

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

‘Sec. 1. 24-A MRSA §6802-A, sub-§6, ¶A, as enacted by PL 2003, c. 636, §5, is amended to read:

A. Acts or omissions committed by any person who, knowingly or with intent to defraud, for the purpose of depriving another of property or for pecuniary gain, commits, or permits its employees or its agents to engage in, acts including:

(1) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by a settlement provider, settlement producer, financing entity, insurer, insurance producer or any other person false material information, or concealing material information, as part of, in support of or concerning a fact material to one or more of the following:

- (a) An application for the issuance of a settlement contract or insurance policy;
- (b) The underwriting of a settlement contract or insurance policy;
- (c) A claim for payment or benefit pursuant to a settlement contract or insurance policy;
- (d) Premiums paid on an insurance policy;
- (e) Payments and changes in ownership or beneficiary made in accordance with the terms of a settlement contract or insurance policy;
- (f) The reinstatement or conversion of an insurance policy;
- (g) The solicitation, offer, effectuation or sale of a settlement contract or insurance policy;
- (h) The issuance of written evidence of a settlement contract or insurance policy; or
- (i) A financing transaction; or

(2) Employing any device, scheme or artifice to defraud related to policies acquired pursuant to a settlement contract;

(3) Entering into stranger-originated life insurance; or

(4) Failing to disclose to the insurer when requested by the insurer that the prospective insured has undergone a life expectancy evaluation by any person other than the insurer or its authorized representatives in connection with the issuance of a policy;

Sec. 2. 24-A MRSA §6802-A, sub-§6-A is enacted to read:

6-A. Life expectancy evaluation. "Life expectancy evaluation" means the process to determine the arithmetic mean of the number of months the insured under the life insurance policy to be settled can be expected to live considering medical records and appropriate experiential data.

Sec. 3. 24-A MRSA §6802-A, sub-§9, as enacted by PL 2003, c. 636, §5, is repealed.

Sec. 4. 24-A MRSA §6802-A, sub-§9-A is enacted to read:

9-A. Settlement contract. "Settlement contract" means a written agreement between a viator and a settlement provider establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance. "Settlement contract" includes the transfer for compensation or value of ownership or beneficial interest in a trust or other entity that owns such policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts, which life insurance contract insures the life of a person residing in this State. "Settlement contract" includes a premium finance loan made for a life insurance policy by a lender to a viator on or before the date of issuance of the policy when the viator or the insured receives on the date of the premium finance loan a guarantee of a future settlement value of the policy or when the viator or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy. "Settlement contract" does not include:

- A. A policy loan or accelerated death benefit made by the insurer pursuant to the policy's terms;
- B. A collateral assignment of a policy by the owner of the policy;
- C. Loan proceeds that are used solely to pay:

(1) Premiums for the policy; and

(2) The costs of the loan, including, without limitation, interest, arrangement fees, utilization fees and similar fees, closing costs, legal fees and expenses, trustee fees and expenses and 3rd-party collateral provider fees and expenses, including fees payable to letter of credit issuers;

D. A loan made by a bank or other licensed financial institution in which the lender takes an interest in a life insurance policy solely to secure repayment of a loan or, if there is a default on the loan and the policy is transferred, the transfer of such a policy by the lender, as long as neither the default itself nor the transfer of the policy in connection with such default is pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter;

E. Unless the premium finance loan otherwise constitutes a settlement contract under this subsection, a loan made by a lender that does not violate Title 9-A, Article 2;

F. An agreement in which all the parties are closely related to the insured by blood or law or have a lawful substantial economic interest in the continued life, health and bodily safety of the person insured or are trusts established primarily for the benefit of such parties;

G. Any designation, consent or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or by a trust established by the employer, of life insurance on the life of the employee;

H. A bona fide business succession planning arrangement:

(1) Between shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders;

(2) Between partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or

(3) Between members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;

I. An agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or

J. Any contract, transaction or arrangement other than those set forth in paragraphs A to I exempted from the definition of "settlement contract" by the superintendent by rule based on a determination that the contract, transaction or arrangement is not of the type intended to be regulated by this chapter. Rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 5. 24-A MRS §6802-A, sub-§12-A is enacted to read:

12-A. Stranger-originated life insurance. "Stranger-originated life insurance" means an act or practice to initiate a life insurance policy for the benefit of a person who, at the time of the origination of the policy, has no insurable interest in the insured. "Stranger-originated life insurance" includes, but is not limited to, cases in which life insurance is purchased with resources or guarantees

from or through a person who, at the time of the inception of the policy, could not lawfully initiate the policy and when, at the time of policy inception, there is an arrangement or agreement to directly or indirectly transfer the ownership of the policy or the policy benefits to another person. A trust that is created to give the appearance of insurable interest and is used to initiate policies for investors violates insurable interest laws and the prohibition against wagering on life. "Stranger-originated life insurance" does not include those practices set forth in subsection 9-A.

Sec. 6. 24-A MRS §6811, sub-§5, as enacted by PL 2003, c. 636, §13, is amended to read:

5. Prohibition on settlements. It is a violation of this chapter for any person to enter into a settlement contract at any time prior to, or at the time of the application for, the issuance of a policy or within a 2-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the settlement provider that one or more of the following conditions have been met within the 2-year period:

A. The policy was issued upon the viator's exercise of conversion rights arising out of a group or individual policy, as long as the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 24 months. The time covered under a group policy must be calculated without regard to any change in insurance carriers, as long as the coverage has been continuous and under the same group sponsorship; and

B. The viator submits independent evidence to the settlement provider that one or more of the following conditions have been met within the 2-year period:

(1) The viator or insured is terminally ill or chronically ill; or

(2) The viator or insured disposes of the viator's entire ownership interest in a closely held corporation pursuant to the terms of a buyout or other similar agreement in effect at the time the insurance policy was initially issued.

Sec. 7. Review by Bureau of Insurance. The Superintendent of Insurance shall review current state law, other state laws and model laws relating to life settlements. In conducting the review, the superintendent shall consult with insurance companies, persons or companies or their trade or professional organizations licensed in this or other jurisdictions to do the business of life settlements and insurance producers. The superintendent shall develop recommendations relating to the solicitation of life insurance for the purpose of settling policies, the use of premium finance agreements in association with viatical and life settlements and the disclosures made to viators and owners of life insurance policies. The superintendent shall submit any recommendations, including recommendations for legislation, to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters not later than March 1, 2009. The joint standing committee of the Legislature having jurisdiction over insurance and financial services matters may submit legislation to the First Regular Session of the 124th Legislature related to the report submitted by the superintendent.'

SUMMARY

This amendment replaces the bill. The amendment amends the Viatical and Life Settlements Act to:

1. Repeal the definition of "settlement contract" and enact a new definition of "settlement contract";
2. Designate entering into stranger-originated life insurance a fraudulent viatical or life settlement act and define "stranger-originated life insurance";
3. Designate failing to disclose to the insurer when requested by the insurer that the prospective insured has undergone a life expectancy evaluation by a person other than the insurer a fraudulent viatical or life settlement act; and
4. Extend the prohibition on settlement of a policy to any time prior to, or at the time of application for, the issuance of a policy.

The amendment also requires the Superintendent of Insurance to review other state and model laws relating to viatical and life settlements and make recommendations, including recommendations for legislation, by March 1, 2009 related to the solicitation of life insurance for the purpose of settling policies, the use of premium finance agreements in association with viatical and life settlements and the disclosures made to viators and owners of life insurance policies. The amendment gives the Joint Standing Committee on Insurance and Financial Services authority to submit legislation to the 124th Legislature based on the superintendent's recommendations.