



Senate Fiscal Agency
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BILL



ANALYSIS

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Senate Bill 289 (Substitute S-3 as reported)
Sponsor: Senator Dale L. Shugars
Senate Committee: Financial Services

CONTENT

The bill would create a new act to regulate the sale and purchase of "viatical settlement contracts" (agreements for the sale of a life insurance policy's death benefits). A "provider" (the purchaser of a life insurance policy's death benefit) entering into a contract with a "viator" (the policy holder) would have to obtain both a written statement from a physician that the viator was of sound mind and under no constraint or undue influence and a document that stated consent to the contract; acknowledgment of the terminal illness or condition; that the viator had a full and complete understanding of both the contract and the benefits of the life insurance policy; and a release of the medical records and acknowledgment that the contract had been entered into freely and voluntarily. A provider would have to transmit any offer to purchase a policy from a viator to the insurer, who could advise the viator of other alternatives that might be available under the policy.

The Insurance Commissioner could order a provider to produce records and pay expenses for conducting an examination. A provider also would have to disclose to a viator information regarding other options to and possible consequences of entering into a viatical settlement contract.

A provider would have to deposit the contract consideration in an escrow or trust account. The financial institution would have to transfer the money to the viator upon receiving acknowledgment of the transfer from the insurer. If a policy provided for double or additional indemnity, the provider would be entitled only to the face amount of the policy. Additional amounts would have to be paid to the beneficiary designated by the viator or, if none were designated, to the viator's estate.

The Insurance Commissioner could prohibit a provider from entering into a viatical settlement contract if the provider had been fraudulent or engaged in dishonest practices; demonstrated a pattern of unreasonable payments to policy owners; had been convicted of a felony or any misdemeanor that involved criminal fraud; or had violated the bill. The Commissioner also could order payment of a civil fine of up to \$500 for each violation; if the person knew or reasonably should have known that he or she was in violation of the bill, order payment of a civil fine of up to \$2,500 for each violation; and/or issue a cease and desist order. A violation of the bill would be a felony, punishable by up to one year's imprisonment, a maximum fine of \$5,000, or both.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have no fiscal impact on the State and is expected to have only a minimal fiscal impact, if any, on the criminal justice system. To the extent that violators were prosecuted, convicted, and sanctioned, costs would increase. While there are no data available on the number of potential violators, it is not expected to be significant.

The bill would have no fiscal impact on the Department of Commerce/Insurance Bureau.

Date Completed: 5-13-96

Fiscal Analyst: M. Hansen
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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.