

HOUSE BILL NO. 190

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Introduced: 4/13/99

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to viatical settlement contracts."**

2 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

3 * **Section 1.** AS 45.55.900 is amended by adding new subsections to read:

4 (g) Except as provided by (h) of this section, an offer or sale of a viatical
5 settlement contract or a security that represents or is secured by a viatical settlement
6 contract is exempt from the registration requirement of AS 45.55.070 if at least 10
7 business days before any offers or sales are made

8 (1) the issuer files with the administrator a notice of the transaction, the
9 fee established by regulation for exemption filings, and the consent to service of
10 process required by AS 45.55.980(g); the notice required in this paragraph must
11 contain

12 (A) the name, address, and telephone number of the issuer and
13 a brief description of the general character and location of the issuer's business;

14 (B) a statement demonstrating eligibility for notice filing under
15 the exemption in this subsection;

1 (C) a description of the security being offered or sold;

2 (D) a description of the kind and amount of commissions,
3 finders' fees, or other remuneration paid directly or indirectly in connection
4 with soliciting a prospective buyer in this state; and

5 (E) the information and documents required under (i) of this
6 section by the administrator by regulation or order;

7 (2) the offer or sale is made by, and commissions or other remuneration
8 in connection with making the sale are made only to, persons registered or required
9 to be registered under AS 45.55.030(a) or (c) and 45.55.040;

10 (3) before a sale, each prospective buyer is furnished information that
11 is sufficient to make an informed investment decision; this information shall be
12 furnished to the administrator on request if not otherwise required to be filed; in this
13 paragraph, "information that is sufficient to make an informed investment decision"
14 includes the issuer's most recent audited income and expense statement and balance
15 sheet, a statement of risks, and a disclosure of any significant negative factor that may
16 affect the outcome of the investment; and

17 (4) the issuer and the issuer's predecessors have been in continuous
18 operation for at least three years and there has been no default during the current fiscal
19 year or within the two preceding fiscal years in the payment of principal, interest,
20 dividends, or other obligation on a security of the issuer or a predecessor of the issuer
21 with a fixed maturity or a fixed interest, dividend, or other provision.

22 (h) The exemption in (g) of this section is not available to an issuer if the
23 issuer, a predecessor of the issuer, an affiliated issuer, a director of the issuer, an
24 officer of the issuer, a general partner of the issuer, a beneficial owner of 10 percent
25 or more of a class of the issuer's equity securities, a promoter of the issuer presently
26 connected with the issuer in any capacity, an underwriter of the securities to be
27 offered, a partner of an underwriter of the securities to be offered, a director of an
28 underwriter of the securities to be offered, or an officer of the underwriter of the
29 securities to be offered

30 (1) has filed within the last five years a registration statement that is
31 the subject of a currently effective registration stop order entered by a state securities

1 administrator or the United States Securities and Exchange Commission;

2 (2) within the last five years has been convicted of

3 (A) a felony;

4 (B) a criminal offense involving fraud or deceit; or

5 (C) a criminal offense in connection with the offer, purchase,
6 or sale of a security;

7 (3) is currently subject to a state or federal administrative enforcement
8 order or judgment entered within the last five years finding fraud or deceit in
9 connection with the purchase or sale of a security; or

10 (4) is currently subject to an order, judgment, or decree of a court of
11 competent jurisdiction entered within the last five years, temporarily, preliminarily, or
12 permanently restraining or enjoining the person subject to the order from engaging in
13 or continuing to engage in conduct or a practice involving fraud or deceit in
14 connection with the purchase or sale of a security.

15 (i) Notwithstanding AS 45.55.150, the administrator may by regulation or order
16 establish requirements for, and require the filing of, a prospectus, pamphlet, circular,
17 form letter, advertisement, or other sales literature used or intended to be used in
18 connection with the offer or sale of a security, whether a viatical settlement contract
19 or a security that represents or is secured by a viatical settlement contract, that is
20 exempt under (g) of this section.

21 * **Sec. 2.** AS 45.55 is amended by adding a new section to read:

22 **Sec. 45.55.933. Right of rescission applicable to sales of viatical settlement**
23 **contracts.** (a) In addition to any other rights provided for under this chapter or
24 otherwise, a person who purchases a viatical settlement contract or a security that is
25 secured by a viatical settlement contract may rescind the purchase. The person may
26 rescind the purchase by giving written notice of rescission to the entity designated for
27 the notice in the disclosure documents by ordinary mail, postage prepaid, within three
28 business days following the later of the day on which the person

29 (1) received the final disclosure document required under this chapter
30 relating to the transaction; or

31 (2) paid the required consideration for the purchase of the viatical

1 settlement contract or a security that is secured by a viatical settlement contract.

2 (b) The notice required under (a) of this section is sufficient if addressed to
3 the entity designated for the notice at the address given in the disclosure statement
4 relating to the transaction. The notice is effective when deposited in the United States
5 mail. The notice is not required to be in a particular form and is sufficient if it
6 expresses the intention of the purchaser to rescind the transaction.

