



The Judiciary Review

Report from the Senate Judiciary Committee (D)

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VIATICAL SETTLEMENTS, SECURITIES LAW UPDATES, FRATERNAL BENEFITS SOCIETIES REGULATION BY THE INSURANCE DEPARTMENT AND TOBACCO SANCTIONS RECEIVE GOVERNOR'S SIGNATURE.

Securities Commission

■ **Senate Bill No. 893**
Printer's No. 2160

This Act amends the Pennsylvania Securities Act of 1972. It updates the Act to consider use of the Internet in communications regarding the sale of securities. Further, it makes Pennsylvania's law consistent with the Federal Gramm-Leach-Bliley Financial Modernization Act of 1999 and the Federal National Securities Markets Improvement Act (NSMIA) of 1996. This Act also provides for prearranged trading programs.

Current Status: Act 108—2002

Viatical Settlements

■ **Senate Bill No. 462**
Printer's No. 2156

The Act provides for the regulation of viatical settlements and for the power and duties of the Insurance Department. A viatical settlement is the sale of a life insurance policy to a third party in return for an immediate lump sum payment to the original purchaser of which a percentage of the face value of the policy is paid. The purchaser is named as the beneficiary of the policy and assumes responsibility for payment of the policy premiums until the insured's death. Once the insured dies, the purchaser receives the policy's full payout.

This legislation authorizes the Insurance Department to approve, or disapprove, a viatical settlement

contract and requires all licensees to develop anti-fraud plans. Additionally, any person who engages in business of viatical settlements must be licensed with the Insurance Department as a "provider" or "broker". Otherwise, any person who engages in the business of viatical settlements without a license commits a felony of the third degree. In addition, the bill allows the Department to suspend, revoke or refuse to renew a license based on the behavior of the licensee including those persons suspended in another state.

Current Status: Act 107—2002

Underage Tobacco Sales

■ **House Bill No. 1501**
Printer's No. 4171

This legislation makes it a summary offense to: sell or furnish a tobacco product to a minor; locate or place a tobacco vending machine in a location accessible to minors; display or offer for sale a cigarette out of a pack or cigarettes; or display or offer for sale a tobacco product in any manner which enables an individual other than the retailer or employee to physically handle tobacco products prior to purchase, unless the products are located with-in the line of sight of a cashier or other employee during business hours. A "tobacco product" includes cigarettes, cigars, pipe tobacco or smoking tobacco in any form, as well as smokeless tobacco, any cigarette paper or product used for smoking tobacco.

Penalties include increased fines for multiple offenses. With regard to retailers, upon receiving notice following a third conviction during a 24-month period, a retailer's cigarette license may result in a thirty-day suspension and a license suspension of sixty days for a fourth conviction during any 24-month period. The retailer, but not the employee making the illegal sale, is afforded three affirmative defenses in a 24-month period at each licensed retail location provided that the retailer has:

- adopted and implemented a written policy against selling tobacco to minors that includes age identification checks;
- implemented a training program for all employees selling tobacco products that reviews laws regarding tobacco sales to minors;
- documented that all employees selling tobacco products had been informed of the policy and trained on the law;
- trained all employees to verify that a customer is at least 18 years of age prior to the sale of a tobacco product;
- conspicuously posted notices in the establishment that sale to and purchase by a minor is illegal and will be prosecuted;
- adopted disciplinary procedures and sanctions for employees who violate the law.

Current Status: Act 112—2002

Fraternal Benefits Societies

■ House Bill No. 599 Printer's No. 4166

This Act repeals the Fraternal Benefit Societies Code and moves its language to the Insurance Company Law of 1921. Further, the annual sales limit placed on Fraternal agents/members is increased from \$100,000 to \$200,000. Beginning July 1, 2007, and every five years after, this monetary limit shall be reviewed by the Insurance Commissioner and may be adjusted at the Commissioner's discretion. Any changes will be published in the Pennsylvania Bulletin. Additionally, the act permits a licensed agent/member of a licensed agent/member of a Fraternal Benefit Society to bring in new insurance members without such agent/member being required to pass an exam or required to participate in continuing education. In addition, this bill would increase from \$1,000 to \$5,000 the maximum civil penalty that is imposed by the Insurance Commissioner on any person who violates the insurance-writing provisions of the Fraternal Benefit Societies Code.

Last, the act would also lower the minimum guaranteed interest rate from 3% to 1.5% on individual fixed annuity contracts. This is the minimum rate used by insurance companies when determining the cash value of certain annuity contracts. This provision will not affect existing policyholders, only those who purchase in the 30-month period.

Current Status: Act 110—2002

Legal Services and Crime Bills Return to House.

■ House Bill No. 2322 Printer's No. 4167

The legislation establishes the Access to Justice Account, a non-lapsing restricted receipt Account in the State Treasury. Funds in the account, including its investment income, will be used to provide civil legal assistance to the poor or disadvantaged in Pennsylvania.

The Access to Justice Account is

funded by a surcharge on civil court filings. The legislation authorizes the Prothonotaries of the Supreme, Superior and Commonwealth Courts, the Prothonotaries and clerks of the Orphans Court, Registers of Wills and Courts of Common Pleas to collect an additional fee of \$10 for the initiation of any legal proceeding. Further, an amendment authorizes District Justices, the Philadelphia Municipal Court, Philadelphia Traffic Court and Pittsburgh Magistrates Court to collect an additional fee of \$10 for the initiation of all legal proceedings. Last an additional fee of \$10 is required to be collected by the Recorders of Deeds for the filing of each deed, mortgage or property transfer. The additional \$10 fee is required to be deposited as follows: \$9 shall be deposited in the Judicial Computer System Augmentation Account; and \$1 shall be deposited in the Access to Justice Account until August 1, 2005.

The IOLTA Board is authorized to contract with eligible legal service providers to provide civil legal assistance to the poor or disadvantaged. An eligible legal services provider is a nonprofit, tax-exempt corporation that provides civil legal services to eligible clients, including victims of domestic abuse under contract or subcontract with the Department of Public Welfare.

Current Status: House Rules Committee on Concurrence Vote

■ House Bill No. 582 Printer's No. 4169

The legislation further amends the offenses of criminal mischief and institutional vandalism by providing that a person commits criminal mischief if he intentionally defaces or otherwise damages tangible public property or the property of another with graffiti by using aerosol spray paint, broad-tipped indelible marker or a similar marking device. Graffiti is amended to include the unauthorized inscription, word, figure, mark or design which is written, marked, etched, scratched, drawn or painted. Last, institutional vandalism is amended to include defacing or otherwise damaging any State or local government building or vehicle.

This measure amends Criminal Trespass making it a third degree misdemeanor to enter onto school grounds in violation of posted signs prohibiting such entry. The offense rises to a first-degree misdemeanor when the person defies a request to leave communicated by any authorized school official or employee.

Last, the bill provides for retail theft of motor fuel, for a first offense, a fine of \$100 to \$250, for the second offense up to \$500, and for third and subsequent offenses \$500 and a possible 30 day driver's license suspension.

Current Status: House Rules Committee on Concurrence Vote

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