

State of Wisconsin



1995 Senate Bill 621

Date of enactment: **May 28, 1996**
Date of publication*: **June 11, 1996**

1995 WISCONSIN ACT 371

AN ACT *to renumber* 71.26 (3) (a); and *to create* 71.05 (1) (f), 71.26 (3) (ag), 71.45 (2) (a) 14., 601.31 (1) (mm), 601.31 (1) (mp), 601.31 (1) (mr), 601.31 (1) (ms) and 632.68 of the statutes; **relating to:** regulation of viatical settlement contracts, exempting from the income tax income that is received from the sale of a life insurance policy under a viatical settlement contract and granting rule-making authority.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.05 (1) (f) of the statutes is created to read:

71.05 (1) (f) *Income from the sales of certain insurance policies.* Income received by the original policyholder or original certificate holder from the sale of a life insurance policy or certificate, or the sale of the death benefit under a life insurance policy or certificate, under a viatical settlement contract, as defined in s. 632.68 (1) (d).

SECTION 2. 71.26 (3) (a) of the statutes is renumbered 71.26 (3) (ar).

SECTION 3. 71.26 (3) (ag) of the statutes is created to read:

71.26 (3) (ag) Section 61 (relating to the definition of gross income) is modified to exclude income received by the original policyholder or original certificate holder from the sale of a life insurance policy or certificate, or the sale of the death benefit under a life insurance policy or certificate, under a viatical settlement contract, as defined in s. 632.68 (1) (d).

SECTION 4. 71.45 (2) (a) 14. of the statutes is created to read:

71.45 (2) (a) 14. By subtracting from federal taxable income the amount that is included in that income from the sale by the original policyholder or original certificate holder of a life insurance policy or certificate, or the sale of the death benefit under a life insurance policy or certificate, under a viatical settlement contract, as defined in s. 632.68 (1) (d).

SECTION 5. 601.31 (1) (mm) of the statutes is created to read:

601.31 (1) (mm) For initial issuance of a license as a viatical settlement provider under s. 632.68 (2), \$750.

SECTION 6. 601.31 (1) (mp) of the statutes is created to read:

601.31 (1) (mp) For each annual renewal of a license as a viatical settlement provider under s. 632.68 (2), \$250.

SECTION 7. 601.31 (1) (mr) of the statutes is created to read:

601.31 (1) (mr) For initial issuance of a license as a viatical settlement broker under s. 632.68 (4), \$750.

SECTION 8. 601.31 (1) (ms) of the statutes is created to read:

601.31 (1) (ms) For each annual renewal of a license as a viatical settlement broker under s. 632.68 (4), \$250.

SECTION 9. 632.68 of the statutes is created to read:

* Section 991.11, WISCONSIN STATUTES 1993-94: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

632.68 Regulation of viatical settlement contracts.

(1) DEFINITIONS. In this section:

(a) “Catastrophic or life-threatening illness or condition” includes AIDS, as defined in s. 49.486 (1) (a), and HIV infection, as defined in s. 49.486 (1) (d).

(b) “Viatical settlement” means payment to the policyholder of a life insurance policy, or to the certificate holder of a group life insurance certificate, insuring the life of a person who has a catastrophic or life-threatening illness or condition, in an amount that is less than the expected death benefit under the policy or certificate, for assigning, selling, devising or otherwise transferring the ownership of or the death benefit under the policy or certificate to the person paying the viatical settlement.

(c) “Viatical settlement broker” means a person that, for a fee, commission or other valuable consideration, offers or attempts to negotiate settlements between a life insurance policyholder or certificate holder and one or more viatical settlement providers. The term does not include a viatical settlement agent, as defined by the commissioner by rule under sub. (11) (b) 4., or an attorney, accountant or financial planner retained by a policyholder or certificate holder to represent the policyholder or certificate holder.

(d) “Viatical settlement contract” means a written agreement providing for and establishing the terms of a viatical settlement.

