WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009

ENROLLED
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 284

(Senators Minard and Kessler, original sponsors)

[Passed April 7, 2009; in effect ninety days from passage.]
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AN ACT to amend and reenact §33-13C-3 and §33-13C-16 of the Code of West Virginia, 1931, as amended, all relating to viatical settlements; adding alternative means for satisfying financial requirements for the licensing of viatical settlement providers and brokers; and making criminal provisions applicable to any person violating the Viatical Settlements Act.

Be it enacted by the Legislature of West Virginia:

That §33-13C-3 and §33-13C-16 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 13C. VIATIONAL SETTLEMENTS ACT.

§33-13C-3. License and bond requirements.
(a) (1) A person may not operate as a viatical settlement provider or viatical settlement broker without first obtaining a license from the commissioner.

(2) (A) An insurance producer who is authorized to sell life insurance in this state pursuant to a resident or nonresident license issued in accordance with the provisions of article twelve of this chapter may operate as a viatical settlement broker without obtaining a license pursuant to this section if the viatical settlement activities of the producer are incidental to the producer’s insurance business activities.

(B) The insurer that issued the policy being viaticated is not responsible for any act or omission of a viatical settlement broker or viatical settlement provider arising out of or in connection with the viatical settlement transaction, unless the insurer receives compensation for the placement of a viatical settlement contract from the viatical settlement provider or viatical settlement broker in connection with the viatical settlement contract.

(3) A person licensed as an attorney, certified public accountant or financial planner accredited by a nationally recognized accreditation agency who is retained to represent the viator, whose compensation is not paid directly or indirectly by the viatical settlement provider, may negotiate viatical settlement contracts on behalf of the viator without having to obtain a license as a viatical settlement broker.

(b) Application for a viatical settlement provider or viatical settlement broker license and for renewals of the licenses shall be made in the manner prescribed by the commissioner and shall be accompanied by fees established in legislative rules, including emergency rules, promulgated by the commissioner.
(c) The commissioner has the authority, at any time, to require the applicant to fully disclose the identity of all stockholders, partners, officers, members and employees and the commissioner may, in the exercise of the commissioner's discretion, refuse to issue a license in the name of a legal entity if not satisfied that any officer, employee, stockholder, partner or member of the entity who may materially influence the applicant's conduct meets the standards of this article.

(d) The commissioner shall make an investigation of each applicant and issue a license if the commissioner finds that the applicant:

1. If a viatical settlement provider, has provided a detailed plan of operation;

2. Is competent and trustworthy and acts in good faith in the capacity of a licensee;

3. Has a good business reputation and is qualified by experience, training or education as a viatical settlement provider or broker;

4. Has demonstrated evidence of financial responsibility, in a format prescribed by the commissioner, by possessing a minimum equity of not less than $250,000 in cash or cash equivalents reflected in the applicant's audited financial statements or through a surety bond executed and issued by an insurer authorized to issue surety bonds in this state in the amount of $250,000: Provided, That the commissioner may permit an applicant for a broker's license to demonstrate evidence of financial responsibility through a policy of insurance covering legal liability resulting from erroneous acts or failure to act in their capacity as a viatical settlement broker and inuring to the benefit of any aggrieved party as the result of any single occurrence in the sum of not less than $100,000 and $300,000 in the aggregate for all occurrences within one
Any surety bond issued pursuant to this subdivision shall be in the favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud or conviction of unfair practices by the viatical settlement provider or viatical settlement broker. The commissioner shall accept, as evidence of financial responsibility, proof that financial instruments in accordance with the requirements in this paragraph have been filed with a state in which the applicant is licensed as a viatical settlement provider or viatical settlement broker. The commissioner may ask for evidence of financial responsibility at any time he or she considers it necessary.

(5) If a legal entity has provided a certificate of good standing from the state of its domicile; and

(6) Has provided an antifraud plan that meets the requirements of subsection (g), section fourteen of this article.

(e) The commissioner may not issue a license to a nonresident applicant unless the applicant files with the commissioner either a written designation of an agent for service of process or the applicant's written irrevocable consent that any action against the applicant may be commenced against the applicant by service of process on the commissioner.

(f) A viatical settlement provider or viatical settlement broker shall provide to the commissioner new or revised information about officers, ten percent or more stockholders, partners, directors, members or designated employees within thirty days of the change.

(g) An individual licensed as a viatical settlement broker shall complete on a biennial basis fifteen hours of training related to viatical settlements and viatical
settlement transactions as required by the commissioner. A life insurance producer operating as a viatical settle-
ment broker pursuant to subdivision (2), subsection (a) of this section is not subject to the requirements of this subsection. Any person failing to meet the requirements of this subsection is subject to the penalties imposed by the commissioner.

§33-13C-16. Criminal penalties.

(a) A person convicted of a fraudulent viatical settle-
ment act is guilty of a felony and, upon conviction thereof, shall be sentenced as follows:

1. Imprisonment in a state correctional facility for not more than twenty years or payment of a fine of not more than $100,000, or both, if the value of the viatical settlement contract is more than $35,000;

2. Imprisonment in a state correctional facility for not more than ten years or to payment of a fine of not more than $20,000, or both, if the value of the viatical settlement contract is more than $2,500, but not more than $35,000;

3. Imprisonment in a state correctional facility for not more than five years or payment of a fine of not more than $10,000, or both, if the value of the viatical settlement contract is more than $500, but not more than $2,500;

(b) Any person who violates any other provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail not more than one year, or both fined and confined.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Danny Wells
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 20th Day of April, 2009.

Governor
PRESENTED TO THE GOVERNOR

APR 16 2009

Time 10:10am