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COMMERCE AND TRADE

Viatical Investments: Regulate Viatical Investments by Changing Provisions Relating to Securities Exempt from Registration and to Change Certain Provisions Relating to Unlawful Practices

CODE SECTIONS:	O.C.G.A. §§ 10-5-2, -8, -12 (amended)
BILL NUMBER:	HB 1220
ACT NUMBER:	804
GEORGIA LAWS:	2002 Ga. Law 792
SUMMARY:	The Act subjects viatical transactions to governance by the securities office of the Secretary of State. The Act clarifies that the securities office has the legal authority to deal with issues arising under viatical instrument transactions.
EFFECTIVE DATE:	July 1, 2002

History

Prior to the 2002 Georgia General Assembly, Georgia's Secretary of State asked legislators to introduce legislation dealing with "alleged abuses of viatical instruments and vagueness over the [Secretary of State's] authority to deal with such complaints."¹ Viatical means "money for a journey" and the journey in this case is death.² A viatical settlement involves the sale of a life insurance policy in which one with a terminal illness sells his policy to a viatical settlement company for a lump sum cash payment.³ The viatical company then either keeps the policy or sells it to a third party investor.⁴ Then, the viatical settlement company or the third party investor pays the premium, makes itself the beneficiary, and collects the face value of the policy when the original policyholder

1. Electronic Mail Interview with Rep. Tracy Stallings, House District No. 100 (Apr. 4, 2002) [hereinafter Stallings Interview].

2. Electronic Mail Interview with Sen. Carol Jackson, Senate District No. 50 (June 24, 2002) [hereinafter Jackson Interview].

3. Audio Recording of House Proceedings, Feb. 28, 2002 (remarks by Rep. Tracy Stallings), at <http://www.state.ga.us/services/leg/audio/2002archive> [hereinafter House Audio].

4. *Id.*

dies from the terminal illness.⁵ The bill was introduced because many investors lost large sums of money due to claims by promoters of large returns that never materialized and because scam artists were “using older, less educated people who were in most cases critically ill” to steal the policies when many of the “victims needed the money from selling the policy to buy medicine.”⁶ The Act protects investors by treating viatical investments as commercial securities, making them subject to regulation under the Georgia securities division of the Secretary of State’s office.⁷

HB 1220

Introduction

Representatives Tracy Stallings of the 100th District, Butch Parrish of the 144th District, Ben L. Harbin of the 113th District, Robert Ray of the 128th District, and others sponsored HB 1220 and introduced it on February 4, 2002.⁸ The House assigned the bill to its Committee on Banks and Banking, which favorably reported the bill, as substituted, on February 26, 2002.⁹ The House adopted the Committee substitute and passed the bill nearly unanimously, with only one dissenting vote, on February 28, 2002.¹⁰

The Senate assigned HB 1220 to its Senate Banking and Financial Institutions Committee, which favorably reported the bill on March 8, 2002.¹¹ The Senate adopted and unanimously passed the bill on April 1, 2002.¹² The General Assembly forwarded the bill to Governor Roy Barnes, who signed HB 1220 into law on May 13, 2002.¹³

Consideration by the House Committee on Banks and Banking

5. *Id.*

6. *Id.*; Jackson Interview, *supra* note 2.

7. House Audio, *supra* note 3.

8. HB 1220, as introduced, 2002 Ga. Gen. Assem.; State of Georgia Final Composite Status Sheet, HB 1220, Apr. 12, 2002.

9. State of Georgia Final Composite Status Sheet, HB 1220, Apr. 12, 2002.

10. Georgia House of Representatives Voting Record, HB 1220 (Feb. 28, 2002); State of Georgia Final Composite Status Sheet, HB 1220, Apr. 12, 2002; House Audio, *supra* note 3.

11. State of Georgia Final Composite Status Sheet, HB 1220, Apr. 12, 2002.

12. *Id.*; Georgia Senate Voting Record, HB 1220 (Apr. 1, 2002).

13. State of Georgia Final Composite Status Sheet, HB 1220, Apr. 12, 2002.

The Committee favorably reported the bill, as substituted, on February 26, 2002.¹⁴ The Committee substitute broadened the language in proposed Section 2 (32)(D) of Georgia Code section 10-5-2.¹⁵ The Committee substitute further amended Georgia Code section 10-5-12 by deleting the word “audited” in Section 4(q)(b) relating to the financial statements of the viatical issuer.¹⁶ Committee changes also impacted Section 4(q)(5)(C)(D)(E), which limits those who can be viatical issuers or selling agents of the viatical investment.¹⁷ The House passed HB 1220, as substituted, on February 28, 2002 by a vote of 162 to 1.¹⁸

