

ALASKA LEGISLATURE COMMITTEE FILES 1999-2000 8672

9933 HOUSE LABOR & COMMERCE

376-5038
P.O. Box 871064
Wasilla, Alaska
99687-9998

September 6, 1985

Mr. Bob Gilfillian, P.E.
Gilfillian Engineering, Inc.
P.O. Box 871868
Wasilla, Alaska 99687

Re: Crissonview Subdivision, Class A Public Water Supply System, Phase I

Dear Mr. Gilfillian:

Please refer to the Department's letters of July 24, 1984 and October 12, 1984, which conditionally approved construction of the referenced system. On the Department's behalf, I have reviewed the information submitted by your letter of August 12, 1985 and the record drawings that were submitted on August 13, 1985. Based upon these submittals, the system was constructed in substantial conformance with the approved plans. Therefore, a 90 day Interim Approval to Operate the well house and the Phase I portion of the distribution system is being granted at this time. This approval is constituted by the enclosed certificate. During the interim approval period, the results of routine monitoring of the water from this system for coliform bacteria must be submitted on a monthly basis. Noting the date of the most recent analysis for coliform bacteria, August 9, 1985, the next analysis should be conducted within the next week. The Public Water System Identification Number assigned to this system is: 224329. This number should be included on all water quality testing results submitted to this Department.

Prior to the expiration date of the Interim Approval to Operate this system, and before the issuance of a Final Operation Certificate, an operation and maintenance agreement must be submitted to and approved by this Department along with assurance that easements for distribution system and well house will be recorded. As previously requested, data verifying that the service factor for the well pump's motor will not be exceeded under conditions of normal operation must also be submitted. In addition, the Department would like to conduct a Public Water System Sanitary Survey during the interim approval period. At this time the survey is being scheduled for 11:00 a.m. on September 17, 1985. It may be beneficial to have someone familiar with the system present during the survey. If the scheduled date or time is not convenient, this office should be notified no later than September 13, 1985. The survey may then be rescheduled.

It is noted that there appears to have been some confusion regarding the applicability of the Department's October 12, 1984 construction approval to the "Phase II" portion of the subject system's distribution piping. Although the Department does not object to the construction of that portion of the distribution system, an additional well and/or expanded storage and standby power facilities will need to be provided and unqualified as-built or record drawings for the "Phase II" distribution piping will need to be submitted before approval to operate that portion of the system can be granted. Plans for any expansion of the system will, of course, need to be approved by this Department.

September 6, 1985

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It is also noted that the Interim Approval to Operate the subject water supply system neither constitutes nor implies approval of the subdivision plans. A copy of the Department's letter of June 25, 1984, which summarizes the Department's review of the proposed subdivision plans, is enclosed for your information.

Thank you for your continued cooperation with this Department. If you have any questions, please do not hesitate to contact me.

Sincerely,

Shaun E. Sexton

Shaun E. Sexton
Environmental Engineer

SES:bkr

Enclosures: As Stated

cc: Ray Niemi/Mat-Su Borough, w/o Encs.

ABC Pump & Well Supply

SR BOX 2201
WASILLA, ALASKA 99687

December 17, 1985

Re: Crimson View Pump House

6N 130-4 Standard Pump
7½ hp 230V 1Ø 6" Franklin Motor

140 Gpm @ 168 TDH

Water Horsepower - 5.9

Pump Efficiency - 70%

BHP - 8.48

Motor Efficiency - 79.8%

Motor Input Hp - 10.63

Unit Efficiency - 56%

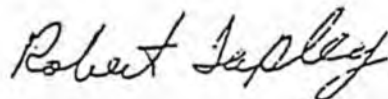
KWH Per 1000 Gal. Pumped - .942

Motor KW Load - 7.93

Motor SF - 1.15

Motor SF Hp - 8.625

Sincerely yours,



Robert Tapley

Pump Specialist

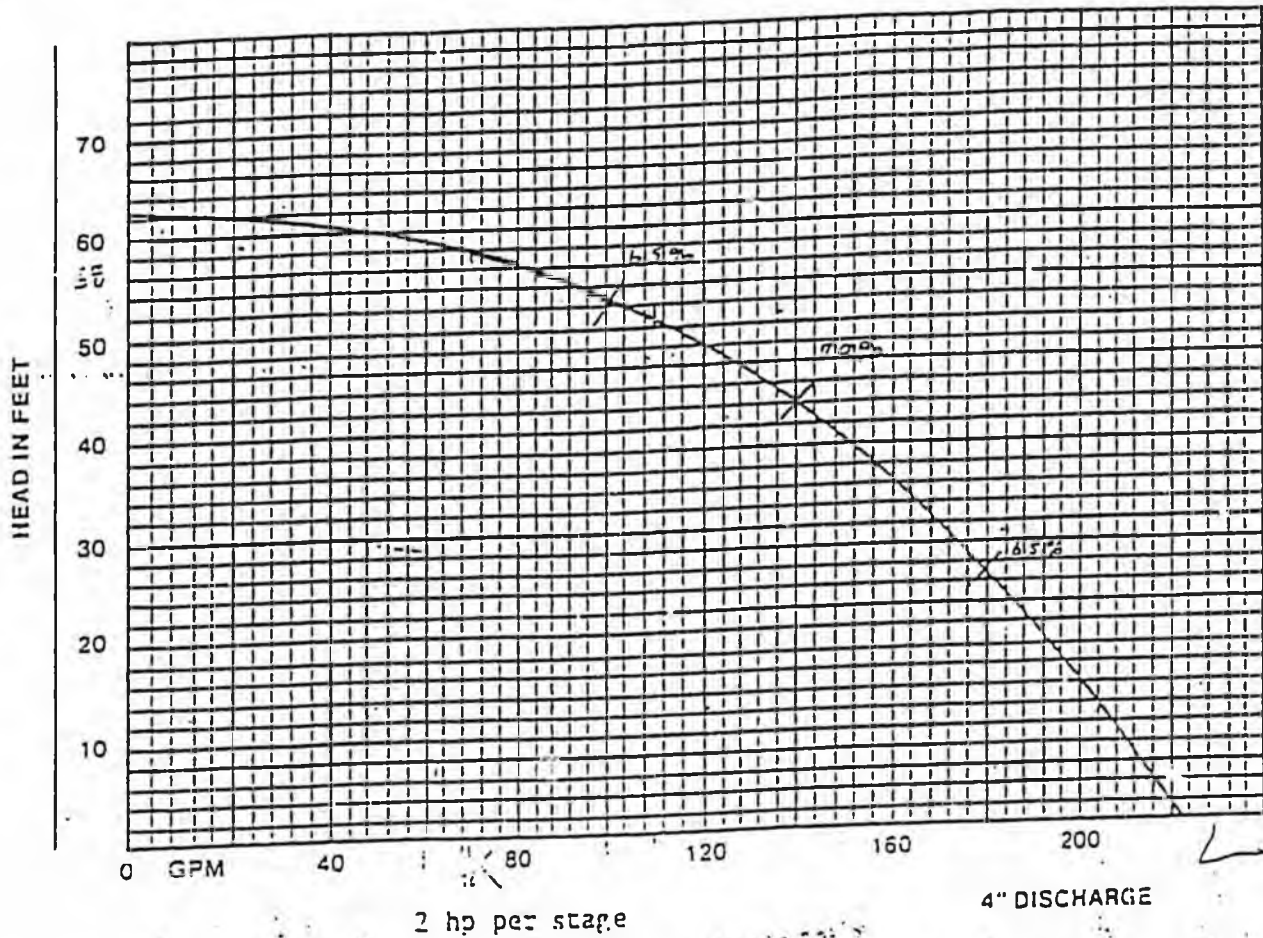
RT/ngs



6N130

PUMPS INC.

ONE STAGE PUMP PERFORMANCE
3450 RPM



30 x 232 = 6960
6960 / 100 = 69.6 HP

HEAD 23.5
30 x 23.5 = 705
705 / 28.5 = 24.74

MODEL	NO. OF STAGES	HP REQUIRED	LENGTH	SHIP WT.	PART NUMBER
6N130-2	2	5	22.13"	70	47607-7
6N130-4	4	7 1/2	28.25"	99	47608-5
6N130-5	5	10	32.13"	113	47609-3
6N130-8	8	15	43.75"	156	47510-1
6N130-10	10	20	51.13"	184	47511-9
6N130-13	13	25	62.25"	227	47612-7
6N130-16	16	30	73.38"	270	47613-5
6N130-21	21	40	91.88"	341	47614-3

RECEIVED
DEC 18 1985

Environmental Conservation

BARTLESVILLE, OKLAHOMA
STANDARD PUMPS Inc.

APRIL 1, 1983

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Page 37

WELL LOG

Whenton Water Wells, Inc.

Box 871218 • Wasilla, Alaska 99687 • 376-2041

APPROVED FOR
INSTALLATION
7/30/84
12V

OWNER Hugh Adams DEPTH OF WELL 100
 ADDRESS SPA BOX 61168, PALMER, AL. 99645 STATIC LEVEL 40
 WELL - SITE CRIMSON VIEW GALS. PER MIN. A. PROX. 100
 LOT TRACT A SCREENED 20'-100' slot
 BLOCK _____ PERFORATED 60'-80'
 DATE 7-30-84 SIZE OF CASING 6.50

KIND OF FORMATION:

FROM <u>0</u> Ft. to <u>2</u> Ft. <u>Top soil</u>	FROM _____ Ft. to _____ Ft. _____
FROM <u>2</u> Ft. to <u>45</u> Ft. <u>Sand/Gravel</u>	FROM _____ Ft. to _____ Ft. _____
FROM <u>45</u> Ft. to <u>60</u> Ft. <u>moist sand</u>	FROM _____ Ft. to _____ Ft. _____
FROM <u>60</u> Ft. to <u>100</u> Ft. <u>Gravel</u>	FROM _____ Ft. to _____ Ft. _____
FROM _____ Ft. to _____ Ft. _____	FROM _____ Ft. to _____ Ft. _____
FROM _____ Ft. to _____ Ft. _____	FROM _____ Ft. to _____ Ft. _____
FROM _____ Ft. to _____ Ft. _____	FROM _____ Ft. to _____ Ft. _____

DRILLER J. B. J.

Anchorag

OWNER Hugh Adams ADDRESS _____

ENGINEER _____

WELL LOCATION Crimson View Subdivision

TOTAL DEPTH 101 DEPTH OF CASING 81 SCREEN FROM 81 TO _____

CASING SIZE 6" SCREEN DIA 6" SCREEN SLOT 20

REMARKS Perforated 60-80"

PUMP INTAKE DEPTH 74 PUMP SIZE 20 hp AIRLINE DEPTH 68

STATIC WATER LEVEL 47 AVG DISCHARGE GMP MAX DRAW DC _____

PUMP ON: 10:00 TIME 8-12 DATE: _____ PUMP OFF: 4:00 TIME 8-12 DATE _____
(am) (pm)

DATE	TIME	PIEZO TUBE	FLOW RATE	WATER LEVEL	COMMENTS
8-12-84				47	
	10:00	18	178	49	Brown cast, 60 PSI
	10:05	18	178	49	Clearing
	10:10	18	178	49	
	10:15	26	214	49	OTV 55PSI
	10:20	35	250	49.5	OTV
	10:25	45	280	50	OTV
	10:30	50	300	50	OTV
	10:35	50	300	50	
	10:40	50	300	50	
	10:45	50	300	50	
	10:50	50	300	50	
	10:55	50	300	50	
	11:00	50	300	50	
	11:05	50	300	50	
	11:10	50	300	50	
	11:15	50	300	50.5	OTV - Open Discharge
	11:20	52	305	50.5	Crystal Clear
	11:25	52	305	50.5	
	11:30	52	305	50.5	
	11:35	52	305	50.5	
	11:40	52	305	50.5	
	11:45	52	305	50.5	
	11:50	52	305	50.	
	12:00	52	305	50.5	
	12:05	52	305	50.5	
	12:10	52	305	50.5	
	12:15	52	305	50.5	
	12:20	52	305	50.5	TDS ~220 PPM
	12:25	52	305	50.5	Fulled Samples
	12:30	52	305	50.5	
	12:35	52	305	50.5	
12:40	52	305	50.5		
12:45	52	305	50.5		
12:50	52	305	50.5		
12:55	52	305	50.5		
1:00	52	305	50.5		
1:05	52	305	50.5		
1:10	52	305	50.5		

NOV 27 1992
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
MSD

Anchorage.

