



*Synopsis of Senate Committee Amendments**

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Legislative Service Commission

Sub. H.B. 404

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(S. Insurance, Commerce, and Labor Committee)

Replaces the proposed requirements in the House-passed version for a viator to qualify for the two-year waiting period for settling a policy with a requirement that the viator certify that all of the following are true: (1) the viator funded the policy with personal assets or the viator disclosed any financing agreement that was secured with personal assets, (2) the viator had no agreement to viaticate or transfer the policy, (3) the viator disclosed any life expectancy evaluation to the insurer, and (4) the viator disclosed any arrangement that conceals the ownership of the policy to the insurer.

Redefines "stranger-originated life insurance" or "STOLI" to include the *acquisition* of a policy in addition to the purchase of one and the transfer of ownership of the policy including through the assumption or forgiveness of a loan and specifies that STOLI does not include a transaction exempt from the definition of viatical settlement contract.

Specifies that trusts or other persons that are created to give the appearance of insurable interest and are used to initiate insurance policies for investors violate insurable interest laws and defines such trusts or person as STOLI.

Specifies that any contract, agreement, arrangement, or transaction entered into for the furtherance or aid of a STOLI is void and unenforceable.

Requires life insurance companies to establish procedures, including amending their applications, to detect and prevent STOLI.

Requires insurers to report suspected STOLI transactions and establishes a procedure for the Superintendent of insurance to investigate those transactions.

Requires all premium finance companies, including those exempted under current law, to give notice to insurers of their financing of life insurance policies and specifies that financing agreements not properly disclosed are unenforceable.

Specifies that an act listed as a fraudulent viatical settlement act must be committed both knowingly *and* with intent to defraud rather than *or* with intent to

* This synopsis does not address amendments that may have been adopted on the Senate floor.

defraud (as in the House-passed version) in order to qualify as a fraudulent viatical settlement act.

Removes House-proposed requirement that a violation of the Viatical Settlement Insurance Law also must be a fraudulent viatical settlement act in order for the Superintendent to seek additional remedies including an injunction, an order to restrain, or a civil fine.

Allows a viatical settlement broker or agent to do business with an entity that is controlling, controlled by, or under common control with the broker or agent if the broker or agent discloses that affiliation and the broker or agent is under common control with a person regulated by the federal Securities Act.

Substitutes costs that the House defined as a fraudulent viatical settlement act which prohibits payment of amounts in addition to principal, interest, and "services charges" pursuant to a finance agreement and expenses for "service charges" in relation to one of the actions.

Removes House-proposed expansion of the current-law viatical settlement contract rescission period.

Removes House-proposed licensure requirement for life expectancy providers.

Removes House-proposed authority of the Superintendent of Insurance to adopt financial responsibility requirements for viatical settlement brokers and maintains specified financial responsibility requirements for viatical settlement providers.

Restores the requirement in existing law that the Superintendent conduct a hearing in order to refuse to renew a license.

Removes the House-proposed requirement that a licensed attorney, certified public accountant, or financial planner's viatical settlement activities be incidental to their professional practice in order to be exempt from the licensing requirements for viatical settlement brokers.

Requires licensee to be additionally licensed in the state of residency of the *owner of policy*, if not Ohio, rather than the *viator* and only requires such additional licensure if the other state licenses viatical settlement providers or viatical settlement brokers.

Maintains current-law requirement that viatical settlement brokers disclose the amount and method of calculating the broker's compensation in addition to the proposed requirement that the viatical settlement provider disclose that information.

Requires viatical settlement brokers or viatical settlement providers to disclose to the Superintendent rather than the insurer any plan to engage in the business of viatical settlements during the first five years after the issuance of a policy.



Specifies that viatical settlement providers are not responsible for the actions of subsequent purchasers of the policy in regards to contacting an insured to determine the insured's health status.

Replaces House-proposed annual statement requirements with aggregate reporting requirements that include total value of unsettled contracts, number of policies purchased, total amount of settlement paid, and total face value of policies purchased and removes proposed requirement that viatical settlement brokers provided specified annual reports.

Removes House-proposed requirement that all licensees file copies of advertisements with the Superintendent and maintains the current-law authority of the Superintendent to require such filings.

Specifies that any contract and disclosure filings not affirmatively disapproved by the Superintendent within 45 days of submission are deemed approved.

Removes actuarial opinions from the proposed list of factors the Superintendent must use to determine the nature, scope, and frequency of examinations.

Requires the Superintendent to keep confidential the proprietary information of the licensee.

Includes the viator's information in the prohibition against disclosing the identity of an insured and excepts from that prohibition instances when it is necessary to effect a viatical settlement whether or not that settlement is between a viator and a viatical settlement provider.

Removes from the definition of "viatical settlement contract" written agreements for loans or other lending transactions, secured primarily by a life insurance policy and adds a premium finance loan made for a policy by a lender to a viator when the viator or insured receives a guarantee of the settlement value of the policy or the viator or insured agrees to sell the policy or any portion of the policy's death benefit.

Adds any arrangement or agreement with a special purpose entity to the list of exceptions to the definition of "viatical settlement contract."

Makes changes the definitions of "advertising," "viator," and "viatical settlement purchaser."

Makes certain other conforming changes.