

## 1 SENATE BILL NO. 357

2 INTRODUCED BY D. RYAN

3 BY REQUEST OF THE STATE AUDITOR

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A VIATICAL DISCLOSURE FORM; DEFINING  
6 "VIATICAL SETTLEMENT PURCHASE AGREEMENT" AND "VIATICAL SETTLEMENT PURCHASER";  
7 REQUIRING THAT CERTAIN INFORMATION MUST BE DISCLOSED TO A VIATICAL SETTLEMENT  
8 PURCHASER BY A VIATICAL SETTLEMENT PROVIDER; AMENDING SECTIONS 33-1-501, 33-20-1302,  
9 AND 33-20-1311, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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13 **Section 1.** Section 33-1-501, MCA, is amended to read:

14 **"33-1-501. Filing and approval of forms.** (1) (a) An insurance policy or annuity contract form,  
15 certificate, enrollment form, application form, viatical disclosure form, printed rider or endorsement form,  
16 or form of renewal certificate may not be delivered or issued for delivery in Montana unless the form has  
17 been filed with and approved by the commissioner and, if required, the regulatory official of the state of  
18 domicile of the insurer. This provision does not apply to surety bonds or policies, riders, endorsements,  
19 or forms of unique character designed for and used with relation to insurance upon a particular subject or  
20 that relate to the manner of distribution of benefits or to the reservation of rights and benefits under life  
21 or disability insurance policies and are used at the request of the individual policyholder, contract holder,  
22 or certificate holder. Forms for use in property, marine, other than ocean marine and foreign trade  
23 coverages, casualty, and surety insurance coverages may be filed by a rating organization on behalf of its  
24 members and subscribers or by a member or subscriber on its own behalf.

25 (b) The approval of an insurance policy or annuity contract form, certificate, enrollment form,  
26 application form, or other related insurance form by the state of domicile may be waived by the  
27 commissioner if the commissioner considers the requirements of subsection (1)(a) unnecessary for the  
28 protection of Montana insurance consumers. If the requirement is waived, an insurer shall notify the  
29 commissioner in writing within 10 days of disapproval, denial, or withdrawal of approval of a form by the  
30 state of domicile.

1           (2) The filing must be made not less than 60 days in advance of delivery. Approval of a form by  
2 the commissioner constitutes a waiver of any unexpired portion of the waiting period. The commissioner  
3 may extend by not more than an additional 60 days the period within which the commissioner may  
4 approve or disapprove a form by giving notice of the extension before expiration of the initial 60-day  
5 period. The commissioner may at any time, after notice and for cause shown, withdraw any approval.

6           (3) Notice by the commissioner disapproving a form or withdrawing a previous approval must state  
7 the grounds for disapproval or withdrawal in sufficient detail to inform the insurer.

8           (4) The commissioner may exempt from the requirements of this section, for so long as the  
9 commissioner considers proper, an insurance document, form, or type of document or form to which, in  
10 the commissioner's opinion, this section may not practicably be applied or the filing and approval of which  
11 are not desirable or necessary for the protection of the public.

12           (5) This section applies to a form used by a domestic insurer for delivery in a jurisdiction outside  
13 Montana if the insurance supervisory official of the jurisdiction informs the commissioner that the form is  
14 not subject to approval or disapproval by the official and upon the commissioner's order requiring the form  
15 to be submitted to the commissioner for the purpose. The same standards apply to these forms as apply  
16 to forms for domestic use.

17           (6) This section and 33-1-502 do not apply to:

18           (a) reinsurance;

19           (b) policies or contracts not issued for delivery in Montana or delivered in Montana, except as  
20 provided in subsection (5);

21           (c) ocean marine and foreign trade insurances.

22           (7) Except as provided in chapter 21, group certificates that are delivered or issued for delivery  
23 in Montana for group insurance policies effectuated and delivered outside Montana but covering persons  
24 resident in Montana must be filed with the commissioner upon request. The certificates must meet the  
25 minimum provisions mandated by Montana if Montana law prevails over conflicting provisions of other  
26 state law."

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28           **Section 2.** Section 33-20-1302, MCA, is amended to read:

29           **"33-20-1302. Definitions.** As used in this part, unless the context requires otherwise, the  
30 following definitions apply:

1 (1) (a) "Viatical settlement broker" means an individual who, for a fee, commission, or other  
2 consideration:

3 (i) offers or advertises the availability of viatical settlement contracts;

4 (ii) introduces holders of life insurance policies or certificates insuring the lives of individuals with  
5 a terminal illness or condition to viatical settlement providers; or

6 (iii) offers or attempts to negotiate viatical settlement contracts between the policyholders or  
7 certificate holders and one or more viatical settlement providers.