Consideration by the Senate Banking and Financial Institutions Committee

The bill was referred to the Senate Banking and Financial Institutions Committee on March 1, 2002.¹⁹ The Senate Banking and Financial Institutions Committee offered an amendment to HB 1220, and favorably reported the bill on March 8, 2002.²⁰ The Senate adopted the amendment and passed the bill.²¹ The House agreed to the Senate amendment and forwarded the bill to the Governor on April 30, 2002.²² Governor Roy Barnes signed HB 1220 into law on May 13, 2002.²³

14. Compare HB 1220, as introduced, 2002 Ga. Gen. Assem., with HB 1220 (HCS), 2002 Ga. Gen. Assem.

15. *Id.*

16. *Id.*

17. State of Georgia Final Composite Status Sheet, HB 1220, Apr. 12, 2002.

18. *Id.*; Georgia House of Representatives Voting Record, HB 1220 (Feb. 28, 2002).

19. State of Georgia Final Composite Status Sheet, HB 1220, Apr. 12, 2002.

20. *Id.*

21. *Id.*; Georgia Senate Voting Record, HB 1220 (Apr. 1, 2002).

22. State of Georgia Final Composite Status Sheet, HB 1220, Apr. 12, 2002; Georgia House of Representatives Voting Record, HB 1220 (Apr. 3, 2002).

23. 2002 Ga. Laws 792, §5, at 796.

*The Act**Code Section 10-5-2*

The Act amends Code section 10-5-2(a)(26) by adding the term “viatical investment” to the definition of a “security.”²⁴

Code Section 10-5-8

The Act amends Code section 10-5-8 by inserting new paragraph (12) to Section 3 to include viatical investments under the exempt securities provision.²⁵

Code Section 10-5-12

The Act amends Code section 10-5-12, relating to unlawful practices, by adding a new subsection (q).²⁶ Subsection (q) sets the requirements necessary to offer to sell or to sell viatical instruments in the state of Georgia.²⁷ First, the Act requires that the viatical issuer file a statement with the Commissioner that includes:

(A) [a] full description of the types of viatical instruments to be offered or sold . . . (B) [t]he financial statements of the viatical issuer . . . (C) [a] list of all dealers, salespersons, and agents authorized by the viatical issuer to sell in this state together with their securities registration numbers . . . (D) [a] list of all states in which the viatical issuer is licensed to purchase viatical settlement contracts, has a license pending or has been denied . . . (E) [a] list of all states in which the viatical issuer sells viatical investments pursuant to exemption, is licensed to sell viatical instruments, has an application pending or has been denied exemption or registration . . . (F) [a] copy of any escrow agreements . . . (G) [a] copy of all advertisements or sales literature and the text of any script . . . (H) [a] copy of all documents to be used to disclose the risk factors associated with the sale of a viatical investment . . . (I) [a] copy of all documents

24. Compare 1990 Ga. Laws 1534, §1, at 1544 (formerly found at O.C.G.A. § 10-5-2(a)(26)(1998)), with O.C.G.A. 10-5-2(a)(26) (Supp. 2002).

25. Compare 1998 Ga. Laws 1617 § 4, at 1637 (formerly found at O.C.G.A. § 10-5-8 (1998)), with O.C.G.A. 10-5-8 (2002).

26. O.C.G.A. § 10-5-12(q) (Supp. 2002).

27. *Id.*

to be used to conduct any determination of suitability of a viatical investment to the particular investor.²⁸

The Act further imposes an affirmative duty upon the viatical issuer to file amended or supplemental statements if a material change to any of the information in the statement occurs.²⁹ The Act further prevents any projections or representations regarding rates of return on any investment or a prospective investment, other than a rate of return expressed on an annual basis.³⁰ All policies must be retained for a minimum of five years after the policy matures and owners must provide copies of documents relating to the sale of that policy upon the request of the Commissioner.³¹

Finally, the Act excludes from the participation of the transfer of viatical investments any issuer or agent or officers, directors, partners, ten percent or greater stockholders, promoters, affiliates or escrow agents who within the last five years (A) had a stop order by any state securities administrator or the SEC; (B) has been convicted of a felony or misdemeanor in connection with the sale or purchase of any security, or any felony involving fraud or deceit; (C) has been subject to an administrative order or decision by a state security or insurance administrator or the SEC in which the decision has not been vacated; (D) has been subject to any administrative order or decision by any state or federal regulatory authority in which fraud or deceit was present or the decision has not been vacated; (E) has been prohibited from the use of a registration exemption; and (F) has been by any order, judgment; or decree of any court of competent jurisdiction, enjoined from engaging in the practice of purchasing or selling any securities or in making a false state filing.³²

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28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.*

32. *See* O.C.G.A. § 10-5-12(q)(Supp. 2002).