

COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 372, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be amended as follows:

- Delete everything after the enacting clause and insert the following:
- SECTION 1. IC 27-8-19.8-1, AS ADDED BY P.L.116-1994, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 1. As used in this chapter, "applicant" refers to an applicant for a **viatical settlement provider** license under this chapter.
- SECTION 2. IC 27-8-19.8-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: **Sec. 4.5. As used in this chapter, "viatical settlement broker" means a person that represents a viator and for a fee, commission, or other valuable consideration, solicits, offers, or attempts to negotiate viatical settlements between a viator and one (1) or more viatical settlement providers. The term does not include:**
- (1) an accountant;
 - (2) an attorney; or
 - (3) a financial planner;
- retained to represent the viator and whose compensation is paid directly by or at the direction of the viator.**
- SECTION 3. IC 27-8-19.8-5, AS ADDED BY P.L.116-1994, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 5. (a) As used in this chapter, "~~living benefits~~ **viatical settlement provider**" means a person that enters into a ~~living benefits viatical settlement~~ contract with a ~~policyowner~~ **viator**.
- (b) The term does not include any of the following:
- (1) A bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy as collateral for a loan.
 - (2) The issuer of a life insurance policy that makes a policy loan, permits surrender of the policy, or pays other policy benefits, including accelerated benefits, in accordance with the terms of the policy.
- SECTION 4. IC 27-8-19.8-6, AS ADDED BY P.L.116-1994,

SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 6. As used in this chapter, "living benefits viatical settlement contract" means a written agreement between a person viatical settlement provider and a policyowner viator under the terms of which the person viatical settlement provider gives anything of value to the policyowner viator, which is less than the expected death benefit of the insurance policy, in return for the policyowner's viator's assignment, bequest, devise, sale, or transfer of all or a part of the death benefit, certificate, or ownership of the insurance policy to the person: viatical settlement provider. The term does not include a loan by a life insurance company under the terms of a life insurance policy, including a loan secured by the cash value of a policy.

SECTION 5. IC 27-8-19.8-7, AS ADDED BY P.L.116-1994, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 7. As used in this chapter, "person" means an individual, an association, a corporation, a limited liability corporation, an estate, a partnership, a trust, or any other business or legal entity.

SECTION 6. IC 27-8-19.8-8, AS ADDED BY P.L.116-1994, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 8. As used in this chapter, "policyowner" "viator" refers to the owner of a life insurance policy or a certificate holder under a group policy that insures the life of an ill individual who enters or seeks to enter into a viatical settlement contract.

SECTION 7. IC 27-8-19.8-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 8.5. The following must be licensed as a life insurance agent under IC 27-1-15.5:

- (1) A viatical settlement broker.
- (2) A person who solicits, offers, or attempts to negotiate a viatical settlement contract with a viator.

SECTION 8. IC 27-8-19.8-8.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 8.7. A viatical settlement broker:

- (1) represents only the viator; and
 - (2) owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator;
- regardless of the manner in which the viatical settlement broker is compensated.

SECTION 9. IC 27-8-19.8-9, AS ADDED BY P.L.116-1994, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 9. After ~~December 31, 1994~~ **December 31, 1998**, a person may not act as a living benefits viatical settlement provider or enter into, or solicit a living benefits contract unless the person holds an unexpired license issued under this chapter.

SECTION 10. IC 27-8-19.8-10, AS ADDED BY P.L.116-1994, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 10. (a) An applicant must do the following to obtain a license as a living benefits viatical settlement provider:

- (1) Apply for the license on forms prescribed by the department.
- (2) Provide information required by the department.
- (3) Pay the license fee.

(b) The application must include the name of each officer, member, or employee of the applicant who will be authorized by the applicant to act as a **living benefits viatical settlement** provider under the license if issued to the applicant.

(c) The department shall adopt rules under IC 4-22-2 to set the licensing fee required by this section.

SECTION 11. IC 27-8-19.8-11, AS ADDED BY P.L.116-1994, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 11. The department shall investigate an applicant and issue a license to the applicant if the department finds all of the following:

(1) The applicant is competent and trustworthy and intends to act in good faith as a **living benefits viatical settlement** provider.

(2) The applicant has a good business reputation.

(3) The applicant has had the experience, training, or education to qualify the applicant as a **living benefits viatical settlement** provider.

(4) If the applicant is a corporation, **or limited liability corporation, it the corporation** is either:

(A) incorporated under Indiana law; or

(B) authorized to do business in Indiana.

SECTION 12. IC 27-8-19.8-14, AS ADDED BY P.L.116-1994, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 14. A license issued under this chapter authorizes all officers, members, and employees of the license holder designated under section 10(b) of this chapter to act as **living benefits viatical settlement** providers under the license.

SECTION 13. IC 27-8-19.8-15, AS ADDED BY P.L.116-1994, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 15. (a) A license issued or renewed under this chapter expires on July 1 after its issuance or renewal.

