



February 22, 2000

ENGROSSED HOUSE BILL No. 1143

DIGEST OF HB 1143 (Updated February 17, 2000 4:25 PM - DI 100)

Citations Affected: IC 23-2; IC 27-8.

Synopsis: Viatical settlement changes. Amends the definition of "security" in the Indiana securities law to include viatical settlement contracts or interests in viatical settlement contracts. Amends the definition of "viatical settlement contract" and excludes from the definition certain agreements and the provision of accelerated benefits under a life insurance policy.

Effective: Upon passage.

Smith M, Fry

(SENATE SPONSORS — PAUL, LEWIS)

January 10, 2000, read first time and referred to Committee on Insurance, Corporations and Small Business.

January 13, 2000, amended, reported — Do Pass.

January 26, 2000, read second time, amended, ordered engrossed.

January 27, 2000, engrossed. Read third time, passed. Yeas 95, nays 0.

SENATE ACTION

January 31, 2000, read first time and referred to Committee on Insurance and Financial Institutions.

February 21, 2000, amended, reported favorably — Do Pass.

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February 22, 2000

Second Regular Session 111th General Assembly (2000)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

ENGROSSED HOUSE BILL No. 1143

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A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 23-2-1-1 IS AMENDED TO READ AS FOLLOWS
- 2 [EFFECTIVE UPON PASSAGE]: Sec. 1. As used in this chapter,
- 3 unless the context otherwise requires:
- 4 (a) "Commissioner" means the securities commissioner provided for
- 5 in ~~IC 23-2-1-15(a)~~; **section 15(a) of this chapter**.
- 6 (b) "Agent" means an individual, other than a broker-dealer, who
- 7 represents a broker-dealer or issuer in effecting or attempting to effect
- 8 purchases or sales of securities. A partner, officer, or director of a
- 9 broker-dealer or issuer or a person occupying a similar status or
- 10 performing similar functions is an agent only if the person effects or
- 11 attempts to effect a purchase or sale of securities in Indiana. "Agent"
- 12 does not include an individual who represents an issuer in:
- 13 (1) effecting transactions in a security exempted by section
- 14 2(a)(1), 2(a)(2), 2(a)(3), 2(a)(6), 2(a)(7), or 2(a)(10) of this
- 15 chapter;
- 16 (2) effecting transactions exempted by section 2(b) of this

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- 1 chapter;
- 2 (3) effecting transactions with existing employees, partners, or
- 3 directors of the issuer, if no commission or other remuneration is
- 4 paid or given directly or indirectly for soliciting a person in
- 5 Indiana; or
- 6 (4) effecting transactions in Indiana limited to those transactions
- 7 described in Section 15(h)(2) of the Securities Exchange Act of
- 8 1934 (15 U.S.C. 78o).
- 9 (c) "Broker-dealer" means a person engaged in the business of
- 10 effecting offers, sales, or purchases of securities for the account of
- 11 others or for the person's own account. "Broker-dealer" does not
- 12 include:
- 13 (1) an agent;
- 14 (2) an issuer with respect to the offer or sale of the issuer's own
- 15 securities;
- 16 (3) a bank, savings institution, or trust company; or
- 17 (4) a person who has no place of business in Indiana if the person
- 18 effects transactions in Indiana exclusively with:
- 19 (i) the issuers of the securities involved in the transactions;
- 20 (ii) other broker-dealers; or
- 21 (iii) banks, savings institutions, trust companies, insurance
- 22 companies, investment companies (as defined in the
- 23 Investment Company Act of 1940, as in effect on December
- 24 31, 1990), pension or profit-sharing trusts, or other financial
- 25 institutions or institutional buyers, whether acting for
- 26 themselves or as trustees, whether or not the offeror or any of
- 27 the offerees is then present in Indiana.
- 28 (d) "Fraud", "fraudulent", "deceit", and "defraud" mean a
- 29 misrepresentation of a material fact, a promise or representation or
- 30 prediction not made honestly or in good faith, or the failure to disclose
- 31 a material fact necessary in order to make the statements made, in the
- 32 light of the circumstances under which they were made, not
- 33 misleading. This definition does not limit or diminish the full meaning
- 34 of those terms as applied by or defined in courts of law or equity. These
- 35 terms are not limited to common law deceit.
- 36 (e) "Guaranteed" means guaranteed as to payment of principal,
- 37 interest, or dividends.
- 38 (f) "Issuer" means a person who issues or proposes to issue a
- 39 security, except that with respect to certificates of deposit, voting-trust
- 40 certificates, or collateral-trust certificates, or with respect to certificates
- 41 of interest or shares in an unincorporated investment trust not having
- 42 a board of directors or person performing similar functions or of the