WELL - TEST PUMP RE F

OWNER Hugh Adams

ADDRESS _____

ENGINEER _____

WELL LOCATION Crimson View Subdivision

TOTAL DEPTH 101 DEPTH OF CASING 81 SCREEN FROM 1.1 TO 2

CASING SIZE 6" SCREEN DIA 6" SCREEN SLOT 20

REMARKS Perforated 60 - 80

PUMP INTAKE DEPTH 74 PUMP SIZE 20 hp AIRLINE DEPTH 68

STATIC WATER LEVEL 47 AVG DISCHARGE _____ GPM MAX DRAW DC _____

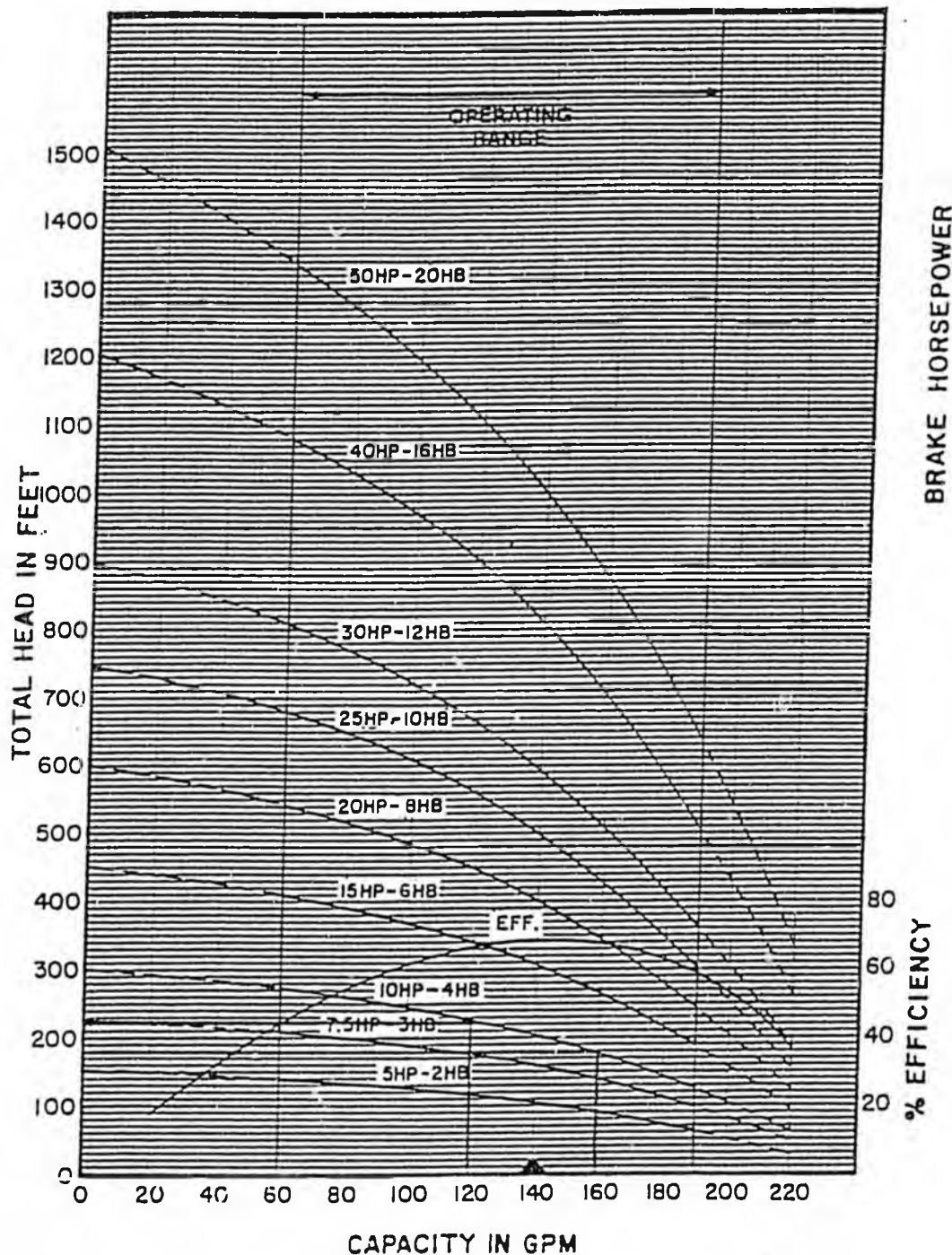
PUMP ON: 10:00 TIME 8-12 DATE PUMP OFF: 4:00 TIME 8-12 DATE

DATE	TIME	PIEZO TUBE	FLOW RATE	WATER LEVEL	COMMENTS	
8-1-84	1:20	52	305	50.5		
	1:30	52	305	50.5		
	1:35	52	305	50.5		
	1:40	52	305	50.5		
	1:45	52	305	50.5		
	1:50	52	305	50.5		
	1:55	52	305	50.5		
	2:00	52	305	50.5		
				47	Shut down	
				47	15 sec.	
				47	30 sec.	
				47	45 sec.	
				47	End Test	
		2:01				
		2:02				
		2:03				
		2:04				
		2:05				
		2:10				
		2:15				
		2:20				
		2:25				
		2:30				
		2:40				
	2:50					
	3:00					
	3:10					
	3:20					
	3:30					
	3:40					
	3:50					
	4:00					

APPROVED
NOV 27 1982
WATER RESOURCES DIVISION



140 GPM SERIES "HB" PUMPS PERFORMANCE CURVES



▲ RATED FLOW
Note: Continuous operation outside operating range will void warranty.

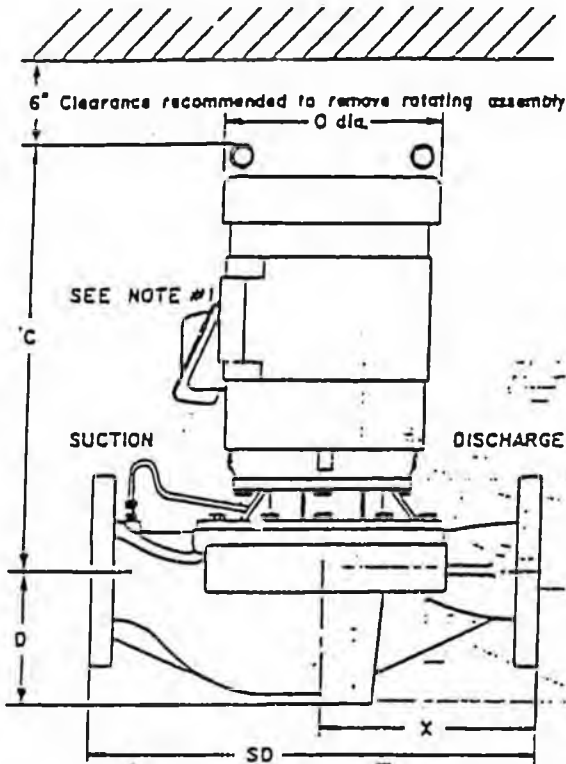
MODEL HB 140 GPM — RPM 3450
STAGE "HB" SERIES

GUARANTEED AS MINIMUM PERFORMANCE ONLY IF CERTIFIED

MINIMUM WELL SIZE 6" I.D.

INLINE PUMPS
TYPE PV

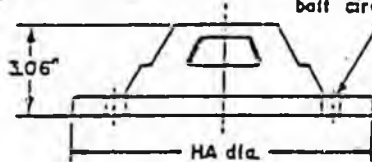
OUTLINE DIMENSIONS
SINGLE PHASE UNITS



PUMP SIZE	ANSI 125 LB. FLANGES SUCT. & DISCH.	BARE PUMP DIMENSIONS					APPROX. PUMP WT. LBS.
		D	SD	X	HA	HE	
2X2X6A	2	4.88	13.50	6.50	9	7.88	63
2.5X2.5X6ALB	2.5	5.62	15.50	7.00	10	8.68	83
2X2X8A	2	4.88	15.50	7.50	9	7.88	85
2.5X2.5X8A	2.5	5.62	16.50	8.00	10	8.88	99
3X3X8A	3	5.88	18.00	8.50	10	8.88	113
4X4X8A	4	6.50	21.00	10.00	11	9.88	148
4X4X7A	4	6.50	20.50	9.50	11	9.88	153
2X2X10A	2	5.50	19.00	9.50	9	7.88	121
3X3X10B	3	5.88	20.00	9.50	10	8.88	142
4X4X10B	4	6.50	22.00	11.00	11	9.88	173

BASE (Pedestal)
OPTIONAL
 Furnished
 Not Furnished

.5 Dia. 4 Holes
equally spaced
straddle
centerline
on HE dia.
ball circle



ALL DIMENSIONS
ARE IN INCHES

APPROX. TOTAL
UNIT WT. LBS.

NOTE 1: CONDUIT BOX LOCATED 45° CLOCKWISE FROM SUCTION FLANGE WHEN VIEWED FROM MOTOR END. (MOTOR MAY BE ROTATED IN 90° INCREMENTS)

NOTE 2: MAINTAIN 'X' DIMENSION FROM CENTERLINE OF UNIT ON EACH SIDE OF CASING FOR MINIMUM CLEARANCE.

SINGLE PHASE MOTOR HP	MOTOR FRAME	UNIT DIMENSIONS		APPROX. MOTOR WT. LBS.
		C MAX	D MAX	
1750	3500			
.50	1.5			35
.75	-	15.75		35
1	-		8.50	35
1.5	2	16.75		45
2	3	20.50		75
3	5	21.25	10.50	87
5	7.5	23.25		127
7.5	10	24.25	12.12	160
10	-	24.25		170

CUSTOMER _____ JOB NAME _____
P.O. NO. _____ ITEM NO. _____
S.O. NO. _____ SERIAL NO. _____
MOTOR MFR. _____ ENC. _____ FRAME _____ HP _____ VOLTS _____ HZ. _____
PUMP TYPE & SIZE _____ RPM _____ G.P.M. _____ TOTAL HD. FT. _____
CERTIFIED FOR APPROVAL CONSTRUCTION BY _____ DATE _____

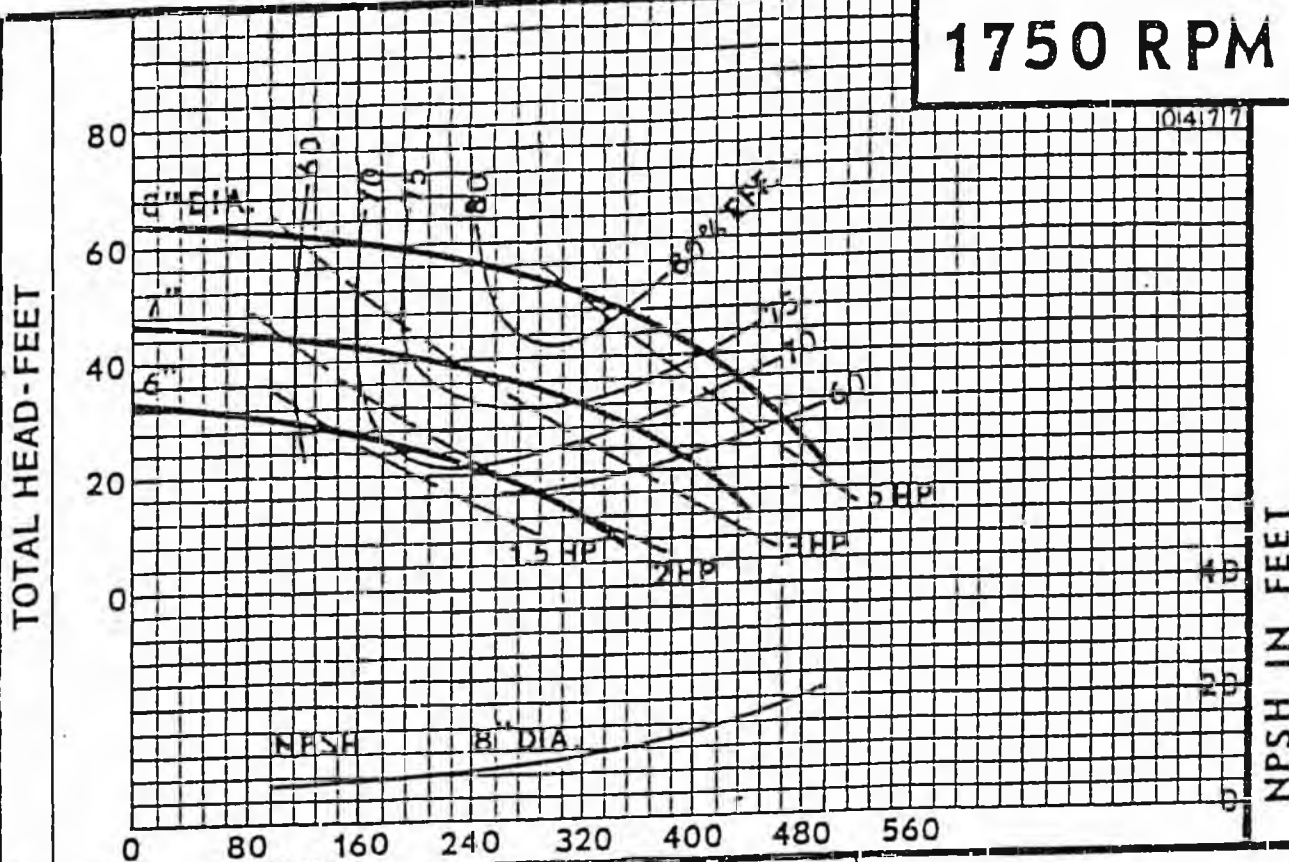
SUBJECT TO
CHANGE UNLESS
CERTIFIED FOR
CONSTRUCTION

