January 25, 2000

SENATE BILL No. 233

DIGEST OF SB 233 (Updated January 20, 2000 5:25 PM - DI 100)

Citations Affected: IC 23-2; IC 27-1; IC 27-8.

Synopsis: Viatical settlement contract. 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: July 1, 2000.

Paul, Mrvan

January 10, 2000, read first time and referred to Committee on Insurance and Financial Institutions.
January 24, 2000, amended, reported favorably — Do Pass.

C o p y

January 25, 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 a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

C o p y

SENATE BILL No. 233

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

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

SECTION 1. IC 23-2-1-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 1. As used in this chapter, unless the context otherwise requires:

(a) "Commissioner" means the securities commissioner provided for in IC 23-2-1-15(a).

(b) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. A partner, officer, or director of a broker-dealer or issuer or a person occupying a similar status or performing similar functions is an agent only if the person effects or attempts to effect a purchase or sale of securities in Indiana. "Agent" does not include an individual who represents an issuer in:

(1) effecting transactions in a security exempted by section 2(a)(1), 2(a)(2), 2(a)(3), 2(a)(6), 2(a)(7), or 2(a)(10) of this chapter;

(2) effecting transactions exempted by section 2(b) of this chapter;

(3) effecting transactions with existing employees, partners, or directors of the issuer, if no commission or other remuneration is paid or given directly or indirectly for soliciting a person in Indiana; or

(4) effecting transactions in Indiana limited to those transactions described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78o).

(c) "Broker-dealer" means a person engaged in the business of effecting offers, sales, or purchases of securities for the account of others or for the person's own account. "Broker-dealer" does not include:

(1) an agent;

(2) an issuer with respect to the offer or sale of the issuer's own securities;

(3) a bank, savings institution, or trust company; or

(4) a person who has no place of business in Indiana if the person effects transactions in Indiana exclusively with:

(i) the issuers of the securities involved in the transactions;

(ii) other broker-dealers; or

(iii) banks, savings institutions, trust companies, insurance companies, investment companies (as defined in the Investment Company Act of 1940, as in effect on December 31, 1990), pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees, whether or not the offeror or any of the offerees is then present in Indiana.

(d) "Fraud", "fraudulent", "deceit", and "defraud" mean a misrepresentation of a material fact, a promise or representation or prediction not made honestly or in good faith, or the failure to disclose a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. This definition does not limit or diminish the full meaning of those terms as applied by or defined in courts of law or equity. These terms are not limited to common law deceit.

(e) "Guaranteed" means guaranteed as to payment of principal, interest, or dividends.

(f) "Issuer" means a person who issues or proposes to issue a security, except that with respect to certificates of deposit, voting-trust certificates, or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or person performing similar functions or of the fixed, restricted management, or unit type. The term "issuer" means the

C o p y

person or persons performing the acts and assuming the duties of depository or manager pursuant to the provisions of the trust or other agreement or instrument under which the security is issued.

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

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

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

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

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

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

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

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

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

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

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

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

(iii) an act incident to a judicially approved reorganization in which a security is issued in exchange for one (1) or more outstanding securities, claims, or property interests, or partly in

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such exchange and partly for cash.

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

(k) "Security" means a note, stock, treasury stock, bond, debenture, evidence of indebtedness, an interest in a limited liability company or limited liability partnership and any class or series of an interest in a limited liability company or limited liability partnership (including any fractional or other interest in an interest in a limited liability company or limited liability partnership), certificate of interest or participation in a profit-sharing agreement, commodity futures contract, option, put, call, privilege, or other right to purchase or sell a commodity futures contract, margin accounts for the purchase of commodities or commodity futures contracts, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, **viatical settlement contract, any fractional or pooled interest in a viatical settlement contract,** voting-trust certificate, certificate of deposit for a security, 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, an automatic extension or rollover of an existing security, or, in general, an interest or instrument commonly known as a "security", or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant, option, or right to subscribe to or purchase, any of the foregoing. "Security" does not include:

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

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

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

C o p y

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

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

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

(1) A bank, savings institution, or trust company.

(2) A lawyer, an accountant, an engineer, or a teacher whose performance of these services is solely incidental to the practice of the person's profession.

(3) A broker-dealer or its agent whose performance of these services is solely incidental to the conduct of the broker-dealer's business as a broker-dealer and who receives no special compensation for them.

