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Bill Analysis
Legislative Service Commission

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123rd General Assembly
(As Reported by H. Civil and Commercial Law)

Reps. Salerno, Peterson, Callender, Womer Benjamin

BILL SUMMARY

- Creates a new R.C. chapter to regulate viatical settlements.
- Prohibits any person from acting as a viatical settlement provider, viatical settlement representative, or viatical settlement broker without first obtaining a license from the Superintendent of Insurance.
- Permits the Superintendent or the Superintendent's appointee to examine the business and affairs of any licensed viatical settlement provider, representative, broker, or applicant for a license, when the Superintendent considers it reasonably necessary to do so.
- Provides that the work papers of the Superintendent or the Superintendent's appointee resulting from the conduct of an examination of the business and affairs of a business licensed under the bill are confidential and not a public record under the Public Records Law.
- Provides that any name, individual identification data, or medical record of a viator that is obtained by or disclosed to the Superintendent or any other person during the course of an examination of the business and affairs of a business licensed under the bill is confidential and is not a public record under the Public Records Law.
- Allows the Superintendent to suspend, revoke, or refuse to renew the license of a viatical settlement provider, representative, or broker if the Superintendent makes certain, specified findings.

* *This analysis was prepared before the report of the House Civil and Commercial Law Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

- Prohibits a viatical settlement representative from soliciting a viatical settlement contract without first obtaining an appointment from a viatical settlement provider or broker.
- Requires a viatical settlement provider, representative, or broker to notify the Superintendent if the provider, representative, or broker suspects another viatical settlement provider, representative, or broker of certain specified offenses and provides that a viatical settlement provider, representative, or broker, in the absence of fraud or bad faith, is immune from any civil liability that may be imposed as a result of notifying the Superintendent of suspected offenses.
- Requires a viatical settlement provider, representative, or broker to disclose certain specified information to a viator no later than the time of application.
- Requires a viatical settlement provider to obtain certain specified information before entering into a viatical settlement contract.
- Requires each viatical settlement contract entered into in Ohio to provide the viator with an unconditional right to rescind the contract for at least 15 days after the receipt of the viatical settlement proceeds.
- Prohibits certain specified persons with actual knowledge of a viator's identity from disclosing that identity unless certain specified conditions are met.
- Defines "security" to include any "life settlement interest" and makes viatical settlement interests subject to the Ohio Securities Law.
- Modifies the exemption provided for certain securities that is based upon the type of securities exchange on which the securities are listed by modifying the recognized stock exchanges on which they may be listed to qualify for the exemption and modifies the Division of Securities ability to revoke the approval of an exchange or system or the exemption of a security by allowing the Division to revoke the approval of an exchange or system or the exemption of a security if it is not listed in section 18(b)(1) of the Securities Act of 1933 or any rule promulgated under the Act or not listed on an exchange that is so listed.

- Modifies the requirement that every applicant for registration or for claim of exemption, and every person submitting a notice filing, for the sale of securities file an irrevocable written consent to be sued in Ohio in actions arising out of the sale of the securities by requiring that each person not organized under Ohio law, not licensed under Ohio Securities Law, or not having its principal place of business in Ohio submit to the Division of Securities an irrevocable written consent to service of process in connection with certain specified filings or applications and requires that the irrevocable written consent be executed and acknowledged by an individual duly authorized to give the consent, designate the Secretary of State as agent for service of process, and state that the consent to be sued also applies to actions growing out of the giving of investment advice.
- Removes the requirement that an application to act as a dealer contain the names and addresses of all salesmen of the applicant and the nature and place of business of the applicant for the prior ten years, removes the requirement that the application be verified by oath of the applicant or his or her agent or attorney, and removes a limitation on the information that must be provided by an applicant to act as a dealer who is renewing the applicant's license for the previous year.
- Replaces the requirement that an applicant to act as a dealer pass an examination that covers the applicant's knowledge of securities laws and practices with a requirement that the applicant pass an examination designated by the Division of Securities.
- Replaces the specific requirements for service of process with regards to an application for an investment adviser's license with the same requirements the bill imposes upon issuers of securities.
- Removes the requirement that the application for a salesman's license include the nature of the employment, and the names and addresses of the employers, of the applicant for the prior ten years, removes the limit on the information that must be in such an application for renewal of a license, and replaces the requirement that Division of Securities require an applicant for a salesman's license pass an examination that covers his or her knowledge of securities law with a requirement that the Division require an applicant to pass an examination designated by the Division.

- With respect to an investigation of a violation of Ohio's Securities Law, permits a subpoena issued requiring the attendance of witnesses and the production of books, records, and papers to be served by personal service in addition to being served by certified mail, return receipt requested.
- Makes other changes in Ohio's Securities Law.

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CONTENT AND OPERATION

REGULATION OF VIATICAL SETTLEMENTS

Background

The bill enacts new R.C. Chapter 3916. to adopt the Viatical Settlements Model Act of the National Association of Insurance Commissioners.

Licensing of viatical settlement provider, representative, or broker

The bill prohibits any person from acting as a *viatical settlement provider*, *viatical settlement representative*, or *viatical settlement broker* (see "**Definitions**,"



below) without first having obtained a license from the Superintendent of Insurance (hereafter "Superintendent"). Whoever violates this prohibition is guilty of a felony of the third degree. (R.C. 3916.02 and 3916.99.)

Application for license

The bill requires an applicant for a license as a viatical settlement provider, viatical settlement representative, or viatical settlement broker to submit an application in a manner prescribed by the Superintendent. An applicant must provide all information requested by the Superintendent. The Superintendent, at any time, may require an applicant to fully disclose the identity of all stockholders, partners, officers, members, and employees. The application must be accompanied by a fee established by the Superintendent by rule adopted in accordance with the Administrative Procedure Act (hereafter "APA"). (R.C. 3916.03(A) and (C).)

Issuance of license

The bill requires the Superintendent to issue to an applicant a license that states in substance that the person is authorized to act as a viatical settlement provider, viatical settlement representative, or viatical settlement broker, as applicable, if *both* of the following apply (R.C. 3916.03(B)):

(1) The applicant provides a detailed plan of operation and, if the applicant is a *legal entity*, a certificate of good standing from the Secretary of State or other proof satisfactory to the Superintendent.

(2) The Superintendent finds all of the following:

(a) The applicant is competent and trustworthy and intends to act in good faith in the capacity that the applicant is licensed.

(b) The applicant has a good business reputation and has had experience, training, or education so as to be qualified to act in the applicant's licensed capacity.

Under the bill, a license issued to a *legal entity* does *not* authorize any member, officer, or employee to act as a viatical settlement provider, viatical settlement representative, or viatical settlement broker under the license. Each member, officer, and employee involved in a viatical settlement transaction must be licensed unless they perform only clerical or ministerial duties. The Superintendent may *refuse* to issue a license to a *legal entity* if the Superintendent is not satisfied that each officer, employee, stockholder, partner, or member who

may materially influence the applicant's conduct meets the standards set forth in proposed R.C. Chapter 3916. (R.C. 3916.03(C) and (D).)

The bill prohibits the Superintendent from issuing a license to a nonresident applicant, unless a written designation of an agent for service of process is filed and maintained with the Superintendent (R.C. 3916.03(F)).

