
SUBSTITUTE SENATE BILL 5780

State of Washington

54th Legislature

1995 Regular Session

By Senate Committee on Financial Institutions & Housing (originally sponsored by Senators Prentice, Deccio and C. Anderson)

Read first time 02/27/95.

1 AN ACT Relating to the regulation of viatical settlements; adding
2 a new section to chapter 42.17 RCW; adding a new chapter to Title 48
3 RCW; and prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** Unless the context clearly requires
6 otherwise, the definitions in this section apply throughout this
7 chapter.

8 (1) "Person" means the same as defined in RCW 48.01.070.

9 (2) "Viatical settlement broker" means an individual, partnership,
10 corporation, or other entity who or which for another person, and for
11 a fee, commission, or any other valuable consideration, does any of the
12 following things:

13 (a) Offers or advertises the availability of viatical settlements;

14 (b) Introduces viators to viatical settlement providers;

15 (c) Offers or attempts to negotiate viatical settlements between a
16 viator and one or more viatical settlement providers. However,
17 "viatical settlement broker" does not mean an attorney, accountant, or
18 financial planner retained to represent the viator, whose fee or other
19 compensation is not paid by the viatical settlement provider.

1 (3) "Viatical settlement contract" means a written agreement
2 entered into between a viatical settlement provider and a viator.

3 (4) "Viatical settlement provider" means any person that enters
4 into an agreement with a viator under the terms of which the viatical
5 settlement provider pays compensation or anything of value, in return
6 for the assignment, transfer, sale, devise, or bequest of the death
7 benefit or ownership of the insurance policy or certificate of
8 insurance to the viatical settlement provider. "Viatical settlement
9 provider" does not mean the following:

10 (a) Any bank, savings bank, savings and loan association, credit
11 union, or other licensed lending institution that takes an assignment
12 of a life insurance policy as collateral for a loan; or

13 (b) The issuer of a life insurance policy providing accelerated
14 benefits, as those are defined in WAC 284-23-620(1).

15 (5) "Viator" means the owner of a life insurance policy, or the
16 holder of a certificate of insurance, insuring the life of a person
17 with a catastrophic or life-threatening illness or condition, who
18 enters into an agreement under which the viatical settlement provider
19 will pay compensation or anything of value, which compensation or value
20 is less than the expected death benefit of the insurance policy or
21 certificate of insurance, in return for the assignment, transfer, sale,
22 devise, or bequest of the death benefit or ownership of the insurance
23 policy or certificate of insurance to the viatical settlement provider.

24 NEW SECTION. **Sec. 2.** (1) On or after the effective date of this
25 act, an individual, partnership, corporation, or other entity may not
26 act as a viatical settlement provider or enter into or solicit a
27 viatical settlement contract in this state, or act as a viatical
28 settlement broker, without first obtaining a license from the
29 commissioner.

30 (2) Application for a license for a viatical settlement provider or
31 viatical settlement broker shall be made on a form prescribed by the
32 commissioner, and the application shall be accompanied by a fee as
33 determined by the commissioner by rule.

34 (3) Licenses for viatical settlement providers or viatical
35 settlement brokers may be renewed from year to year on the anniversary
36 date or at another interval established by rule, upon payment of the
37 renewal fee and submission of forms of information as determined by

1 rule. Failure to pay the fee within the time prescribed shall result
2 in automatic revocation of the license.

3 (4) The applicant shall provide the information the commissioner
4 requires on forms prescribed by the commissioner.

5 (a) The applicant shall disclose the identity of all stockholders,
6 partners, and corporate officers; its parent entities and affiliates,
7 and their stockholders, partners, and officers; to the extent
8 prescribed by the commissioner.

9 (b) The commissioner may refuse to issue or renew a license if he
10 or she is not satisfied that any officer, partner, stockholder, or
11 employee thereof, who may materially influence the conduct of the
12 applicant or licensee, meets the standards required by the public
13 interest.

14 (c) A license issued to a partnership, corporation, or other entity
15 authorizes all its partners, officers, and employees to act as viatical
16 settlement providers under the license, if they were identified in the
17 application or application for renewal.

