

1 State of Arkansas  
2 81st General Assembly  
3 Regular Session, 1997

# A Bill

HOUSE BILL 1862

4  
5 By: Representative McGee

## For An Act To Be Entitled

9 "AN ACT TO AUTHORIZE THE ARKANSAS INSURANCE COMMISSIONER  
10 TO REGULATE VIATICAL SETTLEMENT CONTRACTS SOLICITED OR  
11 SOLD IN THIS STATE; TO AUTHORIZE THE INSURANCE  
12 COMMISSIONER TO LICENSE VIATICAL SETTLEMENT PROVIDERS; AND  
13 FOR OTHER PURPOSES."

## Subtitle

15 "AUTHORIZE THE INSURANCE COMMISSIONER TO  
16 REGULATE VIATICAL SETTLEMENTS IN  
17 ARKANSAS"

19  
20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

21  
22 SECTION 1. Chapter 81 of Title 23 is hereby amended by adding new  
23 subchapter Five (5) on Viatical Settlement Contracts immediately following  
24 current subchapter 4 at the end of the existing chapter to read as follows:

25 "§23-81-501. SHORT TITLE. This act may be cited as the 'Viatical  
26 Settlements Act'.

27  
28 §23-81-502. DEFINITIONS.

29 (a) 'Activities of Daily Living' for purposes of this act include each  
30 of the following:

- 31 (1) Eating;  
32 (2) Toileting;  
33 (3) Transferring;  
34 (4) Bathing;  
35 (5) Dressing; and  
36 (6) Continence.

1           (b) 'Chronically Ill Individual':  
 2                   (1) means any individual who has been certified by a licensed  
 3 health care practitioner as:  
 4                   (A) being unable to perform without substantial assistance  
 5 from another individual at least two (2) activities of daily living for a  
 6 period of at least ninety (90) days due to a loss of functional capacity;  
 7                   (B) having a level of disability similar to the level of  
 8 disability described in subdivision (1) above; or  
 9                   (C) requiring substantial supervision to protect such  
 10 individual from threats to health and safety due to severe cognitive  
 11 impairment.  
 12                   (2) shall not include any individual otherwise meeting the  
 13 requirements of the preceding subdivision unless within the preceding twelve  
 14 (12) month period a licensed health care practitioner has certified that such  
 15 individual meets such requirements.  
 16           (c) Commissioner or Insurance Commissioner means the Insurance  
 17 Commissioner of the State of Arkansas.  
 18           (d) Department means the Arkansas Insurance Department.  
 19           (e) Person means any legal entity, natural or artificial, including but  
 20 not limited to individuals, partnerships, associations, trusts or  
 21 corporations.  
 22           (f) Regulation means any rule or regulation promulgated by the  
 23 Insurance Commissioner unless the context requires otherwise.  
 24           (g) Terminally Ill Individual means an individual who has been  
 25 certified by a physician as having an illness or physical condition which can  
 26 reasonably be expected to result in death in twenty-four (24) months or less  
 27 after the date of certification.  
 28           (h) Viatical Settlement Broker means an individual, partnership,  
 29 corporation or other entity who or which for another and for a fee, commission  
 30 or other valuable consideration, offers or advertises the availability of  
 31 viatical settlements, introduces viators to viatical settlement providers, or  
 32 offers or attempts to negotiate viatical settlements between a viator and one  
 33 (1) or more viatical settlement providers. Viatical settlement broker does  
 34 not include an attorney, accountant or financial planner retained to represent  
 35 the viator whose compensation is not paid by the viatical settlement provider.  
 36           (i) Viatical Settlement Contract means a written agreement entered into

1 between a viatical settlement provider and a person owning a life insurance  
 2 policy or who owns or is covered under a group policy insuring the life of a  
 3 person who is terminally or chronically ill. The agreement shall establish the  
 4 terms under which the viatical settlement provider will pay compensation or  
 5 anything of value, which compensation or value is less than the expected death  
 6 benefit of the insurance policy or certificate, in return for the  
 7 policyowner's assignment, transfer, sale, devise or bequest of the death  
 8 benefit or ownership of the insurance policy or certificate to the viatical  
 9 settlement provider.