Renewal of license

The bill authorizes the Superintendent, in the Superintendent's discretion and upon the payment of a renewal fee established by the Superintendent by rule adopted in accordance with the APA, to permit a license as a viatical settlement provider, viatical settlement representative, or viatical settlement broker to be continued past the last day of February next after its issue and after the last day of February in each succeeding year. Failure to pay the renewal fee by the required date results in the expiration of the license. (R.C. 3916.03(E).)

Fees collected

Any license application and renewal fees collected under the bill must be paid into the State Treasury to the credit of the Department of Insurance Operating Fund (R.C. 3916.03(G)).

Annual report

Each licensed viatical settlement provider, viatical settlement representative, and viatical settlement broker must file with the Superintendent, on or before the first day of March, an annual statement containing the information required by the Superintendent by rule adopted under the APA (R.C. 3916.22).

Examination of applicant's or licensee's business

The Superintendent, or the Superintendent's appointee, whenever the Superintendent considers it reasonably necessary to protect the interests of the public, may examine the business and affairs of any licensed viatical settlement provider, viatical settlement representative, or viatical settlement broker or any license applicant. The Superintendent may order any licensee or applicant to produce any record, book, file, or other information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of the law or in a manner otherwise contrary to the interests of the public. The licensee or applicant must pay to the Superintendent the expenses incurred in conducting an examination. The Superintendent must deposit the money into the State Treasury to the credit of the Department of Insurance Operating Fund. (R.C. 3916.26(A) and (B).)

Confidentiality

The bill provides that the work papers of the Superintendent, or the Superintendent's appointees, resulting from the conduct of an examination as described above, are confidential and are *not* a public record under the Public Records Law. The bill prohibits the original work papers and any copies of them from being subject to subpoena and from being made public by the Superintendent or any other person. The Superintendent may release the original work papers and any copies of them to the insurance regulatory authority of any other state if that authority agrees to maintain the confidentiality of the work papers or copies and if the work papers and copies are not public records under the laws of that state. (R.C. 3916.26(C).)

The bill provides that any name, individual identification data, or medical record of a *viator* (see "**Definitions**," below) that is obtained by or disclosed to the Superintendent or any other person in the course of an examination is confidential and is *not* a public record under the Public Records Law. The Superintendent or other person may not disclose that information, except in the furtherance of the Superintendent's official duties, or to another regulator or a law enforcement agency. (R.C. 3916.26(D).)

Disciplinary actions

Causes for license suspension or revocation

The Superintendent may suspend, revoke, or refuse to renew the license of a viatical settlement provider, viatical settlement representative, or viatical settlement broker, if the Superintendent finds that any of the following apply (R.C. 3916.28(A)):

(1) There was a material misrepresentation in the application for the license.

(2) The licensee or any officer, partner, member, or key management personnel has been convicted of fraudulent or dishonest practices, is subject to a final administrative action in another state, or is otherwise shown to be untrustworthy or incompetent.

(3) The viatical settlement provider made an unreasonable payment to a viator.

(4) The licensee has been convicted of or has pleaded no contest to a felony, a crime involving moral turpitude, or a misdemeanor involving fraud.

(5) The viatical settlement provider has used a *viatical settlement contract* (see "**Definitions**," below) form that has not been approved under the bill.

(6) The viatical settlement provider has failed to honor contractual obligations set out in a viatical settlement contract.

(7) The licensee no longer meets the requirements for initial licensure.

(8) The viatical settlement provider has assigned, transferred, or pledged a *viaticated policy* to a person that is not a viatical settlement provider licensed in Ohio or a *financing entity* (see "**Definitions**," below).

(9) The licensee has violated any provision of, or any rule adopted under, the bill's provisions regulating viatical settlements.

(10) The licensee has committed any coercive, fraudulent, or dishonest act, or made any untrue, deceptive, or misleading statement, in connection with a viatical transaction or a proposed viatical transaction.

Procedures for license denial, suspension, revocation, or nonrenewal

The bill requires the Superintendent, before the Superintendent refuses to issue a license, or suspends, revokes, or refuses to renew a license under the bill's provisions, to provide the licensee or applicant with notice and an opportunity for a hearing as provided in the APA, except that the following procedures *must* apply (R.C. 3916.28(B)):

(1) Any notice of opportunity for hearing, the hearing officer's findings and recommendations, or the Superintendent's order must be served by certified mail at the *last known address* of the licensee or applicant.¹ Service must be evidenced by return receipt signed by any person. If the certified mail envelope is returned with an endorsement showing that service was refused, or that the envelope was unclaimed, the notice and all subsequent notices required by the APA may be served by ordinary mail to the last known address of the licensee or applicant. The mailing must be evidenced by a certificate of mailing. Service is deemed complete as of the date of that certificate if the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery. The time period in which to request a hearing, as provided in the APA, begins to run on the date of mailing.

¹ *The bill defines "last known address" as the address that appears in the licensing records of the Department of Insurance.*

If service by ordinary mail fails, the Superintendent may cause a summary of the substantive provisions of the notice to be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the last known place of residence or business of the party is located. The notice is considered served on the date of the third publication. Any notice required to be served under the APA also must be served upon the party's attorney by ordinary mail if the attorney has entered an appearance in the matter. The Superintendent, at any time, may perfect service on a party by personal delivery of the notice by an employee of the Department. Notices regarding the scheduling of hearings and all other matters other than the notice of hearing opportunity, hearing officer's findings and recommendation, and Superintendent's order must be sent by ordinary mail to the party and to the party's attorney.

(2) Any subpoena for the appearance of a witness or the production of documents or other evidence at a hearing, or for the purpose of taking testimony for use at a hearing, must be served by certified mail, return receipt requested, by an attorney or by an employee of the Department designated by the Superintendent. Those subpoenas must be enforced in the manner provided in the APA. This provision is not to be construed as limiting the Superintendent's other statutory powers to issue subpoenas.

Appointment of viatical settlement representative

The bill prohibits a viatical settlement representative from soliciting a viatical settlement contract without first obtaining an appointment from a viatical settlement provider or viatical settlement broker and from representing both the viatical settlement provider and the viatical settlement broker with respect to the same viator (R.C. 3916.05).

Notice of suspected illegal activity

A viatical settlement provider, viatical settlement representative, or viatical settlement broker who suspects another viatical settlement provider, viatical settlement representative, or viatical settlement broker of fraud, forgery, misrepresentation, theft, conversion, any other culpable misappropriation, or any violation of Ohio's Insurance Law, must notify the Superintendent of the suspicion. The notice must include a complete statement of the facts and the reasons that gave rise to the suspicion. In the absence of fraud or bad faith, a viatical settlement provider, viatical settlement representative, or viatical settlement broker is *immune* from any civil liability that otherwise might be incurred or imposed as a result of any action taken by the viatical settlement provider, viatical settlement representative, or viatical settlement broker to comply with the above notice requirements. (R.C. 3916.07.)

Representation by viatical settlement broker

The bill provides that irrespective of the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent *only* the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator (R.C. 3916.08).