SECTION 2240
INLINE PUMPS

PV 4 x 4 x 8A

 Peerless Pump
An Indian Head Company

1750 RPM



Imp 2683739 (143-215JMV)

U.S. GALLONS PER MINUTE

Curve 2897846r

RECEIVED DEC 01 1997

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CUSTOMER _____ JOB NAME _____
P.O. NO. _____ ITEM NO. _____ S.O. NO. _____ SERIAL NO. _____
PUMP TYPE & SIZE _____ HP _____ RPM _____ GPM _____ TOTAL HO. FT. _____
CERTIFIED FOR APPROVAL CONSTRUCTION BY _____ DATE _____

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

DIVISION OF ENVIRONMENTAL HEALTH
DRINKING WATER AND WASTEWATER PROGRAM
1075 CHECK STREET
P.O. BOX 871064
WASILLA, ALASKA 99687-1064
<http://www.state.ak.us/home.htm>

Telephone: (907) 376-5038
Fax: (907) 376-2382

January 28, 1998

Mr. Dick Lowman, P.E.
Alaska Rim Engineering
P.O. Box 2749
Palmer, Alaska 99645

RE: Crimsonview Class "A" Public Water System (PWSID #224329); Proposed Water System Upgrades for Phase II Service; Plan Review/More Information Requested

Dear Mr. Lowman:

On December 5, 1997, this office received your submittal of plans to upgrade the referenced public water system. Subsequently, on December 8 and 17, 1997, additional information was provided for this project. On January 27, 1998, I met with Mr. Nelson Elliot and two other members of the Crimsonview Homeowners Association to discuss the proposed upgrades. These upgrades are intended to expand the capacity of the system to provide service to phase II of Crimsonview Subdivision. I have reviewed the submittals and have the following comments:

Owner's Statement: You provided an owner's statement from the developer of phase II of this subdivision. This owner's statement provides authorization to review the proposed system upgrades. However, since most of the water system is owned by the Homeowners Association, a second owner's statement will need to be completed and submitted by the Homeowners Association before an "Approval To Construct" Certificate can be issued.

Peak Demand: You provided peak demand calculations for phases I and II combined (68 lots), which show that the water system needs to be capable of producing 146.6 gpm under peak demand. You provided current well flow test results (July 7, 1997) which show the well is capable of meeting the estimated peak demand and total daily demand requirements of the subdivision. You stated that the existing well pump (7.5HP/140 gpm) is slightly undersized to meet the estimated peak demand and you are proposing the installation of a Peerless 2HP inline booster pump to provide 20 to 30 feet of additional lift. You stated that this will result in the existing well pump being capable of producing 160 gpm. Based on the information you provided, it appears that the proposed booster pump is adequately sized, when combined with the existing well pump, to meet the minimum peak demand requirements for both phases I and II.

During my meeting with the Homeowners Association representatives, a copy of the subdivision covenants was provided. Article #5, item #7 of the covenants provides a requirement for landscaping the lots. The Homeowners Association has reported water use of 1000 gpd/home during

Appendix L
Page 1

peak irrigation months for phase I in the past. This is twice the total daily demand expected from typical residential use. The peak demand calculations you provided do not address the expected additional demand from landscape irrigation. The original water system design for this subdivision also did not include additional demand capacity for landscape irrigation. Although the State's Drinking Water Regulations do not require public water systems to meet additional demand expected from landscape irrigation, this issue needs to be addressed, since it is a requirement of the subdivision covenants. One means of addressing this issue is to amend the subdivision covenants to include a provision for scheduled irrigation. Specific times or days can be identified for the homeowners to irrigate their yards. Irrigation periods should not coincide with typical morning and evening peak demand periods.

Future Well Pump: You stated that the developer of phase II is proposing to establish an escrow account to cover the cost of a larger well pump (10HP), when the existing well pump is failed. You provided a performance curve for the proposed well pump: Red Jacket 10HP-4B. Based on the information you provided, it appears that this well pump is adequately sized for the intended use.

Storage: You stated that the system currently uses 14 Con-Aire 85 gallon pressure tanks. The ADEC records indicate that 14 Con-Aire 220 gallon pressure tanks were originally installed. It appears that there is an error in the ADEC records. The Homeowners Association has verified that the pressure tanks provide approximately 300 gallons of drawdown storage under the normal operating pressures. Based on this information, it appears that the pressure tanks are adequately sized to meet the minimum storage requirements for both phases I and II, with either the existing 7.5 HP well pump or the proposed 10HP well pump, and including the proposed 2HP booster pump.


Water Mains: The distribution system (4-inch DIP) for phase II was installed in 1985 along with the construction of the water system for phase I. You stated that the phase II water main was excavated in several locations and a portion of the water main was found to have inadequate ground cover. You verified that insulation has been installed on that portion of the water main. You also stated that the water main was pressure tested and a leaking valve was found. You verified that the valve has been replaced. You stated that the water main will be retested and chlorinated in the spring prior to use. This is acceptable to the Department once the proposed upgrades have been approved, subject to a requirement that satisfactory bacteria test results be obtained from this portion of the distribution system, once it has been disinfected and flushed.

System Reliability: You stated that the system is currently provided with reliable power through the Matanuska Electric Association, and that a backup power supply is not needed. You are proposing the installation of a multi-function automatic dialer in the well control building. You stated that the operator can be alerted to abnormal pump running conditions, unusual noises, temperature extremes, line voltage, running arnps, and pressure abnormalities, and that the automatic dialer can serve as a data logger. The Department agrees that a backup power supply is not required for this public water system, and that the automatic dialer can be used to enhance system reliability.

Construction Approval: Before an "Approval to Construct" Certificate can be issued for the proposed upgrades, an owner's statement will need to be provided by the Homeowners Association. The owner's statement needs to specifically identify which items are authorized for installation: 2HP booster pump and/or future 10HP well pump. Once this information is received, an "Approval to Construct" can be issued by the Department.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Archie Giddings, P.E.
Environmental Engineer

AG:

cc: Donald Mellish
Nelson Elliot

State of Alaska
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
OWNER'S STATEMENT

- DOMESTIC WASTEWATER SYSTEM
 DRINKING WATER PLAN REVIEW

Information required by 18 AAC 15.030, 18 AAC 80.310(8) and 18 AAC 80.355.

Department Completion Only Project No. _____ Date Received: _____

Submitted at DEC Office: **Mat-Su**
Public Water System Name: **Crimsonview Subdivision, Phase II**
Public Water System Location: **Mile 40, Glenn Highway**
Describe type of work proposed: **Expand water system to include Phase II**
Project Name: **Crimsonview Subdivision, Phase II**

These plans submitted by:

- Owner
 Representative of Owner

I submit the enclosed items concerning the above referenced proposed project for review. By my signature I certify that the project is (check one):

- Privately owned and that I am the owner.
 Owned by a sole proprietorship and that I am the proprietor.
 Owned by a partnership of which I am a general partner.
 Owned by a corporation of which I am a principal executive officer of at least the level of vice-president, or a duly authorized representative responsible for the overall management of this project.
 Owned by a municipal, state, federal, or other public agency, of which I am a principal executive officer, ranking elected official, or other duly authorized employee.

Robert Mellish 11-5-97
Signature of Owner or Representative Date

DONALD MELLISH REPRESENTATIVE OF ROBERT MELLISH
Name and Official Title

2200 CLIFF COURT ANCHORAGE AK. 99517
Address of Owner

SIGNING OF APPLICATIONS: This form must be signed as follows:

- 1) in the case of corporations, by the principal executive officer of at least the level of vice-president or his duly authorized representative, if the representative is responsible for the overall management of the project or operation;
- 2) in the case of partnership, by a general partner;
- 3) in the case of a sole proprietorship, by the proprietor; and
- 4) in the case of municipal, state, federal, or other public facility, by either a principal executive officer, ranking elected official, or other duly authorized employee

HB 185 Recd
4:15 PM 4/27

LAW OFFICES

BIRCH, HORTON, BITTNER AND CHEROT

1127 WEST SEVENTH AVENUE • ANCHORAGE, ALASKA 99501-3399 • TELEPHONE (907) 276-1550 • (800) 478-1550 • FACSIMILE (907) 276-3660

A PROFESSIONAL CORPORATION

HAL R. HORTON (1944-1988)

THOMAS L. ALBERT**
RONALD G. BIRCH**
WILLIAM H. BITTNER
KATHRYN A. BLACK
DOUGLAS B. BURDIN*
SUZANNE CHEROT
MAX D. GARNER

TINA M. GROVIER
WILLIAM P. HOAN*
STEPHEN M. HUTCHINGS
ROY B. JONES, JR.*
THOMAS F. KLINKNER
HARVEY A. LEVIN**
STANLEY T. LEWIN

JAMES H. LISTER**
GREGORY A. MILLER
MICHAEL J. PANSE
REBECCA C. PAULI
TIMOTHY J. PETUMENOS
ELISABETH H. ROSE**
EMILY VARTANIAN**

* D.C. BAR
** D.C. AND ALASKA BAR
† MARYLAND BAR
‡ VIRGINIA BAR
ALL OTHERS ALASKA BAR

1155 CONNECTICUT AVE., N.W.
SUITE 1200
WASHINGTON, D.C. 20036
(202) 859-8800
FACSIMILE (202) 698-1027

WRITER'S DIRECT DIAL (907) 263-7229 • WRITER'S DIRECT FAX (907) 276-2822 • rpauli@bhb.com

April 27, 1999

Representative Bill Hudson
Chairman
Utility Restructuring Committee
State Capitol, Room 108
Juneau, Alaska 99811-1182

Re: House Bill 185

Dear Chairman Hudson:

Enclosed please find a written copy of my testimony during last week's hearing on H.B. 185.

Thank you for the opportunity to provide you with my comments. Please don't hesitate to contact me if you have any questions or need any additional information.

Sincerely,

Rebecca C. Pauli

Enclosure

- cc: Chairman Sam Cotten (w/o enc)
- Commissioner Tim Cook, Manager of Docket U-98-151 (w/o enc)
- Bob Lohr, Executive Director (w/o enc)
- Bob Mahoney, Counsel for Crimsonview
Owners Association (w/o enc)

Testimony of Rebecca Pauli

House Bill 185

My name is Rebecca Cohen Pauli and I am an attorney with the Law firm of Birch, Horton, Bittner and Cherot. I am testifying here today on behalf of Robert Mellish. Our firm represents Robert Mellish in his Complaint against The Crimsonview Owners Association ("Association") before the Alaska Public Utilities Commission ("APUC"). We would like to thank the Committee for providing this opportunity to testify against H.B. 185, "An Act Exempting Certain Small Water Utilities From Regulation by the Alaska Public Utilities Commission".

We believe H.B. 185 was introduced in an attempt to eliminate the APUC's authority to resolve Mr. Mellish's complaint against the Association. Mr. Mellish's property is located in the Crimsonview Subdivision and the complaint is Mr. Mellish's final effort to obtain water service from the community well that serves the Crimsonview Subdivision. This is not a case of a developer seeking to obtain water service from a neighboring subdivision but rather is a case of a developer seeking to obtain water service for property located within a subdivision from a community well which was designed to service the entire subdivision and has served the entire subdivision up until now.

Over the past two years, Mr. Mellish has attempted to work with the Association regarding his development of Phase II of the Crimsonview Subdivision. The Association has been both unreasonable and unfair in its demands of Mr. Mellish. If H.B. 185 passes, Mr. Mellish's frustrating and time-consuming experiences will become routine for other developers. As discussed below, we believe H.B. 185 is both anti-consumer and anti-development.

My testimony will cover three areas. First, I will provide a brief background which will provide you with an overview of Mr. Mellish's experiences. This overview will provide insight into what the future will hold for developers and the individual homeowner seeking water should small water utilities be completely exempt from the APUC's jurisdiction. Second, I will address why we believe H.B. 185 is unnecessary reactive legislation that will have an unintended negative impact. And third, I will propose a solution.

I. Mr. Mellish's Attempts to Develop Phase II of the Crimsonview Subdivision

Following is a summary of the undisputed facts as admitted by the Association in their Answer to Robert Mellish's Complaint. The Crimsonview Subdivision was designed and platted to be developed in two phases. Phase I consists of 47 lots and Phase II consists of 22 lots. The community well and the integrated looped water distribution system were originally designed and installed to serve both Phase I and Phase II. This intent is expressed in the notes to the official plat of the subdivision.

Note 2 provides:

Lot 11 of Block 1, Phase I of this plat is the sight of the community well system, and will be exclusively used as such until the time of connection of this subdivision's designed water system to a possible future city water system at which time the community well will be abandoned.