18 (d) Any person who willfully misrepresents any fact required to be
19 disclosed in an application for a license to act as either a viatical
20 settlement provider or a viatical settlement broker shall be liable to
21 penalties as provided by applicable law.

22 (5) Upon the filing of an application and the payment of the fee
23 required by rule, the commissioner shall issue or renew a license if
24 the commissioner finds that the applicant:

25 (a) Has provided a detailed and adequate plan of operation;

26 (b) Is competent and trustworthy and intends to act in good faith
27 in the business covered by the license for which the applicant has
28 applied;

29 (c) Has a good business reputation and has had experience,
30 training, or education so as to be qualified in the business covered by
31 the license for which the applicant has applied; and

32 (d) If a corporation, is incorporated under the laws of this state,
33 or is a foreign corporation authorized to transact business in this
34 state.

35 (6) The commissioner shall not issue or renew any license unless
36 the applicant has filed with the commissioner a written irrevocable
37 consent that any action against the applicant may be commenced by the
38 service of process upon the commissioner.

1 NEW SECTION. **Sec. 3.** (1) The commissioner may suspend, revoke, or
2 refuse to renew the license of any viatical settlement broker or
3 viatical settlement provider if the commissioner finds that:

4 (a) There was any misrepresentation, intentional or otherwise, in
5 the application for the license or for renewal of a license;

6 (b) The applicant for, or holder of any such license, is or has
7 been subject to a final administrative action for being, or is
8 otherwise shown to be, untrustworthy or incompetent to act as either a
9 viatical settlement broker or a viatical settlement provider;

10 (c) The applicant for, or holder of any such license, demonstrates
11 a pattern of unreasonable payments to viators;

12 (d) The applicant for, or holder of any such license, has been
13 convicted of a felony or of any criminal misdemeanor of which criminal
14 fraud is an element; or

15 (e) The applicant for, or holder of any such license, has violated
16 any provision of this title.

17 (2) The commissioner may from time to time require the holder of
18 any license issued under this chapter to supply current information on
19 the identity or capacity of stockholders, partners, officers, and
20 employees, including but not limited to the following: Fingerprints,
21 personal history, business experience, business records, and any other
22 information which the commissioner may require.

23 (3) Before the commissioner suspends or revokes any license issued
24 under this chapter, or refuses to issue any such license, the
25 commissioner shall conduct a hearing, if the applicant or licensee
26 requests this in writing. The hearing shall be in accordance with
27 chapters 34.05 and 48.04 RCW.

28 (4) After a hearing or with the consent of any party licensed under
29 this chapter and in addition to or in lieu of the suspension,
30 revocation, or refusal to renew any license under this chapter, the
31 commissioner may levy a fine upon the viatical settlement provider in
32 an amount not more than ten thousand dollars, for each violation of
33 this chapter. The order levying the fine shall specify the period
34 within which the fine shall be fully paid, and that period shall not be
35 less than fifteen nor more than thirty days from the date of the order.
36 Upon failure to pay the fine when due, the commissioner may revoke the
37 license if not already revoked, and the fine may be recovered in a
38 civil action brought in behalf of the commissioner by the attorney
39 general. Any fine so collected shall be deposited into the general fund.

1 NEW SECTION. **Sec. 4.** After a date established by rule, no
2 viatical settlement provider or viatical settlement broker may use any
3 viatical settlement contract or brokerage contract in this state unless
4 the contract form has been filed with and approved by the commissioner.
5 Any such contract filing is approved if it has not been disapproved
6 within sixty days after it is filed with the commissioner. The rate,
7 fee, commission, or other compensation charged must also be filed with
8 the commissioner at the same time the contract form is filed, and any
9 changes must be filed and approved before use. The commissioner shall
10 disapprove any such viatical settlement contract or brokerage contract,
11 or revoke previous approval, or rates, if the commissioner makes either
12 of the following alternative findings:

13 (1) The benefits offered to the viator are unreasonable in relation
14 to the rate, fee, or other compensation that is charged; or

15 (2) Any other provisions or terms of the contract are unreasonable,
16 contrary to the public interest, misleading, or unfair to the viator.

