



1995 SENATE BILL 621

March 13, 1996 – Introduced by Senators ROSENZWEIG, SCHULTZ, BUETTNER, RUDE, BURKE, GROBSCHMIDT, DARLING, CLAUSING, PANZER, RISSER and CHVALA, cosponsored by Representatives BALDWIN, JENSEN, ALBERS, FOTI, GOETSCH, GARD, UNDERHEIM, BOCK, MEYER, AINSWORTH, BRANDEMUEHL, DUFF, MURAT, WASSERMAN, WALKER, WOOD, GUNDERSON, HANSON, BALDUS, MUSSER, OURADA, CARPENTER, COGGS, CULLEN, HASENOHRL, HUEBSCH, KELSO, KLUSMAN, KREIBICH, KREUSER, KRUG, F. LASEE, LAZICH, NOTESTEIN, OTTE, OWENS, PLOMBON, R. POTTER, RILEY, ROBSON, SERATTI, SPRINGER, VRAKAS, L. YOUNG, R. YOUNG and ZIEGELBAUER. Referred to Joint survey committee on Tax Exemptions.

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

Analysis by the Legislative Reference Bureau

This bill establishes standards and requirements for viatical settlements and viatical settlement contracts. A viatical settlement is defined in the bill as payment to the policyholder of a life insurance policy, or to the certificate holder of a group life insurance certificate, that insures 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 in exchange for the sale or other transfer of the ownership of the policy or certificate to the person making the payment. The person to whom the policy or certificate is sold is a viatical settlement provider. A viatical settlement broker is defined as a person who offers or advertises the availability of viatical settlement providers. A viatical settlement broker may also negotiate a viatical settlement between a viatical settlement provider and a policyholder or certificate holder.

Under the bill, both viatical settlement providers and viatical settlement brokers must be licensed on an annual basis by the office of the commissioner of insurance. The bill sets out the fees for initial issuance and renewal of a license, the requirements that a person must satisfy in order to obtain or renew a license and the bases upon which the commissioner of insurance (commissioner) may deny, revoke,

suspend or refuse to renew a license. The bill also sets out certain requirements and prohibitions that apply to the activities of viatical settlement providers and brokers. For example, providers and brokers are prohibited from discriminating on the basis of such factors as race, age, sex, occupation and sexual orientation in the making of viatical settlements. Providers and brokers are prohibited from paying a finder's fee or other compensation to any 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. The maximum number of contacts that a provider or broker may have with the former policyholder or certificate holder after the viatical settlement has been paid are specified in the bill. Certain advertising requirements are provided.

The bill specifies certain criteria that viatical settlement contracts must satisfy. Any form that is used for a viatical settlement contract must be filed with and approved by the commissioner. If the policyholder or certificate holder is the person whose life is insured, before the contract may be executed the viatical settlement provider must obtain a written statement from the person's attending physician that the person is of sound mind and a written statement from the person that he or she acknowledges his or her catastrophic or life-threatening illness or condition, understands and consents to the viatical settlement contract, releases his or her medical records and has received financial advice regarding the effect of the settlement on creditor claims, income taxes and government benefits. The bill requires a viatical settlement provider or broker to make certain disclosures to the policyholder or certificate holder before the execution of the contract. The minimum payment that may be made under a contract is specified in the bill as a percentage of the face amount of the policy or certificate, depending on the life expectancy of the insured person.

The proceeds of a viatical settlement must be paid by the viatical settlement provider into a trust or escrow account in a bank approved by the commissioner. When the trustee or escrow agent receives acknowledgment from the insurer that the policy or certificate has been transferred to the viatical settlement provider, the trustee or escrow agent must transfer the proceeds in a lump sum to an account of the former policyholder or certificate holder. Any viatical settlement contract may be rescinded by the former policyholder or certificate holder within 30 days after the contract is entered into or 15 days after he or she has received the proceeds, whichever is sooner.

The bill exempts from the state income tax income that is received from the sale of a life insurance policy or certificate under a viatical settlement contract.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

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

2 71.05 (1) (f) *Income from the sales of certain insurance policies.* Income received
3 from the sale of a life insurance policy or certificate, or the death benefit under a life
4 insurance policy or certificate, under a viatical settlement contract, as defined in s.
5 632.68 (1) (d).

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

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

8 71.26 (3) (ag) Section 61 (relating to the definition of gross income) is modified
9 to exclude income from the sale of a life insurance policy or certificate, or the death
10 benefit under a life insurance policy or certificate, under a viatical settlement
11 contract, as defined in s. 632.68 (1) (d).

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

13 71.45 (2) (a) 14. By subtracting from federal taxable income the amount that
14 is included in that income from the sale of a life insurance policy or certificate, or the
15 death benefit under a life insurance policy or certificate, under a viatical settlement
16 contract, as defined in s. 632.68 (1) (d).

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

18 601.31 (1) (mm) For initial issuance of a license as a viatical settlement
19 provider under s. 632.68 (2), \$750.

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

21 601.31 (1) (mp) For each annual renewal of a license as a viatical settlement
22 provider under s. 632.68 (2), \$250.

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

24 601.31 (1) (mr) For initial issuance of a license as a viatical settlement broker
25 under s. 632.68 (4), \$750.

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

2 601.31 (1) (ms) For each annual renewal of a license as a viatical settlement
3 broker under s. 632.68 (4), \$250.

