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SFA BILL ANALYSIS

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House Bill 4764 (as reported without amendment)
Sponsor: Representative Gerald Law
House Committee: Insurance and Financial Services
Senate Committee: Financial Services

Date Completed: 10-19-99

RATIONALE

A new industry that has emerged in recent years features companies that purchase life insurance policies at a discount from terminally ill policy-holders. These transactions are known as viatical settlement contracts or agreements. For example, an article in the *Detroit News* (2-9-97) cited a transaction in which a man terminally ill with cancer sold his $100,000 life insurance policy for $79,000 and used the cash to buy a house for his family and lease a car. In this kind of arrangement, the terminally ill insured gets value out of the life insurance policy while still alive, which can alleviate economic hardship, improve his or her quality of life, or perhaps supply funds to pay for experimental treatment not covered by health insurance. The company purchasing the policy eventually earns as a return on its investment the difference between the amount paid for the policy and the death benefit when the insured dies. In addition, the ability to sell or assign a life insurance policy to a third party, other than the issuing insurance company, allows a taxpayer to take advantage of competitive forces and the free market to obtain the highest payment for his or her life insurance contract. Reportedly, since January 1, 1997, proceeds from viatical settlements to terminally and chronically ill individuals are no longer subject to Federal income tax.

The viatical settlement practice apparently began with AIDS patients, but has grown to involve policy-holders with other life-threatening and terminal diseases. Reportedly, more than 60 companies nationwide are engaged in this business and purchased about $300 million in life insurance policies in 1994. The typical amount of a viatical settlement contract reportedly is 60% to 80% of the value of a policy's death benefit, with a higher payout for a shorter life expectancy.

Although viatical settlement contracts can benefit both the investor and the viator, some people believe that health insurers, who are interested in the economics of treating a terminally ill person, could encourage physicians to suggest that a patient commit suicide rather than pursue costly life-sustaining treatments. It has been suggested that health insurers could offer lump sum payments to terminally ill patients who agreed to commit suicide in order to save money.

CONTENT

The bill would amend Public Act 389 of 1996, which regulates the sale and purchase of viatical settlement contracts, to prohibit a provider from offering to provide or from providing any payment to a viator conditioned on the viator's agreement to commit suicide.

("Provider" means a person who enters into a viatical settlement with a viator, but does not include a financial lending institution that takes a policy as collateral for a loan; the issuer of a policy providing accelerated benefits under the Insurance Code; or an individual who enters into no more than one viatical settlement contract in a calendar year for the transfer of a policy for any value less than the expected death benefit. "Viator" means the owner or holder of a life insurance policy or certificate, who has a catastrophic or life-threatening illness or condition and who enters into a viatical settlement contract.)

Proposed MCL 550.524a

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Viatical settlements can provide an opportunity for unscrupulous individuals to benefit unfairly from terminally or chronically ill individuals' weaknesses and vulnerabilities. The bill would put into law a clear prohibition against a contract in which the provider would benefit by coercing the viator into signing an agreement to commit suicide in order to maximize the profit. The bill also would prevent a viator from offering to commit suicide as an inducement for the provider to purchase the policy. The bill would eliminate any opportunities to encourage or pressure the act of suicide.

Response: According to an analysis by the Department of Consumer and Industry Services, the bill might be unnecessary because a contract to commit suicide could be unenforceable under the current law. Section 2302 of the Uniform Commercial Code allows the courts to refuse to enforce a contract that is considered unconscionable at the time it was made. A contract in which one party agrees to commit suicide in exchange for money from the other could be considered unconscionable.

Opposing Argument

Although the bill would address the suicide issue for viatical settlement contracts on life insurance policies, it does not address suicide contracts that health insurers or health providers may form with their patients outside of the life insurance arena. The bill would not prohibit an agreement between a health insurer and a patient in which the insurer agreed to give a lump sum of money to the patient in return for his promise to commit suicide.

Legislative Analyst: N. Nagata

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Tyszkiewicz