(e) “Viatical settlement provider” means a person that pays a viatical settlement. The term does not include any of the following:

1. A financial institution, as defined in s. 705.01 (3), that takes an assignment of a life insurance policy or certificate as collateral for a loan.

2. The issuer of a life insurance policy or certificate providing accelerated benefits under the policy or certificate.

3. A natural person who enters into no more than one agreement in a year for the transfer of the ownership of or the death benefit under a life insurance policy or a group life insurance certificate for an amount that is less than the expected death benefit under the policy or certificate.

4. A natural person who enters into an agreement for the transfer of the ownership of or the death benefit under a life insurance policy or a group life insurance certificate for an amount that is less than the expected death benefit under the policy or certificate and who is a member of the immediate family, as defined in s. 23.33 (1) (h), of the life insurance policyholder or certificate holder.

(2) VIACICAL SETTLEMENT PROVIDER LICENSE REQUIREMENT. (a) Except as provided in sub. (1) (e) 3. and 4., no person may act as a viatical settlement provider, solicit or pay viatical settlements or enter into a viatical settlement contract with the policyholder of the life insurance policy, or the certificate holder of the group life insurance certificate, that is the subject of a viatical settle-

ment contract unless the person obtains and has in effect a viatical settlement provider license under this subsection.

(b) A person may apply to the commissioner for a viatical settlement provider license on a form prescribed by the commissioner for that purpose. The fee specified in s. 601.31 (1) (mm) shall accompany the application. After any investigation of the applicant that the commissioner determines is sufficient, the commissioner shall issue a viatical settlement provider license to an applicant that satisfies all of the following:

1. Pays the applicable fee.

2. Provides complete information on the application.

3. Provides a detailed plan of operation.

4. Fully discloses the identity of all stockholders, partners, officers and employees, if applicable.

5. If a corporation, is incorporated under the laws of this state or is authorized to transact business in this state.

6. Shows to the satisfaction of the commissioner all of the following:

a. If a natural person, that the applicant is competent and trustworthy, or, if a partnership, corporation or limited liability company, that all partners, members, directors or principal officers or persons in fact having comparable powers are competent and trustworthy.

b. If a natural person, that the applicant has the intent in good faith to do business as a viatical settlement provider, or, if a partnership, corporation or limited liability company, that the applicant has that intent and has included that purpose in the articles of association, incorporation or organization.

c. That the applicant has a good business reputation and, if a natural person, has had experience, training or education that qualifies the applicant to be a viatical settlement provider, or, if a partnership, corporation or limited liability company, that all partners, members, directors or principal officers or persons in fact having comparable powers have had experience, training or education that qualifies the applicant to be a viatical settlement provider.

7. If a nonresident, files with the commissioner a written designation of the applicant’s agent in this state for service of process or executes in a form acceptable to the commissioner an agreement to be subject to the jurisdiction of the commissioner and the courts of this state on any matter related to the applicant’s viatical settlement activities in this state, on the basis of service of process under ss. 601.72 and 601.73.

(c) If the commissioner denies an application for a license under this subsection, the applicant may, within 20 days after receiving notice of the denial, demand a hearing. The demand shall be in writing and shall be served on the commissioner by delivering a copy to the commissioner or by leaving it at the commissioner’s office. The commissioner shall hold a hearing not less than 10 days nor more than 30 days after service of the demand. Fail-

ure to demand a hearing within the required time constitutes waiver of a hearing.

(d) A license issued under this subsection to a partnership, corporation or limited liability company authorizes all partners, members, directors or principal officers or persons in fact having comparable powers to act as a viatical settlement provider under the license. All persons acquiring authority under this paragraph to act under the license shall be named in the application and any supplements to the application.

(e) Except as provided in sub. (3), a license issued under this subsection shall be renewed annually on the anniversary date upon payment of the fee specified in s. 601.31 (1) (mp).

(3) VIATICAL SETTLEMENT PROVIDER LICENSE REVOCATION. The commissioner may revoke, suspend or refuse to renew a viatical settlement provider license if, after a hearing, the commissioner finds any of the following:

(a) That the licensee misrepresented information in the application.