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

5 **632.68 Regulation of viatical settlement contracts. (1) DEFINITIONS.** In
6 this section:

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

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

16 (c) “Viatical settlement broker” means a person that, for a fee, commission or
17 other valuable consideration, offers or advertises the availability of viatical
18 settlement providers or offers or attempts to negotiate viatical settlements between
19 a life insurance policyholder or certificate holder and a viatical settlement provider.
20 The term does not include an attorney, accountant or financial planner retained by
21 a policyholder or certificate holder to represent the policyholder or certificate holder.

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

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

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

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

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

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

14 **(2) VIATICAL SETTLEMENT PROVIDER LICENSE REQUIREMENT.** (a) Except as provided
15 in sub. (1) (e) 3. and 4., no person may act as a viatical settlement provider, solicit or
16 pay viatical settlements or enter into a viatical settlement contract with the
17 policyholder of the life insurance policy, or the certificate holder of the group life
18 insurance certificate, that is the subject of a viatical settlement contract unless the
19 person obtains and has in effect a viatical settlement provider license under this
20 subsection.

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

1 issue a viatical settlement provider license to an applicant that satisfies all of the
2 following:

3 1. Pays the applicable fee.

4 2. Provides complete information on the application.

5 3. Provides a detailed plan of operation.

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

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

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

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

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

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

1 7. If a nonresident, files with the commissioner a written designation of the
2 applicant's agent in this state for service of process or executes in a form acceptable
3 to the commissioner an agreement to be subject to the jurisdiction of the
4 commissioner and the courts of this state on any matter related to the applicant's
5 viatical settlement activities in this state, on the basis of service of process under ss.
6 601.72 and 601.73.

7 (c) If the commissioner denies an application for a license under this
8 subsection, the applicant may, within 20 days after receiving notice of the denial,
9 demand a hearing. The demand shall be in writing and shall be served on the
10 commissioner by delivering a copy to the commissioner or by leaving it at the
11 commissioner's office. The commissioner shall hold a hearing not less than 10 days
12 nor more than 30 days after service of the demand. Failure to demand a hearing
13 within the required time constitutes waiver of a hearing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 **(8) RECORD KEEPING.** Every licensee under this section shall maintain and make
24 available for inspection by the commissioner records of all viatical settlement
25 transactions. Names and other individual identifying information related to

1 policyholders or certificate holders shall be considered confidential and may not be
2 disclosed to the commissioner.

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

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

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

12 a. Consents to the viatical settlement contract.

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

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

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

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

20 f. Affirms that he or she has received financial advice from an individual or
21 entity other than the viatical settlement provider or a viatical settlement broker
22 regarding the effect of the viatical settlement on creditor claims, income taxes and
23 government benefits.

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

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

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

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

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

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

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

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

21 8. The date by which the viatical settlement proceeds will be available to the
22 policyholder or certificate holder and the bank from which the funds will be
23 available.

24 9. That, except for double or additional indemnity provisions for accidental
25 death, as a result of the viatical settlement contract no beneficiary named by the

1 policyholder or certificate holder will receive any insurance proceeds under the
2 policy or certificate.

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

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

7 a. If the insured's life expectancy is 12 months or less, 75% of the policy or
8 certificate face value.

9 b. If the insured's life expectancy is more than 12 months but less than 24
10 months, 65% of the policy or certificate face value.

11 c. If the insured's life expectancy is 24 months or more, 55% of the policy or
12 certificate face value.

13 2. The minimum payment amount under subd. 1. shall be reduced by the
14 amount of any outstanding loans against the policy or certificate.

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

22 (e) If a policy or certificate that is the subject of a viatical settlement contract
23 contains a provision for double or additional indemnity for accidental death, the
24 viatical settlement contract shall provide for the same additional payment to a

1 beneficiary named payable in the viatical settlement contract by the policyholder or
2 certificate holder.

3 (f) Upon receipt from the policyholder or certificate holder of all documents
4 necessary for the transfer of the life insurance policy or certificate, the viatical
5 settlement provider shall pay all of the proceeds of the settlement into a trust account
6 or escrow account, to be managed by a trustee or escrow agent, in a bank that is
7 approved by the commissioner. The trustee or escrow agent shall pay the proceeds
8 to the former policyholder or certificate holder immediately upon receiving
9 acknowledgement from the insurer issuing the life insurance policy or certificate
10 that the policy or certificate has been transferred to the viatical settlement provider.
11 Payment shall be made in a lump sum by certified check or by wire transfer to an
12 account of the former policyholder or certificate holder.

13 (g) If the viatical settlement proceeds are not paid to the policyholder or
14 certificate holder by the date disclosed under par. (b) 8., the viatical settlement
15 contract shall be void.

16 **(10) GENERAL RULES RELATED TO VIATICAL SETTLEMENTS.** (a) A viatical settlement
17 provider or broker may not discriminate in the making of viatical settlements on the
18 basis of race, age, sex, national origin, creed, religion, occupation, marital or family
19 status, sexual orientation or whether the person whose life is insured under the
20 policy or certificate has dependents.

21 (b) A viatical settlement provider or broker may not pay or offer to pay a finder's
22 fee, commission or other compensation to a physician, attorney, accountant or other
23 person providing medical, legal or financial planning services to the policyholder or
24 certificate holder of a policy or certificate that may be the subject of a viatical

1 settlement contract, or to any other person acting as an agent of the policyholder or
2 certificate holder with respect to a viatical settlement.

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

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

14 (e) The owner of a life insurance policy or certificate may not be required to
15 enter into a viatical settlement contract as a condition of eligibility for public
16 assistance, or as a condition for receiving the full amount of public assistance
17 benefits for which the person is otherwise eligible.

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

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

