

SESSION OF 2002

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2640

As Amended by Senate Committee of the Whole

Brief*

HB 2640, as amended, repeals existing law relating to viatical settlements and enacts the Viatical Settlement Act of 2002. (A viatical settlement transaction is one in which a person sells the person's life insurance policy to a third party for cash and receives less than the full amount of the death benefit. The buyer becomes the new owner and, perhaps, the beneficiary, may have to pay future premiums, and collects the full amount of the death benefit when the insured dies.)

The bill:

- ! Defines several terms important to the regulation of viatical settlements, including:
 - " Viator is the person who enters or seeks to enter into a viatical settlement contract.
 - " Viatical settlement contract is the agreement between the viator and a viatical settlement provider establishing the terms under which compensation will be paid to the viator in return for the viator's assignment of the death benefit or ownership of the insurance policy or certificate of insurance.
 - " Viatical settlement provider is the person who enters into or effectuates a viatical settlement contract.
 - " Viatical settlement broker is a person who, for a fee, negotiates a viatical settlement between a viator and a viatical settlement provider and who owes a fiduciary responsibility to

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.accesskansas.org/legislature/>

the viator to act according to the viator's instructions and best interests.

- ! Requires a person operating as a viatical settlement provider or viatical settlement broker to be licensed by the Commissioner of Insurance in this state or by the appropriate regulator in the state of residence of the viator. The applicant must provide the information requested on forms required to be filed and pay the prescribed fees. The Commissioner may refuse to license, suspend or revoke a license, or refuse to renew a license for the reasons stated in the act.
- ! Authorizes the Commissioner to conduct an examination of licensees as often as the Commissioner deems appropriate, or the Commissioner may accept an examination report on a licensee prepared by the regulator for the licensee's state of domicile. The Commissioner may retain professional assistance as examiners and assess reasonable cost for the examination to the licensee that is the subject of the examination. The examination report, examiner working papers, and other specified documents are confidential and privileged. The Commissioner may share documents and materials with other designated entities so long as those receiving such documentation agree in writing to hold it confidential and in a manner consistent with this act.
- ! Provides that, not later than the time the application for a viatical settlement contract is signed, the viator must receive from the viatical settlement provider or broker several disclosures, including, that:
 - " there are other alternatives to the contract, including accelerated death benefits or policy loans;
 - " the proceeds of the viatical settlement may be taxable under federal and state tax laws;
 - " the proceeds of the viatical settlement may adversely affect the viator's eligibility for government benefits or entitlements;
 - " the viator has the right to rescind a viatical settlement contract for 15 calendar days after the receipt of the viatical proceeds by the viator;

- " the medical, financial, or personal information obtained about an insured (the viator), may be disclosed as necessary to effect the viatical settlement, and that the viator will be asked to consent to the disclosure; and
- " the insured (viator) may be contacted for the purpose of determining the insured's (viator's) health status.

! Makes it a violation of the act for any person to enter into a viatical settlement contract within a two-year period commencing with the date of issuance of the insurance policy or certificate of insurance, unless one or more of the specified conditions is met during the two-year period, including, among other conditions:

- " the viator is terminally ill or chronically ill;
- " the viator becomes physically or mentally disabled ; or
- " the viator experiences a significant and unexpected decrease in income that impairs the viator's ability to pay the policy premium.

! Establishes guidelines and standards of permissible and impermissible conduct in the advertising of viatical settlements to prevent unfair, deceptive or misleading advertising, and requires every viatical settlement licensee to establish and at all times maintain a system of control over the content, form, and method of dissemination of all advertisements of its contracts, products, and services.

! Provides that no person shall:

- " commit a fraudulent viatical settlement act;
- " knowingly or intentionally interfere with the enforcement of this law; or
- " knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.

