

House Bill 1220 (AS PASSED BY HOUSE AND SENATE)

By: Representatives Stallings of the 100th, Parrish of the 144th, Harbin of the 113th, Lord of the 121st, Ray of the 128th and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 5 of Title 10 of the Official Code of Georgia Annotated, relating to securities, so as to regulate viatical investments; to change certain provisions relating to definitions; to define certain terms; to change certain provisions relating to securities exempt from registration; to change certain provisions relating to unlawful practices; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 5 of Title 10 of the Official Code of Georgia Annotated, relating to securities, is amended in Code Section 10-5-2, relating to definitions, by striking paragraph (26) of subsection (a) and inserting in lieu thereof the following:

"(26) 'Security' means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of indebtedness, investment certificate, certificate of interest or participation in any profit-sharing agreement, certificate of interest in oil, gas, or other mineral rights, collateral trust certificates, preorganization certificate or subscription, transferable share, investment contract, viatical investment, voting-trust certificate, limited partnership interest, or beneficial interest in profits or earnings, or any other instrument commonly known as a security, including any certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, or warrant or right to subscribe to or purchase, any of the foregoing. The term 'investment contract' shall include but is not limited to an investment which holds out the possibility of return on risk capital even though the investor's efforts are necessary to receive such return if:

(A) Such return is dependent upon essential managerial or sales efforts of the issuer or its affiliates; ~~and~~

(B) One of the inducements to invest is the promise of promotional or sales efforts of the issuer or its affiliates in the investor's behalf; and

(C) The investor shall thereby acquire the right to earn a commission or other compensation from sales of rights to sell goods, services, or other investment contracts of the issuer or its affiliates.

~~'Security'~~ Security shall not mean any insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period nor any variable annuity contract as provided for and regulated under Title 33 and issued by a life insurance company licensed to do business in the State of Georgia nor shall it mean any interest in a residential unit and a rental management arrangement relating to such residential unit so long as the owner-participants under the rental management arrangement, whether optional or mandatory, do not participate directly in the income derived from the rental of units owned by others."

SECTION 2.

Said chapter is further amended in subsection (a) of said Code Section 10-5-2 by inserting new paragraphs to read as follows:

"(32) 'Viatical investment' means the contractual right to receive any portion of the death benefit or ownership of a life insurance policy or certificate for consideration that is less than the expected death benefit of the life insurance policy or certificate. Viatical investment does not include:

(A) Any sale or transfer of any portion of the death benefit or ownership of a life insurance policy or certificate by the insured or policy owner to a viatical issuer or to any person or entity regularly engaged in the business of reselling or transferring such benefits to viatical issuers;

(B) The assignment of a life insurance policy to a bank, savings bank, savings and loan association, credit union, or other institution licensed under the laws of any state or the United States as collateral for a loan;

(C) The obtaining of accelerated benefits from the issuer pursuant to the terms of a life insurance policy issued in accordance with the laws of this or another state; or

(D) The sale or transfer of any portion of the death benefit or ownership of a life insurance policy by an individual who enters into no more than one agreement in a calendar year regarding the transfer of life insurance policies insuring the life of only one person for consideration that is less than the death benefit, unless any third party receives, directly or indirectly, any fee, commission, or other remuneration in connection with said assignment.

(33) 'Viatical issuer' means, in the case of a fractional or pooled interest in viatical investments, any person who creates, for the purpose of sale, the fractional or pooled

1 interest, and in the case of a viatical investment that is not fractionalized or pooled, any
2 person engaged in the business of effecting transactions in viatical investments. A
3 viatical issuer pursuant to this Code section is an issuer within the definition contained
4 in this Code section."

5 **SECTION 3.**

6 Said chapter is further amended in Code Section 10-5-8, relating to securities exempt from
7 registration, by striking the period at the end of subparagraph (F) of paragraph (11) and
8 inserting "; or" in lieu thereof and by adding a new paragraph to read as follows:

9 "(12) Viatical investments."