(b) A **licensee viatical settlement provider** may renew a license by:

(1) applying for renewal on forms prescribed by the department; and

(2) paying the renewal fee.

(c) The department shall adopt rules under IC 4-22-2 to do the following:

(1) Set the renewal fee required by this section.

(2) Set a date before July 1 and before which receipt of a license renewal application can be processed without a lapse in the license.

(d) A **licensee viatical settlement provider** that submits an application for renewal after the date set under subsection (c)(2):

(1) is not entitled to have the license renewed before July 1; and

(2) may not act as a **living benefits viatical settlement** provider until the department issues the license renewal, if the department is unable to process the renewal before July 1.

SECTION 14. IC 27-8-19.8-16, AS ADDED BY P.L.116-1994, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 16. The department may at any time require a **licensee viatical settlement provider** or an applicant for a license to disclose fully the identity of all of the **licensee's viatical settlement provider's** or applicant's officers, employees, partners, and

stockholders.

SECTION 15. IC 27-8-19.8-17, AS ADDED BY P.L.116-1994, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 17. (a) A **licensee viatical settlement provider** shall file with the department an annual report containing information prescribed in rules adopted by the department under IC 4-22-2.

(b) The rules adopted by the department under subsection (a) shall set the date by which annual reports must be submitted.

(c) A viatical settlement provider shall maintain records of each viatical settlement at least five (5) years after the death of the ill individual.

SECTION 16. IC 27-8-19.8-18, AS ADDED BY P.L.116-1994, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 18. (a) When the department reasonably considers it necessary for the protection of the public, the department may examine the business and other affairs of a **licensee viatical settlement provider** or an applicant.

(b) The department may order a **licensee viatical settlement provider** or an applicant to produce records, books, files, or other information reasonably necessary to ascertain whether the **licensee viatical settlement provider** or the applicant has violated or is violating the law or otherwise has acted or is acting contrary to the public interest.

(c) The **licensee viatical settlement provider** or applicant shall pay the expenses of an examination conducted under this section.

SECTION 17. IC 27-8-19.8-19, AS ADDED BY P.L.116-1994, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 19. After a hearing under IC 4-21.5, the department may suspend, revoke, or refuse to renew a **licensee's viatical settlement provider's license, or impose a civil penalty, or both**, if the department finds any of the following:

(1) There was a misrepresentation in the application for the license.

(2) The **licensee viatical settlement provider** is untrustworthy or incompetent to act as a **living benefits viatical settlement provider**.

(3) The **licensee viatical settlement provider** demonstrates a pattern of unreasonable payments to **policyowners viators**.

(4) The **licensee viatical settlement provider** has been convicted of, **or pleaded guilty or nolo contendere to**, an offense the definition of which includes fraudulent acts as an element of the offense **regardless of whether a judgement has been entered by the court**.

(5) **The viatical settlement provider no longer meets the requirements for initial licensure.**

(6) **The viatical settlement provider has failed to honor the contractual obligations of a viatical settlement contract.**

(7) The **licensee viatical settlement provider** has violated this chapter.

SECTION 18. IC 27-8-19.8-21, AS ADDED BY P.L.116-1994, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 21. (a) A **living benefits viatical settlement contract** must establish the terms under which the **living benefits**

viatical settlement provider will pay value, in return for the **policyowner's viator's** assignment, bequest, devise, sale, or transfer of the death benefit, **certificate**, or ownership of the insurance policy to the **living benefits viatical settlement** provider.

(b) A **living benefits viatical settlement** contract must provide for the unconditional rescission of the contract by the **policyowner viator** for thirty (30) days after execution of the contract.

(c) **A viatical settlement contract is rescinded if the ill individual dies during the rescission period, subject to repayment of all proceeds to the viatical settlement provider.**

SECTION 19. IC 27-8-19.8-22, AS ADDED BY P.L.116-1994, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 22. (a) A **living benefits provider person** may not use a **living benefits viatical settlement** contract form or a **disclosure form** in Indiana unless the contract form or **disclosure form** has been filed with and approved by the department.

(b) A **living benefits viatical settlement** contract form or **disclosure form** filed with the department is considered approved if the department has not disapproved the form within sixty (60) days after the filing.

(c) The department shall disapprove a **living benefits viatical settlement** contract form or **disclosure form** if the department finds that the contract form, **disclosure form**, or the provisions of the contract are:

- (1) misleading or unfair to the **policyowner viator**;
- (2) **not in compliance with this chapter**; or
- (2) (3) otherwise contrary to the public interest.