- The community well and water distribution were installed in 1985. It is noteworthy that the water distribution system to serve both Phases I and Phase II was installed at the same time is an interconnected looped distribution system.
- In February 1997, the title to the lot in Phase I on which the well house is located was conveyed to the Association. Since that time the Association has operated the water system, asserted ownership, and charged Phase I owners an initial hook up fee and a monthly water assessment.
- When Mr. Mellish was ready to develop Phase II, he wanted to do it right. He hired the engineering firm that originally designed the water system to determine whether the existing system's distribution facilities were adequately sized to serve the lots in Phase II. The firm concluded they were, however, the additional homes in Phase II required a two horsepower pump to ensure adequate pressure. It is undisputed that the existing distribution system is adequately sized to serve all 68 lots. It is also undisputed that the aquifer is more than adequate to supply the entire subdivision.
- A second well makes no sense because it would be relatively close to the first well, would draw from the same aquifer, and would require changes to the existing distribution system to ensure against backflow from the second well.
- In an abundance of caution, Mr. Mellish hired a second engineering firm to review the original engineering firm's conclusion that the existing system's design was still suitable to serve both Phase I and II. The second firm, Alaska Rim, confirmed the existing system was appropriate. Upon two engineers assurances, Mr. Mellish informed the Association of his plans to develop the 22 lots in Phase II and that this would necessitate the operation of the water distribution system located in Phase II.
- Throughout 1997, Mr Mellish performed extensive work to bring Phase II into compliance with the Matanuska-Susitna Borough subdivision requirement, including upgrades to the water system.
- Mr. Mellish hired Alaska Rim to design the necessary upgrades to the water system and address any Association concerns regarding lawn watering. Prior to Mr. Mellish's plans for development, the Phase I homeowners has experienced poor water pressure when they would

be watering their lawns during the dry summer months. Alaska Rim prepared a proposal to satisfy ADEC requirements and to address the Association's concerns about lawn watering.

- As I previously indicated Alaska Rim found the existing well has a flow yield capability far in excess of the total instantaneous peak demand and total daily demand of all 68 lots, the existing storage capacity is more than adequate to serve all 68 lots and the existing pump equipment exceeds the minimum capacity requirements for Phase I and is a mere 7 g.p.m. shy of meeting the instantaneous combined peak demand of Phases I and II.
- To address these concerns and to obtain water from his Association, Mr. Mellish offered to purchase and install a 2 horsepower booster pump as recommended by his engineers. Mr. Mellish also offered to purchase and install a multi function automatic dialer which would monitor the system's operation and immediately report any deviations from the norm. Finally he was willing to establish and fund an escrow account to cover the capital cost of a 10 horsepower pump which would provide more than adequate peak capacity to replace the existing pump if it fails in the future or to increase system capacity.
- On January 28, 1998, the ADEC agreed with Mr. Mellish's plans stating that the well yield and proposed addition of a 2 horsepower pump were adequate to meet the demand requirements of all 68 lots and that scheduled irrigation could be employed to address any concerns regarding lawn watering, the existing storage tanks were adequate to meet the storage requirements of all 68 lots and that a standby power supply is not necessary.
- The ADEC, having made these findings, required a completed "Owner's Statement" from the Association. The Association refused to sign the Owner's Statement and rejected Mr. Mellish's earlier proposal to bear all the costs of the upgrades even though all the lots would benefit.
- The Association counter offered demanding that, in addition to the upgrades and the payment of the higher developed lot rate for Mr. Mellish's undeveloped lots, he must also:
 1. At his own expense, design, supply, install, and warranty a 30,000 gallon water storage facility with attendant plumbing, booster pumps and installation, heating, and water treatment systems;
 2. At his own expense, design supply, install, and warranty a standby power generation system.
 3. Submit all engineering plans for the storage facility and power system for approval by the Association and pay the fees for the Association to hire an engineer to inspect and approve the plans.
 4. Pay the Association an initial assessment fee of 125 per Phase II lots (2750) in order for Mr. Mellish to accept financial responsibility for the expenses the association incurred in operating the Phase I portion of the water system during the previous year.

5. The association and additional administrative fee of 2,000
6. Maintain the system's water mains that are located in Phase II until 50% of the Phase II lots have occupied dwellings; and
7. Obtain a certificate to operate from the ADEC.

- In response to these ransom demands of the Association, Mr. Mellish reluctantly agreed to pay the \$4,750 and to maintain the water mains until 50% of the phase II lots had houses on them. Mr. Mellish had buyers for 50% of the lots. Because of the Association's refusal to provide Phase II of the subdivision with water the purchasers canceled.
- The Association rejected Mr. Mellish's second offer.
- On April 20, 1998, Mr. Mellish yet again attempted a compromise and made a third offer agreeing to pay the Phase II lots proportionate share of the cost of installing the Association's requested 30,000 gallon storage facility even though such a facility is unnecessary and would involve increased operation and maintenance costs for the entire system. The Association refused to alter its demands and ultimately added to their list of demands paved roads.
- Mr. Mellish had no recourse other than to seek a legal solution. Because the Association, by its own admission controls a water system for providing water to 10 or more persons for compensation, it is a public utility with an obligation to serve all persons within its service area under equal terms and conditions. Because it is undisputed that the water system was designed and constructed for both Phase I and Phase II to provide drinking water to all 68 lots from a single community well and water distribution system, it is only natural that the public interest would support a finding that the service area be the Crimsonview subdivision (both Phase I and II). This is the least cost means of service. Water service to Phase II is as simple as a turn of a valve. Accordingly, in mid September 1998 Mr. Mellish filed a complaint with the APUC seeking service under equal terms and conditions.
- The APUC provides a forum that is in many instances quicker than the court system and generally less expensive. In this case, the APUC scheduled a hearing for April 5, 1999. Because it is undisputed that the Association owns the water system, provides service to 46 households, and receives payments from those households, Mr. Mellish requested the Commission rule that under the statutes the Association is public utility. Mr. Mellish was ready to proceed to hearing. The Association requested the Commission to delay the hearing until after it rules on Mr. Mellish's request.
- Were it not for the Association's request for further delay, this matter would have proceeded to hearing and a final order would be forthcoming within the next few weeks. Because of the Association's actions, Mr. Mellish will forgo yet another construction season.

II. H.B. 185 is Both Anti-Consumer and Anti-Developer

- While HB 185 may be backed by good intentions, upon closer examination it becomes apparent as a public policy matter you do not want water service disputes in the court system.
- For these types of matters, the APUC is much more expedient, inexpensive and user friendly than the Court system. The APUC also has the expertise on staff, engineers etc. to determine whether an existing system is adequate or inadequate.
- Historically, the APUC has not sought out small water utilities such as homeowners associations for regulation. The APUC only becomes involved in the "regulation" of these water utilities when asked to do so by a consumer or a lending institution.
- By statute, AS 42.05.990, a homeowner's association that owns, operates, manages or controls a utility system servicing ten or more customer/members for compensation is a "public utility" subject to regulation under AS 42.05. The Commission will grant exemptions to homeowners under AS42.05.711(d) because it has found that under certain circumstances, full regulation is not in the public interest.
- By providing for the public interest exemption, prior legislatures and the APUC wisely recognize that consumers must have an easily accessible and friendly forum for disputes. Perhaps the most important function of the APUC is to provide a forum where an aggrieved or potential consumer may be heard. If HB 185 became law, the only recourse for an aggrieved or potential consumer would be the court system. The APUC is a much friendlier and accessible forum than the legal system. Unlike the court system, the APUC has as one of its purposes to assist the consumer in obtaining service from a utility. By preventing the consumer from having access to the APUC, HB 185 is anti-consumer.
- HB 185 is anti-development. The impact of HB 185 on potential developments such as Mr. Mellish's must be considered. If it becomes law, you have the ultimate NIMBY ("not in my back yard") weapon. Here, we have a case where all engineers (including the Association's) agree there is an adequate water supply and an adequate water distribution system ready to provide water service with the turn of a valve.
- However, a few individuals who control the Association do not want further development in their neighborhood and are effectively blocking responsible development by refusing to provide water via the existing facilities. If HB 185 passes, it is possible that Mr. Mellish will have to dedicate several lots to a well to draw from the same aquifer as the existing well and modify the existing distribution system, thereby increasing the cost of the development. This is not a case of a developer asking a neighboring subdivision for water, this is a case of homes within the existing subdivision being deprived of water.

III. Mr. Mellish's Proposed Solution

- H.B. 185 appears to be intended to eliminate the APUC's authority to require homeowners associations to obtain certificates of public convenience and necessity, to impose rate regulation on homeowners associations and to require homeowners associations to pay the Regulatory Cost Charge. However, the APUC does not require homeowners associations to obtain certificates of public convenience, does not subject homeowners associations to rate regulation and does not require homeowners associations to pay the Regulatory Cost Charge. Rather, the APUC merely provides an accessible, user friendly and affordable forum for resolving disputes between homeowners associations and consumers.
- As a result, the Committee should adopt either one of two alternatives. First, the Committee should not pass this legislation to exempt certain small water utilities from regulation. As explained above, the APUC does not require homeowners associations to comply with most provisions in AS 42.05. Rather, the APUC only retains jurisdiction to resolve disputes such as the one between Mr. Mellish and the Association.
- Second, in the alternative, the Committee should add language providing that H.B. 185 will not become effective until January 1, 2000 to clarify that the APUC will have the authority and opportunity to resolve any pending complaints or other matters relating to small water utilities including the complaint filed by the Mellishes. This complaint has been pending since early last fall, the Mellishes have already expended a significant amount of time and resources before the APUC, and they are now only waiting for the APUC to issue a decision. In view of this investment of public and private resources, it would not be fair for the Alaska Legislature to completely and immediately eliminate the APUC's authority to resolve this and other pending complaints.
- Unlike telephone and electric where the homeowner has other means of obtaining service, water utilities maintain the ultimate natural monopoly. In small water utility situations, competition cannot protect the consumer. Therefore, as a public policy matter small water utility systems should not be deregulated leaving the consumer with no protection.

IV. Conclusion

If HB 185 passes, consumers will be left with little recourse except to resort to the judicial system. A lawsuit is more expensive and takes longer than filing a complaint at the APUC. The Court staff is not statutorily required to protect the public interest. The APUC has the authority to resolve disputes relating to the provision of water service and is less expensive. Moreover, based upon Mr. Mellish's experiences with the Crimsonview Owners Association, without APUC intervention, homeowners associations will be able to frustrate further development in their areas by refusing to provide water service to certain property owners.

Thank you for the opportunity to provide these comments.

HB

1900

TO: Bannister/Ford

1/24/00

below moved
unanimous

Amendment #3

To CSHB 190(L&C), Draft Version "K"

Page 2, line 6, following "broker"

delete "subject to a risk" and insert "relative to a subject"

TO: Terry Bannister/Mike Ford

DATE: January 24, 2000

RE: HB 190

Please prepare in final, from LS0576/K, Bannister/Ford, 1/24/00 with the above amendment #3, for delivery to the Chief Clerk's office to be read across. If you have any questions, please let me know.

Janet x 4954
Rep. Rokeberg's Office

long used throughout
statute in this amend.
Cover only ends in
Alaska

1/24/00 Halcio moved to accept working document

1-LS0576\K
Bannister/Ford
1/24/00

1/24/00 as amended moved out w/ new recs. & 2 zero fiscal notes

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:
Referred:**

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

9 **Sec. 21.89.110. Viatical settlement transactions.** (a) The director shall
10 regulate the transaction of viatical settlement contracts for the protection of viators,
11 insureds, and insurers. The authority of the director under this subsection extends to
12 the regulation of transactions between a viator and a viatical settlement provider and
13 between a viator and a person acting as an agent in viaticating a life insurance policy,
14 while the authority of the commissioner extends to the regulation of viatical settlement

1 investments as provided under AS 45.55.905(c).

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

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

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

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

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

20 (2) viator and insured privacy protection;

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

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

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

27 (6) financial accountability of viatical settlement providers;

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

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

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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

L

- 1 (i) a loan by a life insurance company under the terms
2 of a life insurance contract;
- 3 (ii) a loan secured by the cash value of a policy;
- 4 (iii) the assignment of a life insurance policy as
5 collateral for a loan to a bank, saving bank, savings and loan
6 association, credit union, or other licensed lending institution;
- 7 (iv) the exercise by the viator or insured of an
8 accelerated benefits provision under the terms of the life insurance
9 contract; or
- 10 (v) the sale, assignment, transfer, devise, or bequest of
11 a life insurance policy for less than the expected death benefit by a
12 viator or insured to a friend or family member if the friend or family
13 member does not enter into more than one agreement in a calendar
14 year;
- 15 (4) "viatical settlement provider" means a person, other than a viator
16 or insured, that enters into a viatical settlement contract, including a person that
- 17 (A) obtains financing for the purchase, acquisition, transfer, or
18 other assignment of one or more viatical settlement contracts, viaticated
19 policies, or interests in viatical settlement contracts or viaticated policies; or
- 20 (B) sells, assigns, transfers, pledges, hypothecates, or disposes
21 of one or more viatical settlement contracts, viaticated policies, or interests in
22 viatical settlement contracts or viaticated policies;
- 23 (5) "viatical settlement representative"
- 24 (A) means a person that is an authorized agent of a viatical
25 settlement provider or broker and that acts or aids in any manner in the
26 transaction of a viatical settlement contract;
- 27 (B) does not include
- 28 (i) a person acting as an attorney or an accountant, or
29 a person exercising a power of attorney granted by a viator or insured;
30 or
- 31 (ii) a person retained to represent a viator or insured and

1 compensated by or at the direction of the viator or insured;

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

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

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

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

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

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

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

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

6 (37) "viatical settlement interest"

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

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

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

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

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: April 13, 1999

FURTHER REFERRALS:

Judiciary

Date of Committee Action: Jan. 24, 2000

The LABOR AND COMMERCE Committee considered:

HB 190

HOUSE BILL NO. 190

VIATICAL SETTLEMENTS

'An Act relating to viatical settlement contracts.'

recommends it be replaced with the following committee substitute CSHB 190(L+C) the same title a new title

additional referral to _____ Committee
 attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____ APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____ fiscal note(s) _____

zero fiscal note(s) Dept of Banking; zero fiscal note(s) _____
House L+C

SIGNING WITH RECOMMENDATIONS	DP	DNP	NR	AM
<i>Ch. H</i>			✓	
<i>John Sampson</i>			✓	
<i>John Price</i>			✓	
<i>Chris...</i>			✓	
<i>Phil Harris</i>	✓			
<i>John...</i>			✓	
<i>Sam Roky</i>	✓			

CHAIR'S SIGNATURE *Sam Roky*

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

NO. _____
BILL VERSION: CSHB 190 (L&C)
PUBLISH DATE: _____

Revision Date: _____
Title: An Act relating to viatical settlement contracts

Department Affected: Community & Economic Development
BRU: Insurance

Sponsor: Labor & Commerce
Requestor: Labor & Commerce

Component: Insurance

COMPONENT SERIAL NO: 354

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 01	FY 02	FY 03	FY 04	FY 05	FY 06
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS						
OTHER FUND SOURCE						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary)

It is unknown how many registrations will be received and processed. Fees collected will cover expenses. Zero fiscal impact.