Regulation of viatical settlements: disclosure requirements

Disclosure by viatical settlement provider, representative, or broker

Under the bill, a viatical settlement provider, viatical settlement representative, or viatical settlement broker must disclose the following to a viator no later than the time of application (R.C. 3916.12(A)):

(1) Possible alternatives to viatical settlement contracts for individuals with catastrophic, life-threatening, or chronic illnesses, including any accelerated death benefits offered under the viator's life insurance policy or certificate;

(2) That some or all of the viatical settlement proceeds may be subject to federal income taxation and state franchise and income taxation and that assistance should be sought from a professional tax advisor and that the viatical settlement proceeds could be subject to creditors' claims;

(3) That receipt of the viatical settlement proceeds may adversely affect the viator's eligibility for medical assistance under the Medical Assistance Program Law or other government benefits or entitlements and that advice should be obtained from the appropriate government agencies;

(4) That the viator has a right to rescind the viatical settlement contract for at least 15 days after the viator receives the viatical settlement proceeds and that funds will be sent to the viator within two business days after the viatical settlement provider has received acknowledgment from the insurer or group administrator that ownership of the policy or interest in the certificate has been transferred and that the beneficiary has been designated pursuant to the viatical settlement contract;

(5) That entering into a viatical settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator and that assistance should be sought from a financial advisor.

Additional disclosure by viatical settlement provider

The bill additionally requires a viatical settlement provider to disclose the following to a viator prior to the date the viatical settlement contract is signed by all of the necessary parties (R.C. 3916.12(B)):

(1) The affiliation, if any, between the viatical settlement provider and the issuer of the insurance policy or certificate to be viaticated;

(2) If an insurance policy or certificate to be viaticated has been issued as a joint policy or certificate or involves family riders or any coverage of a life other than the insured, the possible loss of coverage on the other lives and that advice should be sought from the viator's insurance producer or the company issuing the policy or certificate;

(3) The dollar amount of the current death benefit payable to the viatical settlement provider under the policy or certificate, along with the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the viatical settlement provider's interest in those benefits.

Regulation of viatical settlements: viatical settlement contract

Required documents

A viatical settlement provider entering into a viatical settlement contract must first obtain all of the following (R.C. 3916.13):

(1) If the viator is the insured, a written statement from an attending *physician* that the viator is of sound mind and under no constraint or undue influence to enter into a viatical settlement contract;²

(2) A witnessed document in which the viator, in writing, (a) consents to the viatical settlement contract, (b) acknowledges that the insured has a terminal or chronic illness or condition, (c) represents that the viator has a full and complete understanding of the viatical settlement contract and of the benefits of the life insurance policy or certificate, *and* (d) acknowledges that the viator has entered into the viatical settlement contract freely and voluntarily;

² *The bill defines "physician" as a person authorized under R.C. Chapter 4731. to practice medicine and surgery or osteopathic medicine and surgery.*

(3) A document in which the insured consents in writing to the release of the insured's medical records to a viatical settlement provider or viatical settlement broker.

Right of rescission

Each viatical settlement contract entered into in Ohio must provide the viator with an *unconditional* right to rescind the contract for at least 15 days after the receipt of the viatical settlement proceeds. If the insured dies during the rescission period, the viatical settlement contract is deemed to have been rescinded, subject to repayment of all viatical settlement proceeds to the viatical settlement provider. If a viator rescinds a viatical settlement contract, ownership of the insurance policy or certificate reverts to the viator or to the viator's estate if the viator is deceased, irrespective of any transfer of ownership of the policy or certificate by the viator, viatical settlement provider, or any other person. (R.C. 3916.15.)

Payment of proceeds

The bill requires a viatical settlement provider, *immediately* upon the receipt of documents to effect the transfer of the insurance policy or certificate, to pay the proceeds of the viatical settlement to an escrow or trust account in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation. A trustee or escrow agent independent of the parties to the contract must manage the account. The trustee or escrow agent must transfer the proceeds to the viator *immediately* upon the viatical settlement provider's receipt of acknowledgment of the transfer of the insurance policy or certificate. (R.C. 3916.17(A).)

Failure to transfer the proceeds to the viator within two business days after the viatical settlement provider receives acknowledgment of the transfer of the insurance policy or certificate renders the viatical settlement contract *voidable* by the viator for lack of consideration until the time consideration is tendered to and accepted by the viator. If the viator voids the contract pursuant to this provision, ownership of the insurance policy or certificate reverts to the viator or the viator's estate if deceased, irrespective of any transfer of ownership of the policy or certificate by the viator, viatical settlement provider, or any other person. (R.C. 3916.17(B).)

Maintenance of records

The bill requires that each viatical settlement provider maintain records of all transactions of viatical settlement contracts, including the name, individual identification, and medical record of the viator. Those records must be made

available to the Superintendent for inspection during reasonable business hours. A viatical settlement provider must maintain the record of a viatical settlement for at least five years after the death of the insured. (R.C. 3916.21.)

Limitations regarding contact with insured

Under the bill, after a viatical settlement has occurred, the viatical settlement provider, viatical settlement representative, or viatical settlement broker may not contact the insured for the purpose of determining the insured's health status more than once every three months if the insured has a life expectancy of more than one year, or more than once per month if the insured has a life expectancy of one year or less. The viatical settlement provider or viatical settlement broker must explain the procedure for making these contacts at the time the viatical settlement contract is entered into. These limitations on viator contacts do *not* apply to contacts made with an insured under a viaticated policy for purposes *other than* to determine the insured's health status. (R.C. 3916.19.)

Confidentiality of viator's identity

The bill prohibits a viatical settlement provider, viatical settlement representative, viatical settlement broker, insurance company, insurance agent, insurance broker, information bureau, rating agency or company, or any other person with *actual knowledge* of a viator's identity, except as otherwise permitted or required by law, from disclosing that identity as a viator, including the viator's name, individual identification data, or medical record, unless any of the following apply (R.C. 3916.24):

(1) The disclosure is necessary to effect a viatical settlement between the viator and a viatical settlement provider, and the viator has provided prior written consent to the disclosure.

(2) The disclosure is provided in response to an investigation or examination by the Superintendent or by any other governmental officer or agency.

(3) The disclosure is a term of, or condition to, the transfer of a viaticated policy by one viatical settlement provider to another viatical settlement provider.

Regulation of viatical settlements: approval of contract form and disclosure statement form

The bill prohibits a person from using a viatical settlement contract form or providing a disclosure statement form to a viator in Ohio unless the contract form or disclosure statement form is filed with and approved by the Superintendent.

The Superintendent must disapprove a viatical settlement contract form or disclosure statement form if, in the Superintendent's opinion, the contract form, disclosure statement form, or any provision contained in either is unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator. (R.C. 3916.10(A).)

The bill authorizes the Superintendent to adopt rules in accordance with the APA to establish reasonable fees for any service or transaction performed by the Department of Insurance in the approval of viatical settlement contract forms or disclosure statement forms. Any fee collected pursuant to those rules must be paid into the State Treasury to the credit of the Department of Insurance Operating Fund. (R.C. 3916.10(B).)

Other authority of Superintendent of Insurance

The bill further authorizes the Superintendent to do the following (R.C. 3916.30(A) and (B)):

(1) Adopt rules in accordance with the APA for purposes of implementing the new R.C. chapter regulating viatical settlements, including rules governing the relationship and responsibilities of both insurers and viatical settlement providers, viatical settlement representatives, and viatical settlement brokers during the viatication of a life insurance policy or certificate;

(2) Establish standards for evaluating the reasonableness of payments under viatical settlement contracts. This authority includes, but is not limited to, the regulation of discount rates used to determine the amount paid in exchange for the assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy or certificate.

