

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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House Bill 4661 (Substitute S-1 as reported)
Sponsor: Representative Gerald Law
House Committee: Insurance
Senate Committee: Financial Services

Date Completed: 11-14-97

RATIONALE

Public Act 386 of 1996 created a new Act to regulate "viatical settlement contracts". Under the Act, a person with a terminal illness or condition who owns or holds a life insurance policy, and a "provider", may enter into a viatical settlement contract: a written agreement between the person (the "viator") and the provider in which the provider pays an amount that is less than the expected death benefit of the viator's policy in return for his or her assignment or sale of the death benefit to the provider. A provision in the Act allows the Insurance Commissioner to order payments to a viator if a provider is in violation of the Act. It has been suggested that this provision needs clarification.

CONTENT

The bill would amend Public Act 386 of 1996 to revise a provision that allows the Insurance Commissioner to order the payment of all death benefits to a viator, if a provider knew or should have known that he or she was in violation of the Act.

Currently, the Insurance Commissioner may prohibit a provider from entering into a viatical settlement contract in Michigan if the Commissioner finds that the provider has violated certain provisions in the Act. Further, if a person knew or reasonably should have known that he or she was in violation of the 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 up to \$2,500, for each violation. The bill would revise this provision to allow the Commissioner to order 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 up to \$2,500, for each violation, if

the provider knew or reasonably should have known that the provider was in violation of the Act.

MCL 550.528

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would clarify that if a provider knew or reasonably should have known that the provider was in violation of the Act, the Insurance Commissioner could order repayment of all consideration "paid by or on behalf of a viator" rather than "payment of all death benefits and other proceeds paid by a viator". Death benefits, of course, are not paid by an insured person, or paid while he or she is alive.

Legislative Analyst: G. Towne

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.