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1 fixed, restricted management, or unit type. The term "issuer" means the
 2 person or persons performing the acts and assuming the duties of
 3 depository or manager pursuant to the provisions of the trust or other
 4 agreement or instrument under which the security is issued.

5 (g) "Nonissuer" means not directly or indirectly for the benefit of the
 6 issuer.

7 (h) "Person" means an individual, a corporation, a limited liability
 8 company, a partnership, an association, a joint-stock company, a trust
 9 where the interests of the beneficiaries are evidenced by a security, an
 10 unincorporated organization, a government, or a political subdivision
 11 of a government.

12 (i)(1) "Sale" or "sell" means a contract of sale of, contract to sell, or
 13 disposition of, a security, or interest in a security for value.

14 (2) "Offer" or "offer to sell" means an attempt or offer to dispose of,
 15 or solicitation of an offer to purchase, a security, or interest in a
 16 security for value.

17 (3) "Transaction" and "transactions" include the meanings of "sale",
 18 "sell", "offer", "offer to sell", and "purchase".

19 (4) "Purchase" means an acquisition, direct or indirect, of a security
 20 or an interest in a security for value.

21 (5) A security given or delivered with, or as a bonus on account of,
 22 a purchase of securities or any other thing is considered to constitute
 23 part of the subject of the purchase and to have been offered and sold for
 24 value.

25 (6) A purported gift of assessable stock is considered to involve an
 26 offer and sale.

27 (7) A sale or offer of a warrant or right to purchase or subscribe to
 28 another security of the same or another issuer, as well as a sale or offer
 29 of a security that gives the holder a present or future right or privilege
 30 to convert into another security of the same or another issuer, is
 31 considered to include an offer of the other security.

32 (8) The terms defined in this subsection do not include:

33 (i) a bona fide secured transaction in or loan of outstanding
 34 securities;

35 (ii) a stock dividend, whether the corporation distributing the
 36 dividend is the issuer of the stock or not, if nothing of value is
 37 given by the stockholders for the dividend other than the
 38 surrender of a right to a cash or property dividend when each
 39 stockholder may elect to take the dividend in cash or property or
 40 in stock; or

41 (iii) an act incident to a judicially approved reorganization in
 42 which a security is issued in exchange for one (1) or more

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1 outstanding securities, claims, or property interests, or partly in
2 such exchange and partly for cash.

3 (j) "Securities Act of 1933", "Securities Exchange Act of 1934",
4 "Public Utility Holding Company Act of 1935", and "Investment
5 Company Act of 1940" mean the federal statutes of those names, as in
6 effect on December 31, 1990.

7 (k) "Security" means a note, stock, treasury stock, bond, debenture,
8 evidence of indebtedness, an interest in a limited liability company or
9 limited liability partnership and any class or series of an interest in a
10 limited liability company or limited liability partnership (including any
11 fractional or other interest in an interest in a limited liability company
12 or limited liability partnership), certificate of interest or participation
13 in a profit-sharing agreement, commodity futures contract, option, put,
14 call, privilege, or other right to purchase or sell a commodity futures
15 contract, margin accounts for the purchase of commodities or
16 commodity futures contracts, collateral-trust certificate,
17 preorganization certificate or subscription, transferable share,
18 investment contract, **viatical settlement contract, any fractional or**
19 **pooled interest in a viatical settlement contract,** voting-trust
20 certificate, certificate of deposit for a security, certificate of interest or
21 participation in an oil, gas, or mining title or lease or in payments out
22 of production under the title or lease, an automatic extension or
23 rollover of an existing security, or, in general, an interest or instrument
24 commonly known as a "security", or a certificate of interest or
25 participation in, temporary or interim certificate for, receipt for,
26 guarantee of, or warrant, option, or right to subscribe to or purchase,
27 any of the foregoing. "Security" does not include:

