

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty: The bill provides viatical settlement providers with the option of filing their required annual audited financial statement at the end of a fiscal year or a calendar year.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Viatical Settlement Contracts

Viatical settlement contracts are agreements to transfer ownership of or change the beneficiary designation of a life insurance policy at a later date in exchange for compensation to the policy owner or certificateholder.¹ The policy owner or certificateholder, known as a viator, receives compensation in an amount less than the expected death benefit.²

Viatical settlement contracts are well-known in the context of a viator who is terminally ill and has been given a life expectancy of two years or less. This is not always the case, however, as some contracts involve a longer life expectancy, possibly up to five years. Additionally, viatical settlement contracts are also entered into with elderly individuals, even those who are not terminally ill. Persons who effectuate viatical settlement contracts are known as viatical settlement providers.³ Life expectancy providers assist viatical settlement providers by determining life expectancies or mortality ratings that are used to determine life expectancies.⁴

Licensing for Viatical Settlement Providers

Viatical settlement providers are required to obtain a license from OIR before soliciting or entering into a viatical settlement contract.⁵ A successful license application is submitted under oath on an authorized form and is accompanied by the payment of a \$500 fee.⁶ Once a license is obtained, a license stays in effect until it is suspended or revoked.⁷

Annual Licensing Requirements

In order for a viatical settlement provider's license to remain in good standing, each year, the licensee must file an annual statement and a \$500 license fee on or before March 1.⁸ The annual statement must include all information that the Commission requires. In 2005, section 626.9913, Florida Statutes, was amended to require more detailed reporting, including: annual audited financial statements and a report of all life expectancy providers who have provided life expectancies directly or indirectly.⁹ The audited financial statement must be prepared by an independent certified public accountant and the audit must be conducted in accordance with generally accepted accounting principles.¹⁰ In 2006,

¹ Section 626.9911(10), F.S.

² Id.

³ Section 626.9911(10), F.S.

⁴ Section 626.9911(4), F.S.

⁵ Section 626.9912(1), F.S.

⁶ Specific information that the applicant must disclose on the license application is detailed in section 626.9912(3), Florida Statutes.

⁷ Section 626.9913(1), F.S.

⁸ Section 626.9913(2), F.S.

⁹ Id.

¹⁰ Id.

language was added to the statute to require that the audited financial statement provisions take effect after December 31, 2007.

Currently, the statute provides that after December 31, 2007, audited financial statements must be prepared as of the last day of the preceding calendar year.¹¹ If the audited financial statement is not complete, the licensee must submit an unaudited financial statement for the preceding calendar year and an officer of the licensee must submit an affidavit stating that the audit has not been completed. In this case, the licensee has until June 1 to submit the audited financial statement.

PROPOSED CHANGES

The bill amends section 626.9913(2), Florida Statutes, and it addresses the ending day of the year on which the audited financial statement is to be based. Instead of requiring that all financial statements be prepared as of the last day of the calendar year (December 31), the bill requires that the annual audited financial statement cover a 12-month period and end on a day that falls during the preceding calendar year. This language allows licensees who operate on a fiscal year basis to conduct their financial statement audit on the same basis, rather than on a calendar year basis. Licensees who operate on a calendar year basis would conduct calendar year audits, unaffected by the proposed change.

C. SECTION DIRECTORY:

Section 1: Amends section 626.9913(2), Florida Statutes; revises the ending day on which an annual audited financial statement must be based.

Section 2: Provides an effective date of July 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

¹¹ Id.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Viatical settlement providers who currently operate on a fiscal year rather than a calendar year will not have to: (1) conduct a second audit solely for the purpose of complying with section 626.9913, Florida Statutes, or (2) have to switch altogether to a fiscal year mode of operation.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR:

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 15, 2007, the Committee on Insurance adopted two amendments:

Amendment 1 provides that an administrator may submit its preceding fiscal year's audited financial statement on or before December 31 if the administrator has an established fiscal year of July 1 – June 30 and its sole stockholder is an association representing health care providers and is not an affiliate of an insurer; the amendment revises a portion of the title from "an act relating to viatical settlement provider licensees" to "an act relating to insurer financial statements."

Amendment 2 specifies that the ending day on which a viatical settlement provider's audited financial statement is based must occur during the last six months of the preceding calendar year.