Prepared By: Janet S. Seitz, Committee Assistant
Division: House Labor & Commerce Committee

Phone: 465-4954
Date: 01/24/00

Approved By: Rep. Norman Rokeberg, Chairman, House Labor & Commerce Committee
Agency: _____

Date: 01/24/00

Distribution (by preparer): Leg. Finance, Legislative Sponsor, Requestor, OMB, Gov. , & Impacted Agency(ies).

FISCAL NOTE

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

BILL NO. HB 190

Revision Date/Time (Note if correction) _____	Dept. Affected _____	Community & Econ. Dev.
Title <u>Viatical Settlements</u>	BRU	Banking, Securities, and Corporations
	Component	Banking, Securities, and Corporations
Sponsor <u>House Labor & Commerce</u>		
Requester <u>House Labor & Commerce</u>	Component Serial No.	<u>1233</u>

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
CHANGE IN REVENUES ()						

FUND SOURCE (Thousands of Dollars)

FUND SOURCE	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY99) cost: _____

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

Viatical settlements involve the purchase by an investor of an insurance policy covering the life of an individual diagnosed with a terminal illness. The purchase is usually for a fraction of the face value of the policy, thus the terminally ill person receives money now to cover expenses and other considerations while the investor receives the right to the face amount of the policy on the viator's death. A life settlement is functionally the same, only the insured is not burdened with a terminal illness, thus these investments are contemplated for a considerably longer time period. Sales of these investments have been tainted with considerable fraud in the past and the public requires protections that only the state can implement. The division contemplates regulations and required disclosures, together with mandatory rescission periods, will adequately protect the average investor. Since the added regulation will likely keep most bad actors out of the state, and the division currently handles these as investment contracts, the additional supervision is not expected to impose any additional significant fiscal impact.

Prepared by	Franklin T. Elder, Director	
Division	Banking, Securities and Corporations	
Approved by Commissioner	Deborah B. Sedwick	
Agency	Community and Economic Development	

Phone	465-2521
Date/Time	12/30/99 11:30 AM
Date	1/9/00

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FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 190

Revision Date/Time (Note if correction) _____ Dept. Affected Community & Economic Development
 Title An Act relating to viatical settlement contracts BRU Insurance
 Component Insurance
 Sponsor Labor & Commerce
 Requester Labor & Commerce Component No. 354

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services	25.0	25.0	12.5	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	25.0	25.0	12.5	0.0	0.0	0.0

CAPITAL EXPENDITURES						
-----------------------------	--	--	--	--	--	--

CHANGE IN REVENUES ()						
-------------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	25.0	25.0	12.5	0.0	0.0	0.0
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	25.0	25.0	12.5	0.0	0.0	0.0

Estimate of any current year (FY2000) cost: _____

POSITIONS

Full-time	1	1				
Part-time			1	0	0	0
Temporary						

ANALYSIS: (Attach a separate page if necessary)

During the first two years a clerical staff person will be needed to provide support with the inception of the new regulation. The staff person will provide support for the Licensing section, Filings Review section, Financial section and the Market Conduct section. By the fourth year the clerical duties can be absorbed by existing clerical staff.

Prepared by: Robert A. Lohr
 Division Insurance

Phone 269-7900

Date/Time 1-5-00 11:52 AM

Approved by Commissioner Deborah B. Sedwick
 Agency Community & Economic Development

Date 1/9/00

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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:
Referred:**

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

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

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

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

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

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

9 **Sec. 21.89.110. Viatical settlement transactions.** (a) The director shall
10 regulate the transaction of viatical settlement contracts for the protection of viators,
11 insureds, and insurers. The authority of the director under this subsection extends to
12 the regulation of transactions between a viator and a viatical settlement provider and
13 between a viator and a person acting as an agent in viaticating a life insurance policy,
14 while the authority of the commissioner extends to the regulation of viatical settlement

1 investments as provided under AS 45.55.905(c).

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

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

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

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

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

20 (2) viator and insured privacy protection;

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

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

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

27 (6) financial accountability of viatical settlement providers;

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

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

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

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

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

7 (g) In this section,

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

9 (A) solicitation and inducement;

10 (B) preliminary negotiations;

11 (C) effectuation of a viatical settlement contract;

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

14 (2) "viatical settlement broker"

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

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

22 (3) "viatical settlement contract"

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

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

31 (C) does not include

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(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

1 compensated by or at the direction of the viator or insured;

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

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

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

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

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

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

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

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

6 (37) "viatical settlement interest"

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

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

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

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

ALASKA STATE LEGISLATURE

HOUSE LABOR AND COMMERCE COMMITTEE


Representative Norman Rokeberg, Chairman
Representative Andrew Halcro, Vice-Chairman
Representative John Harris
Representative Lisa Murkowski
Representative Jerry Sanders
Representative Tom Brice
Representative Sharon Cissna



State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4954
Fax: (907) 465-2040

MEMORANDUM

TO: Mike Ford, Legislative Counsel

FROM: Janet Seitz 
House Labor & Commerce Committee Aide

DATE: January 21, 2000

RE: New CS for HB 190

Working from the LS0576VI, Bannister/Ford, 1/18/00 draft, please prepare a new committee work draft as follows:

1. Incorporate language on the following page (the "bright light" language)
2. Incorporate amendment I.2, Ford, 1/18/00
3. Page 3, line 13, following "viator or", change "insurer" to "insured"

The committee is scheduled to hear this bill on Monday, January 21st.

Thanks for your assistance.

AS 21.89.XXX is amended by adding a section to read:

The DOI shall have primary jurisdiction over all matters involving transactions between the viator and the viatical settlement provider, or between the viator and any person acting as an agent in viaticating a life insurance policy.

AS 45.55.905 is amended by new adding a subsection to read:

(c) The Administrator shall have primary jurisdiction over all matters involving transactions between the viatical settlement provider or person acting as an agent of the viatical settlement provider and any subsequent investor.

(An editor's note should be made to tie these two sections together and alert a reader that a related provision exists in another statute.)

Insert just before the effective date provision:

* **Sec. 5. TRANSITION: REGULATIONS.** Notwithstanding sec. 6 of this Act, the state agency affected by this Act may proceed to adopt regulations necessary to implement this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the changes in law in this Act.

A M E N D M E N T # 1

OFFERED IN THE HOUSE

TO: CSHB 190(L&C), Draft Version "I"

1/19/00
Hale removed
Bric objected
removed
adopted

- 1 Page 1, line 1, following "**transactions**":
- 2 Insert "**and life settlement interest**"

- 3 Page 5, line 9, following "**interest**":
- 4 Insert "**or life settlement interest**"

- 5 Page 5, following line 28:
- 6 Insert a new paragraph to read:
- 7 "(37) "life settlement interest" means the entire interest or any
- 8 fractional interest in a life insurance policy, or in the death benefit under a life
- 9 insurance policy that is the subject of a life settlement contract; "life settlement
- 10 interest" does not include the initial purchase from the owner by a life settlement
- 11 provider;"

- 12 Renumber the following paragraphs accordingly.

AMENDMENT #2

*Halers moved
Bruce objected
Halers withdrew*

OFFERED IN THE HOUSE

TO: CSHB 190(L&C), Draft Version "I"

- 1 Page 5, line 1:
- 2 Delete "with a catastrophic or life-threatening chronic illness or condition"

- 3 Page 6, line 5:
- 4 Delete "with a catastrophic or life-threatening chronic illness or condition"

JAN 18 2000

1/19/00
clerk moved adoption
unanimous

1-LS0576V
Bannister/Ford
1/18/00

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9 **Sec. 21.89.110. Viatical settlement transactions.** (a) The director shall
10 regulate the transaction of viatical settlement contracts for the protection of viators,
11 insureds, and insurers.

12 (b) A viatical settlement provider, representative, or broker must apply for a
13 license with the director, submit information required by the director, and pay the
14 required fee established under AS 21.06.250 with the application for licensure. A

1 person may not act as or represent to be a viatical settlement provider, representative,
2 or broker subject to a risk resident, located, or to be performed in this state unless
3 licensed under this section.

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

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

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

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

16 (2) viator and insured privacy protection;

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

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

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

23 (6) financial accountability of viatical settlement providers;

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

27 (8) viator, insured, and insurer protection, including full and fair
28 disclosure setting out the manner and content of required disclosures and filing
29 requirements; and

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

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

3 (g) In this section,

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5 (A) solicitation and inducement;

6 (B) preliminary negotiations;

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

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

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

18 (3) "viatical settlement contract"

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

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

27 (C) does not include

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

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

31 (iii) the assignment of a life insurance policy as

1 collateral for a loan to a bank, saving bank, savings and loan
2 association, credit union, or other licensed lending institution;

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

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

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

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

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

19 (5) "viatical settlement representative"

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

23 (B) does not include

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

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

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

31 (7) "viator" means the owner of a life insurance policy insuring the life

1 of an individual with a catastrophic or life-threatening chronic illness or condition who
2 enters or seeks to enter into a viatical settlement contract.

3 * Sec. 3. AS 45.55.990(32) is amended to read:

4 (32) "security" means a note; stock; treasury stock; bond; debenture;
5 evidence of indebtedness; certificate of interest or participation in any profit-sharing
6 agreement; limited liability company interest under AS 10.50, notwithstanding the
7 limitations of AS 45.08.103(c); collateral-trust certificate; preorganization certificate
8 or subscription; transferable share; investment contract; voting-trust certificate;
9 certificate of deposit for a security; viatical settlement interest; certificate of interest
10 or participation in an oil, gas, or mining title or lease or in payments out of production
11 under the title or lease or in any sale of or indenture or bond or contract for the
12 conveyance of land or any interest in land; an option on a contract for the future
13 delivery of agricultural or mineral commodities or any other commodity offered or sold
14 to the public and not regulated by the Commodity Futures Trading Commission;
15 however, the contract or option is not subject to the provisions of AS 45.55.070 if it
16 is sold or purchased on the floor of a bona fide exchange or board of trade and offered
17 or sold to the public by a broker-dealer or agent registered under this chapter;
18 investment of money or money's worth including goods furnished or services
19 performed in the risk capital of a venture with the expectation of some benefit to the
20 investor where the investor has no direct control over the investment or policy decision
21 of the venture; or, in general, any interest or instrument commonly known as a
22 "security," or any certificate of interest or participation in, temporary or interim
23 certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase,
24 any of the foregoing; "security" does not include an insurance or endowment policy
25 or annuity contract under which an insurance company promises to pay a fixed or
26 variable sum of money either in a lump sum or periodically for life or for some other
27 specified period;

28 * Sec. 4. AS 45.55.990 is amended by adding new paragraphs to read:

29 (37) "viatical settlement interest"

30 (A) means the entire interest or any fractional interest in a life
31 insurance policy or in the death benefit under a life insurance policy that is the

1 subject of a viatical settlement contract;

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

4 (38) "viator" means the owner of a life insurance policy insuring the
5 life of an individual with a catastrophic or life-threatening chronic illness or condition
6 who enters or who seeks to enter a viatical settlement contract.

7 * Sec. 5. This Act takes effect immediately under AS 01.10.070(c).

ALASKA STATE LEGISLATURE

HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Andrew Halcro, Vice-Chairman
Representative John Harris
Representative Lisa Murkowski
Representative Jerry Sanders
Representative Tom Brice
Representative Sharon Cissna



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January 18, 2000

For House Labor & Commerce Committee Meeting
Wednesday, January 19, 2000
3:15 p.m., Room 17, Capitol

HB 190 - viatical settlements is on the agenda.