(b) That the licensee has engaged in fraudulent or dishonest practices or is otherwise shown to be untrustworthy or incompetent to act as a viatical settlement provider.

(c) That the licensee has failed to meet the minimum settlement payment requirements under sub. (9) (c) or has demonstrated a pattern of making unreasonable payments to policyholders or certificate holders.

(d) Notwithstanding ss. 111.321, 111.322 and 111.335, that the licensee has been convicted of a misdemeanor or felony involving fraud, deceit or misrepresentation.

(e) That the licensee has violated any provision of this section.

(4) VIATICAL SETTLEMENT BROKER LICENSE AND OTHER REQUIREMENTS. (a) Except as provided in sub. (1) (c), no person may act as a viatical settlement broker unless the person obtains and has in effect a viatical settlement broker license under this subsection.

(b) A person may apply to the commissioner for a viatical settlement broker license on a form prescribed by the commissioner for that purpose. The fee specified in s. 601.31 (1) (mr) shall accompany the application.

(c) Except as provided in sub. (5), a license issued under this subsection shall be renewed annually on the anniversary date upon payment of the fee specified in s. 601.31 (1) (ms).

(d) A licensee under this subsection shall acquire and maintain professional liability insurance in an amount that is satisfactory to the commissioner.

(e) A licensee under this subsection is not subject to any preclicensing or continuing education that may be required by rule under ch. 628.

(5) VIATICAL SETTLEMENT BROKER LICENSE REVOCATION. The commissioner may revoke, suspend or refuse to renew a viatical settlement broker license if, after a hearing, the commissioner finds any of the following:

(a) That the licensee misrepresented information in the application.

(b) That the licensee has engaged in fraudulent or dishonest practices or is otherwise shown to be untrustworthy or incompetent to act as a viatical settlement broker.

(c) Notwithstanding ss. 111.321, 111.322 and 111.335, that the licensee has been convicted of a misdemeanor or felony involving fraud, deceit or misrepresentation.

(d) That the licensee has violated any provision of this section.

(6) APPROVAL OF VIATICAL SETTLEMENT CONTRACTS. No viatical settlement contract form may be used in this state unless it has been filed with and approved by the commissioner. Any viatical settlement contract form filed with the commissioner is approved if it is not disapproved within 60 days after filing. The commissioner shall disapprove a viatical settlement contract form if, in the commissioner's opinion, the contract or any of its provisions is unreasonable, contrary to any provision of this section, contrary to the public interest or otherwise misleading or unfair to the policyholder or certificate holder.

(7) REPORTING REQUIREMENTS. Annually, on or before March 1, every licensee under this section shall file with the commissioner a statement containing any information that the commissioner requires by rule.

(8) RECORD KEEPING. Every licensee under this section shall maintain and make available for inspection by the commissioner records of all viatical settlement transactions. Names and other individual identifying information related to policyholders or certificate holders shall be considered confidential and may not be disclosed by the commissioner.

(9) REQUIREMENTS FOR VIATICAL SETTLEMENTS AND CONTRACTS. (a) If the policyholder or certificate holder who desires to enter into a viatical settlement contract is the person with a catastrophic or life-threatening illness or condition whose life is insured under the policy or certificate, the viatical settlement provider shall obtain all of the following before entering into the contract:

1. A written statement from the person's attending physician that the person is of sound mind.

2. A written statement, signed by the person and witnessed by 2 disinterested adults, in which the person does all of the following:

a. Consents to the viatical settlement contract.

b. Acknowledges his or her catastrophic or life-threatening illness or condition.

c. Releases his or her medical records to the viatical settlement provider.

d. Represents that he or she understands the viatical settlement contract, the benefits under the life insurance policy or certificate and the relationship between the viatical settlement contract and the life insurance policy or certificate.

e. Acknowledges that he or she is entering into the viatical settlement contract freely and voluntarily.

f. Affirms that he or she has received a recommendation from a viatical settlement provider or a viatical settlement broker in writing to seek financial advice from an individual or entity other than the viatical settlement provider or a viatical settlement broker regarding the effect of the viatical settlement on creditor claims, income taxes and government benefits.