28 (i) (1) an insurance or endowment policy or annuity contract
29 under which an insurance company promises to pay money either
30 in a lump sum or periodically for life or some other specified
31 period;

32 (ii) (2) a contract or trust agreement under which money is paid
33 pursuant to a charitable remainder annuity trust or a charitable
34 remainder unitrust (described in Section 664 of the Internal
35 Revenue Code), or a pooled income fund (described in Section
36 642(c)(5) of the Internal Revenue Code) or an annuity contract
37 under which the purchaser receives a charitable contribution
38 deduction under Section 170 of the Internal Revenue Code; or

39 (iii) (3) an interest in a limited liability company or limited
40 liability partnership if the person claiming that the interest is not
41 a security can prove that all of the members of the limited liability
42 company or limited liability partnership are actively engaged in

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1 the management of the limited liability company or limited
2 liability partnership.

3 (l) "State" means a state, territory, or possession of the United
4 States, the District of Columbia, and Puerto Rico.

5 (m) Corporations are "affiliated" during a period of time when either
6 is the owner of shares of the other representing and possessing fifty
7 percent (50%) or more of the total combined voting power of all classes
8 of stock issued by the other corporation and then outstanding and
9 entitled to vote.

10 (n) "Investment adviser" means a person who holds himself out to
11 be an investment adviser, or who, for compensation, engages in the
12 business of advising others, either directly or through publications or
13 writings, as to the value of securities or as to the advisability of
14 investing in, purchasing, or selling securities, or who, for compensation
15 and as a part of a regular business, issues and promulgates analyses or
16 reports concerning securities. "Investment adviser" does not include
17 any of the following:

- 18 (1) A bank, savings institution, or trust company.
19 (2) A lawyer, an accountant, an engineer, or a teacher whose
20 performance of these services is solely incidental to the practice
21 of the person's profession.
22 (3) A broker-dealer or its agent whose performance of these
23 services is solely incidental to the conduct of the broker-dealer's
24 business as a broker-dealer and who receives no special
25 compensation for them.
26 (4) A publisher of a bona fide newspaper, news column,
27 newsletter, news magazine, or business or financial publication or
28 service, by whatever means communicated, that does not render
29 advice on the specific investment situation of individual clients.
30 (5) An investment adviser representative.
31 (6) A person who is an investment adviser to an investment
32 company registered under the Investment Company Act of 1940
33 (15 U.S.C. 80a-1 et seq.).
34 (7) A person who is registered as an investment adviser under
35 Section 203 of the Investment Advisers Act of 1940 (15 U.S.C.
36 80b-3).
37 (8) A person who is excluded from the definition of investment
38 adviser under Section 202(a)(11) of the Investment Advisers Act
39 of 1940 (15 U.S.C. 80b-2).
40 (9) Other persons the commissioner may by rule or order
41 designate.
42 (o) "Transferable share" means a security representing an equity

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1 interest in a corporation or business trust, but does not include the
 2 shares of open-end investment companies (as defined by the
 3 Investment Company Act of 1940, as in effect on December 31, 1990).

4 (p) A "qualified transfer agent" means:

5 (1) a bank whose deposits are insured by the Bank Insurance Fund
 6 of the Federal Deposit Insurance Corporation; or

7 (2) a person, independent of the issuer, approved by the
 8 commissioner by regulation or by individual order in specific
 9 cases.