7 * **Sec. 3.** AS 45.55.935(a) is amended to read:

8 (a) The administrator shall adopt regulations, consistent with the provisions of
9 this chapter, governing administrative hearings conducted by the administrator or a
10 designee of the administrator for the following:

11 (1) orders issued under AS 45.55.120, 45.55.900(d) or (i), or 45.55.920;
12 in these instances, the administrator shall promptly send a notice of opportunity for
13 hearing to the issuer of the securities and to all persons who have filed with the
14 department a notice of intention to sell the securities; and

15 (2) orders issued under AS 45.55.060; before the administrator enters
16 an order under AS 45.55.060, the administrator shall send to the person involved a
17 notice of opportunity for hearing; if the person involved is an agent, then the
18 administrator shall in addition notify the employing broker-dealer, investment advisor,
19 or issuer.

20 * **Sec. 4.** AS 45.55.990(7) is amended to read:

21 (7) "issuer" means a person who issues or proposes to issue any
22 security, except that with respect to

23 (A) certificates of deposit, voting-trust certificates, or collateral-
24 trust certificates, or with respect to certificates of interest or shares in an
25 unincorporated investment trust not having a board of directors, or persons
26 performing similar functions or of the fixed, restricted management, or unit
27 type, the term "issuer" means the person or persons performing the acts and
28 assuming the duties of depositor or manager under the provisions of the trust
29 or other agreement or instrument under which the security is issued;

30 (B) a fractional or pooled interest in a viatical settlement
31 contract, the term "issuer" means the person who creates, for the purpose

1 **of sale, the fractional, or pooled interest;**

2 **(C) a viatical settlement contract that is not a fractional or**
 3 **pooled interest in a viatical settlement, the term "issuer" means the person**
 4 **effecting the transaction with the investor in the contract, but does not**
 5 **include a broker-dealer or agent;**

6 * **Sec. 5.** AS 45.55.990(12) is amended to read:

7 (12) "security" means a note; stock; treasury stock; bond; debenture;
 8 evidence of indebtedness; certificate of interest or participation in any profit-sharing
 9 agreement; [A] limited liability company interest under AS 10.50; collateral-trust
 10 **certificate** [CERTIFICATES]; preorganization certificate or subscription; transferable
 11 share; investment contract; voting-trust certificate; certificate of deposit for a security;
 12 **viatical settlement contract;** [A] certificate of interest or participation in an oil, gas,
 13 or mining title or lease or in payments out of production under the title or lease or in
 14 any sale of or indenture or bond or contract for the conveyance of land or any interest
 15 in land; an option on a contract for the future delivery of agricultural or mineral
 16 commodities or any other commodity offered or sold to the public and not regulated
 17 by the Commodity Futures Trading Commission; however, the contract or option is not
 18 subject to the provisions of AS 45.55.070 if it is sold or purchased on the floor of a
 19 bona fide exchange or board of trade and offered or sold to the public by a broker-
 20 dealer or agent registered under this chapter; investment of money or money's worth
 21 including goods furnished or services performed in the risk capital of a venture with
 22 the expectation of some benefit to the investor where the investor has no direct control
 23 over the investment or policy decision of the venture; or, in general, any interest or
 24 instrument commonly known as a "security," or any certificate of interest or
 25 participation in, temporary or interim certificate for, receipt for, guarantee of, or
 26 warrant or right to subscribe to or purchase, any of the foregoing; "security" does not
 27 include an insurance or endowment policy or annuity contract under which an
 28 insurance company promises to pay a fixed or variable sum of money either in a lump
 29 sum or periodically for life or for some other specified period;

30 * **Sec. 6.** AS 45.55.990 is amended by adding new paragraphs to read:

31 (14) "viatical settlement contract" means an agreement for the purchase,

1 sale, assignment, transfer, devise, or bequest of all or a portion of the death benefit or
2 ownership of a life insurance policy or certificate for consideration; "viatical settlement
3 contract" includes a fractional or pooled interest in a viatical settlement contract, but
4 does not include

5 (A) the assignment, transfer, sale, devise, or bequest of a death
6 benefit, life insurance policy, or certificate of insurance by a viator to the
7 viatical settlement provider;

8 (B) the assignment, transfer, sale, devise, or bequest of a life
9 insurance policy, for less than the expected death benefit, by the viator to a
10 friend or family member if the friend or family member does not enter into
11 more than one agreement described in this paragraph in a calendar year;

12 (C) an assignment of a life insurance policy to a bank, savings
13 bank, savings and loan association, credit union, or other licensed lending
14 institution as collateral for a loan; or

15 (D) the exercise by the viator of an accelerated benefits
16 provision under the terms of the life insurance policy.

17 (15) "viatical settlement provider" means a person who is an issuer, has
18 satisfied all requirements of this state to allow the person to do business in this state,
19 and enters into multiple viatical settlement contracts with viators each year for the
20 purpose of selling viatical settlement contracts or pooled or fractional interests in
21 viatical contracts to one or more investors;

22 (16) "viator" means the person whose life is insured by the insurance
23 policy or certificate that is the subject of a viatical settlement contract.