Please bring your files from last year (may be two, one for during session and one for October).

A new draft of the bill is being worked on by legal. As soon as it is received, I will get it to you.

Janet

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Vilma Zimmer lost \$33,000 in one insurance sale scam. NBC's Bob Dotson reports.

By Bob Dotson

St. Petersburg, Fla., Nov. 22 — There's one investment idea that sounds like the perfect way to do well by doing good. It involves buying someone else's life insurance policy. But a problem comes when the man in the middle has other ideas. NBC's Bob Dotson reports.

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Bob Dalton
NBC CORRESPONDENT

'The problem is that, just as in any other new financial industry, it attracts lots of scam artists.'
— SCOTT PAGE
Investment advisor

DONNA HERLONG takes 48 pills a day, fighting to keep her body from rejecting a transplanted heart. Her medication costs \$2,600 a month, far more than she can afford. Desperate, she sold the one real asset she had — her life insurance policies.

"It is the only way I could get the help I needed," she said.

When she dies, those policies will be worth \$280,000. She sold them to Scott Page at a discount — for \$200,000. Page pioneered a growing business aimed at helping the terminally ill get money they need to live.

"You're making a difference in someone's life who is faced with knowing they're gonna die," said Page, an investment advisor. Page then sold shares of Herlong's policies to investors who will make a profit when she dies.

That's how it's supposed to be done.

Vilma and Max Zimmer, a retired Florida couple, liked the idea of investing in life insurance.

"If I could be of help to somebody; help them out for a year or two, and then benefit later on, then that would be fine," said Vilma Zimmer.

Though well-intentioned, experts call the investments among the "riskiest," and warn they are ripe for fraud. "The problem is that, just as in any other new financial industry, it attracts lots of scam artists," said Syver Vinje, securities commissioner.

Why? Investors are not told whose life insurance they're buying — the records are confidential. So, there's no way to know exactly what you are getting.

The Zimmers found out the hard way. They believed that they were buying insurance policies. But what did they end up buying?

"A worthless piece of paper," Zimmer said.

INSURANCE BROKER INDICTED

The Zimmers invested almost \$33,000 with Frederick Brandau. A federal indictment claimed he

brokered life insurance policies and collected more than \$100 million from investors all over the country, but only used \$6 million to buy policies and spent most of the rest on fast cars and fancy homes.

"The things you wouldn't do for yourself with your own money, somebody else — a stranger — is doing with your money. It hurts," Vilma Zimmer said.






"When you [have] individuals come into this industry and cause the problems they cause, it makes it much more difficult to help individuals for tomorrow," said investment advisor Page.

Brandau is now in jail, awaiting trial. He was arrested with four associates and faces 43 counts of fraud and money laundering. He denied the charges, and declined to talk to NBC News.

Vilma Zimmer suspects she won't see her money again. "I'm still hoping, you know," Zimmer said. "Where there's life there's hope. But I doubt it. I really do."

For the Zimmers, and thousands of others, there is nothing to insure that a feel-good investment won't become a painful Fleecing of America.

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TIME SELECT/BUSINESS
NOVEMBER 29, 1999 VOL. 154 NO. 22

NFC 2-8 1999

Making A Killing

Viaticals let sick people sell their life insurance. But investing in death may not always be the best bet

BY DANIEL EISENBERG

Michael Lee Davis is probably the last guy from whom you'd want to buy life insurance. True, he does have some experience in the field. Davis, a.k.a. Walter Waldneuser Jr., spent most of the 1980s in prison for hiring a hit man to wipe out a friend's family in order to get a share of their life-insurance proceeds. But after being released on parole, Davis found a new line of insurance work: a largely unregulated offshoot of the business called viaticals.

A viatical is not another impotence wonder drug. Rather, a viatical (from the Latin viaticum, a payment given to Roman officials before embarking on a journey) is a way for a terminally ill or elderly person (the viator) to get money before he dies by selling his life-insurance policy at a discount. The discount, usually 10% to 40% of the policy's face value, is based on the viator's life expectancy; once the viator dies and a broker takes a commission, the investor collects the rest of the benefits. A decade ago, viaticals were embraced by the AIDS community as an ingenious way for patients to get some cash for their final days.

Then in 1996 Congress made the proceeds from most viatical settlements tax exempt, and the business really took off. Increasing numbers of terminally ill people, including those suffering from cancer or heart disease, have sold their life-insurance policies to enjoy their death benefits while they're still alive. This year alone, more than \$1 billion in viatical settlements, only about half related to AIDS, will be brokered, according to the National Viatical Association (NVA), roughly 20 times as much as when the business began. Relatively healthy elderly people are also hawking their policies for some additional income; \$3 billion in so-called senior settlements will be brokered this year.

Tom Volz, president of the Columbia, S.C., visitors' bureau, has advanced prostate cancer; he's been given two to three years to live. A few months ago, he received the funding for his

THE BUDGET:
Rolling In Dough

BUSINESS: When Little Companies Bulk Up

Making A Killing: Viaticals let sick people sell their life insurance. But investing in death may not always be the best bet

VIEWPOINT: The Ties That Really Bind



months ago, he received the funding for his viatical settlement, which handed him \$58,500, or roughly 40% of his \$150,000 policy. "There are some things I'd like to do, but I didn't have the resources for, like a trip to Hawaii or herbal remedies not covered by insurance," says Volz.

Unfortunately, viaticals have attracted con artists the way blood does leeches, and regulators are contemplating halting, or at least restricting, the practice. The problem is with folks like Davis, indicted on fraud and other charges by a Dallas County grand jury last summer. He persuaded scores of unsuspecting Texans to shell out millions on supposedly low-risk, guaranteed investments in viaticals offered by his Dallas-based company, First American Fidelity Corp. But authorities say the policies were fraudulently obtained for the express purpose of reselling them, an increasingly common practice dubbed cleansheeting. Davis allegedly solicited HIV-positive men to lie about their medical condition and buy multiple \$50,000-to-\$100,000 policies, which usually require no medical exams or blood tests. His lawyer denies the charges. As Davis awaits trial, his victims are stuck holding some \$10 million worth of policies that are probably worthless.

▲ Last May the North American Securities Administrators Association cited viatical scams as one of the country's top 10 financial cons. "I like a lot of people in this industry, but I don't trust a lot of them, and that's sad," says Carole Fiedler, of Sausalito, Calif., an established viatical broker who each year helps about 100 people find buyers for their policies. "I hope there's a weeding-out process."

There will be, if regulators and prosecutors in states from Florida to California get their way. Late last summer a federal grand jury in Florida indicted Frederick Brandau and his company, Financial Federated Title & Trust, for allegedly defrauding thousands of viatical investors across the country in an elaborate, \$115 million Ponzi scheme. Brandau's attorney denies the allegations. Just a month ago, two officers of Justus Viatical, a Pompano Beach, Fla., firm, were charged with selling investors \$2 million worth of fraudulently obtained life-insurance policies. Their lawyer calls the indictment a farce. And insurance heavyweights like American General and John Hancock Mutual Life have recently fought in the courts to rescind bogus policies.

As the number of would-be viators has increased, the industry has gone into hard-sell mode, promising fail-safe, above-market returns. The harsh reality, though, is that investors are in some measure betting on the death of the sellers. If the person whose policy you buy dies in a year, it's a great investment; but if he lives five, it's a dud. "Profitability is related to the predictability of death, which has proved to be singularly unpredictable," says Bill

McDonald, chief of enforcement for the California Department of Corporations, who thinks viaticals may need to be outlawed. In Florida, Mutual Benefits Corp., a Broward County viatical provider, was recently sued by investors for misrepresenting the life expectancy of AIDS patients, and therefore the return on the investment, by providing inaccurate information about new treatments. The company denies the charges. MORE>>

Many viatical deals are marketed to seniors looking for a slightly better return on their retirement income. Ursula Linke, 60, of Silver Spring, Md., and her husband, tired of earning a relatively paltry 4% to 6% on their annuities, moved their entire life savings of \$700,000 into viaticals sold by Liberte Capital Group of Toledo, Ohio, which claimed to pay 14% on a one-year maturity. "We wanted to have a sound investment, retire and have some peace and tranquillity," says Linke. After the first few quarterly payments arrived from the company, the money suddenly stopped coming. Liberte Capital blames its escrow agent for the problem. Now Linke and her fellow investors' money is frozen while a court-appointed receiver tries to resolve the dispute.

There are other pitfalls. In many cases, if the viator lives longer than expected, investors can end up having to pay premiums to maintain the policy. And unlike stocks or bonds, these are highly illiquid investments. That means that in the event of an emergency, there's no quick, easy way to get your money back.

Viators can be victims too. There are brokers who reap hefty, 18% commissions without getting the sellers—often ill, vulnerable people—the best deal available. One viator who went through Alpha Capital Group, a viatical provider that is fighting a cease-and-desist order from Washington State, ultimately received \$5,400, or 6% of the policy's \$90,000 face value.

Industry representatives support uniform regulation but hope officials don't go too far in their zeal to crack down. "It's a critical option that every terminally ill person should have," says Valerie Cooper, executive director of the NVA, who claims scam artists don't represent the bulk of law-abiding viatical providers, like Page & Associates and the Ardan Group. Gloria Wolk, chief consumer advocate for viaticals (<http://www.viatical-expert.net>), is worried that money for legitimate viatical settlements could disappear. "Fraud can destroy this industry and leave patients high and dry."

Competition may provide an alternative. To help slow the growing appeal of viaticals, more insurance companies are offering so-called

accelerated death benefits, which, like viaticals, award a certain portion of the policies' face value to terminally ill patients before they die. That way, people can take it with them, and there's little chance that investors will be taken.

Viaticals: a Primer

It sounds like the perfect investment: realize a great return while helping the sick get some money for their final days. That, at least, is the selling point of viaticals, a multibillion-dollar-a-year business that lets the terminally ill or senior citizens sell their life-insurance policies at a discount, leaving buyers to collect the benefits when they die. But with a host of viatical scam artists preying on unsuspecting investors, such a good deed doesn't always make such a good investment. Below, a look at some of the pitfalls.

--No matter what brokers claim, these are not low-risk investments. You're betting on how long someone will live, and the longer they do, the smaller your annual return.

--Many shady brokers have been selling investors fraudulently obtained policies, which means your investment could well turn out to be worthless.

--If viators live longer than expected--a very distinct possibility--investors may have to pay premiums just to keep the policies valid.

--Unlike stocks or bonds, viaticals are illiquid investments. In the event of an emergency, you may have a hard time trading them in for your money.

--A broker can charge a viator an excessive commission, leaving a vulnerable, sick person with just a fraction of the face value of a policy.

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Subject: Viatical regulations

Date: Tue, 04 Jan 2000 11:57:32 -0900

From: Vince Usera <vince_usera@dced.state.ak.us>

To: Janet_Seitz@legis.state.ak.us

Here is the latest version of our regulations. Please call me at your earliest convenience. 465-5451

 viaticalregs. VLU revI.doc	Name: viaticalregs, VLU revI.doc Type: Winword File (application/msword) Encoding: base64 Download Status: Not downloaded with message
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CHAPTER 08 SECURITIES.

Chapter 08 is amended by adopting new sections to read:

ARTICLE 7. VIATICAL AND LIFE SETTLEMENTS

3 AAC 08 is amended by adding new sections to read:

3 AAC 08.701. FINDING. The administrator finds, in the policy statement adopted concurrently with and incorporated by reference in these regulations, that an investment contract known as a viatical settlement interest in a viatical settlement contract or a life settlement interest in a life settlement contract is a security and subject to the provisions of AS 45.55 and these regulations. (Eff. / / ; Register)

Authority: AS 45.55.950

3 AAC 08.702. SCOPE. (a) The applicable provisions of 3 AAC 08.701 – 3 AAC 08.740 set out the regulatory standards for the exemption from the registration requirement of AS 45.55.070, renewal of the exemption from registration, fees, effective dates, and related matters for a viatical settlement interest or a life settlement interest.

