

H. 3/22/99 Commerce & Regulation
H. 3/24/99 Do Pass

FILED MAR 11 1999

SENATE FILE 410
BY COMMITTEE ON COMMERCE

(SUCCESSOR TO SF 354)

Passed Senate, Date ^(p. 688) 3/18/99 Passed House, Date ^(p. 1184) 4/12/99
Vote: Ayes 48 Nays 1 Vote: Ayes 93 Nays 0
Approved May 18, 1999

A BILL FOR

1 An Act providing for the regulation of viatical settlement
2 contracts when sold as investments.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SF 410

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1 Section 1. Section 502.102, subsection 13, Code 1999, is
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. c. With respect to a viatical settlement
4 contract, "issuer" means a person involved in creating,
5 transferring, or selling to an investor any interest in such a
6 contract, including but not limited to fractional or pooled
7 interests, but does not include an agent or a broker-dealer.

8 Sec. 2. Section 502.102, subsection 19, Code 1999, is
9 amended to read as follows:

10 19. "Security" means any note; stock; treasury stock;
11 bond; debenture; evidence of indebtedness; certificate of
12 interest or participation in a profit sharing agreement;
13 collateral trust certificate; preorganization certificate or
14 subscription; transferable share; investment contract;
15 viatical settlement contract, or any fractional or pooled
16 interest in such contract; voting trust certificate;
17 certificate of deposit for a security; fractional undivided
18 interest in an oil, gas, or other mineral lease or in payments
19 out of production under such a lease, right, or royalty; an
20 interest in a limited liability company or in a limited
21 liability partnership or any class or series of such interest,
22 including any fractional or other interest in such interest;
23 or, in general, any interest or instrument commonly known as a
24 "security", or any certificate of interest or participation
25 in, temporary or interim certificate for, receipt for,
26 guarantee of, or warrant or right to subscribe to or purchase,
27 any of the foregoing. "Security" does not include an
28 insurance or endowment policy or annuity contract under which
29 an insurance company promises to pay money either in a lump
30 sum or periodically for life or for some other specified
31 period. "Security" also does not include an interest in a
32 limited liability company or a limited liability partnership
33 if the person claiming that such an interest is not a security
34 proves that all of the members of the limited liability
35 company or limited liability partnership are actively engaged

1 in the management of the limited liability company or limited
2 liability partnership; provided that the evidence that members
3 vote or have the right to vote, or the right to information
4 concerning the business and affairs of the limited liability
5 company or limited liability partnership, or the right to
6 participate in management, shall not establish, without more,
7 that all members are actively engaged in the management of the
8 limited liability company or limited liability partnership.

9 Sec. 3. Section 502.102, Code 1999, is amended by adding
10 the following new subsection:

11 NEW SUBSECTION. 20A. "Viatical settlement contract" means
12 an agreement for the purchase, sale, assignment, transfer,
13 devise, or bequest of any portion of the death benefit or
14 ownership of a life insurance policy or contract, for
15 consideration which is less than the expected death benefit of
16 the life insurance policy or contract.

17 Sec. 4. Section 502.202, Code 1999, is amended by adding
18 the following new subsection:

19 NEW SUBSECTION. 19. A viatical settlement contract, or
20 fractional or pooled interest in such contract, provided any
21 of the following conditions are satisfied:

22 a. The assignment, transfer, sale, devise, or bequest of a
23 death benefit of a life insurance policy or contract, is made
24 by the viator to an insurance company as provided under Title
25 13, subtitle 1.

26 b. The assignment, transfer, sale, devise, or bequest of a
27 life insurance policy or contract, for any value less than the
28 expected death benefit, is made by the viator to a family
29 member or other person who enters into no more than one such
30 agreement in a calendar year.

31 c. A life insurance policy or contract is assigned to a
32 bank, savings bank, savings and loan association, credit
33 union, or other licensed lending institution as collateral for
34 a loan.

35 d. Accelerated benefits are exercised as provided in the

1 life insurance policy or contract and consistent with
2 applicable law.

3 EXPLANATION

4 This bill provides specific authority for the regulation of
5 viatical settlement contracts when they are sold as
6 investments.

7 Code section 502.102 is amended to provide a definition of
8 viatical settlement contract. The Code section is amended to
9 provide that, with respect to a viatical settlement contract,
10 "issuer" means a person involved in creating, transferring, or
11 selling to an investor any interest in such a contract,
12 including but not limited to fractional or pooled interests,
13 but does not include an agent or a broker-dealer. The Code
14 section is also amended to define a viatical settlement
15 contract as a security.

16 Code section 502.202 is amended to establish new exemptions
17 for certain sales of viatical settlement contracts, including
18 sales to licensed insurance companies, an isolated assignment
19 to a family member or other individual, an assignment to a
20 financial institution as collateral, or the acceleration of
21 benefits under the terms of the policy or contract.

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AN ACT
 PROVIDING FOR THE REGULATION OF VIATICAL SETTLEMENT
 CONTRACTS WHEN SOLD AS INVESTMENTS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 502.102, subsection 13, Code 1999, is amended by adding the following new paragraph:

NEW PARAGRAPH. c. With respect to a viatical settlement contract, "issuer" means a person involved in creating, transferring, or selling to an investor any interest in such a contract, including but not limited to fractional or pooled interests, but does not include an agent or a broker-dealer.

Sec. 2. Section 502.102, subsection 19, Code 1999, is amended to read as follows:

19. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical settlement contract, or any fractional or pooled interest in such contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under such a lease, right, or royalty; an interest in a limited liability company or in a limited liability partnership or any class or series of such interest, including any fractional or other interest in such interest; or, in general, any interest or instrument commonly known as a "security", or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include an

insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period. "Security" also does not include an interest in a limited liability company or a limited liability partnership if the person claiming that such an interest is not a security proves that all of the members of the limited liability company or limited liability partnership are actively engaged in the management of the limited liability company or limited liability partnership; provided that the evidence that members vote or have the right to vote, or the right to information concerning the business and affairs of the limited liability company or limited liability partnership, or the right to participate in management, shall not establish, without more, that all members are actively engaged in the management of the limited liability company or limited liability partnership.

Sec. 3. Section 502.102, Code 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 20A. "Viatical settlement contract" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of any portion of the death benefit or ownership of a life insurance policy or contract, for consideration which is less than the expected death benefit of the life insurance policy or contract.

Sec. 4. Section 502.202, Code 1999, is amended by adding the following new subsection:

NEW SUBSECTION. 19. A viatical settlement contract, or fractional or pooled interest in such contract, provided any of the following conditions are satisfied:

a. The assignment, transfer, sale, devise, or bequest of a death benefit of a life insurance policy or contract, is made by the viator to an insurance company as provided under Title 13, subtitle 1.

b. The assignment, transfer, sale, devise, or bequest of a life insurance policy or contract, for any value less than the expected death benefit, is made by the viator to a family

member or other person who enters into no more than one such agreement in a calendar year.

c. A life insurance policy or contract is assigned to a bank, savings bank, savings and loan association, credit union, or other licensed lending institution as collateral for a loan.

d. Accelerated benefits are exercised as provided in the life insurance policy or contract and consistent with applicable law.

MARY E. KRAMER
President of the Senate

RON J. CORBETT
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 410, Seventy-eighth General Assembly.

MICHAEL E. MARSHALL
Secretary of the Senate

Approved May 18, 1999

THOMAS J. VILSACK
Governor