(4) A publisher of a bona fide newspaper, news column, newsletter, news magazine, or business or financial publication or service, by whatever means communicated, that does not render advice on the specific investment situation of individual clients.

(5) An investment adviser representative.

(6) A person who is an investment adviser to an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

(7) A person who is registered as an investment adviser under Section 203 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3).

(8) A person who is excluded from the definition of investment adviser under Section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2).

(9) Other persons the commissioner may by rule or order designate.

(o) "Transferable share" means a security representing an equity interest in a corporation or business trust, but does not include the shares of open-end investment companies (as defined by the

C o p y

Investment Company Act of 1940, as in effect on December 31, 1990).

(p) A "qualified transfer agent" means:

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

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

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

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

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

(3) who:

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

(B) manages accounts or portfolios of clients;

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

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

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

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

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

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

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

(s) "Federal covered security" refers to a security described as a covered security in Section 18(b) of the Securities Act of 1933 (15 U.S.C. 77r).

(t) "Viatical settlement contract" means an agreement for the

C o p y

purchase, sale, assignment, transfer, devise, or bequest of a portion of a death benefit or ownership of a life insurance policy or contract for consideration that is less than the expected death benefit of the life insurance policy or contract. The term does not include the following:

(1) A loan by an insurer under the terms of a life insurance policy, including a loan secured by the cash value of a policy.

(2) An agreement with 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.

(3) The provision of accelerated death benefits by an insurer to an insured under the provisions of a life insurance contract.

(4) Agreements between an insurer and a reinsurer.

(5) An agreement by a person who enters into not more than one (1) such agreement in any five (5) year period to purchase a life insurance policy or contract for the transfer of a life insurance policy for a value that is less than the expected death benefit.

SECTION 2. IC 27-1-12-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 6. (a) No policy of life insurance, other than industrial insurance, group life insurance or reinsurance, bearing a date of issue which is the same as or later than a transition date to be selected by the company pursuant to section 12 of this chapter, such transition date in no event to be later than January 1, 1948, shall be delivered or issued for delivery in this state or issued by a company organized under the laws of this state unless the same shall provide the following:

(1) That all premiums shall be payable in advance, either at the home office of the company, or to an agent of the company, upon delivery of a receipt signed by one (1) or more of the officers who shall be designated in the policy.

(2) For a grace period of not less than thirty (30) days for the payment of every premium after the first premium, which may be subject to an interest charge, during which period the insurance shall continue in force; provided, that if the insured shall die within such period of grace the unpaid premium for the current policy year may be deducted in any settlement under the policy.

(3) That the policy, together with the application therefor, a copy of which application shall be attached to the policy and made a part thereof, shall constitute the entire contract between the parties and shall, **except in the event of fraud,** be incontestable

C o p y

after it shall have been in force during the lifetime of the insured for two (2) years from its date, or, at the option of the company after it shall have been in force for two (2) years from its date, except for nonpayment of premiums, and except for violation of the conditions of the policy relating to naval and military service in time of war, and at the option of the company provisions relative to benefits in the event of total and permanent disability and provisions which grant additional insurance specifically against death by accident may also be excepted.

(4) That if the age of the insured and/or beneficiary, if that age enters into the determination of the premiums charged or benefits promised, has been misstated, the amount payable under the policy shall be such as the premium would have purchased at the correct age of the insured and/or beneficiary.

(5) That all statements made by the insured in the application shall, in the absence of fraud, be deemed representations and not warranties.

(6) That, in the case of participating policies, the policy shall participate in the surplus of the company as apportioned by the board of directors of the company, and that, beginning not later than the end of the fifth policy year, the company will determine and account for the portion of the divisible surplus so ascertained accruing on the policy, and that the owner of the policy shall have the right to have the current dividends arising from such participation paid in cash, and that at periods of not more than five (5) years, such accounting and payment at the option of the policyholder shall be had. The owner of the policy may elect to take any of the other dividend options in the policy. If the owner of the policy shall not elect any of the other dividend options provided in the policy, the apportioned dividends shall be held to the credit of the policy and be payable in cash at maturity of the policy or be withdrawable in cash at any anniversary of its date; provided, however, that if the policy shall contain a provision for an apportionment of the surplus at the end of the first policy year and annually thereafter, then and in that event, said policy may provide that each dividend shall be paid subject to the payment of the premium of the next ensuing year.