10 (j) Viatical Settlement Provider :

11 (1) means any person regularly engaged in the trade or business  
 12 of purchasing or taking assignments of life insurance contracts on the lives  
 13 of insureds who are terminally or chronically ill as defined in this act if:

14 (A) such person is licensed for such purpose with respect  
 15 to insureds described as terminally or chronically ill in the state in which  
 16 the insured resides; or

17 (B) such person meets the requirements of §23-81-508 and  
 18 §23-81-509 of this act and of any companion regulation promulgated by the  
 19 commissioner in compliance with the provisions of this act, in the case of an  
 20 insured who resides in a state not requiring licensure of such persons as  
 21 described in subdivision (1) above; and

22 (2) means any person which enters into an agreement, with a  
 23 person who owns a life insurance policy or who is covered under a group policy  
 24 insuring the life of a person who has a catastrophic or life threatening  
 25 illness or condition, under the terms of which the viatical settlement  
 26 provider pays compensation or anything of value, which compensation or value  
 27 is less than the expected death benefit of the insurance policy or  
 28 certificate, in return for the policyowner's assignment, transfer, sale,  
 29 devise or bequest of the death benefit or ownership of the insurance policy or  
 30 certificate to the viatical settlement provider; and

31 (3) does not include:

32 (A) Any bank, savings bank, savings and loan association,  
 33 credit union or other licensed lending institution which takes an assignment  
 34 of a life insurance policy as collateral for a loan;

35 (B) The issuer of a life insurance policy providing  
 36 accelerated benefits under Arkansas Rule and Regulation 60, 'Accelerated

1 Benefits Provisions in Life Insurance Policies' promulgated by the Insurance  
 2 Commissioner; or

3 (C) Any natural person who enters into no more than one (1)  
 4 agreement in a calendar year for the transfer of life insurance policies for  
 5 any value less than the expected death benefit.

6 (k) Viator means the owner of a life insurance policy insuring the  
 7 life of a person with a terminal or chronic illness or condition or the  
 8 certificate holder who enters into an agreement under which the viatical  
 9 settlement provider will pay compensation or anything of value, which  
 10 compensation or value is less than the expected death benefit of the insurance  
 11 policy or certificate, in return for the viator's assignment, transfer, sale,  
 12 devise or bequest of the death benefit or ownership of the insurance policy or  
 13 certificate to the viatical settlement provider.

14

15 §23-81-503. LICENSE REQUIREMENTS.

16 (a) No individual, partnership, corporation or other entity may act as  
 17 a viatical settlement provider or enter into or solicit a viatical settlement  
 18 contract without first having obtained a license from the Insurance  
 19 Commissioner.

20 (b) Application for a viatical settlement provider license shall be  
 21 made to the commissioner by the applicant on a form prescribed by the  
 22 commissioner, and the application shall be accompanied by a fee of one hundred  
 23 dollars (\$100), which shall be deposited into The State Insurance Department  
 24 Trust Fund pursuant to §§23-61-701, et seq.

25 (c) Licenses may be renewed from year to year on or by July 1 of each  
 26 year upon payment of the annual renewal fee of one hundred dollars (\$100).  
 27 Failure to pay the fee as this act requires shall result in automatic  
 28 revocation of the license.

29 (d) The applicant shall provide such information as the commissioner  
 30 may require on forms prepared by the commissioner. The commissioner shall  
 31 have authority at any time to require the applicant to disclose fully the  
 32 identity of all stockholders, partners, officers, directors and employees. The  
 33 commissioner may in his discretion refuse to issue a license in the name of  
 34 any firm, partnership or corporation, if he is not satisfied that any officer,  
 35 director, employee, stockholder or partner thereof, who may materially  
 36 influence the applicant's conduct or actions, meets the standards of this act.

1       (e) A license as a viatical settlement provider issued to a  
 2 partnership, corporation or other entity authorizes all members, officers,  
 3 directors and designated employees to act as viatical settlement providers  
 4 under the license, so long as such persons are named in the application and/or  
 5 any subsequent supplements, amendments or addendums to the application on the  
 6 commissioner's records.

7       (f) Upon the filing of an application and the payment of the license  
 8 fee, the commissioner shall make an investigation of each applicant and may  
 9 issue a license if the commissioner finds that the applicant:

10               (1) Has provided a detailed plan of operation; and

11               (2) Is competent and trustworthy and intends to act in good faith  
 12 in the capacity involved in the license applied for; and

13               (3) Has a good business reputation and has had experience,  
 14 training or education so as to be qualified in the business for which the  
 15 license is applied for;

16               (4) If a corporation, is a corporation incorporated under and  
 17 authorized by the laws of this state or is a foreign corporation authorized to  
 18 transact business in this state; and is in good standing according to the  
 19 records of the Arkansas Secretary of State if and as applicable; and

20               (5) If a partnership, is a partnership organized under the laws  
 21 of this state or is a non-resident partnership authorized to transact business  
 22 in this state.