(3) Establish appropriate licensing requirements and standards for continued licensure for viatical settlement providers, viatical settlement representatives, and viatical settlement brokers;

(4) Require a bond or other mechanism for ensuring the financial accountability of viatical settlement providers.

Unfair and deceptive act or practice in insurance business

The bill prohibits any person from failing to comply with the new R.C. chapter regulating viatical settlements. Whoever violates this prohibition is deemed to have engaged in an unfair and deceptive act or practice in the business of insurance under the Insurance Law. (R.C. 3916.32.)

Grandfather clause

The bill provides that any person that, on the effective date of the act, transacts business in Ohio as a viatical settlement provider, viatical settlement representative, or viatical settlement broker may continue to do so pending approval of the person's application for a license, if the person applies for the license during the six-month period immediately following the effective date of the act (Section 4).

Definitions

The bill defines the following terms for use in the new R.C. chapter that regulates viatical settlements (R.C. 3916.01).

Viatical settlement contract

"Viatical settlement contract" means either of the following (R.C. 3916.01(D)):

(1) An agreement between a viatical settlement provider and a viator under which the viatical settlement provider pays compensation or any other thing of value, which compensation or other thing of value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of all or a portion of the insurance policy or certificate to the viatical settlement provider;

(2) A contract for a loan or any other financial transaction secured primarily by an individual or a group life insurance policy or certificate, other than a loan by a life insurance company pursuant to the terms of the life insurance contract or a loan secured by the cash value of a policy or certificate.

Viatical settlement provider

"Viatical settlement provider" means either of the following (R.C. 3916.01(E)(1)):

(1) A person, other than a viator, that enters into a viatical settlement contract;

(2) A person that obtains financing from a financing entity for the purchase, acquisition, transfer, or other assignment of one or more viatical settlement contracts, viaticated policies, or interests therein, or that otherwise sells, assigns, transfers, pledges, hypothecates, or otherwise disposes of one or more viatical settlement contracts, viaticated policies, or interests therein.

"Viatical settlement provider" does *not* include any of the following (R.C. 3916.01(E)(2)):

(1) A bank, savings bank, savings and loan association, credit union, or other financial institution 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* as defined in the Insurance Law;³

(3) An individual who enters into not more than one agreement in any calendar year for the transfer of life insurance policies or certificates for any value less than the expected death benefit.

Viatical settlement broker

"Viatical settlement broker" means a person that, on behalf of a viator and for a fee, commission, or other valuable consideration, offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers. "Viatical settlement broker" does *not* include an attorney, a certified public accountant, or a financial planner retained to represent the viator whose compensation is paid directly by, or at the direction of, the viator. (R.C. 3916.01(C).)

Viatical settlement representative

"Viatical settlement representative" means an appointed agent of a licensed viatical settlement provider or viatical settlement broker, as applicable, that acts or aids in any manner in the solicitation of a viatical settlement. "Viatical settlement representative" does *not* include any of the following (R.C. 3916.01(F)):

(1) An attorney, a certified public accountant, a financial planner, or any other person exercising a power of attorney granted by a viator;

(2) Any person that is retained to represent a viator and whose compensation is paid by or at the direction of the viator, regardless of whether the viatical settlement is consummated.

³ R.C. 3915.21(A) (not in the bill) defines "accelerated benefits" as the benefits that are payable under a policy and that meet all of the following criteria: (1) the benefits are payable to the policyholder or certificate holder during the lifetime of the insured and upon the occurrence of a qualifying event, (2) the benefits are payable in amounts that are fixed at the time of the acceleration of the benefits, and (3) the benefits reduce the death benefit otherwise payable under the policy.

Viator

"Viator" means the owner of a life insurance policy or a certificate holder under a group policy insuring the life of an individual with a terminal or chronic illness or condition, who enters or seeks to enter into a viatical settlement contract (R.C. 3916.01(H)).

Viaticated policy

"Viaticated policy" means a life insurance policy or certificate that has been acquired by a viatical settlement provider, or by a person designated by the viatical settlement provider, pursuant to a viatical settlement contract (R.C. 3916.01(G)).

Financing entity

"Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any other person that (a) is a party to a viatical settlement contract, (b) has an agreement in writing with a viatical settlement provider to act as a participant in a *financing transaction* (defined below), and (c) has a direct ownership interest in the policy or certificate that is the subject of the viatical settlement contract, *but* whose sole activity related to the transaction is providing funds to effect the viatical settlement (R.C. 3916.01(A)).

Financing transaction

"Financing transaction" means a transaction in which a licensed viatical settlement provider or a financing entity obtains financing for viatical settlement contracts, viaticated policies, or interests therein, which financing includes, but is not limited to, (a) any secured or unsecured financing, (b) any securitization transaction or securities offering that is either registered or exempt from registration under federal and Ohio securities laws, or (c) any direct purchase of interests in a policy or certificate, if the transaction complies with federal and Ohio securities laws (R.C. 3916.01(B)).

CHANGES TO OHIO SECURITIES LAW

Designation of "life settlement interest" as a "security" under the Ohio Securities Law

As used in the Ohio Securities Law, "security" means any certificate or instrument that represents title to or interest in, or is secured by any lien or charge upon, the capital, assets, profits, property, or credit of any person or of any public or governmental body, subdivision, or agency. It includes shares of stock,

certificates for shares of stock, membership interests in limited liability companies, voting-trust certificates, warrants and options to purchase securities, subscription rights, interim receipts, interim certificates, promissory notes, all forms of commercial paper, evidences of indebtedness, bonds, debentures, land trust certificates, fee certificates, leasehold certificates, syndicate certificates, endowment certificates, certificates or written instruments in or under profit-sharing or participation agreements or in or under oil, gas, or mining leases, or certificates or written instruments of any interest in or under the same, receipts evidencing preorganization or reorganization subscriptions, preorganization certificates, reorganization certificates, certificates evidencing an interest in any trust or pretended trust, any investment contract, any instrument evidencing a promise or an agreement to pay money, warehouse receipts for intoxicating liquor, and the currency of any government other than those of the United States and Canada. (R.C. 1707.01(B).)

The bill includes "any life settlement interest" within the list of things that are examples of a "security" (R.C. 1707.01(B)). The inclusion of "life settlement interest" within that list of examples of a security makes that type of interest subject to most if not all of the provisions of the Ohio Securities Law (R.C. Chapter 1707.) (see "*Overview of Ohio Securities Law*," below). The bill defines "life settlement interest" to mean the entire interest or any fractional interest in an insurance policy or certificate of insurance, or in an insurance benefit under such a policy or certificate, that is the subject of a life settlement contract. For the purposes of the prior definition, "life settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of any portion of the death benefit or ownership of any life insurance policy or contract, in return for consideration or any other thing of value that is less than the expected death benefit of the life insurance policy or contract. (R.C. 1707.01(NN).)