(7) Nonforfeiture provisions in accordance with the requirements of section 7 of this chapter.

(8) That the company, at any time while the policy is in force, will loan, on the execution of a proper assignment of the policy, and on the sole security thereof, at a specified rate of interest (payable

C o p y

in advance if the company so elects), a sum, which, together with the sum of:

(A) previously existing indebtedness, if any, including interest thereon to the end of the current policy year; and

(B) interest to the end of the current policy year on the amount newly loaned;

is equal to or, at the option of the insured, less than the cash surrender value at the end of the current policy year as provided for by the policy in accordance with the terms of section 7 of this chapter; provided, that the company may, as a condition precedent to the making of such loan, and at its own option, require the payment of the unpaid balance, if any, of the premium or premiums for the current policy year, and may require the payment of interest in advance on the total loan to the end of the current policy year. The policy may provide that, if interest on the loan is not paid when due, it shall be added to the existing loan and become a part thereof and bear interest at the same rate as the loan. It shall further be stipulated in the policy that failure to repay any such loan or pay interest thereon shall not void the policy unless such total indebtedness to the company shall equal or exceed such cash surrender value at the time of such failure, nor until thirty (30) days after notice shall have been mailed by the company to the last known address of the insured and to the assignee, if any, if such assignee has notified the company of his address. No condition other than as provided in this subdivision shall be exacted as prerequisite to any such loan. The company shall reserve the right to defer the granting of any loan, except when made to pay premiums on a policy or policies issued by it, for six (6) months after application therefor is made. The provisions of this subdivision shall not be required in term policies nor shall they apply to paid-up insurance issued or granted in exchange for lapsed or surrendered policies.

(9) That, should there have been default in premium payment and the value of the policy applied to the extension of the insurance, and such insurance be in force and the original policy not surrendered to the company and canceled, the policy may be reinstated within three (3) years from the due date of the premium in default, upon evidence of insurability satisfactory to the company and payment of arrears of premiums with interest.

(10) That when a policy shall become a claim by the death of the insured, settlement shall be made upon receipt of due proof of death and of the interest of the claimant and not later than two (2)

C o p y

months after receipt of such proof.

(11) A title on the face and on the back of the policy describing the same.

(b) Any of the provisions of subsection (a) not applicable to single premium policies shall to that extent not be incorporated therein. The provisions of subsection (a) shall not apply to policies issued on substandard, underaverage, or impaired risks. Any policy may be issued or delivered in this state which in the opinion of the department contains provisions on any one (1) or more of the several requirements of subsection (a) more favorable to the policyholder than those required in subsection (a).

SECTION 3. IC 27-8-19.8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 6. As used in this chapter, "viatical settlement contract" means ~~a written~~ **an** agreement ~~between a viatical settlement provider and a viator under the terms of which the viatical settlement provider gives anything of value to the viator, which~~ **for the purchase, sale, assignment, transfer, devise, or bequest of a portion of the death benefit or ownership of a life insurance policy or contract for consideration that** is less than the expected death benefit of the **life** insurance policy ~~in return for the viator's assignment, bequest, devise, sale, or transfer of all of the death benefit, certificate, or ownership of the insurance policy to the viatical settlement provider.~~ **or contract.** The term does not include **the following:**

(1) A loan by ~~a life insurance company~~ **an insurer** under the terms of a life insurance policy, including a loan secured by the cash value of a policy.

(2) An agreement with 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.

(3) The provision of accelerated death benefits by an insurer to an insured under the provisions of a life insurance contract.

(4) Agreements between an insurer and a reinsurer.

(5) An agreement by a person who enters into not more than one (1) such agreement in any five (5) year period to purchase a life insurance policy or contract for the transfer of a life insurance policy for a value that is less than the expected death benefit.

C o p y

SENATE MOTION

Mr. President: I move that Senator Mrvan be added as second author of Senate Bill 233.

PAUL

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COMMITTEE REPORT

Mr. President: The Senate Committee on Insurance and Financial Institutions, to which was referred Senate Bill No. 233, 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 10, delete lines 12 through 42.
Delete pages 11 through 13.
Page 14, delete lines 1 through 19.
Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 233 as introduced.)

PAUL, Chairperson

Committee Vote: Yeas 7, Nays 0.

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