JENNIFER M. GRANHOLM
GOVERNOR

STATE OF MICHIGAN
OFFICE OF FINANCIAL AND INSURANCE REGULATION
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
STANLEY "SKIP" PRUSS, DIRECTOR

KEN ROSS
COMMISSIONER

BILL ANALYSIS

BILL NUMBER: HB 4890 and HB 4891, as introduced

TOPIC: Prohibit STOLI

SPONSOR: Representative Barb Byrum

CO-SPONSORS: Representatives Rocca, Daley, Brown, Espinoza, Polidori, Walsh, Jones, Young, Segal, Cogen-Lipton, Coulouris, Corriveau, Switalski, Kandrevas, Scripps, Pavlov, Green, Meadows, Sheltrown, Tlaib, Roberts, Bauer

COMMITTEE: Insurance

DATE: May 13, 2009

POSITION

The Office of Financial and Insurance Regulation (OFIR) supports this legislation.

PROBLEM/BACKGROUND

Viatical settlement investments were first introduced 15 to 20 years ago due in large part to the emerging acquired immune deficiency syndrome (AIDS) mortalities. Individuals with AIDS that also had life insurance policies were approached to see if they had an interest in selling the policies so they would have access to the money that was otherwise going to be paid on their behalf to a beneficiary or to their estate.

Over the years, viatical settlement transactions have evolved. The viatical settlement transaction uses an insurance product to be sold in a secondary market as the financial instrument on which the investment is based. It appears to OFIR that there has been an increase in activity in the viatical settlement market. As the economy grows worse, more holders of life insurance policies are using the viatical settlement market to acquire cash when the life insurance policy might otherwise lapse due to nonpayment of premiums.

Recently, concerns have arisen over the development of the stranger originated life insurance (STOLI) and whether it has begun to undermine the integrity of the life insurance transaction. STOLI is a practice to initiate a life insurance policy for the benefit of a third party investor who, at the time of the policy origination, has no insurable interest in the life of the insured. Concerns over whether STOLI transactions have undermined states' long standing insurable interest

Street/Overnight Delivery Address: 611 W. OTTAWA STREET, 3rd FLOOR, LANSING, MICHIGAN 48933
Mailing Address: P.O. BOX 30220, LANSING, MICHIGAN 48909-7720
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standards have also been raised. STOLI violates the true purpose of life insurance which is protection.

DESCRIPTION OF BILL

House Bill 4890 adds the regulation of viatical settlement contracts and the licensing of persons involved in these transactions to the Michigan Insurance Code. The bill creates chapter 43, Viatical Settlement Contracts, to place the regulatory framework for this type of transaction within the authority of the Commissioner of the Office of Financial and Insurance Regulation. This legislation also repeals Act 386 of 1996, Viatical Settlement Contracts, MCL 550.521 through 550.528. This legislation also prohibits transactions that are fraudulent life settlements, including STOLI transactions.

House Bill 4890 includes valuable consumer protections:

- The licensing procedure requires fingerprinting and background checks for applicants.
- Entities must identify all persons who will act as viatical settlement providers or viatical settlement facilitators.
- Plans of operation, proof of financial responsibility, methods for determining life expectancy, advertising materials, and an anti-fraud plan all must be submitted for review.
- The legislation requires that a resident agent for service of process be identified and contains a requirement that 15 hours of continuing education be completed by the Provider and Facilitator every two years.
- Prior approval of documents and licensing requirements serve to protect consumers.
- House Bill 4890 provides for administrative enforcement, preserves private cause of action to viator, and provides for civil penalties and restitution.
- House Bill 4891 adds category, class, and maximum penalties to Section 15a of the Code of Criminal Procedure for felonious fraudulent acts or licensure violations related to viatical settlement transactions.

SUMMARY OF ARGUMENTS

Pro

The legislation adds a regulatory framework for viatical settlement contracts within the Michigan Insurance Code and clearly prohibits STOLI transactions.

The legislation also contains consumer protections for the viator.

Requiring periodic financial reporting to OFIR will provide transparency to viatical settlement transactions. In addition to the reporting requirements; the legislation requires submission of various forms and documents that will be subject to review and prior approval by OFIR staff.

The legislation contains penalty provisions which give the Commissioner resources to punish participants engaged in fraudulent conduct. It gives the Commissioner the ability to investigate all aspects of the viatical settlement transaction.

The legislation provides the Commissioner with the authority to promulgate rules relative to the relationship and responsibilities of insurers, viatical settlement providers, and viatical settlement facilitators; for establishing standards for evaluating the reasonableness of payments under viatical settlement contracts for persons who are terminally or chronically ill; and to establish appropriate licensing requirements, fees, and standards for continued licensure for viatical settlement providers and viatical settlement facilitators.

Con

Section 4307 of HB 4891 prescribes fees associated with licensure. Section 4360 gives the Commissioner authority to promulgate rules for, among other things, fees. OFIR recommends that fees be set via annual Order. If the Commissioner finds that the licensing fees are excessive or inadequate, it will be more efficient to change the amounts through changes to an Order rather than a legislative or rulemaking process.

Section 4311 gives the Commissioner 45 days to review the documents associated with the viatical settlement transaction. It has been reported that the transaction documents can be quite voluminous. The Commissioner should be given 60 days to review and approve these documents.

OFIR recommends adding the following language to section 4343(4): All monies collected under this section shall be credited to the Insurance Bureau Fund as provided in Section 225.

FISCAL/ECONOMIC IMPACT

OFIR has identified the following revenue or budgetary implications in the bill:

(a) To the Office of Financial and Insurance Regulation:

Budgetary: Administering Chapter 43 will require a significant commitment of OFIR resources. A more detailed workload/staff analysis is in development.

Physician "sound mind" statement, insured release of medical information, and verification of insurance coverage forms will have to be produced if the Commissioner chooses not to use the NAIC-created forms. OFIR will have to develop consumer information publications.

Staff will have to be trained in the areas of document review, consumer complaints and inquiries, and examinations.

Revenue: There will be an increase in revenue due to increased licensing fees being remitted by applicants seeking to be licensed as viatical settlement providers and viatical settlement facilitators.

Comments:

(b) To the Department of Labor & Economic Growth: None Known

(c) To the State of Michigan: None Known

(d) To Local Governments within this State: None Known

OTHER STATE DEPARTMENTS

In addition to OFIR, the Department of Corrections would be affected for persons found guilty of committing fraudulent acts under the legislation.

ANY OTHER PERTINENT INFORMATION

HB 4890 and HB 4891 are tie-barred.

ADMINISTRATIVE RULES IMPACT

HB 4890 would amend the Michigan Insurance Code. OFIR has general rulemaking authority under the Insurance Code, 1956 PA 218.

Ken Ross
Commissioner

5-13-09

Date