(b) Before the execution of a viatical settlement contract, a viatical settlement provider or a viatical settlement broker shall disclose to the policyholder or certificate holder all of the following:

1. That he or she is a viatical settlement provider or broker.

1m. That there may be alternatives to viatical settlements for persons with a catastrophic or life-threatening illness or condition and what those alternatives are, including accelerated benefits under the life insurance policy or certificate.

2. That the policyholder or certificate holder should obtain financial advice from a financial counselor, a tax adviser or an appropriate agency.

3. That some or all of the viatical settlement proceeds may be taxable and that he or she should seek advice from a personal tax adviser.

4. That the viatical settlement proceeds may be subject to the claims of creditors.

5. That receipt of a viatical settlement may adversely affect the recipient's eligibility for medicaid or other government benefits and that he or she should seek advice from any appropriate agencies.

6. That the policyholder or certificate holder may rescind the viatical settlement contract as provided in par. (d).

7. The frequency of and procedure for contacts by the provider or broker to determine the health status of the policyholder or certificate holder after the performance of the contract.

8. The bank from which the viatical settlement proceeds will be available and that the trustee or escrow agent holding the proceeds is required to pay the proceeds to the policyholder or certificate holder immediately upon notification from the insurer that the policy or certificate has been transferred to the viatical settlement provider.

9. That, except for double or additional indemnity provisions for accidental death, as a result of the viatical settlement contract no beneficiary named by the policyholder or certificate holder will receive any insurance proceeds under the policy or certificate.

10. The name of the new policyholder or certificate holder under the viatical settlement contract.

(c) 1. Every viatical settlement shall be reasonable and shall meet the following minimum payment requirements:

a. If the insured's life expectancy is 6 months or less, 80% of the policy or certificate face value after reducing the face value by the amount of any outstanding loans against the policy or certificate.

b. If the insured's life expectancy is more than 6 months but not more than 12 months, 75% of the policy or certificate face value after reducing the face value by the amount of any outstanding loans against the policy or certificate.

c. If the insured's life expectancy is more than 12 months but not more than 24 months, 65% of the policy or certificate face value after reducing the face value by the amount of any outstanding loans against the policy or certificate.

d. If the insured's life expectancy is more than 24 months but not more than 36 months, 55% of the policy or certificate face value after reducing the face value by the amount of any outstanding loans against the policy or certificate.

e. If the insured's life expectancy is more than 36 months but not more than 48 months, 45% of the policy or certificate face value after reducing the face value by the amount of any outstanding loans against the policy or certificate.

f. If the insured's life expectancy is more than 48 months, 30% of the policy or certificate face value after reducing the face value by the amount of any outstanding loans against the policy or certificate.

2. If the total of the premiums that the viatical settlement provider expects to pay under the policy or certificate exceeds 5% of the face value of the policy or certificate, the viatical settlement provider may reduce the minimum payment amount under subd. 1. by the percentage of the face value that the total of the premiums that the viatical settlement provider expects to pay equals.

(d) Every viatical settlement contract entered into in this state shall provide that the policyholder or certificate holder entering into the contract has the unconditional right to rescind the contract within 30 days after the contract is entered into or 15 days after receiving the viatical settlement proceeds, whichever is sooner. If the policyholder or certificate holder wishes to rescind the contract after receipt of the viatical settlement proceeds, the policyholder or certificate holder must refund the proceeds.

(e) If a policy or certificate that is the subject of a viatical settlement contract contains a provision for double or additional indemnity for accidental death, the viatical settlement contract shall provide for the same additional payment to a beneficiary named payable in the viatical settlement contract by the policyholder or certificate holder.