"Life settlement contract" includes "viatical settlement contract" but does not include any of the following (R.C. 1707.01(NN)):

- (1) A loan by an insurer under the terms of a life insurance policy, including, but not limited to, a loan secured by the cash value of the policy;
- (2) An agreement with a bank that takes an assignment of a life insurance policy as collateral for a loan;
- (3) The provision of accelerated benefits as defined in the Insurance Law;
- (4) Any agreement between an insurer and a reinsurer;
- (5) An agreement by an individual to purchase an existing life insurance policy or contract from the original owner of the policy or contract, if the

individual does not enter into more than one life settlement contract per calendar year.

(6) The initial purchase of an insurance policy or certificate of insurance from its owner by a viatical settlement provider.

Exempt securities

Existing law

Under R.C. 1707.02, there are certain securities that are exempt from the registration requirements in R.C. 1707.08 to 1707.11 as well as R.C. 1707.39.

Under existing R.C. 1707.02(E)(1), any security, whether a preliminary or final security, is exempt, which, at the time of sale within this state, is listed, or listed upon notice of issuance, on the Cincinnati Stock Exchange, the Midwest Stock Exchange, the New York Stock Exchange, or the American Stock Exchange, or is designated, or approved for designation upon notice of issuance, as a national market system security on the NASDAQ system, or is listed or designated on any other stock exchange or national quotation system approved by the Division as having listing requirements substantially equivalent to those of any one of those exchanges or systems, and any security senior to any security so listed or designated is also exempt. These exemptions apply only so long as such security remains so listed or designated pursuant to official action of such exchange or system and not under suspension, and only so long as such exchange or system remains approved under R.C. 1707.02.

Existing law permits the Division of Securities to revoke the approval of an exchange or system approved in R.C. 1707.02 or approved by it upon a finding, after due notice, investigation, and hearing, that the practices or requirements of such exchange or system have been so changed or modified, or are, in their actual operation, such that the contemplated protection is no longer afforded. (R.C. 1707.02(E)(3).) Existing law also allows the Division of Securities to suspend the exemption of any security described above by giving notice, by certified mail, to that effect to the exchange or system upon which such security is listed or designated and to the issuer of such security. After notice and hearing, the Division may revoke such exemption if it appears to it that sales of such security have been fraudulent or that future sales of it would be fraudulent. The Division must set such hearing not later than ten days from the date of the order of suspension, but may for good cause continue such hearing upon application of the exchange or system upon which such security is listed or designated or upon application of the issuer of such security. (R.C. 1707.02(E)(4).)

Operation of the bill

The bill replaces the above exemption with an exemption for a security that meets any of the following requirements (R.C. 1707.02(E)(1)):

(1) The security is listed, or authorized for listing, on the New York Stock Exchange, the American Stock Exchange, or the national market system of the NASDAQ stock market, or any successor to such entities.

(2) The security is listed, or authorized for listing, on a national securities exchange or system, or on a tier or segment of such exchange or system, designated by the Securities and Exchange Commission in rule 146(b) promulgated under section 18(b)(1) of the Securities Act of 1933.

(3) The security is listed, or authorized for listing, on a national securities exchange or system, or on a tier or segment of such exchange or system, that has listing standards that the Division of Securities, on its own initiative or on the basis of an application, determines by rule are substantially similar to the listing standards applicable to securities described in paragraph (1), above.

(4) The security is a security of the same issuer that is equal in seniority or that is a senior security to a security described in paragraph (1), (2), or (3), above.

The bill modifies the Division's ability to revoke the approval of an exchange or system approved in R.C. 1707.02 by permitting the Division to revoke the approval of an exchange or system listed in the prior paragraph if the exchange or system is not listed in section 18(b)(1) of the Securities Act of 1933 or any rule promulgated under the Act. (R.C. 1707.02(E)(3).) The bill also modifies the Division's ability to suspend the exemption of any security described above by requiring that the security be listed or authorized for listing on an exchange or system that is not listed in section 18(b)(1) of the Securities Act of 1933 or any rule promulgated under the Act (R.C. 1707.02(E)(4)).

Consent to service

Existing law

Existing R.C. 1707.11 requires every applicant for registration, or for claim of exemption and every person submitting a notice filing, for the sale of securities pursuant to Chapter 1707. that is an incorporated applicant not domiciled in this state or an unincorporated applicant having the situs of its principal place of business outside this state to file with its application or notice filing its irrevocable written consent, executed and acknowledged by an individual duly authorized to give such consent, that actions growing out of the sale of those securities or fraud

committed by an applicant in this state may be commenced against it, in the proper court of any county in this state in which a cause of action for the fraud may arise or in which the plaintiff in the action may reside, by serving on the Secretary of State any proper process or pleading authorized by the laws of this state. The consent must stipulate that the service of the process or pleading on the Secretary of State must be taken in all courts to be valid and binding as if service had been made upon the applicant itself.

Existing R.C. 1707.11 permits service of any process to be made on the Secretary of State by duplicate copies, of which one must be filed in the office of the Secretary of State, and the other immediately forwarded by the Secretary of State by certified mail to the principal place of business of the applicant, or the last known address as shown on the application form filed with the Division of Securities, or if it has a principal office in this state, then to the principal office, but failure to mail such copy must not invalidate such service. (R.C. 1707.11.)

Operation of the bill

The bill modifies the requirements discussed above by requiring each person not organized under Ohio law, not licensed under Ohio Securities Law, and not having its principal place of business in Ohio to submit to the Division of Securities an irrevocable consent to service of process, as described below, in connection with any of the following (R.C. 1707.11(A)):

- (1) Filings to claim any of the exemptions enumerated in R.C. 1707.03(Q), (W), (X), or (Y);
- (2) Applications for registration by description, qualification, or coordination;
- (3) Notice filings pursuant to R.C. 1707.092 or 1707.141;
- (4) Applications for licensure as a securities dealer under R.C. 1707.15;
- (5) Applications for licensure as an investment adviser under R.C. 1707.151.

Under the bill, the irrevocable written consent must be executed and acknowledged by an individual duly authorized to give the consent must do all of the following (R.C. 1707.11(B)):

- (1) Designate the Secretary of State as agent for service of process or pleadings;

(2) State that actions growing out of the sale of such securities, *the giving of investment advice* (added by bill), or fraud committed by a person on whose behalf the consent is submitted may be commenced against the person, in the proper court of any county in this state in which a cause of action may arise or in which the plaintiff in the action may reside, by serving on the Secretary of State any proper process or pleading authorized by the laws of this state;

(3) Stipulate that service of process or pleading on the Secretary of State must be taken in all courts to be as valid and binding as if service had been made upon the person on whose behalf the consent is submitted.

The bill removes the requirement that the duplicate copy of service of process or pleadings made on the Secretary of State be immediately forwarded by the Secretary of State to the principal office in this state of the applicant if the applicant has a principal office in this state (R.C. 1707.11(C)).

Application for and issuance of dealer's license

Existing R.C. 1707.15 requires that an application to act as dealer be in writing and be filed with the Division of Securities. The application must be in the form the Division of Securities prescribes and must be verified by oath of the applicant, the applicant's agent, or the applicant's attorney. The application must also contain the following information:

- (1) The name and address of the applicant;
- (2) A description of the applicant;
- (3) The location and addresses of the principal office and all other offices of the applicant;
- (4) A general description of the business of the applicant done prior to the application, including a list of states in which the applicant is a licensed dealer.
- (5) The names and addresses of all salesmen of the applicant at the date of the application;
- (6) The nature of the applicant's business, and its place of business, for the period of ten years next preceding the date of application.

