CS FOR HOUSE BILL NO. 190(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 1/26/00
Referred: Judiciary

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to viatical settlement transactions; and providing for an effective date."

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

*** Section 1.** AS 21.36 is amended by adding a new section to read:

Sec. 21.36.055. Violation of viatical settlement provisions prohibited. A person may not violate the viatical settlement transaction provisions of AS 21.89.110 or regulations adopted under AS 21.89.110.

*** Sec. 2.** AS 21.89 is amended by adding a new section to read:

Sec. 21.89.110. Viatical settlement transactions. (a) The director shall regulate the transaction of viatical settlement contracts for the protection of viators, insureds, and insurers. The authority of the director under this subsection extends to the regulation of transactions between a viator and a viatical settlement provider and between a viator and a person acting as an agent in viaticating a life insurance policy, while the authority of the commissioner extends to the regulation of viatical settlement investments as provided under AS 45.55.905(c).

(b) A viatical settlement provider, representative, or broker must apply for a license with the director, submit information required by the director, and pay the required fee established under AS 21.06.250 with the application for licensure. A person may not act as or represent to be a viatical settlement provider, representative, or broker relative to a subject resident, located, or to be performed in this state unless licensed under this section.

(c) Viatical settlement contract forms, viator and insured disclosure statements, and viatical settlement advertising materials must be filed by the viatical settlement provider, representative, or broker with the director and must be approved by the director.

(d) The director may examine a licensed viatical settlement provider, representative, or broker, or an applicant for a viatical settlement provider, representative, or broker license. The cost of the examination shall be paid by the person examined under AS 21.06.160.

(e) The director may adopt regulations to implement this section, including standards for

(1) viatical settlement provider, representative, and broker reporting requirements and records retention;

(2) viator and insured privacy protection;

(3) viatical settlement contract provisions, advertising materials, and filing requirements;

(4) payments to viators or insureds, including evaluating the reasonableness of payments under a viatical settlement contract;

(5) licensing requirements, including license qualification, disqualification, and renewal;

(6) financial accountability of viatical settlement providers;

(7) the relationship and responsibilities of insurers, viators, insureds, and viatical settlement providers, representatives, and brokers in the transaction of a viatical settlement contract;

(8) viator, insured, and insurer protection, including full and fair

disclosure setting out the manner and content of required disclosures and filing requirements; and

(9) assessment of fees to cover the cost of regulating viatical settlement contracts, providers, representatives, and brokers.

(f) A violation of this section or a regulation adopted under this section is an unfair trade practice and subject to penalty under AS 21.36.

(g) In this section,

(1) "transaction" means, with respect to viatical settlement contracts,

(A) solicitation and inducement;

(B) preliminary negotiations;

(C) effectuation of a viatical settlement contract;

(D) transaction of matters subsequent to the effectuation of the viatical settlement contract and arising out of it;

(2) "viatical settlement broker"

(A) means a person that, on behalf of a viator or insured and for a fee, commission, or other valuable consideration, offers or attempts to negotiate viatical settlement contracts between a viator or insured and one or more viatical settlement providers;

(B) does not include a person acting as an attorney or accountant retained to represent a viator or insured and compensated by or at the direction of the viator or insured;

(3) "viatical settlement contract"

(A) means a written agreement between a viator or insured and a viatical settlement provider for the sale, assignment, transfer, devise, or bequest to the viatical settlement provider by the viator or insured of all or a portion of the death benefit or ownership of a life insurance policy for consideration that is less than the expected death benefit of the life insurance policy;

(B) includes a contract for a loan or other financial transaction secured primarily by an individual or group life insurance policy;

(C) does not include

(i) a loan by a life insurance company under the terms of a life insurance contract;

(ii) a loan secured by the cash value of a policy;

(iii) the assignment of a life insurance policy as collateral for a loan to a bank, saving bank, savings and loan association, credit union, or other licensed lending institution;

(iv) the exercise by the viator or insured of an accelerated benefits provision under the terms of the life insurance contract; or

(v) the sale, assignment, transfer, devise, or bequest of a life insurance policy for less than the expected death benefit by a viator or insured to a friend or family member if the friend or family member does not enter into more than one agreement in a calendar year;

(4) "viatical settlement provider" means a person, other than a viator or insured, that enters into a viatical settlement contract, including a person that

(A) obtains financing for the purchase, acquisition, transfer, or other assignment of one or more viatical settlement contracts, viaticated policies, or interests in viatical settlement contracts or viaticated policies; or

(B) sells, assigns, transfers, pledges, hypothecates, or disposes of one or more viatical settlement contracts, viaticated policies, or interests in viatical settlement contracts or viaticated policies;

(5) "viatical settlement representative"

(A) means a person that is an authorized agent of a viatical settlement provider or broker and that acts or aids in any manner in the transaction of a viatical settlement contract;

(B) does not include

(i) a person acting as an attorney or an accountant, or a person exercising a power of attorney granted by a viator or insured; or

(ii) a person retained to represent a viator or insured and compensated by or at the direction of the viator or insured;

(6) "viaticated policy" means a life insurance policy that has been acquired by a viatical settlement provider under a viatical settlement contract;

(7) "viator" means the owner of a life insurance policy insuring the life of an individual who enters or seeks to enter into a viatical settlement contract.

*** Sec. 3.** AS 45.55.905 is amended by adding a new subsection to read:

(c) The administrator shall regulate transactions between a viatical settlement provider or person acting as an agent of a viatical settlement provider and a subsequent investor, while the authority of the director of the division of insurance extends to the regulation of viatical settlement contracts under AS 21.89.110.

*** Sec. 4.** AS 45.55.990(32) is amended to read:

(32) "security" means a note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; limited liability company interest under AS 10.50, notwithstanding the limitations of AS 45.08.103(c); collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting-trust certificate; certificate of deposit for a security; **<u>viatical settlement interest;</u>** certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under the title or lease or in any sale of or indenture or bond or contract for the conveyance of land or any interest in land; an option on a contract for the future delivery of agricultural or mineral commodities or any other commodity offered or sold to the public and not regulated by the Commodity Futures Trading Commission; however, the contract or option is not subject to the provisions of AS 45.55.070 if it is sold or purchased on the floor of a bona fide exchange or board of trade and offered or sold to the public by a broker-dealer or agent registered under this chapter; investment of money or money's worth including goods furnished or services performed in the risk capital of a venture with the expectation of some benefit to the investor where the investor has no direct control over the investment or policy decision of the venture; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase,

any of the foregoing; "security" does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or for some other specified period;

*** Sec. 5.** AS 45.55.990 is amended by adding new paragraphs to read:

(37) "viatical settlement interest"

(A) means the entire interest or any fractional interest in a life insurance policy or in the death benefit under a life insurance policy that is the subject of a viatical settlement contract;

(B) does not include the initial purchase from the viator by a viatical settlement provider;

(38) "viator" means the owner of a life insurance policy insuring the life of an individual who enters or who seeks to enter a viatical settlement contract.

*** Sec. 6.** This Act takes effect immediately under AS 01.10.070(c).