(f) Upon receipt from the policyholder or certificate holder of all documents necessary for the transfer of the life insurance policy or certificate, the viatical settlement provider shall pay all of the proceeds of the settlement into a trust account or escrow account in a bank, to be

managed by a trustee or escrow agent. The trustee or escrow agent shall pay the proceeds to the former policyholder or certificate holder immediately upon receiving acknowledgement from the insurer issuing the life insurance policy or certificate that the policy or certificate has been transferred to the viatical settlement provider. Payment shall be made in a lump sum by certified check, wire transfer or electronic fund transfer to an account of the former policyholder or certificate holder, or in instalments if the settlement is effected through the purchase of an annuity or similar instrument from a person authorized by this or another state to issue annuities.

(10) GENERAL RULES RELATED TO VIACIAL SETTLEMENTS. (a) A viatical settlement provider or broker may not discriminate in the making of viatical settlements on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status, sexual orientation or whether the person whose life is insured under the policy or certificate has dependents, unless any such factor affects the life expectancy of the person whose life is insured.

(b) A viatical settlement provider or broker may not pay or offer to pay a finder's fee, commission or other compensation to a physician, attorney, accountant or other person providing medical, legal or financial planning services to the policyholder or certificate holder of a policy or certificate that may be the subject of a viatical settlement contract, or to any other person acting as an agent of the policyholder or certificate holder with respect to a viatical settlement.

(c) A viatical settlement provider or broker shall comply with the confidentiality requirements of ss. 51.30, 146.82 and 252.15 with respect to any medical information obtained by the viatical settlement provider or broker concerning the person whose life is insured under the policy or certificate.

(d) Contacts by a viatical settlement provider or broker for the purpose of determining the health status of a person whose life is insured under a policy or certificate that was the subject of a viatical settlement contract shall be limited to once every 3 months if the person's life expectancy was more than one year at the time that the viatical settlement contract was entered into and once per month if the person's life expectancy was one year or less at the time that the viatical settlement contract was entered into.

(e) The owner of a life insurance policy or certificate may not be required to enter into a viatical settlement contract as a condition of eligibility for public assistance, or as a condition for receiving the full amount of public

assistance benefits for which the person is otherwise eligible.

(f) A viatical settlement provider or broker may not solicit or accept as investors in a life insurance policy or certificate that is the subject of a viatical settlement contract persons who are in a position to influence the treatment of the catastrophic or life-threatening illness or condition of the person whose life is insured under the policy or certificate.

(g) 1. Advertising related to viatical settlements shall be truthful and may not be misleading by fact or implication.

2. If an advertisement emphasizes the speed with which a viatical settlement may occur, the advertisement shall disclose, by life expectancy category under sub. (9) (c), the average time between the completion of the application and the receipt of the settlement proceeds under contracts with the advertiser.

3. If an advertisement emphasizes the amount of proceeds that may be received, the advertisement shall disclose, by life expectancy category under sub. (9) (c), the average purchase price as a percentage of policy face value that has been obtained under contracts with the advertiser during the past 6 months.

(11) ADDITIONAL REGULATORY AUTHORITY. (a) The commissioner may require the filing of a bond as a condition of licensure under this section.

(b) The commissioner may promulgate rules that do any of the following:

1. Establish standards for determining the reasonableness of payments under viatical settlement contracts that exceed the minimum percentages under sub. (9) (c).

2. Establish the maximum fee that a viatical settlement provider may pay a viatical settlement broker for services provided.

3. Establish standards regarding the duty of insurers to respond without unreasonable delay to a request, in writing and authorized by the policyholder or certificate holder, from a viatical settlement provider or broker for information related to a policy or certificate.

4. Define a viatical settlement agent and establish regulations related to viatical settlement agents that are consistent with this section.

5. Establish any additional standards that may be necessary for the administration of this section.

SECTION 10. Initial applicability; revenue.

(1) SALES OF CERTAIN INSURANCE POLICIES. The treatment of sections 71.05 (1) (f), 71.26 (3) (a) and (ag) and 71.45 (2) (a) 14. of the statutes first applies to taxable years beginning on January 1, 1996.