23       (g) The commissioner shall not issue any license to any nonresident  
 24 applicant, unless a written designation as agent for service of process is  
 25 filed and maintained with the commissioner; or the applicant has filed with  
 26 the commissioner his/its written irrevocable consent that any action against  
 27 the applicant may be commenced against the applicant by service of process on  
 28 the Insurance Commissioner and that the applicant submits to the jurisdiction  
 29 of this state.

30

31       §23-81-504. LICENSE REVOCATION.

32       (a) The commissioner shall have the right to suspend, revoke or refuse  
 33 to renew the license of any viatical settlement provider if the commissioner  
 34 finds that:

35               (1) There was any misrepresentation in the application for the  
 36 license;

1           (2) The holder of the license has been guilty of fraudulent or  
 2 dishonest practices, is subject to a final administrative action, or is  
 3 otherwise shown to be untrustworthy or incompetent to act as a viatical  
 4 settlement provider;

5           (3) The licensee demonstrates a pattern of unreasonable payments  
 6 to policyowners;

7           (4) The licensee has been convicted of a felony or any  
 8 misdemeanor of which criminal fraud is an element; or

9           (5) The licensee has violated any of the provisions of this act.

10          (b) Before the commissioner shall deny a license application or  
 11 suspend, revoke or refuse to renew the license of a viatical settlement  
 12 provider, the commissioner shall conduct a hearing in accordance with the  
 13 Arkansas Administrative Procedure Act, §§25-15-201, et seq.

14

15          §23-81-505. APPROVAL OF VIATICAL SETTLEMENTS CONTRACTS.

16          No viatical settlement provider may use any viatical settlement contract  
 17 in this state unless it has been filed with and approved by the commissioner.  
 18 Any viatical settlement contract form filed with the commissioner shall be  
 19 deemed approved if it has not been disapproved within sixty (60) days of the  
 20 filing. The commissioner shall disapprove a viatical settlement contract form  
 21 if, in the commissioner's opinion, the contract or provisions contained  
 22 therein are unreasonable, contrary to the interests of the public, or  
 23 otherwise misleading or unfair to the policyowner.

24

25          §23-81-506. REPORTING REQUIREMENTS.

26          Each licensee shall file with the commissioner on or before March 1 of  
 27 each year an annual statement containing such information as the commissioner  
 28 by rule may prescribe.

29

30          §23-81-507. EXAMINATION.

31          (a) The commissioner may, when the commissioner deems it reasonably  
 32 necessary to protect the interests of the public, examine the business and  
 33 affairs of any licensee or applicant for a license. The commissioner shall  
 34 have the authority to order any licensee or applicant to produce any records,  
 35 books, files or other information reasonably necessary to ascertain whether or  
 36 not the licensee or applicant is acting or has acted in violation of the law

1 or otherwise contrary to the interests of the public. The expenses incurred  
 2 in conducting any examination shall be paid by the licensee or applicant.

3 (b) Names and individual identification data for all viators shall be  
 4 considered private and confidential information and shall not be disclosed by  
 5 the commissioner, unless required by law.

6 (c) Records of all transactions of viatical settlement contracts shall  
 7 be maintained by the licensee and shall be available to the commissioner for  
 8 inspection during reasonable business hours.

9

10 §23-81-508. DISCLOSURE.

11 A viatical settlement provider shall disclose the following information  
 12 to the viator no later than the date the viatical settlement contract is  
 13 signed by all parties:

14 (a) Possible alternatives to viatical settlement contracts for persons  
 15 with Terminal or Chronic illnesses, including, but not limited to, accelerated  
 16 benefits offered by the issuer of the life insurance policy;

17 (b) The fact that some or all of the proceeds of the viatical  
 18 settlement may be taxable, and that assistance should be sought from a  
 19 personal tax advisor;

20 (c) The fact that the viatical settlement could be subject to the  
 21 claims of creditors;

22 (d) The fact that receipt of a viatical settlement may adversely affect  
 23 the recipient's eligibility for Medicaid or other government benefits or  
 24 entitlements, and that advice should be obtained from the appropriate  
 25 agencies;

26 (e) The policyowner's right to rescind a viatical settlement contract  
 27 within thirty (30) days of the date it is executed by all parties or fifteen  
 28 (15) days of the receipt of the viatical settlement proceeds by the viator,  
 29 whichever is less, as provided in §23-81-509(c) of this act; and

30 (f) The date by which the funds will be available to the viator and the  
 31 source of the funds.