10 **SECTION 4.**

11 Said chapter is further amended in Code Section 10-5-12, relating to unlawful practices, by
12 adding a new subsection to read as follows:

13 "(q) It shall be unlawful for any person to offer for sale or to sell viatical investments in
14 or from this state unless the following requirements are met:

15 (1) The viatical issuer first files with the commissioner a statement which provides the
16 following information:

17 (A) A full description of the types of viatical investments to be offered or sold,
18 including without limitation statements as to whether the underlying policies or
19 certificates will be whole, fractionalized, or pooled, whether the underlying policies are
20 currently owned by the viatical issuer or will be acquired in the future, and whether the
21 investors will be sold only policies or certificates owned by the viatical issuer at the
22 time of the investment or will have their investments matched to policies that may be
23 acquired after the date of the investment;

24 (B) The financial statements of the viatical issuer, prepared in conformity with
25 generally accepted accounting principles;

26 (C) A list of all dealers, salespersons, and agents authorized by the viatical issuer to
27 sell in this state, together with their securities registration numbers;

28 (D) A list of all states in which the viatical issuer is licensed to purchase viatical
29 settlement contracts, has an application pending, or has been denied exemption or
30 registration;

31 (E) A list of all states in which the viatical issuer sells viatical investments pursuant to
32 exemption, is licensed to sell viatical investments, has an application pending, or has
33 been denied exemption or registration;

34 (F) A copy of any escrow agreements for the escrow of proceeds or for the escrow of
35 funds for the payment of premiums;

(G) A copy of all advertisements or sales literature and the text of any script to be used in conjunction with the solicitation, offer, or sale of a viatical investment;

(H) A copy of all documents to be used to disclose the risk factors associated with the sale of a viatical investment; and

(I) A copy of all documents to be used to conduct any determination of suitability of a viatical investment to the particular investor.

The viatical issuer shall have an affirmative duty to file with the commissioner a supplemental or amended statement if at any time there is a material change to any of the information provided in the statement;

(2) The viatical issuer files an annual report that shall include such information pertaining to the offer, sale, or status of any viatical investment as the commissioner may by rule require;

(3) In connection with the offer or sale of any viatical investment, the viatical issuer, dealer, salesperson, and agent offering or selling the viatical investment shall not make any projections or representations regarding rates of return of any investment or prospective investment other than a rate of return expressed on an annual basis. Such projection or representation must be based upon a written opinion of life expectancy by a qualified physician;

(4) The viatical issuer, dealer, salesperson, and agent shall, for a minimum of five years after the date of maturity of any policy that is the subject of a viatical investment, retain and provide to the commissioner upon request copies of documents relating to the offer or sale of viatical investments that the commissioner may by rule require and shall make said documents available for inspection by the commissioner upon request; and

(5) Neither the viatical issuer nor any of its officers, directors, partners, 10 percent or greater stockholders, promoters, affiliates, nor the escrow agent nor any selling agent of the viatical investment being offered, nor any officer, director, or partner of the selling agent shall have:

(A) Within the last five years filed a registration statement which is the subject of a currently effective stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(B) Within the last five years been convicted of any felony or misdemeanor in connection with the purchase or sale of any security or any felony involving fraud or deceit including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(C) Within the last five years been subject to an administrative order or decision issued by any state securities or insurance administrator or the United States Securities and Exchange Commission which administrative order or decision has not been vacated;

1 (D) Within the last five years been subject to any administrative order or decision
2 issued by any state or federal regulatory authority or any financial services
3 self-regulatory organization in which fraud or deceit was found which administrative
4 order or decision has not been vacated;

5 (E) Within the last five years been subject to an order or decision issued by any state
6 securities administrator, which order or decision has not been vacated and prohibits the
7 use of any exemption from registration in connection with the purchase or sale of
8 securities; or

9 (F) Within the last five years been subject to any order, judgment, or decree of any
10 court of competent jurisdiction temporarily, preliminarily, or permanently restraining
11 or enjoining the person from engaging in or continuing any conduct or practice in
12 connection with the purchase or sale of any security or involving the making of any
13 false filing with any state."

14 **SECTION 5.**

15 All laws and parts of laws in conflict with this Act are repealed.