STORAGE NAME: h4449a.rpp
DATE: April 15, 1998

HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY & PROBATE
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: HB 4449

RELATING TO: Viatical settlement related provider trusts

SPONSOR(S): Representative Barreiro

COMPANION BILL(S): SB 2004 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) REAL PROPERTY & PROBATE 4 YEAS 0 NAYS
(2)
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I. SUMMARY:

HB 4449 amends sections of part XI, chapter 626, Florida Statutes.

A “viatical settlement contract” is an agreement between a life insurance policyholder (“viator”) who has a terminal illness and an investor or group of investors (“provider”) under which the provider makes an up-front payment to the viator. In exchange for this payment, the provider assumes the obligation of paying premiums on the policy and becomes entitled to the proceeds of the policy upon the death of the viator. The concept of viatical settlements arose in response to AIDS patients’ need for immediate cash.

A viatical settlement provider can pool funds from several investors, each of whom would be entitled to a proportionate share of the life insurance proceeds.

Under this bill, a licensed viatical settlement provider would be able to establish a trust for the benefit of viatical investors. The effect of establishing such a trust would be to shield the viatical investment from liabilities of the provider that are not related to viatical settlement contracts.

The bill should have no fiscal impact.

There is a strike-everything amendment traveling with the bill. See <u>AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES</u>.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

A “viatical settlement contract” is an agreement between a life insurance policyholder (“viator”) who has a terminal illness and an investor or group of investors (“provider”) under which the provider makes an up-front payment to the viator. In exchange for this payment, the provider assumes the obligation of paying premiums on the policy and becomes entitled to the proceeds of the policy upon the death of the viator. The concept of viatical settlements arose in response to AIDS patients’ need for immediate cash.

Viatical settlement contracts are regulated by the Department of Insurance [hereinafter the Department] under part XI of chapter 626, Florida Statutes, which was enacted in 1996.[1]

A viatical settlement provider can pool funds from several investors, each of whom would be entitled to a proportionate share of the life insurance proceeds. The expectations of an investor in a viatical settlement contract are that the payout will be a predetermined amount, but that the costs of maintaining the investment (the continuing obligation to pay premiums) will be variable based on the length of time the viator survives after entering into the contract.

As a practical matter, a business is unlikely to act as a viatical settlement provider and also engage in other activities. A venture capital corporation, for example, that wished also to be a viatical settlement provider may have difficulty attracting investors because of investors’ concern that the corporation’s non-viatical liabilities could affect the investors’ payoff from the viatical investment, thereby frustrating the investors’ expectations. The life insurance proceeds could, in such a situation, be used to pay liabilities of the business entity that are unrelated to viatical contracts; in the event of bankruptcy of the corporation, the viatical investor would become a creditor of the bankrupt business. By contrast, a business that acts only as a viatical settlement provider can promise its investors a more secure payoff.

Viatical settlement providers are licensed by the Department.

B. EFFECT OF PROPOSED CHANGES:

A licensed viatical settlement provider would be able to establish a trust for the benefit of viatical investors. The effect of establishing such a trust would be to shield the viatical investment from liabilities of the provider that are not related to viatical settlement contracts.

The trust, known as a “related provider trust,” would be subject to all aspects of regulation under part XI of chapter 626, Florida Statutes, except that the trust would not be required to be separately licensed as a viatical settlement provider. The bill provides that the viatical settlement provider could establish only one trust. The sole trustee of a related provider trust would be required to be a licensed viatical settlement provider.

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[1] Chapter 96-336, Laws of Florida.

The provider establishing the trust would be required to include in all statements filed with the Department information requested by the Department regarding the trust. The Department would not be allowed to charge any additional fees to a provider as a result of establishing a trust. At least 60 days before a related provider trust entered into any contracts, the viatical settlement provider would be required to file with the Department notice of its intention to use a trust. The filing would include a copy of the trust agreement and all contract forms and related forms used by the trust.

A viatical settlement provider that established a trust would be liable for the performance of all obligations of the trust under all viatical settlement contracts entered into by the trust and would be responsible for the compliance of the trust with all provisions of part XI of chapter 626, Florida Statutes. In the event of a violation by the trust, the Department would be authorized to apply any statutory sanctions for the violations to both the provider and the trust.

The bill would take effect upon becoming a law.

C. APPLICATION OF PRINCIPLES:

1. <u>Less Government:</u>

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. A viatical settlement provider that established a related provider trust would be required to file certain information with the Department.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. The bill enables a viatical settlement provider to establish a trust for the benefit of viatical investors.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 626.9911, 626.9912, 626.9913, 626.9914 and 626.9921, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

Section 1 amends section 626.9911, Florida Statutes, relating to definitions used in part XI, chapter 626, Florida Statutes. This section includes within the definition of “viatical settlement contract” a contract between a viator and a related provider trust. This section also adds a definition of “related provider trust.”

Section 2 amends section 626.9912, Florida Statutes, relating to viatical settlement provider licenses, to provide that a related provider trust need not be separately licensed as a viatical settlement provider.

Section 3 amends section 626.9913, Florida Statutes, relating to annual reports of viatical settlement providers, to require a provider to include in any statements filed with the Department any information regarding related provider trusts requested by the Department.

Section 4 amends section 626.9914, Florida Statutes, relating to suspension or revocation of viatical settlement provider licenses, to specify the liabilities and responsibilities of a viatical settlement provider with respect to a related provider trust.

Section 5 amends section 626.9921, Florida Statutes, relating to filing of forms, to require a provider to give the Department advance notice of its intention to use a provider trust and to require filing of the trust agreement, contract forms, and related forms.

Section 6 provides that the bill will take effect upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

   N/A

2. Recurring Effects:

   N/A

3. Long Run Effects Other Than Normal Growth:

   N/A

4. Total Revenues and Expenditures:

   N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   N/A

2. Recurring Effects:

   N/A

3. Long Run Effects Other Than Normal Growth:

   N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   The bill could create an economic disadvantage for creditors of a business that conducted its viatical activities through a related provider trust, in that the proceeds of the viatical settlement contracts would not be available to meet non-viatical liabilities of the business.

2. Direct Private Sector Benefits:

   The bill could increase the pool of funds available for viatical settlement contracts by making it practical for businesses that have non-viatical interests to enter into viatical settlement contracts. The bill could attract additional viatical investors by providing greater assurance that the investors' expectations will be met.

3. Effects on Competition, Private Enterprise and Employment Markets:

   N/A

D. FISCAL COMMENTS:

   The bill should have no fiscal impact.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

   This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

   This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

   This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Real Property & Probate adopted a strike-everything amendment, which is traveling with the bill.

The strike-everything amendment differs from the bill as follows:

- The amendment excludes from the definition of a viatical settlement provider a trust which meets the definiton of a related provider trust.
- The amendment provides that there will be no additional license fee or deposit requirements under this act for a viatical settlement provider.
- The amendment creates section 626.99235, Florida Statutes, to prohibit misrepresentation of the nature of a return or the duration of time to obtain the return of an investment.
- A disclosure must be provided to investors, stating that the return available is directly tied to the life span and projected date of death of one or more viators; if a return is represented, the disclosure must state the projected life span or date of death of the viator(s) whose life or lives is tied to the return.

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

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