(b) Nothing in this section

(1) provides an exemption from the anti-fraud provisions of AS 45.55;

(2) relieves broker-dealers or agents from the due diligence, suitability, or "know your customer" standards, or any other requirements of law otherwise applicable to persons registered under AS 45.55; or

(3) prohibits an issuer using this section from using the registration procedures in AS 45.55 or from claiming the availability of any other exemption from registration available under AS 45.55. (Eff. / / ; Register)

Authority: AS 45.55.010 AS 45.55.025 AS 45.55.027 AS 45.55.028 AS 45.55.950

3 AAC 08.710. EXEMPTION FROM REGISTRATION. (a) Except as provided by (b) of this section, an offer or sale of a viatical settlement interest, a life settlement interest, or a security that represents or is secured by a viatical or life settlement interest is exempt from the registration requirement of AS 45.55.070 if

(1) at least 10 business days before the initial offer or sale is made the issuer files with the administrator, in compliance with 3 AAC 08.090(b), an application on State of Alaska Form 08-102 to engage in the transaction, the fee established in this section, and the consent to service of process required by AS 45.55.980(g); the application required in this paragraph must contain

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

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

(C) a description of the security being offered or sold; in this subsection, "description of the security" means a general description of the program offered by the issuer such as viatical settlement interest sales, or life settlement interest sales, of a certain maturity secured by proceeds from the death benefit of an insurance contract;; "description of the security" does not mean details of specific policies or contracts;

(D) a description of the kind and amount of commissions, finders' fees, or other remuneration paid directly or indirectly in connection with soliciting a prospective viatical settlement purchaser or life settlement purchaser in this state; and

(E) notwithstanding AS 45.55.150, the following must be filed with the application: any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature used or intended to be used in connection with the offer or sale of a security,

and such other information or documents as the administrator may by regulation or order establish; unless waived by the administrator, the issuer's most recent audited income and expense statement and balance sheet must be provided to the administrator and the provision of those documents will be disclosed to a purchaser who can obtain copies on written request to the administrator;

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

(3) before a sale, each prospective individual viatical settlement purchaser or life settlement purchaser is furnished written information that is sufficient to make an informed investment decision; this information shall be furnished to the administrator at the time of application; in this paragraph, "information that is sufficient to make an informed investment decision" includes the state-mandated viatical settlement disclosure document, State of Alaska Form 08-114, Part A or, if applicable, the state-mandated life settlement disclosure document, State of Alaska Form 08-117, Part A; "sale" for purposes of this section occurs when the viatical settlement purchaser or life settlement purchaser executes and the seller, or its representative, accepts the purchase agreement;

(4) on or before the time of closure of a sale, defined as the date when the viatical settlement or life settlement provider locates and proposes to the viatical settlement purchaser or life settlement purchaser an acceptable, specific viatical or life settlement contract under the executed purchase agreement, an individual investor receives a completed State of Alaska Form 08-114, Part B (viatical settlement disclosure document) or State of Alaska Form 08-117, Part B (life settlement disclosure document), as applicable; and

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

(b) The exemption in (a) of this section is not available to an issuer if the issuer, a predecessor of the issuer, an affiliate of the issuer, a director of the issuer, an officer of the issuer, a general partner of the issuer, a beneficial owner of 10 percent or more of a class of the issuer's equity securities, a promoter of the issuer presently connected with the issuer in any capacity, an underwriter of the securities to be offered, a partner of an underwriter of the securities to be offered, a director of an underwriter of the securities to be offered, or an officer of the underwriter of the securities to be offered

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

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

(A) a felony;

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

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

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

(4) is currently subject to an order, judgment, or decree of a court of competent jurisdiction entered within the last five years, temporarily, preliminarily, or permanently

restraining or enjoining the person subject to the order from engaging in or continuing to engage in conduct or a practice involving fraud or deceit in connection with the purchase or sale of a security. (Eff. / / ; Register)

Authority: AS 45.55.070 AS 45.55.950

3 AAC 08.715. EFFECTIVENESS DATES AND FEE. Unless made effective earlier by the administrator, an application for exemption from registration under this section becomes effective 10 business days after the administrator receives the complete application, the fee, and the required documents, unless the administrator contacts the filer within 10 business days after the receipt of the complete filing to seek additional information or clarification. In that case, the application becomes effective when the administrator issues an order of effectiveness. The order of effectiveness issued under this section expires one year from the date of effectiveness. The notice filing fee under this section is \$250 for each application, payable to the State of Alaska. (Eff. / / ; Register)

Authority: AS 45.55.070 AS 45.55.110 AS 45.55.950.

3 AAC 08.720. REVOCATION OR DENIAL OF EXEMPTION. The administrator may by order deny or revoke an exemption specified in 3 AAC 08.710(a) with respect to a specific viatical or life settlement interest or transaction. The order may not be entered without appropriate prior notice to all interested parties, opportunity for hearing, and written findings of fact and conclusions of law, except that the administrator may by order summarily deny or revoke any of the specified exemptions pending final determination of a proceeding under this subsection. Upon the entry of a summary order, the administrator shall promptly notify all interested parties that it has been entered and of the reasons for it and that within 15 days of the receipt of a written request the matter will be set down for hearing to be held in accordance with AS 45.55.935. If no hearing is requested and none is ordered by the administrator, the order

remains in effect until it is modified or vacated by the administrator. If a hearing is requested or ordered, the administrator, after giving notice and opportunity to be heard to all interested persons, may modify or vacate the order or extend it until final determination. (Eff. / / ; Register)

Authority: AS 45.55.950

3 AAC 08.730. RIGHT OF RESCISSION APPLICABLE TO SALES OF VIATICAL AND LIF SETTLEMENT CONTRACTS. (a) In addition to any other rights provided for under this chapter or otherwise, a person who buys a viatical settlement interest, a life settlement interest, or a security that represents or is secured by a viatical or life settlement interest may rescind the purchase by giving, by ordinary mail, postage prepaid, within 10 business days following execution of the purchase agreement, written notice of rescission to the entity designated for the rescission notice in the disclosure documents.

(b) The notice required under (a) of this section is sufficient if addressed to the entity designated for the notice at the address given in the disclosure statement provided a viatical settlement purchaser or life settlement purchaser before executing a purchase agreement. The rescission notice is effective when deposited in the United States mail. The rescission notice is not required to be in a particular form and is sufficient if it expresses the intention of a purchaser to rescind the transaction.

(c) The disclosure document provided a viatical settlement purchaser or life settlement purchaser before the execution of a purchase agreement shall include a clear notice of the right to rescind, the address to which a rescission notice is to be sent, and the time within which the notice must be sent.

(d) Notwithstanding the time limit in (a) of this section, if the issuer has not found an acceptably suitable viatical or life settlement contract and closed the transaction within 90 days

of the execution of the purchase agreement, on the ninetieth day following the execution of the purchase agreement, the issuer shall provide the viatical settlement purchaser or life settlement purchaser with a rescission offer using State of Alaska Form 08-118, and the viatical settlement purchaser or life settlement purchaser will have 10 business days from its receipt to either accept or reject the rescission offer. The issuer shall keep a record of the rescission offer and its acceptance or rejection for at least three years, and provide this information to the administrator at the administrator's request.

(e) For purposes of this section, "person" means a viatical settlement purchaser or a life settlement purchaser, but does not include accredited or institutional investors in either viatical or life settlement contracts.

(Eff. / / ; Register)

Authority: AS 45.55.950

3 AAC 08.735. SALES AGENTS. In addition to other requirements for agents under AS 45.55, sales agents licensed to sell viatical or life settlement interests

(1) shall not misrepresent or fail to clearly and affirmatively disclose the nature of the return or the duration of time to obtain the return of any investment related to one or more viatical or life settlements sold by a viatical settlement provider, a life settlement provider, or other seller whom they represent; and

(2) shall not fail to provide the required disclosure documents to the purchaser in a timely manner. (Eff. / / ; Register)

Authority: AS 45.55.950

3 AAC 08.740. WAIVER. The administrator may by regulation or order waive a term, condition, or requirement of this article if the administrator determines the waiver to be in the public interest and no danger to investor protection. An issuer may request a waiver and will

bear the burden of proof to satisfy the administrator that the waiver will not injure investor protection. (Eff. / / ; Register)

Authority: AS 45.55.950

3 AAC 08.790. DEFINITIONS. As used in this chapter, unless the context clearly means otherwise

(1) "financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, life settlement provider, credit enhancer, reinsurer or any person that may be a party to a viatical settlement contract or life settlement contract and that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract or a life settlement contract but whose sole activity related to the transaction is providing funds to effect the viatical settlement or life settlement and who has an agreement in writing with a viatical settlement provider or life settlement provider to act as a participant in a financing transaction;

(2) "financing transaction" means a transaction in which a viatical settlement provider or a life settlement provider or a financing entity obtains financing for viatical settlement contracts or life settlement contracts, viaticated policies, or interests in the contracts or policies including, without limitation, any secured or unsecured financing, any securitization transaction or any securities offering either registered or exempt from registration under federal and state securities law, or any direct purchase of interests in a policy or certificate, if the financing transaction complies with federal and state securities law;

(3) "issuer" means a person who, in addition to the terms of AS 45.55.990(7), is a viatical settlement provider with respect to the viatical settlement contract relating to the life insurance policy or certificate comprising the viatical settlement interest, or is a person that purchases or

otherwise acquires a viatical settlement contract for the purpose of selling a viatical settlement interest in the contract, but does not include a broker-dealer, agent, or viator;

(4) "life settlement contract" means a written agreement between a life settlement provider and an owner that establishes the terms under which the life settlement provider will pay compensation or anything of value, that is less than the expected death benefit of the insurance policy or certificate, in return for the owner's assignment, transfer, sale, devise or bequest of the death benefit or ownership of all or a portion of the insurance policy or certificate of insurance to the life settlement provider; it also includes a contract for a loan or other financial transaction secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company under the terms of the life insurance contract, or a loan secured by the cash value of a policy;

(5) "life settlement interest" means the entire interest or any fractional interest in a life insurance policy or certificate, or in the death benefit thereunder that is the subject of a life settlement contract, and constitutes a security for purposes of AS 45.55, and does not include the initial purchase from the owner by a life settlement provider;

(6) "life settlement provider" means a person, other than an owner, that has satisfied all requirements of this state to allow the person to do business in this state and that effectuates a life settlement contract; it also means a person that obtains financing from a financing entity for the purchase, acquisition, transfer, or other assignment of one or more life settlement contracts, life policies, or interests in life policies or life settlement contracts, or otherwise sells, assigns, transfers, pledges, hypothecates, or otherwise disposes of one or more life settlement contracts, life policies, or interests in them; but does not include:

(A) a bank, savings bank, savings and loan associations, credit union, or other licensed lending institution that takes as assignment of a life insurance policy as

collateral for a loan;

(B) a life and health insurer that has lawfully issued a life insurance policy that provides accelerated benefits to terminally ill policyholders or certificate holders;

(C) a natural person that enters into no more than one life settlement contract with an owner in one calendar year, unless the natural person has previously been or currently is licensed under AS 45.55; or

(D) a financing entity.

(7) "life settlement purchaser" means a person that gives a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy that has been or will be the subject of a life settlement contract for the purpose of deriving an economic benefit; it does not include a licensee under this section, an accredited investor as defined in SEC Rule 230.501 (17 CFR 230.501) adopted under 15 U.S.C. 77a et seq. (Securities Act of 1933, as amended), or a qualified institutional viatical settlement purchaser or life settlement purchaser, financing entity, or a special purpose entity that is created solely to act as a financing source for the life settlement provider;

(8) "life settlement purchase agreement" means a contract or agreement, entered into by a life settlement purchaser to which the owner is not a party, to purchase a life insurance policy or an interest in a life insurance policy, that is entered into for the purpose of deriving an economic benefit;

(9) "life settlement sales agent" means a person, other than a Life Settlement Provider, that arranges or effects the purchase, through a life settlement purchase agreement, of a life insurance policy or an interest in a life insurance policy between a life settlement provider and a life settlement purchaser;

(10) "owner" means the person that is the original owner or subsequent assignee or transferee, that has had a bona fide insurable interest in a life insurance policy insuring the life of an individual that does not have a catastrophic or life threatening illness or condition, that has the right to assign, transfer, sell, devise, or bequest the benefits of the life insurance policy, and enters or seeks to enter into a life settlement contract; but does not include a life settlement purchaser or a life settlement provider or any person acquiring the policy or interest in a policy from a life settlement provider, and does not include an independent third party trustee or escrow agent;

(11) "viatical settlement contract" means a written agreement between a viator and a viatical settlement provider for the sale, assignment, transfer, or bequest to the viatical settlement provider by the viator of all or a portion of the death benefit or ownership of an insurance policy, under the terms of which contract the purchaser is to pay compensation or other valuable consideration that is less than the expected death benefit of a particular insurance policy or certificate in return for the viator's assignment, transfer, sale, or bequest of all or a portion of the death benefit or ownership of a life insurance policy or certificate for consideration that is less than the expected death benefit of a life insurance policy or certificate to the purchaser; "viatical settlement contract" includes a contract for a loan or other financial transaction secured primarily by an individual or group life insurance policy, but does not include

(A) a loan by a life insurance company pursuant to the terms of the life insurance contract;

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

(C) 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;

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

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

(12) "viatical settlement interest" means the entire interest or any fractional interest in a life insurance policy or certificate, or in the death benefit thereunder that is the subject of a viatical settlement contract, and constitutes a security for purposes of AS 45.55, and does not include the initial purchase from the viator by a viatical settlement provider;

(13) "viatical settlement offering" means the offer or sale of one or more viatical settlement interests derived from the same viatical settlement contract;

(14) "viatical settlement provider" means a person who is an issuer, has satisfied all requirements of this state to allow the person to do business in this state, and enters into a viatical settlement contract with a viator for the purpose of purchasing or selling viatical settlement interests and includes a person that 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, and that 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;

(15) "viaticated policy" means a life insurance policy or a certificate of life insurance under a group life insurance policy that has been acquired or transferred under a viatical settlement contract;

(16) "viator" means the owner of a life insurance policy or the holder of a certificate under a group life insurance policy insuring the life of an individual with a catastrophic or life threatening chronic illness or condition who enters into a viatical settlement contract, but does not include a viatical settlement provider or a person that acquires a viaticated policy or a fractional interest in a viaticated policy from a viatical settlement provider or a subsequent purchaser.