17 NEW SECTION. **Sec. 5.** Each holder of any license issued under this
18 chapter shall file with the commissioner, on or before March 1 of each
19 year, an annual statement containing such information as the
20 commissioner may by rule require.

21 NEW SECTION. **Sec. 6.** (1) The commissioner may examine the
22 business and affairs of any applicant for or holder of any license
23 issued under this chapter. The commissioner may require any applicant
24 for or holder of any such license to produce any records, books, files,
25 and any other writings or information reasonably necessary to determine
26 whether or not the applicant for or holder of any such license is
27 acting, or has acted, in violation of any laws, or otherwise contrary
28 to the interests of the public, or has acted in a manner demonstrating
29 incompetence or untrustworthiness to hold any such license. The
30 expenses incurred in conducting any examination shall be paid by the
31 applicant for or holder of any such license.

32 (2) The names and individual identification data of all viators are
33 private and confidential information and shall not be disclosed by the
34 commissioner, except under court order.

35 (3) Records of all transactions of viatical settlement contracts
36 and brokerage contracts, and an advertising file containing the text of
37 all advertising used and the dates and media in which it was used,

1 shall be maintained by each holder of any license issued under this
2 chapter.

3 NEW SECTION. **Sec. 7.** A viatical settlement provider shall
4 disclose, in writing, the following information to the viator no later
5 than the date when the viatical settlement contract is signed by all
6 parties:

7 (1) Possible alternatives to viatical settlement contracts for
8 persons with catastrophic or life-threatening conditions. These shall
9 include, but not be limited to, any available accelerated benefits on
10 the life insurance policy;

11 (2) The fact that some or all of the proceeds of the viatical
12 settlement may be taxable, and that advice and assistance should be
13 sought from an attorney or tax professional;

14 (3) The fact that the proceeds of the viatical settlement could be
15 subject to the claims of creditors, and that advice and assistance
16 should be sought from an attorney;

17 (4) The fact that receiving the proceeds of the viatical settlement
18 might adversely affect the viator's eligibility for medicaid, or other
19 public benefits or entitlements, and that advice and assistance should
20 be sought from an attorney;

21 (5) The right of the viator to rescind the contract on or before
22 the later of (a) thirty days after the date when it is executed by all
23 parties or (b) fifteen days after the receipt of the proceeds of the
24 viatical settlement contract; and

25 (6) The date by which the proceeds will be available to the viator,
26 and also the source of the proceeds.

27 NEW SECTION. **Sec. 8.** (1) A viatical settlement provider entering
28 into a viatical settlement contract with a viator shall first obtain
29 the following:

30 (a) A written and signed statement from an attending medical doctor
31 that in his or her professional opinion, the viator is of sound mind
32 and under no undue influence;

33 (b) A document witnessed by a person not employed by or affiliated
34 with the viatical settlement provider, in which the viator consents to
35 the viatical settlement contract, acknowledges the catastrophic or
36 life-threatening illness or condition, and represents that he or she:

1 (i) Has a complete understanding of the viatical settlement
2 contract;

3 (ii) Has a full and complete understanding of the life insurance
4 policy;

5 (iii) Releases his or her medical records for the limited and
6 express purpose of making the viatical settlement agreement possible;

7 (iv) Has either obtained advice or assistance from an attorney or
8 tax professional, or has had the opportunity to do so; and

9 (v) Has entered into the viatical settlement contract freely and
10 voluntarily; and

11 (c) In those cases where the viator is not the insured person, a
12 written consent to the viatical settlement agreement from the insured
13 person or his or her legal representative.

14 (2) All medical information solicited or obtained by any holder of
15 a license issued under this chapter is subject to all applicable laws
16 governing confidentiality of medical information.

17 (3) All viatical settlement contracts entered into in this state
18 shall contain a provision no less favorable than that in the event the
19 viator exercises his or her right to rescind the viatical settlement
20 contract, any proceeds previously paid shall be refunded no later than
21 the earliest of (a) thirty days of the date of rescission or (b)
22 fifteen days of payment of the proceeds.