8 (b) Viatical settlement broker does not mean an attorney, accountant, or financial planner retained  
9 to represent the policyholder or certificate holder unless compensation paid to the attorney, accountant,  
10 or consultant is paid by the viatical settlement provider.

11 (2) "Viatical settlement contract" means a written agreement between a viatical settlement  
12 provider and the holder of a group or individual life insurance policy insuring the life of an individual with  
13 a terminal illness or condition or between a viatical settlement provider and the certificate holder of a policy  
14 in which:

15 (a) the terms establish that the viatical settlement provider pays something of value in return for  
16 the policyholder's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit  
17 or ownership of the insurance policy or certificate to the viatical settlement provider; and

18 (b) the policyholder or certificate holder holds an irrevocable right under the policy or certificate  
19 to name the beneficiary.

20 (3) (a) "Viatical settlement provider" means a person who solicits, enters into, or negotiates  
21 viatical settlement contracts or offers to enter into or negotiate viatical settlement contracts.

22 (b) A viatical settlement provider may use the term "life settlement provider" to describe the  
23 business transacted under the license and may use the term "life settlement contract" instead of "viatical  
24 settlement contract".

25 (c) Viatical settlement provider does not mean:

26 (i) a bank, savings bank, savings and loan association, credit union, or other licensed lending  
27 institution that takes an assignment of a life insurance policy only as collateral for a loan;

28 (ii) an insurer issuing a life insurance policy providing accelerated benefits pursuant to 33-20-127  
29 or pursuant to the laws of the state to which the policy was subject when issued;

30 (iii) an individual who enters into a single agreement in a calendar year for the transfer of life

1 insurance policies for any value less than the expected death benefit; or

2 (iv) any corporation, partnership, or partner that purchases a life insurance contract of an employee  
3 or retiree of the corporation or of a partner. The settlement made on any contract exempt under this  
4 section must be reasonable and subject to the standards imposed on licensees under 33-20-1304.

5 (4) (a) "Viatical settlement purchase agreement" means a contract or agreement entered into by  
6 a viatical settlement purchaser with a viatical settlement provider to purchase a life insurance policy or an  
7 interest in a life insurance policy for the purpose of deriving an economic benefit.

8 (b) A viatical settlement purchase agreement does not include a viatical settlement contract.

9 (5) (a) "Viatical settlement purchaser" means a person who, for the purpose of deriving an  
10 economic benefit:

11 (i) gives consideration for a life insurance policy or an interest in the death benefits of a life  
12 insurance policy; or

13 (ii) owns, acquires, or is entitled to a beneficial interest in a trust that owns a viatical settlement  
14 contract or that is the beneficiary of a life insurance policy that has been or will be the subject of a viatical  
15 settlement contract.

16 (b) A viatical settlement purchaser does not include a licensed viatical settlement provider or  
17 licensed viatical settlement broker."

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19 **Section 3.** Section 33-20-1311, MCA, is amended to read:

20 **"33-20-1311. Disclosure of information to policyholder.** A viatical settlement provider shall  
21 disclose the information specified in this section to the policyholder or certificate holder entering the  
22 viatical settlement contract prior to the date on which the viatical settlement contract is signed by all  
23 parties. The disclosure must be in the form ~~prescribed~~ approved by the commissioner. The information  
24 must include the following:

25 (1) possible alternatives to viatical settlement contracts for persons with terminal illnesses or  
26 conditions, including but not limited to accelerated benefits offered by the issuer of the life insurance  
27 policy;

28 (2) the fact that some or all of the proceeds of the viatical settlement may be taxable and that  
29 assistance should be sought from a personal tax adviser. Viatical settlement brokers, viatical settlement  
30 providers, or their respective employees or agents may not act as personal tax advisers for purposes of

1 this disclosure requirement.

2 (3) the fact that the viatical settlement could be subject to the claims of creditors;

3 (4) the fact that receipt of a viatical settlement may adversely affect the recipient's eligibility for  
4 medicaid or other government benefits or entitlement and that advice should be obtained from the  
5 appropriate agencies;

6 (5) the right of a policyholder or certificate holder to rescind a viatical settlement contract as  
7 provided in 33-20-1308. The disclosure must state the deadlines for rescission and the return of proceeds  
8 received.

9 (6) the date by which the funds will be available to the policyholder or certificate holder and the  
10 source of the funds; and

11 (7) the fact that the viatical settlement contract is void if the viatical settlement provider or viatical  
12 settlement broker fails to tender payment of the proceeds as provided in the viatical settlement contract."