10 (q) "Investment adviser representative" means a person, except a
 11 person in a clerical or ministerial position:

12 (1) who is employed by or associated with an investment adviser
 13 registered under this chapter; or

14 (2) who has a place of business located in Indiana and is
 15 employed by or associated with a person required to be registered
 16 as an investment adviser under Section 203 of the Investment
 17 Advisers Act of 1940 (15 U.S.C. 80b-3); and

18 (3) who:

19 (A) makes recommendations or otherwise renders advice
 20 regarding securities;

21 (B) manages accounts or portfolios of clients;

22 (C) determines recommendations or advice that should be
 23 given regarding securities;

24 (D) solicits, offers, or negotiates the sale of or sells investment
 25 advisory services; or

26 (E) supervises employees who perform a duty described in this
 27 subsection.

28 (r) "Accredited investor" means a person who is within any of the
 29 following categories, or who the issuer reasonably believes is within
 30 any of the following categories, at the time of the sale of securities to
 31 the person:

32 (1) A person who meets the definition of "accredited investor" (as
 33 defined under the Securities Act of 1933 in 17 CFR 230.215), and
 34 in any other rule or regulation modifying the definition adopted
 35 by the Securities and Exchange Commission as in effect on
 36 December 31, 1990.

37 (2) A person to whom an offer or sale may be made without
 38 registration pursuant to section 2(b)(8) or 2(b)(9) of this chapter.

39 (3) Any other person the commissioner may designate by rule or
 40 order.

41 (s) "Federal covered security" refers to a security described as a
 42 covered security in Section 18(b) of the Securities Act of 1933 (15

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1 U.S.C. 77r).

2 (t) "Viatical settlement contract" means an agreement for the
 3 purchase, sale, assignment, transfer, devise, or bequest of a portion
 4 of a death benefit or ownership of a life insurance policy or
 5 contract for consideration that is less than the expected death
 6 benefit of the life insurance policy or contract. The term does not
 7 include the following:

- 8 (1) A loan by an insurer under the terms of a life insurance
 9 policy, including a loan secured by the cash value of a policy.
 10 (2) An agreement with a bank, savings bank, savings and loan
 11 association, credit union, or other licensed lending institution
 12 that takes an assignment of a life insurance policy as collateral
 13 for a loan.
 14 (3) The provision of accelerated death benefits by an insurer
 15 to an insured under the provisions of a life insurance contract.
 16 (4) Agreements between an insurer and a reinsurer.
 17 (5) An agreement by a person who enters into not more than
 18 one (1) such agreement in any five (5) year period to purchase
 19 a life insurance policy or contract for the transfer of a life
 20 insurance policy for a value that is less than the expected
 21 death benefit.

22 SECTION 2. IC 27-8-19.8-6 IS AMENDED TO READ AS
 23 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. As used in this
 24 chapter, "viatical settlement contract" means a ~~written~~ **an** agreement
 25 between a viatical settlement provider and a viator under the terms of
 26 which the viatical settlement provider gives anything of value to the
 27 viator; ~~which for the purchase, sale, assignment, transfer, devise, or~~
 28 **bequest of a portion of the death benefit or ownership of a life**
 29 **insurance policy or contract for consideration that** is less than the
 30 expected death benefit of the **life** insurance policy ~~in return for the~~
 31 ~~viator's assignment, bequest, devise, sale, or transfer of all of the death~~
 32 ~~benefit, certificate, or ownership of the insurance policy to the viatical~~
 33 ~~settlement provider.~~ **or contract.** The term does not include ~~the~~
 34 **following:**

- 35 (1) A loan by a ~~life insurance company~~ **an insurer** under the
 36 terms of a life insurance policy, including a loan secured by the
 37 cash value of a policy.
 38 (2) An agreement with a bank, savings bank, savings and loan
 39 association, credit union, or other licensed lending institution
 40 that takes an assignment of a life insurance policy as collateral
 41 for a loan.
 42 (3) The provision of accelerated death benefits by an insurer



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1 **to an insured under the provisions of a life insurance contract.**
2 **(4) Agreements between an insurer and a reinsurer.**
3 **(5) An agreement by a person who enters into not more than**
4 **one (1) such agreement in any five (5) year period to purchase**
5 **a life insurance policy or contract for the transfer of a life**
6 **insurance policy for a value that is less than the expected**
7 **death benefit.**
8 **SECTION 3. An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Insurance, Corporations and Small Business, to which was referred House Bill 1143, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 8, line 2, after "shall" delete "," and insert ":

(A)".