The bill removes the requirement that the application contain the names and addresses of all salesmen of the applicant and the nature of the applicant's business and place of business for the prior ten years (repeal of existing R.C. 1707.15(E) and (F)). It also removes the requirement that the application be verified by oath of the applicant, his or her agent, or has or her attorney (R.C. 1707.15).

Under existing law, every applicant not a resident of this state must name a person within this state upon whom process against the applicant may be served and must give the complete residence and business address of the person designated. Every applicant must also file an irrevocable consent to service of process on the Secretary of State in the event that the applicant, if a resident of this state, or the person designated by the nonresident applicant, cannot be found at the address given. The bill modifies this requirement by requiring that each applicant file an irrevocable consent to service of process as provided in R.C. 1707.11 (described above). (R.C. 1707.15(B).)

Existing law provides that the Division may investigate any applicant for a license and may require such additional information as it deems necessary to determine the applicant's business repute and qualifications to act as a dealer in securities. If the application for any license involves investigation outside of this state, the applicant may be required by the Division to advance sufficient funds to pay any of the actual expenses of the examination. The Division must furnish to the applicant an itemized statement of any expenses that the applicant must pay. If the applicant is merely renewing his license for the previous year, the application need contain only the information required by R.C. 1707.15 (B), (C), and (E). The bill removes this limitation on the information that must be provided by an applicant renewing the applicant's license for the previous year. (R.C. 1707.15(C).)

Under existing law, the Division of Securities must by rule require an applicant to pass an examination that covers the applicant's knowledge of securities laws and practices. If the Division finds that the applicant is of good business repute, appears qualified to act as a dealer in securities, and has fully complied with R.C. Chapter 1707., the Division must issue to the applicant a license to act as dealer, upon payment by the applicant of the prescribed fee. The Division may, after proper hearing, refuse, as provided in R.C. 1707.19, to grant a license to the applicant. The bill replaces the requirement that an applicant pass an examination that covers the applicant's knowledge of securities law and practices with a requirement that one natural person who is a principal, officer, director, general partner, manager, or employer of a dealer pass an examination designated by the Division of Securities and further requires that each dealer that is not a natural person notify the Division of the name and relationship to the dealer of the natural person who has passed the examination on behalf of the dealer and who will serve as the designated principal on behalf of the dealer. (R.C. 1707.15(D).)

Application for and issuance of investment adviser's license

Under existing R.C. 1707.151, every applicant for an investment adviser's license who is not a resident of this state must name a person within this state upon

whom process against such applicant may be served and must give the complete residence and business address or addresses of the person designated. Every applicant for such a license must also file an irrevocable consent to service of process naming the Secretary of State for service of process in the event that the applicant, if a resident of this state, or the person designated above, cannot be found at the address given on the application. The bill eliminates these specific requirements and replaces them with a requirement that each applicant for an investment adviser's license file an irrevocable consent to service of process as provided above under "Consent to service"; "Operation of the bill." (R.C. 1707.151(B).)

Application for and issuance of salesman's license

Under existing R.C. 1707.16, every salesman of securities must be licensed by the Division of Securities and must be employed only by the licensed dealer specified in his license. The application for a salesman's license must set forth the following information (R.C. 1707.16):

(1) The name and complete residence and business addresses of the applicant;

(2) The name of the dealer who is employing the applicant or who intends to employ him;

(3) The applicant's age and education, and the applicant's experience in the sale of securities; whether the applicant has ever been licensed by the Division, and if so, when; whether the applicant has ever been refused a license by the Division; and whether the applicant has ever been licensed or refused a license or any similar permit by any division or commissioner of securities, whatsoever name known or designated, anywhere;

(4) The nature of the employment, and the names and addresses of the employers, of the applicant for the period of ten years immediately preceding the date of the application.

The bill removes the requirement that the application include the nature of the employment, and the names and addresses of the employers, of the applicant for the period of ten years immediately preceding the date of the application.

Existing law specifies that if the applicant is merely renewing his license for the previous year or renewing his license upon change of employment, the application only needs to contain the name and complete residence and business addresses of the applicant and the name of the applicants employing dealer. The bill removes this limit on the information that must be in such an application.

Existing law also requires that the Division must, by rule, require an applicant to pass an examination that covers the applicant's knowledge of securities law and practices. The bill modifies this provision by requiring that the Division by rule require an applicant to pass an examination designated by the Division. (R.C. 1707.16.)

Enforcement powers of the Division of Securities

Existing R.C. 1707.23 permits the Division of Securities, whenever it appears to the Division, from its files, upon complaint, or otherwise that any person has engaged in, is engaged in, or is about to engage in any practice declared to be illegal or prohibited by Ohio's Securities Law, or defined as fraudulent under that Law, or any other deceptive scheme or practice in connection with the sale of securities, or when the Division believes it to be in the best interest of the public and necessary for the protection of investors to, among other things, require the attendance of witnesses, and the production of books, records, and papers, as are required either by the Division or by any party to a hearing before the Division, and for that purpose issue a subpoena for any witness, or a subpoena duces tecum to compel the production of any books, records, or papers. The subpoena must be served by certified mail, return receipt requested. The bill modifies the requirement that a subpoena issued requiring the attendance of witnesses, and the production of books, records, and papers, as are required either by the Division or by any party to a hearing before the Division, be served by certified mail, by including the option that the subpoena be served by personal service. (R.C. 1707.23(C).)

Overview of Ohio Securities Law

Licensing

Ohio law generally requires any person acting as a "dealer" to be licensed as a dealer by the Division of Securities. "Dealer," except as otherwise provided in the Ohio Securities Law, means every person, other than a salesman, who engages or professes to engage, in this state, for either all or part of the person's time, directly or indirectly, either in the business of the sale of securities for the person's own account, or in the business of the purchase or sale of securities for the account of others in the reasonable expectation of receiving a commission, fee, or other remuneration as a result of engaging in the purchase and sale of securities (R.C. 1707.01(E)(1)). "Dealer" does not mean any of the following:

(1) Any issuer, including any officer, director, employee, or trustee of, or partner in, or any general partner of, any issuer, that sells, offers for sale, or does any act in furtherance of the sale of a security that represents an economic interest

in that issuer, provided no commission, fee, or other similar remuneration is paid to or received by the issuer for the sale;

(2) Any licensed attorney, public accountant, or firm of such attorneys or accountants, whose activities are incidental to the practice of the attorney's, accountant's, or firm's profession;

(3) Any person that, for the account of others, engages in the purchase or sale of securities that are issued and outstanding before such purchase and sale, if a majority or more of the equity interest of an issuer is sold in that transaction, and if, in the case of a corporation, the securities sold in that transaction represent a majority or more of the voting power of the corporation in the election of directors;

(4) Any person that brings an issuer together with a potential investor and whose compensation is not directly or indirectly based on the sale of any securities by the issuer to the investor;

(5) Any bank, savings and loan association, savings bank, or credit union chartered under the laws of the United States or any state, provided that all transactions are consummated by or through a person licensed as a "dealer";

(6) Any person that the Division of Securities by rule exempts from the definition of "dealer."