32

33 §23-81-509. GENERAL RULES.

34 (a) A viatical settlement provider entering into a viatical settlement  
 35 contract with any person with a Terminal or Chronic Illness or condition shall  
 36 first obtain:

- 1           (1) A written statement from a licensed attending physician that  
 2 the person is of sound mind and under no constraint or undue influence; and  
 3           (2) A witnessed document in which the person:  
 4                   (A) Consents to the viatical settlement contract;  
 5                   (B) Acknowledges the Terminal or Chronic Illness;  
 6                   (C) Represents that he or she has a full and complete  
 7 understanding of the viatical settlement contract;  
 8                   (D) Acknowledges that he or she has a full and complete  
 9 understanding of the benefits of the life insurance policy;  
 10                   (E) Authorizes release of his or her medical records; and  
 11                   (F) Acknowledges that he or she has entered into the  
 12 viatical settlement contract freely and voluntarily.

13           (b) All medical information solicited or obtained by any licensee shall  
 14 be subject to the applicable provision of state law relating to  
 15 confidentiality of medical information.

16           (c) All viatical settlement contracts entered into in this state shall  
 17 contain an unconditional refund provision of at least thirty (30) days from  
 18 the date of the contract, or fifteen (15) days of the receipt of the viatical  
 19 settlement proceeds, whichever is less.

20           (d) Immediately upon receipt from the viator of documents to effect the  
 21 transfer of the insurance policy, the viatical settlement provider shall pay  
 22 the proceeds of the settlement to an escrow or trust account managed by a  
 23 trustee or escrow agent in a bank approved by the commissioner, pending  
 24 acknowledgment of the transfer by the issuer of the policy. The trustee or  
 25 escrow agent shall be required to transfer the proceeds due to the viator  
 26 immediately upon receipt of acknowledgment of the transfer from the insurer.

27           (e) Failure to tender the viatical settlement by the date disclosed to  
 28 the viator renders the contract null and void.

29

30           §23-81-510. AUTHORITY TO PROMULGATE STANDARDS.

31           The commissioner shall have the authority to:

- 32                   (a) Promulgate regulations implementing this act; and  
 33                   (b) Establish standards for evaluating reasonableness of payments under  
 34 viatical settlement contracts. This authority includes, but is not limited  
 35 to, regulation of discount rates used to determine the amount paid in exchange  
 36 for assignment, transfer, sale, devise or bequest of a benefit under a life



1 insurance policy; and

2 (c) Establish appropriate licensing requirements and fees for agents  
 3 and brokers; and

4 (d) Require a bond.

5

6 §23-81-511. UNFAIR TRADE PRACTICES.

7 A violation of this act shall be deemed or considered an unfair trade  
 8 practice under §§23-66-201, et seq., as appropriate, and subject to the  
 9 penalties contained in that subchapter, including §23-66-210 and §23-66-211.

10

11 §23-81-512. EFFECTIVE DATE.

12 This act shall apply to all new viatical settlement contracts  
 13 solicited, sold, issued, issued for delivery, or to be performed in this state  
 14 on and after January 1, 1998. Further, no person shall act as or hold  
 15 himself out to be a viatical settlement provider, broker or agent in this  
 16 state or solicit or sell viatical settlement contracts issued, issued for  
 17 delivery or to be performed in this state unless first licensed or registered  
 18 in this state pursuant to this act and is otherwise acting in conformity with  
 19 this act."

20

21 SECTION 2. All provisions of this Act of a general and permanent  
 22 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
 23 Code Revision Commission shall incorporate the same in the Code.

24

25 SECTION 3. If any provision of this Act or the application thereof to  
 26 any person or circumstance is held invalid, such invalidity shall not affect  
 27 other provisions or application of the Act which can be given effect without  
 28 the invalid provision or application, and to this end the provisions of the  
 29 Act are declared to be severable.

30

31 SECTION 4. All laws and parts of laws in conflict with this Act are  
 32 hereby repealed.

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