23 (4) All viatical settlement contracts entered into in this state
24 shall contain a rescission clause no less favorable than that the
25 viator has the unconditional right to rescind the contract on or before
26 the later of (a) thirty days of the date it is signed by all parties or
27 (b) fifteen days of the receipt of the proceeds of the viatical
28 settlement agreement; subject to refund of those proceeds as set forth
29 in subsection (3) of this section.

30 (5) Time is of the essence in delivery of the proceeds of any
31 viatical settlement contract by the date disclosed to the viator.

32 (6) No viatical settlement contract entered into in this state may
33 contain any restrictions upon the use of the proceeds of the contract.

34 (7) Any viatical settlement contract entered into in this state
35 shall establish the terms under which the viatical settlement provider
36 shall pay compensation or anything of value, which compensation is less
37 than the expected death benefit of the insurance policy or certificate
38 of insurance, in return for the assignment, transfer, sale, devise, or

1 bequest of the death benefit or ownership of the insurance policy or
2 certificate to the viatical settlement provider.

3 NEW SECTION. **Sec. 9.** (1) A viatical settlement provider shall not
4 directly or indirectly assign, transfer, sell, resell, or transfer by
5 gift or bequest, or otherwise convey any insurance policy that is or
6 has been the subject of a viatical settlement agreement, to any person,
7 custodian, investor, investor group, or other entity that does not hold
8 a Washington license as a viatical settlement provider, issued by the
9 commissioner.

10 (2) Any attempted transfer to any person, custodian, investor,
11 investor group, or other entity not holding such a license is void, and
12 all rights in the insurance policy are restored to the viator as of the
13 date of the purported transfer, except that the viator is not required
14 to return the proceeds of the original viatical settlement agreement to
15 the viatical settlement provider. The commissioner may allow
16 exceptions to this subsection, by rule.

17 NEW SECTION. **Sec. 10.** (1) The commissioner may adopt rules as
18 necessary to implement this chapter. This includes, but is not limited
19 to, the adoption of rules regarding minimum capital requirements for
20 viatical settlement providers, training and examination requirements
21 for viatical settlement brokers, requiring a prospective viator to
22 contact his or her life insurer regarding possible accelerated benefits
23 before entering into a viatical settlement agreement, licensing and
24 examination requirements for applicants for a license as a viatical
25 settlement broker, when benefits are or are not reasonable in relation
26 to the rate fee, or other compensation, and bond requirements for
27 either or both viatical settlement providers or viatical settlement
28 brokers.

29 NEW SECTION. **Sec. 11.** (1) The legislature finds that the subject
30 of viatical settlements is of vital importance to the public interest
31 for the purpose of applying the consumer protection act, chapter 19.86
32 RCW. Violations of this chapter are not reasonable in relation to the
33 development and preservation of business. A violation of this chapter
34 is an unfair or deceptive act in trade or commerce. It is also an
35 unfair method of competition for the purpose of applying the consumer
36 protection act, chapter 19.86 RCW.

1 (2) Any person who is injured by a violation of this chapter may
2 bring a civil action against a viatical settlement provider in superior
3 court to recover his or her actual damages. The court may increase the
4 award of damages to an amount not more than three times the actual
5 damages sustained, and in addition the court may award costs and
6 attorneys' fees to the injured person.

7 NEW SECTION. **Sec. 12.** This act may be known and cited as the
8 viatical settlements act.

9 NEW SECTION. **Sec. 13.** The provisions of this chapter do not
10 affect the application of chapter 21.20 RCW.

11 NEW SECTION. **Sec. 14.** Sections 1 through 13 of this act
12 constitute a new chapter in Title 48 RCW.

13 NEW SECTION. **Sec. 15.** A new section is added to chapter 42.17 RCW
14 to read as follows:

15 The names and individual identification data of all viators
16 regulated by the insurance commissioner under chapter 48.-- RCW
17 (sections 1 through 13 of this act) are exempt from the disclosure and
18 reporting requirements of this chapter.

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