(17) "viatical settlement purchaser" means a person that gives a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy that has been or will be the subject of a viatical settlement contract for the purpose of deriving an economic benefit; it does not include a licensee under this section, an accredited investor as defined in SEC Rule 230.501 (17 CFR 230.501) adopted under 15 U.S.C. 77a et seq. (Securities Act of 1933, as amended), or a qualified institutional viatical settlement purchaser or life settlement purchaser, financing entity, or a special purpose entity that is created solely to act as a financing source for the life settlement provider;

(18) "viatical settlement purchase agreement" means a contract or agreement, entered into by a viatical settlement purchaser to which the owner is not a party, to purchase a life insurance policy or an interest in a life insurance policy on the life of an individual with a catastrophic or life threatening chronic illness or condition, that is entered into for the purpose of deriving an economic benefit. (Eff. / / ; Register)

Authority: AS 45.55.950

ALASKA STATE LEGISLATURE

HOUSE LABOR AND COMMERCE COMMITTEE

Representative Norman Rokeberg, Chairman
Representative Andrew Halcro, Vice-Chairman
Representative John Harris
Representative Lisa Murkowski
Representative Jerry Sanders
Representative Tom Brice
Representative Sharon Cissna



State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4954
Fax: (907) 465-2040

MEMORANDUM

TO: ~~Terry Bannister~~
Legal Services

FROM: Janet Seitz, Committee Aide, *Janet*
House Labor & Commerce Committee

DATE: January 13, 2000

RE: HB 190
LS0576\H - 12/27/99

We need another work draft on this legislation.

Following are the following:

e-mail to me from Katie Campbell
Draft language for new work draft

Please DO NOT include the references to "life settlement"; however, please do a proposed amendment to the new work draft to add in "life settlement" if the committee wishes.

The Committee will be considering this bill on Wednesday of next week (Jan. 19th).

Thanks for your assistance.

*1/14/00
Mike Fossil
is handling.
Terry Bannister's
father passed away
& who is out.
He'll do draft but just
on the details & amendments
to add life settlement.
Janet*

6 pages follow

Subject: Draft Viatical Settlement Legislation

Date: Thu, 13 Jan 2000 14:40:55 -0900

From: Katie Campbell <Katie_Campbell@commerce.state.ak.us>

To: Janet_Seitz@legis.state.ak.us

CC: Vince L Usera <vince_usera@dced.state.ak.us>, Terry Elder <terry_elder@dced.state.ak.us>, Bob Lohr <bob_lohr@dced.state.ak.us>

Janet,


Directors Lohr and Elder requested that Vince Usera and I coordinate our work on the draft and develop a single draft bill for your consideration. The attached draft contains both the insurance and banking sections and our recommendation is to simply replace the current work draft of HB 190 with the attached draft.

Representative Rokeberg asked that we point out any areas where a policy decision is needed. As mentioned in Director Lohr's e-mail to you, a policy decision is needed relative to giving the division of insurance authority to regulate life settlement as well as viatical settlement contracts. In the attached draft there is a bracketed phrase in the definition of "viator". If Representative Rokeberg chooses to give authority to the division of insurance to regulate life settlements, a simple way to do this would be to simply delete the bracketed phrase.

Also, FYI, I received a call from John Walsh, lobbyist for Future First and Independent Agents and Brokers. He requested a copy of the most recent work draft. We weren't comfortable giving him the work draft without Representative Rokeberg's authorization and so I referred him to you and mentioned that I would be forwarding a copy of the divisions' most recent draft to you today.

Please feel free to contact me at 4607 or Vince Usera at 5451, if you have questions. We would be happy to discuss the draft with you anytime.

Katie Campbell
Life/Health Actuary
Alaska Division of Insurance
465-4707

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* Section 1. 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.

(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 subject to a risk resident, located, or to be performed in this state unless licensed under this section.

(c) Viatical settlement contracts, viator and insured disclosure statements, and viatical settlement advertising materials must be filed with and 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 person examined consistent with 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" 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 insurer and one or more viatical settlement providers, but does not include a person acting in their capacity as an attorney or an accountant who is retained to represent a viator or insured and whose compensation is paid by or at the direction of the viator or insured;

(3) "viatical settlement contract" 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 an insurance policy, for consideration that is less than the expected death benefit of the insurance policy; "viatical settlement contract" includes a contract for a loan or other financial transaction secured primarily by an individual or group life insurance policy, but does not include

(A) a loan by a life insurance company pursuant to the terms of the life insurance contract;

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

(C) 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;

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

(E) the assignment, transfer, sale, 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.

(2) "viatical settlement provider" means a person, other than a viator or insured, that enters into a viatical settlement contract and includes a person

(A) that 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) that 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.

(C) "viatical settlement representative" means a person who is an authorized agent of a viatical settlement provider or broker and who acts or aids in any manner in the transaction of a viatical settlement contract, but does not include

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

(ii) a person who is retained to represent a viator or insured and whose compensation is paid by or at the direction of the viator or insured;

(1) "viaticated policy" means a life insurance policy that has been acquired by a viatical settlement provider pursuant to a viatical settlement contract.

(2) "viator" means the owner of a life insurance policy insuring the life of an individual [*with a catastrophic or life threatening chronic illness or condition*] who enters or seeks to enter into a viatical settlement contract.

* Sec. 2. AS 45.55.990(12) is amended to read:

(12) "security" means a note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; a 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; **viatical settlement interest and life settlement interest**; voting-trust certificate; certificate of deposit for a security; a 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. 3. AS 45.55.990 is amended by adding new sections to read:

(37) "life settlement interest" means the entire interest or any fractional interest in a life insurance policy or certificate, or in the death benefit thereunder that is the subject of a life settlement contract, and constitutes a security for purposes of AS 45.55, and does not include the initial purchase from the owner by a life settlement provider;

(38) "viatical settlement interest" means the entire interest or any fractional interest in a life insurance policy or certificate, or in the death benefit thereunder that is the subject of a viatical settlement contract, and constitutes a security for purposes of AS 45.55, and does not include the initial purchase from the viator by a viatical settlement provider;

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

December 6, 1999

SUBJECT: Draft CSHB 190(L&C) on viatical settlement contracts (Work Order No. 21-LS0576\H)

TO: Representative Norman Rokeberg, Chair
Labor and Commerce Committee
Attn: Janet

FROM:  Theresa Bannister
Legislative Counsel

DEC 09 1999

This memo accompanies a draft of the bill described above.

1. Scope of Division of Insurance regulation (proposed AS 21.89.110). In the draft the division regulates those transactions that are excluded from the definition of "viatical settlement contract" under AS 45.55.990(37)(A) - (C). Does this cover everything you want to allocate to the division?
2. Mandatory regulation. Proposed AS 21.89.110 now requires the Division of Insurance to regulate certain viatical settlement contracts. Would you prefer to merely allow the division to regulate the contracts, rather than requiring the regulation?
3. Delegation of legislative authority. In order to avoid an unlawful delegation of legislative authority, proposed AS 21.89.110 provides some minimal language explaining the purpose and scope of the division's responsibilities. The draft language may not be what you had in mind or may be too limited. You may want to consider spelling out just what aspects of viatical settlement contracts the division will be regulating, and you may want to add or change the purposes of the regulation.
4. Proposed AS 45.55.900(i)(2). The language has been altered somewhat to clarify its intent.
5. Proposed AS 45.55.900(j)(3) - (4). Added "offer" to "purchase and sale."

If I may be of further assistance, please advise.

TLB:jdr
99-303.jdr

Enclosure

1-LS0576AH
Bannister
12/7/99

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:
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to viatical settlement contracts; and providing for an effective**
2 **date."**

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

4 *** Section 1.** AS 21.89 is amended by adding a new section to read:

5 **Sec. 21.89.110. Viatical settlement contracts.** (a) The division shall regulate
6 the formation and terms of viatical settlement contracts in order to protect viators from
7 unscrupulous contracts. The division may adopt regulations to implement this section.

8 (b) In this section,

9 (1) "viatical settlement contract" means, if the consideration is less than
10 the expected death benefit of the policy or certificate and if the viator has a
11 catastrophic or life-threatening chronic illness or condition,

12 (A) the assignment, transfer, sale, devise, or bequest of a death
13 benefit, life insurance policy, or life insurance certificate by the viator,
14 including the assignment of a life insurance policy or certificate to a bank,

1 savings bank, savings and loan association, credit union, or other licensed
2 lending institution as collateral for a loan;

3 (B) the exercise by the viator of an accelerated benefits
4 provision under the terms of a life insurance policy or certificate; or

5 (C) the purchase of a life insurance policy or certificate by the
6 insurer of the policy or certificate from a person who is not the viator;

7 (2) "viator" means an individual whose life is insured under a life
8 insurance policy or certificate that is the subject of a viatical settlement contract.

9 * Sec. 2. AS 45.55.900(d) is amended to read:

10 (d) The administrator may by order deny or revoke an exemption specified in
11 (a)(5), (7),₂ or (11) of this section or in (b) or (i) of this section with respect to a
12 specific security or transaction. The order may not be entered without appropriate
13 prior notice to all interested parties, opportunity for hearing, and written findings of
14 fact and conclusions of law, except that the administrator may by order summarily
15 deny or revoke any of the specified exemptions pending final determination of a
16 proceeding under this subsection. Upon the entry of a summary order, the
17 administrator shall promptly notify all interested parties that it has been entered and
18 of the reasons for it and that within 15 days of the receipt of a written request the
19 matter will be set [DOWN] for hearing. If no hearing is requested and none is ordered
20 by the administrator, the order remains in effect until it is modified or vacated by the
21 administrator. If a hearing is requested or ordered, the administrator, after notice of
22 and opportunity for hearing to all interested persons, may modify or vacate the order
23 or extend it until final determination.

24 * Sec. 3. AS 45.55.900 is amended by adding new subsections to read:

25 (i) Except as provided by (j) of this section, an offer or sale of a viatical
26 settlement contract or a security that represents or is secured by a viatical settlement
27 contract is exempt from the registration requirement of AS 45.55.070 if

28 (1) the issuer files with the administrator

29 (A) a notice of the transaction at least 10 days before any offers
30 or sales are made; the notice required in this subparagraph must contain

31 (i) the name, address, and telephone number of the

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issuer and a brief description of the general character and location of the issuer's business;

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

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

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

(v) the information and documents required under (k) of this section by the administrator by regulation or order;

(B) the fee established by regulation for exemption filings; and

(C) the consent to service of process required by AS 45.55.980(g);

(2) the persons who make the offer or sale, and to whom commissions or other remuneration in connection with making the sale are made, are registered under AS 45.55.030(a) or (c) or have made a notice filing under AS 45.55.040, unless the persons are not required to be registered under AS 45.55.030(a) or (c) or to make a notice filing under AS 45.55.040;

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

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

1 (j) The exemption in (i) of this section is not available to an issuer if the
2 issuer, a predecessor of the issuer, an affiliated issuer, a director of the issuer, an
3 officer of the issuer, a general partner of the issuer, a beneficial owner of 10 percent
4 or more of a class of the issuer's equity securities, a promoter of the issuer presently
5 connected with the issuer in any capacity, an underwriter of the securities to be
6 offered, a partner of an underwriter of the securities to be offered, a director of an
7 underwriter of the securities to be offered, or an officer of the underwriter of the
8 securities to be offered

9 (1) has filed within the last five years a registration statement that is
10 the subject of a currently effective registration stop order entered by a state securities
11 administrator or the United States Securities and Exchange Commission;

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

13 (A) a felony;

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

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

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

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

25 (k) Notwithstanding AS 45.55.150, the administrator may by regulation or
26 order establish requirements for, and require the filing of, a prospectus, pamphlet,
27 circular, form letter, advertisement, or other sales literature used or intended to be used
28 in connection with the offer or sale of a security, whether a viatical settlement contract
29 or a security that represents or is secured by a viatical settlement contract, that is
30 exempt under (i) of this section.

31 * Sec. 4. AS 45.55 is amended by adding a new section to read:

1 **Sec. 45.55.933. Right of rescission applicable to sales of viatical settlement**
2 **contracts.** (a) In addition to any other rights provided for under this chapter or
3 otherwise, a person who purchases a viatical settlement contract or a security that
4 represents or is secured by a viatical settlement contract may rescind the purchase.

5 The person may rescind the purchase by giving written notice of rescission to the
6 entity designated for the notice in the disclosure documents by ordinary mail, postage
7 prepaid, within three business days following the later of the day on which the person

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

10 (2) paid the required consideration for the purchase of the viatical
11 settlement contract or a security that represents or is secured by a viatical settlement
12 contract.

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

18 * Sec. 5. AS 45.55.990(20) is amended to read:

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

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

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

31 (C) a viatical settlement contract that is not a fractional or