13

14 **NEW SECTION. Section 4. Disclosure of information to viatical settlement purchasers.** (1) A  
15 viatical settlement provider shall disclose the information specified in this section to a viatical settlement  
16 purchaser prior to the date on which the parties sign the viatical settlement purchase agreement.

17 (2) The viatical settlement purchaser shall date and sign the information disclosure. The viatical  
18 settlement provider shall provide a copy of the information disclosure to the viatical settlement purchaser.

19 (3) The information disclosure must include the following:

20 (a) that the viatical settlement purchaser will not receive payment until the insured dies;

21 (b) that the actual annual rate of return on a viatical settlement purchase agreement is dependent  
22 upon an accurate projection of the insured's life expectancy and the actual date of the insured's death and  
23 that an annual guaranteed rate of return is not determinable;

24 (c) that the viatical insurance contract is not a liquid purchase since it is impossible to predict the  
25 exact timing of its maturity, that the funds are probably not available until the death of the insured, and  
26 that there is not an established secondary market for the resale of viatical settlement products by the  
27 viatical settlement purchaser;

28 (d) that the viatical settlement purchaser may lose all benefits or may receive substantially reduced  
29 benefits if the insurer goes out of business during the term of the viatical settlement investment;

30 (e) (i) that the viatical settlement purchaser is responsible for payment of the insurance premium

1 or other costs related to the policy, if required by the terms of the viatical purchase agreement, and that  
2 these payments may reduce the viatical settlement purchaser's return and may continue beyond the  
3 insured's projected life expectancy; and

4 (ii) if a party other than the viatical settlement purchaser is responsible for the payment, that the  
5 name of that party must also be disclosed;

6 (f) the amount of the premium that a purchaser is required to pay, if applicable;

7 (g) that the viatical settlement purchaser may be responsible for payment of the insurance  
8 premium or other costs related to the policy if the insured returns to health;

9 (h) the amount of any fees or other expenses to be charged to the viatical settlement purchaser;

10 (i) whether or not the viatical settlement purchaser is entitled to a refund of all or part of the  
11 investment under the viatical settlement purchase agreement if the policy is later determined to be void;

12 (j) that group policies:

13 (i) may contain limitations on conversion rights;

14 (ii) may require additional premiums to be paid if the group policy is converted; and

15 (iii) may be terminated and replaced by another group policy, with benefits under the new policy  
16 that may be substantially less than those in the original coverage;

17 (k) for group policies, the name of the party responsible for the payment of any additional  
18 premiums;

19 (l) that there are risks associated with policy contestability, including the risk that the viatical  
20 settlement purchaser may not have a claim or may have only a partial claim to death benefits if the insurer  
21 rescinds the policy within the contestability period;

22 (m) whether or not the viatical settlement purchaser will be the beneficiary or owner of the policy  
23 and, if the viatical settlement purchaser is the beneficiary, the special risks associated with beneficiary  
24 status, including the risk that the beneficiary may be changed; ~~and~~

25 (n) a description of:

26 (i) the experience and qualifications of the person who has determined the life expectancy of the  
27 insured, such as in-house staff, independent physicians, or specialty firms that weigh medical and actuarial  
28 data;

29 (ii) the information on which the projection of life expectancy is based; and

30 (iii) the relationship of the person who has made the determination of life expectancy to the viatical

1 settlement provider, if any;

2 (O) ALL OF THE LIFE EXPECTANCIES OBTAINED IN THE PROCESS OF DETERMINING THE PRICE PAID TO THE VIATOR;

3 (P) A DESCRIPTION AND AMOUNT OF ANY LOAN OR OTHER ENCUMBRANCE AGAINST OR IN CONNECTION WITH THE

4 POLICY; AND

5 (Q) THAT THE VIATICAL SETTLEMENT PURCHASER IS ENCOURAGED TO CONSULT WITH AN ATTORNEY,

6 ACCOUNTANT, OR FINANCIAL PLANNER WHO IS NOT AFFILIATED WITH THE VIATICAL SETTLEMENT BROKER OR VIATICAL

7 SETTLEMENT PROVIDER PRIOR TO PURCHASE.

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9 NEW SECTION. Section 5. Codification instruction. [Section 4] is intended to be codified as an  
10 integral part of Title 33, chapter 20, part 13, and the provisions of Title 33, chapter 20, part 13, apply  
11 to [section 4].

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13 NEW SECTION. Section 6. Effective date. [This act] is effective January 1, 2002.

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