SECTION 20. IC 27-8-19.8-23, AS ADDED BY P.L.116-1994, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 23. A **living benefits viatical settlement** provider or **viatical settlement broker** shall disclose the following information to the **policyowner viator** not later than the date the **living benefits contract is entered into**: **of application:**

- (1) Possible alternatives to **living benefits viatical settlement** contracts, including accelerated benefits offered by the issuer of the life insurance policy.
- (2) Tax consequences that may result from entering into a **living benefits viatical settlement** contract.
- (3) ~~Consequences of Possible~~ interruption of assistance provided by medical or public assistance programs **as a consequence of entering into a viatical settlement contract.**
- (4) The **policyowner's viator's** right to rescind a **living benefits viatical settlement** contract as provided in section 21 of this chapter.
- (5) **The amount of any fees paid by a viatical settlement provider to a viatical settlement broker.**
- (6) **A statement that proceeds of the viatical settlement could be subject to claims of creditors.**
- (7) **A statement that entering into a viatical settlement contract may cause other rights or benefits under the policy, including conversion rights, waiver of premium benefits, family riders, or coverage of a life other than an ill individual, to be forfeited by the viator.**
- (8) **The procedure for contacts with the ill individual under**

section 24.9 of this chapter.

SECTION 21. IC 27-8-19.8-24, AS ADDED BY P.L.116-1994, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: Sec. 24. A **living benefits viatical settlement** provider shall obtain the following before entering into a **living benefits viatical settlement** contract: ~~with a policyowner who is an ill individual~~

(1) ~~If the viator is the ill individual, A~~ a written statement from a licensed attending physician that the **ill individual** is of sound mind and under no constraint or undue influence.

(2) A document signed by the ~~individual~~ **viator** and witnessed by two (2) disinterested witnesses in which the ~~individual~~ **viator** does the following:

(A) Consents to the **living benefits viatical settlement** contract.

(B) Acknowledges the catastrophic or life threatening illness.

(C) Represents that the ~~individual~~ **viator** has a full and complete understanding of the **living benefits viatical settlement** contract.

(D) Represents that the ~~individual~~ **viator** has a full and complete understanding of the benefits of the life insurance policy.

~~(E) Releases the individual's medical records. IC 16-39 applies to the release of the individual's medical records under this clause.~~

~~(F)~~ (E) Acknowledges that the ~~individual~~ **viator** has entered into the **living benefits viatical settlement** contract freely and voluntarily.

(3) **A document in which the ill individual consents to the release of the ill individual's medical records. IC 16-39 applies to the release of the ill individual's medical records under this section.**

SECTION 22. IC 27-8-19.8-24.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: **Sec. 24.2. (a) Immediately upon a viatical settlement provider's receipt of a signed viatical settlement contract, the viatical settlement provider shall pay the proceeds of the viatical settlement to a trust or escrow account in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation. The account shall be managed by a trustee or escrow agent independent of the parties to the contract.**

(b) Within two (2) business days after the viatical settlement provider's receipt of the insurer's or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated according to the viatical settlement contract, the trustee or escrow agent shall transfer the proceeds to the viator.

SECTION 23. IC 27-8-19.8-24.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: **Sec. 24.5. Any fee paid by a viatical settlement provider or a viator to a viatical settlement broker for services provided to the viator must be computed as a**

percentage of the value paid in return for the viator's assignment, bequest, devise, sale, or transfer of the death benefit, certificate, or ownership of the insurance policy to the viatical settlement provider.

SECTION 24. IC 27-8-19.8-24.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: **Sec. 24.7. Except as otherwise provided by law, a person with actual knowledge of a viator's identity may not disclose that identity to another person unless the disclosure is:**

- (1) necessary to effect a viatical settlement contract and the viator has provided written consent to the disclosure; or
- (2) provided in response to an investigation by the commissioner or other governmental officer or agency.

SECTION 25. IC 27-8-19.8-24.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: **Sec. 24.9. The viatical settlement provider or viatical settlement broker may contact the ill individual for the purpose of determining the health status of the ill individual not more than:**

- (1) one (1) time every three (3) months for an ill individual with a life expectancy of more than one (1) year; or
- (2) one (1) time every month for an ill individual with a life expectancy of not more than one (1) year.

SECTION 26. IC 27-8-19.8-25, AS ADDED BY P.L.116-1994, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: **Sec. 25. The department shall adopt rules under IC 4-22-2 to establish standards for evaluating the reasonableness of payments under living benefits viatical settlement contracts, including regulation of discount rates used to determine the amount paid in exchange for an assignment, a bequest, a devise, a sale, or a transfer of a benefit under a life insurance policy.**

SECTION 27. [EFFECTIVE JANUARY 1, 1999] (a) **Notwithstanding IC 27-8-19.8-9, as amended by this act, a person who holds a valid license under IC 27-8-19.8-11 (before its amendment by this act) on December 31, 1998, is considered to have a valid license under IC 27-8-19.8-9, as amended by this act, and does not need to reapply or renew the license until the date the license is due for renewal.**

(b) **This SECTION expires January 1, 2000.**

SECTION 28. THE FOLLOWING ARE REPEALED [EFFECTIVE JANUARY 1, 1999]: IC 27-8-19.8-4; IC 27-8-19.8-20. (Reference is to SB 372 as introduced.)

and when so amended that said bill be reassigned to the Senate Committee on Judiciary.

Garton

Chairperson