

Fiscal Note & Local Impact Statement

127th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Am. Sub. H.B. 404** DATE: **February 5, 2008**
STATUS: **As Passed by the House** SPONSOR: **Reps. Hottinger and Barrett**
LOCAL IMPACT STATEMENT REQUIRED: **No — No local cost**
CONTENTS: **Would make changes to the law governing viatical settlements**

State Fiscal Highlights

STATE FUND	FY 2008	FY 2009	FUTURE YEARS
General Revenue Fund			
Revenues	Potential gain	Potential gain	Potential gain
Expenditures	- 0 -	- 0 -	- 0 -
Department of Insurance Operating Fund			
Revenues	Potential minimal gain or loss	Potential minimal gain or loss	Potential minimal gain or loss
Expenditures	Potential minimal increase	Potential minimal increase	Potential minimal increase

Note: The state fiscal year is July 1 through June 30. For example, FY 2008 is July 1, 2007 – June 30, 2008.

- The bill would authorize the Department of Insurance to establish a new category of licensee—that of life expectancy provider. Applications to operate as a life expectancy provider in Ohio are to be accompanied by a fee that would be set by the Superintendent of Insurance by rule. Department officials indicate that the new category is a type of viatical settlement provider—an existing category of licensee. Thus, Department officials report that they do not expect any change in the overall number of licensees or in revenue from licenses.
- The bill would require viatical settlement brokers to complete at least 15 hours of continuing education every two years under the direction of the Superintendent of Insurance. Department officials believe that this provision would create, at most, a minimal amount of additional revenue to the Department of Insurance Operating Fund and that there would be no additional cost from the provision.
- The bill would designate that certain actions are fraudulent viatical settlement acts. Such acts may incur a civil penalty up to \$10,000 per violation, with any revenue resulting from such penalties deposited into the GRF. The amount of revenue that might be raised by these provisions would depend on the compliance of industry participants with the new provisions of viatical settlement law.
- The bill would establish new reporting requirements to the Superintendent of Insurance. It would also authorize the Superintendent to impose fees to accompany some of the reports, and penalties of up to \$25,000 for failure to file



some of the reports. The bill does not designate a fund to receive any revenue that may result from the penalties. Department officials expect any costs or revenue resulting from these provisions to be minimal.

Local Fiscal Highlights

- No direct fiscal effect on political subdivisions.
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Detailed Fiscal Analysis

H.B. 404 would make several changes to the law governing viatical settlements. A viatical settlement, generally speaking, is an arrangement for someone to purchase the rights to the death benefits from a life insurance policy while the insured individual remains alive.

Under existing law, the Department of Insurance (ODI) licenses viatical settlement providers and viatical settlement brokers, and regulates their activities. The bill extends ODI's licensing authority to a new licensee called a "life expectancy provider," which is defined in section 3916.01(I) of the bill. The bill would prohibit anyone from acting as a life expectancy provider in Ohio without obtaining a license from ODI, with limited exceptions. Such licenses would need to be renewed annually, and would require the applicant to pay a fee upon initial application and when renewing the license. Receipts from the fee would be paid into the Department of Insurance Operating Fund (Fund 5540, formerly Fund 554), and the amount of the fee is to be determined by the Superintendent of Insurance by rule. The bill also would establish a requirement that viatical settlement brokers complete at least 15 hours of continuing education biennially under the supervision of ODI. The Superintendent would be required to adopt rules governing this requirement, and any fees that might be associated with the continuing education program would apparently be paid into Fund 5540. The bill would prohibit viatical settlement brokers and producers that are business affiliates from dealing with each other on a given viatical settlement, and defines doing so to be a fraudulent viatical settlement act. Certain other actions, detailed in section 3916.171 of the bill, are also newly designated to be fraudulent viatical settlement acts.

The bill would establish new reporting requirements for certain industry participants. Viatical settlement providers, brokers, and life expectancy providers would be required to file annual statements with the Superintendent of Insurance. Any viatical settlement provider that failed to file the annual statement on time would be subject to a penalty of \$250 per day, up to \$25,000. The bill does not specify a fund that would receive any receipts from the penalty. The bill also would require viatical settlement providers to file financial statements with the Superintendent quarterly and annually. And all licensees would be required to file samples of their advertising materials with the Superintendent. The bill would authorize the Superintendent to impose a fee to accompany the filing of advertising materials. The amount of the fee and the fund into which it should be deposited are not specified by the bill. Finally, the bill would eliminate an existing requirement that nonrenewal of a license to a viatical settlement provider or broker is subject to Chapter 119. of the Revised Code.

The bill would make a number of other changes to the conditions under which viatical settlements may be made, and to the statutes governing viatical settlement providers and brokers. These other changes have no direct fiscal effects.

Fiscal effects

An official with ODI reports that the new designation of "life expectancy provider" is in use in the industry so that it is not truly new, and that it is a type of viatical settlement provider. ODI officials do not expect an increase in the overall number of applications for licenses or a fiscal effect on the Department from the bill. Since the fee amount for life expectancy providers has not been determined yet, this expectation seems to imply that fee amounts for a license to conduct business as a life expectancy provider would be the same as those currently in force for viatical settlement providers. The Department's web site lists fee amounts of \$1,000 for an initial application and \$500 for renewals of a license to be a viatical settlement provider. The expectation of ODI officials also seems to imply that those currently licensed as viatical settlement providers would not have to pay the initial application fee if they choose to switch to a license as a life expectancy provider. Though the Department does not expect a cost or a change in revenue from the provisions of the bill related to licensing life expectancy providers, those provisions could increase revenue to Fund 5540 and increase expenditures from Fund 5540. It is also possible that the Department could set a fee amount that is lower than the current amount for viatical settlement providers. If it were to do so, and if a number of current viatical settlement providers switched to a license as a life expectancy provider, there could be a loss of revenue. Based on the expectations of Department officials, any potential increases or decreases would likely be minimal.

Department officials do not expect the continuing education provision of the bill to create a "meaningful" increase in revenue, nor do they expect it to create costs for the Department. They also do not expect the new reporting requirements to create more than a minimal increase in costs and revenue.

The provision that establishes new fraudulent viatical settlement acts could lead to a civil penalty (under section 3916.19 of the Revised Code) of up to \$10,000 per violation. Any revenue resulting from such a penalty would be deposited into the GRF. The amount of any such revenue would depend on compliance of viatical settlement providers and brokers with this provision of the bill.

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