A person does not have to be licensed as a dealer by the Division of Securities in the following cases (R.C. 1707.14(A)):

(1) When the person is transacting business through or with a licensed dealer;

(2) When the securities are the subject matter of one or more exempt transactions enumerated in R.C. 1707.03(B) to (L), (O) to (R), and (U) to (W), or in R.C. 1707.06, except when a commission, discount, or other remuneration is paid or given in consideration with transactions enumerated in R.C. 1707.03(O), (Q), and (W), or in R.C. 1707.06;

(3) When the person is an issuer selling securities issued by it or by its subsidiary, if such securities are specified under R.C. 1707.02(G) or (I), or under R.C. 1707.04. "Issuer" means every person who has issued, proposes to issue, or issues any security (R.C. 1707.01(G)).

(4) When the person is participating in transactions exempt, under R.C. 1707.34, from R.C. Chapter 1707.

Every "salesman" of securities must be licensed by the Division of Securities, and every salesman must be employed only by the licensed dealer specified in the salesman's license. "Salesman" means every natural person, other than a dealer, employed, authorized, or appointed by a dealer to sell securities within this state.

The general partners of a partnership, and the executive officers of a corporation or unincorporated association, licensed as a dealer are not salesmen within the meaning of this definition, nor are the clerical or other employees of an issuer or dealer who are employed for work to which the sale of securities is secondary and incidental. The Division of Securities may require a license from any such partner, executive officer, or employee if it determines that protection of the public necessitates the licensing. (R.C. 1707.16 and 1707.01(F).)

Registration

Ohio law prohibits any person from offering or selling securities unless the securities or transactions in which they are offered and sold are registered or exempt. There are three methods by which a viatical settlement interest may be registered: registration by description, registration by qualification, or registration by coordination.

Registration by description

R.C. 1707.08 allows the securities specified in R.C. 1707.05 to be sold, and the transactions enumerated in R.C. 1707.06 to be consummated, on compliance with the following procedures. A description, verified either by the oath of the person filing it or of any person having knowledge of the facts, must be filed with the Division of Securities by the issuer, or by a majority of the incorporators of the issuer prior to election of officers if it is an incorporated issuer, or by a licensed dealer, which description must be on forms prescribed by the Division and must set forth the following information:

- (1) The name of the issuer;
- (2) A brief description of the securities;

(3) The amount of the securities to be offered after the filing of the description for sale in this state and, if all the securities are not to be offered by the person filing the description, then the respective amounts to be offered by others, so far as the amounts are known, and the names and addresses of other offerors;

(4) A brief statement of the facts that show that the securities fall within one of the classes specified in R.C. 1707.05 or that they are the subject matter of a transaction enumerated in R.C. 1707.06;

(5) The price at which the securities are to be offered for sale.

Registration by description is completed when the description, together with the prescribed fee, in the form of cash, check, or United States postal money order, is delivered, or mailed by certified mail with postage prepaid, to the Division. At the time the description is filed, the person filing it must pay to the Division a fee of one-tenth of one per cent of the aggregate price at which the securities described are to be offered for sale to the public in this state, if they fall within one of the classes specified in R.C. 1707.05; but in no case can the fee be less than \$100 or more than \$1,000. If the securities are the subject matter of a transaction enumerated in R.C. 1707.06, the fee is a flat fee of \$50.

Registration by qualification

R.C. 1707.09 requires all securities, except those enumerated in R.C. 1707.02 or 1707.05 and those that are the subject matter of a transaction permitted by R.C. 1707.03, 1707.04, or 1707.06, be qualified under R.C. 1707.09 before being sold in this state. R.C. 1707.09 also requires that applications for that qualification, on forms prescribed by the Division of Securities, be made in writing either by the issuer of the securities or by any licensed dealer desiring to sell them within this state and be signed by the applicant, sworn to by any person having knowledge of the facts stated in the application, and filed in the office of the Division.

The Division must require the applicant to submit with the application for qualification information specified in R.C. 1707.09.

If the Division finds that it is not necessary in the public interest and for the protection of investors to require all the information specified in R.C. 1707.09, it may permit the filing of applications for qualification that contain the information that it considers necessary and appropriate in the public interest and for the protection of investors; but this provision applies only in the case of applications for qualification of securities previously issued and outstanding that may not be made the subject matter of transactions exempt under R.C. 1707.03(M) by reason of the fact that those securities within one year were purchased outside this state or within one year were transported into this state.

All the statements, exhibits, and documents required by the Division under R.C. 1707.09, except properly certified public documents, must be verified by the oath of the applicant, of the issuer, or of any person having knowledge of the facts,

and in the manner and form that may be required by the Division. Failure or refusal to comply with the requests of the Division is sufficient reason for a refusal by the Division to register securities. At the time of filing the information prescribed in R.C. 1707.09, the applicant must pay to the Division a filing fee of \$100.

Registration by coordination

R.C. 1707.091(A) allows any security for which a registration statement has been filed pursuant to section 6 of the Securities Act of 1933 or for which a notification form and offering circular has been filed pursuant to regulation A of the general rules and regulations of the Securities and Exchange Commission in connection with the same offering be registered by coordination. A registration statement filed by or on behalf of the issuer under this section with the Division of Securities must contain the following information and be accompanied by the following items in addition to the consent to service of process required by R.C. 1707.11 (R.C. 1707.091(B)):

(1) One copy of the latest form of prospectus or offering circular and notification filed with the securities and exchange commission;

(2) If the Division of Securities by rule or otherwise requires, a copy of the articles of incorporation and code of regulations or bylaws, or their substantial equivalents, as currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) If the Division of Securities requests, any other information, or copies of any other documents, filed with the Securities and Exchange Commission;

(4) An undertaking by the issuer to forward to the Division, promptly and in any event not later than the first business day after the day they are forwarded to or thereafter are filed with the Securities and Exchange Commission, whichever occurs first, all amendments to the federal prospectus, offering circular, notification form, or other documents filed with the securities and exchange commission, other than an amendment that merely delays the effective date;

(5) A filing fee of \$100.

Exempt transactions

Under R.C. 1707.03, there are certain circumstances under which a sale of a viatical settlement interest may be exempt from the registration requirements. "Exempt" means that, except in the case of securities the right to buy, sell, or deal

in which has been suspended or revoked under an existing order of the Division of Securities or under a cease and desist order, transactions in securities may be carried on and completed without compliance with R.C. 1707.08 to 1707.11 (R.C. 1707.03(A)). The list of exempt transactions is extensive. Some examples are as follows:

(1) A sale of securities made by or on behalf of a bona fide owner, neither the issuer nor a dealer, is exempt if the sale is made in good faith and not for the purpose of avoiding this chapter and is not made in the course of repeated and successive transactions of a similar character.

(2) The sale of securities by executors, administrators, receivers, trustees, or anyone acting in a fiduciary capacity is exempt, if the relationship was created by law, by a will, or by judicial authority, and the sales are subject to approval by, or are made in pursuance to authority granted by, any court of competent jurisdiction or are otherwise authorized and lawfully made by such fiduciary.

