

VIATICAL SETTLEMENT CONTRACTS

House Bill 4661 as introduced First Analysis (5-20-97)

Sponsor: Rep. Gerald Law
Committee: Insurance

THE APPARENT PROBLEM:

Public Act 386 of 1996 created a new act dealing with viatical settlement contracts. Such a contract is a written agreement between the owner or holder of a life insurance policy who has a terminal illness or condition (a "viator") and a person or entity who "buys" the policy at a cost below the amount of the death benefit (a "provider"). Under the contract, the provider pays consideration that is less than the expected death benefit of the policy in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the policy to the provider.

The new act allows the insurance commissioner to issue an order prohibiting a provider from entering into a viatical settlement contract in the state if the provider has engaged in certain specified conduct (e.g., fraudulent or dishonest practices, a pattern of unreasonable payments, felony fraud convictions). In addition, the commissioner can issue a cease and desist order, and can order a civil fine of not more than \$500 per violation, and in some cases, a civil fine up to \$2,500 per violation. The act also contains language regarding penalties and restitution when the provider knew or reasonably should have known he or she was in violation. The language, however, is not technically correct and needs clarification.

THE CONTENT OF THE BILL:

Under the act regulating viatical settlements, "if the person knew or reasonably should have known that he or she was in violation of this act, the commissioner may order the payment of all death benefits and other proceeds paid by a viator affected by the violation and a civil fine of not more than \$2,500 for each violation."

The bill would amend Public Act 386 of 1996 to rewrite the provision cited above. In such cases, it would allow the commissioner to order "the repayment of all consideration paid by or on behalf of a viator for a viatical settlement contract affected by the violation and a civil fine of not more than \$2,500 for each violation."

The bill also would replace the phrase, "if the person knew . . ." with the phrase, "if the provider knew . . ."

MCL 550.528

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal implications. (5-9-97)

ARGUMENTS:

For:

The bill makes technical, clarifying amendments to the recent legislation regulating viatical settlements. The amendments conform to the intent of the original legislation.

POSITIONS:

The Insurance Bureau supports the bill. (5-14-97)

The Michigan Health and Hospital Association has indicated its support for the bill. (5-7-97)

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

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