year, assignment of a life insurance policy to certain licensed lending institutions as collateral for a loan, and acceleration of the death benefit in a life insurance contract.

Explanation of amendments, if any:

1. The committee amendments would amend section 2 of the bill to: (a) clarify that the definition of “fraudulent viatical settlement act” means an act or omission committed knowingly “and” (rather than “or”) with intent to defraud, and (b) provide that the definition of “viatical settlement broker” also “includes a licensed life insurance producer that meets the requirements” for a viatical settlement provider or viatical settlement broker license.

2. The committee amendments would amend section 3 of the bill to provide that a licensed life insurance producer shall be exempt from the requirement to obtain a viatical settlement provider or viatical settlement broker license if the life insurance producer is involved in no more than five viatical settlements per year.

3. The committee amendments would amend section 7 of the bill to eliminate a requirement that a person required to be licensed under the Viatical Settlements Act must retain copies for five years of all “advertising and licensing records.”

4. The committee amendments would amend section 9 of the bill to eliminate a requirement that the escrow agent shall pay the settlement proceeds to the viator within three business days after the date the viatical settlement provider received the acknowledged forms from the insurance company regarding transfer of ownership, assignment, or designation of beneficiary.

The committee amendments would amend this section to provide that contracts with the insured for the purpose of determining the health status of the insured by the viatical settlement provider or the viatical settlement broker shall be limited to once every “six” months (rather than once every “three” months) for insureds with a life expectancy of more than one year and to no more than “once every three months” (rather than “one per month”) for insureds with a life expectancy of one year or less.

5. The committee amendments would amend section 10 of the bill to provide that the conditions allowing a viatical settlement within two years of policy issuance shall apply to “individual” as well as group policies.

6. The committee amendments would amend section 12 of the bill to provide that there shall be no civil liability for furnishing information concerning suspected fraudulent viatical settlement acts if the information is provided to or received from the Department of Banking and Finance (as well as the Department of Insurance) rather than simply provided to or received from “regulatory” officials.

The committee amendments would further amend this section by striking provisions which provide that there shall be no civil liability for furnishing information concerning suspected fraudulent viatical settlement acts if the information is provided to or received from “A person involved in the prevention and detection of fraudulent viatical settlement acts or that person’s employees, agents, or representatives”. (This language would be stricken because it is too open ended.)

The committee amendments would further amend this section to provide that the section’s limitations on civil liability would not apply to statements about fraud that are made with “fraudulent intent” or “bad faith” as well as with “actual malice.”

7. The committee amendments would amend the definition of “issuer” in section 8-1101 (9) of the Securities Act of Nebraska (section 17 of the bill) in order to specify which party constitutes the issuer in a viatical settlement contract. The committee amendments would provide that with respect to a fractional or pooled interest in a viatical settlement contract, “issuer” would mean the person who creates, for the purpose of sale, the fractional or pooled interest. In the case of a viatical settlement contract that is not fractionalized or pooled, “issuer” would mean the person effecting a transaction with a purchaser of the viatical settlement contract.

The committee amendments would further amend this section in order to amend the proposed definition of “viatical settlement contract” in section 8-1101(17) so as to exclude certain transactions from coverage of the securities act: (a) the assignment, transfer, sale, devise, or bequest of a death benefit of a life insurance policy or contract made by the viator to an insurance company or to a viatical settlement provider or broker licensed pursuant to the Viatical Settlement Act (sections 1 to 16 of the bill), (b) the assignment of a life insurance policy or contract to a licensed lending institution as collateral for a loan, or (c) the exercise of accelerated benefits pursuant to the terms of a life insurance policy or contract and consistent with applicable law. This language which the committee amendments would add to the definition of “viatical settlement contract” is similar to language which the bill, as introduced, would add to section 8-

1110 as exemptions. The Department of Banking has recommended the approach taken by the committee amendments. This would eliminate the necessity of amending section 8-1110 and, accordingly, the committee amendments would strike section 18 from the bill.

8. The committee amendments would insert and amend section 8-1111 of the Securities Act of Nebraska (to become new section 18 of the bill) in order to provide a transactional exemption for the sale of viatical settlement contracts. The provisions of the exemption would require that (a) a purchaser meets specific net worth qualifications, (b) a purchaser invests no more than 5 percent of his or her net worth, (c) the purchaser represents the purchase is for his or her own account and not for resale, (d) certain disclosures are made to the purchaser by the issuer, (e) the purchaser may rescind the transaction within 15 calendar days, (f) a notice is filed with the Department of Banking prior to any sale, (g) no commissions are paid except to registered agents of registered broker-dealers, and (h) all advertising and sales material are filed with the department before use.

9. The committee amendments would insert and amend section 59-1803 of the Charitable Gift Annuity Act to provide that issuance of a gift annuity does not constitute engaging in an act in violation of the Viatical Settlements Act (sections 1 to 16 of the bill).

10. The committee amendments would provide for inclusion of the emergency clause which would apply only to the sections which amend the Securities Act of Nebraska.

Senator David M. Landis, Chairperson