(3) A sale to the issuer, to a dealer, or to an institutional investor is exempt.

(4) A sale in good faith, and not for the purpose of avoiding the Ohio Securities Law, by a pledgee of a security pledged for a bona fide debt is exempt.

(5) The sale at public auction by a corporation of shares of its stock because of delinquency in payment for the shares is exempt.

(6) The delivery of securities by the issuer on the exercise of conversion rights, the sale of securities by the issuer on exercise of subscription rights or of warrants or options to purchase securities, the delivery of voting-trust certificates for securities deposited under a voting-trust agreement, the delivery of deposited securities on surrender of voting-trust certificates, and the delivery of final certificates on surrender of interim certificates are exempt.

(7) The issuance of securities in exchange for one or more bona fide outstanding securities, claims, or property interests, not including securities sold for a consideration payable in whole or in part in cash, under a plan of reorganization, recapitalization, or refinancing approved by a court pursuant to the Bankruptcy Act of the United States or to any other federal act giving any federal court jurisdiction over such plan of reorganization, or under a plan of reorganization approved by a court of competent jurisdiction of any state of the United States is exempt.

(8) A sale by a licensed dealer, acting either as principal or as agent, of securities issued and outstanding before the sale is exempt, unless the sale is of one or more of a list of transactions.

(9) The sale of any security is exempt if all of the following conditions are satisfied:

(a) The provisions of section 5 of the Securities Act of 1933 do not apply to the sale by reason of an exemption under section 4 (2) of that act.

(b) The aggregate commission, discount, and other remuneration, excluding legal, accounting, and printing fees, paid or given directly or indirectly does not exceed ten per cent of the initial offering price.

(c) Any such commission, discount, or other remuneration for sales in this state is paid or given only to dealers or salespersons registered under the Ohio Securities Law.

(d) The issuer or dealer files with the Division of Securities, not later than sixty days after the sale, a report setting forth the name and address of the issuer, the total amount of the securities sold under this Division, the number of persons to whom the securities were sold, the price at which the securities were sold, and the commissions or discounts paid or given.

(e) The issuer pays a filing fee of \$100 for the first filing and \$50 for every subsequent filing during each calendar year.

(10) The execution by a licensed dealer of orders for the purchase of any security is exempt, provided that the dealer acts only as agent for the purchaser, has made no solicitation of the order to purchase the security, has no interest in the distribution of the security, and delivers to the purchaser written confirmation of the transaction that clearly itemizes the dealer's commission.

(11) The sale of any security is exempt if the Division by rule finds that registration is not necessary or appropriate in the public interest or for the protection of investors.

Prohibitions

R.C. 1707.44 generally prohibits any person from failing to comply with the securities registration, the broker-dealer registration, and the anti-fraud provisions of the Ohio Securities Law. Under the bill, this section will apply to viatical settlement interests. The prohibitions are as follows:

(1) No person may engage in any act or practice that violates R.C. 1707.14(A), (B), or (C), and no salesperson may sell securities in this state without being licensed.

(2) No person may engage in any act or practice that violates Division (A) of R.C. 1707.141(A).

(3) No person may knowingly make or cause to be made any false representation concerning a material and relevant fact, in any oral statement or in any prospectus, circular, description, application, or written statement, to comply with the Ohio Securities Law, in regard to registering securities by description; to secure the qualification of any securities; to procure the licensing of any dealer, salesperson, investment adviser, or investment adviser representative; to sell any securities in this state; or to advise for compensation, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities.

(4) No person may knowingly and intentionally sell, cause to be sold, offer for sale, or cause to be offered for sale, any security that is not exempt, is not the subject matter of an exempt transaction, has not been registered by description, coordination, or qualification, and is not the subject matter of a transaction that has been registered by description; for which the prescribed fees for registering by description, by coordination, or by qualification have not been paid in respect to such security; when the person has been notified by the Division, or has knowledge of the notice, that the right to buy, sell, or deal in such security has been suspended or revoked, or that the registration by description, by coordination, or by qualification under which it may be sold has been suspended or revoked; or when the offer or sale is accompanied by a statement that the security offered or sold has been or is to be in any manner endorsed by the Division.

(5) No person who is an officer, director, or trustee of, or a dealer for, any issuer, and who knows such issuer to be insolvent in that the liabilities of the issuer exceed its assets, may sell any securities of or for any such issuer, without disclosing the fact of the insolvency to the purchaser.

(6) No person with intent to aid in the sale of any securities on behalf of the issuer may knowingly make any representation not authorized by such issuer or at material variance with statements and documents filed with the Division by such issuer.

(7) No person, with intent to deceive, may sell, cause to be sold, offer for sale, or cause to be offered for sale, any securities of an insolvent issuer, with knowledge that such issuer is insolvent in that the liabilities of the issuer exceed its assets, taken at their fair market value.

(8) No person in purchasing or selling securities may knowingly engage in any act or practice that is declared illegal, defined as fraudulent, or prohibited under the Ohio Securities Law.

(9) No licensed dealer may refuse to buy from, sell to, or trade with any person because the person appears on a blacklist issued by, or is being boycotted by, any foreign corporate or governmental entity, nor sell any securities of or for any issuer who is known in relation to the issuance or sale of such securities to have engaged in such practices.

(10) No dealer in securities, knowing that the dealer's liabilities exceed the reasonable value of the dealer's assets, may accept money or securities, except in payment of or as security for an existing debt, from a customer who is ignorant of the dealer's insolvency, and thereby cause the customer to lose any part of the customer's securities or the value of those securities, by pledging, selling, or otherwise disposing of such securities, when the dealer has no lien on or any special property in such securities; or by pledging such securities for more than the amount due, or otherwise disposing of such securities for the dealer's own benefit, when the dealer has a lien or indebtedness on such securities.

(11) No person, with purpose to deceive, may make, issue, publish, or cause to be made, issued, or published any statement or advertisement as to the value of securities, or as to alleged facts affecting the value of securities, or as to the financial condition of any issuer of securities, when the person knows that such statement or advertisement is false in any material respect.

(12) No person, with purpose to deceive, may make, record, or publish or cause to be made, recorded, or published, a report of any transaction in securities that is false in any material respect.

(13) No dealer may engage in any act that violates the provisions of section 15(c) or 15(g) of the "Securities Exchange Act of 1934" or any rule or regulation promulgated by the Securities and Exchange Commission.

(14) No investment adviser or investment adviser representative may employ any device, scheme, or artifice to defraud any person; engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person; in acting as principal for the investment adviser's or investment adviser representative's own account, knowingly sell any security to or purchase any security from a client, or in acting as salesperson for a person other than such client, knowingly effect any sale or purchase of any security for the account of such client, without disclosing to the client in writing before the completion of the transaction the capacity in which the investment adviser or investment adviser representative is acting and obtaining the consent of the client to the transaction; or engage in any act, practice, or course of business that is fraudulent, deceptive, or manipulative.

(15) No investment adviser or investment adviser representative may take or have custody of any securities or funds of any person, except as provided in rules adopted by the Division.

(16) In the solicitation of clients or prospective clients, no person may make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made not misleading in light of the circumstances under which the statements were made.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	01-20-00	p. 1536
Reported, H. Civil & Commercial Law	05-09-00	p. 1902

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