Page 8, line 2, after "fraud" delete "," and insert "**in connection with a viaticated policy as provided in clause (B),**".

Page 8, line 5, after "date" delete "," and insert "; **and**

(B) in the event of fraud in connection with a viaticated policy (as defined in IC 27-8-19.8-6), be incontestable after the policy has been in force during the lifetime of the insured for five (5) years after the date of issue, or, at the option of the company after the policy has been in force for five (5) years after the date of issue;".

Page 10, delete lines 34 through 42, begin a new line block indented and insert:

"(2) A provision that the validity of the policy may not be contested ~~except for nonpayment of premiums; after the policy has been in force for two (2) years after its date of issue and that no statement made by a person insured under the policy relating to the person's insurability may be used in contesting the validity of the insurance with respect to which the statement was made;~~ **unless: except as provided in clause (A), (B), (C), or (D):**

(A) the insurance has not been in force for a period of two (2) years or longer during the person's lifetime; or The validity of a policy may be contested at any time for nonpayment of premiums.

(B) the statement is contained in a written instrument signed by the insured person. The validity of a policy may be contested based on a statement made by a person insured under the policy that relates to the person's insurability if:

(i) the statement is set forth in a written instrument signed by the insured; and

(ii) the policy has not been in force for two (2) years after the date of issue.

(C) The validity of a policy may be contested based on a statement made by a person insured under the policy that relates to the person's insurability if:

(i) the policy has not been in force for at least two (2) years during the person's lifetime; and

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(ii) the policy has not been in force for two (2) years after its date of issue.

(D) The validity of a viaticated policy (as defined in IC 27-8-19.8-6) may be contested on the grounds of fraud until the policy has been in force for five (5) years after the date of issue."

Page 11, delete lines 1 through 2.

and when so amended that said bill do pass.

(Reference is to HB 1143 as introduced.)

FRY, Chair

Committee Vote: yeas 12, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1143 be amended to read as follows:

Replace the effective date in SECTIONS 1 through 4 with "[EFFECTIVE UPON PASSAGE]".

Page 8, line 3, delete "in the event of fraud in connection with a".

Page 8, line 4, delete "viaticated policy".

Page 8, line 9, delete "a viaticated" and insert "**an application for life insurance benefits under a policy that is part of a viatical settlement contract**".

Page 8, line 10, delete "policy".

Page 8, line 12, delete "five (5)" and insert "**six (6)**".

Page 8, line 14, delete "five (5)" and insert "**six (6)**".

Page 11, line 27, delete "viaticated".

Page 11, line 27, after "policy" insert "**that is part of a viatical settlement contract**".

Page 11, line 28, after "fraud" insert "**in connection with an application for life insurance benefits under the policy**".

Page 11, line 29, delete "five (5)" and insert "**six (6)**".

Page 15, after line 35, begin a new paragraph and insert: "**SECTION 5. An emergency is declared for this act.**".

(Reference is to HB 1143 as printed January 14, 2000.)

SMITH M

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COMMITTEE REPORT

Mr. President: The Senate Committee on Insurance and Financial Institutions, to which was referred House Bill No. 1143, 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:

Page 7, delete lines 22 through 42.

Delete pages 8 through 14.

Page 15, delete lines 1 through 9.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1143 as reprinted January 27, 2000.)

PAUL, Chairperson

Committee Vote: Yeas 8, Nays 1.

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