- ! States affirmatively that any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison, and persons engaged in the business of viatical settlements having knowledge of or a reasonable belief that a fraudulent act is being, will be, or has been committed must provide that information to the Insurance Commissioner (the statute provides immunity from liability for reporting, a redress for actions arising out of activities in carrying out the provisions of the act, and some protection for the confidentiality of documents obtained in the prosecution of a fraudulent viatical settlement act).
- ! Authorizes the Commissioner, after a hearing and the determination that a person has engaged or is engaging in any act or practice constituting a violation of the act, to order payment of a monetary penalty, issue a cease and desist order, or suspend or revoke the person's license.
- ! Provides that any person who violates the act is guilty of a severity level 7, nonperson felony if the value of the viatical settlement contract is \$25,000 or more; severity level 9, nonperson felony if the value of the contract is at least \$500 but less than \$25,000; or class A nonperson misdemeanor if the value of the viatical settlement contract is less than \$500 (restitution may be ordered in addition to, but not in lieu of, any other penalty).
- ! Declares that any violation of the act also shall be considered an unfair or deceptive act or practice and subject to the penalties provided in the unfair and deceptive practices act.
- ! Authorizes the Insurance Commissioner to adopt rules and regulations necessary to implement the act, and to establish standards for evaluating the reasonableness of payments under viatical settlement contracts for persons who are terminally or chronically ill.
- ! Provides an exemption from the Kansas Securities Act for transactions made through a registered broker-dealer or agent involving a viatical investment. Additionally, the Securities Commissioner is authorized to adopted rules and regulations or to

issue an order requiring the filing of a notice and specifying conditions for the exemption.

The House Committee amendments relate to the release of information by the Insurance Commissioner of documents and evidence obtained in the investigation of suspected or actual fraudulent viatical settlement acts to a person aggrieved by a fraudulent viatical settlement act.

Further, Senate Committee amendments add two new sections relating to "sunset" provisions in other statutes pertaining to health insurance.

- ! The eligibility date for small employers to take advantage of a tax credit under the small employer group statutes is changed from within the period of December 31, 1999 and before January 1, 2002. The new eligibility date of December 31, 1999, with no termination date, continues indefinitely small employers access to the tax credit provisions of the small employer health benefit plan statutes.
- ! To be in compliance with the federal Health Insurance Portability and Accountability Act of 1997 (HIPAA), the sunset date of September 30, 2001, contained in the law requiring parity between health and mental health benefits in all group policies, except small groups, is extended to December 31, 2002.

Finally, as amended by the Senate Committee of the Whole, the bill concerns the filing of certain reports by insurance companies with the Insurance Department, the licensure of insurance agents, and the standard nonforfeiture provisions for annuities. The bill:

- ! Updates from December 31, 2000, to December 31, 2001, the risk-based capital instructions and formulas developed by the National Association of Insurance Commissioners (NAIC) and used by insurance companies in filing their financial reports with the Department;
- ! Reinserts the authority of the Insurance Commissioner to deny issuance of a license to an insurance agent;

- ! Lowers from 3 percent to 1.5 percent the nonforfeiture minimum annuity guarantee rate for individual annuity contracts issued on or after July 1, 2002, and before July 1, 2005; and
- ! Makes other necessary technical changes.

Background

HB 2640 was recommended by the Insurance Commissioner whose Assistant Commissioner explained that, since enactment of the current Kansas law on viatical settlements in 1999, the industry has changed to include life settlements for healthy senior citizens. The bill offers a comprehensive approach to regulating the industry based on a National Association of Insurance Commissioners model act. The new law provides greater safeguards for viator's privacy, covers life settlements, and protects investors.

The Securities Commissioner supports passage of HB 2640 recognizing in the law that viatical settlement contracts are investment contracts and subject to regulation by the Securities Commissioner. The bill allows the Securities Commissioner to protect investors by requiring more complete disclosures to be made to investors and that individuals selling viatical investments will be registered and, therefore, subject to ethical guidelines provided by Kansas law and regulation on sellers (viatical settlement providers and brokers).

HB 2640 was supported by the Kansas Association of Insurance and Financial Advisors. The Kansas Trial Lawyers Association proposed the Committee amendment.

Senate Committee of the Whole amendments incorporate in HB 2640 the provisions of SB 388.

The fiscal note prepared by the Division of the Budget indicates passage of the bill would have no fiscal effect on the Insurance Department. Fiscal impact on the judiciary is difficult to predict.

Concerning the tax credit extension, the Senate Committee noted that such an extension could encourage small employers to make health insurance available to their employees. Regarding the mental

health parity amendment, the Committee was aware that the federal government was extending the applicability of the act beyond the September 2001 sunset.