

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## SECOND SPECIAL SESSION-2004

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Legislative Document

No. 1907

H.P. 1411

House of Representatives, March 4, 2004

### An Act To Govern and Regulate Life Settlements

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Reference to the Committee on Insurance and Financial Services suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative O'NEIL of Saco. (GOVERNOR'S BILL)  
Cosponsored by Senator MAYO of Sagadahoc.

2 **Be it enacted by the People of the State of Maine as follows:**

4 **Sec. 1. 24-A MRSA §601, sub-§27** is enacted to read:

6 **27. Viatical or life settlement provider. Settlement provider license issuance fees and renewal fees may not exceed:**

8 **A. Original license issuance fee** **\$400; and**

10 **B. Annual renewal fee** **\$400**

12 **Sec. 2. 24-A MRSA c. 85**, as amended, is further amended by  
14 repealing the chapter headnote and enacting the following in its place:

16 **CHAPTER 85**

18 **VIATICAL AND LIFE SETTLEMENTS ACT**

20 **Sec. 3. 24-A MRSA §6801**, as enacted by PL 1997, c. 430, §1  
22 and affected by §2, is amended to read:

24 **§6801. Short title**

26 This chapter may be known and cited as the "Viatical and Life Settlements Act."

28 **Sec. 4. 24-A MRSA §6802**, as enacted by PL 1997, c. 430, §1  
30 and affected by §2, is repealed.

32 **Sec. 5. 24-A MRSA §6802-A** is enacted to read:

34 **§6802-A. Definitions**

36 As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

38 **1. Advertising.** "Advertising" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet or a similar communications medium, including film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to sell a life insurance policy pursuant to a viatical or life settlement contract.

48 **2. Business of settlements.** "Business of settlements" means any activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation,

2 purchasing, financing, monitoring, tracking, underwriting,  
3 selling, transferring, assigning, pledging, hypothecating or in  
4 any other manner engaging in the business of settlement contracts.

6 **3. Chronically ill.** "Chronically ill" means:

8 A. Being unable to perform at least 2 activities of daily  
9 living, including, but not limited to, eating, moving from  
10 one place to another, bathing, dressing, voiding the  
11 bladder, eliminating the bowel or maintaining continence;

12 B. Requiring substantial supervision to protect the  
13 individual from threats to health and safety due to severe  
14 cognitive impairment; or

16 C. Having a level of disability similar to that described  
17 in paragraph A, as determined by the United States Secretary  
18 of Health and Human Services.

20 **4. Financing entity.** "Financing entity" means an  
21 underwriter, placement agent, lender, purchaser of securities,  
22 purchaser of a policy or certificate from a settlement provider,  
23 credit enhancer or any entity that has a direct ownership in a  
24 policy or certificate that is the subject of a settlement  
25 contract:

26 A. Whose principal activity related to the transaction is  
27 providing funds to effect the settlement or purchase of one  
28 or more purchased policies or to provide credit enhancement;  
29 and

31 B. Who has an agreement in writing with one or more  
32 licensed settlement providers to finance the acquisition of  
33 settlement contracts or to provide stop loss insurance.

35 "Financing entity" does not include a nonaccredited investor.

37 **5. Financing transaction.** "Financing transaction" means any  
38 transaction in which a licensed settlement provider obtains  
39 financing for the purchase, acquisition, transfer or other  
40 assignment of one or more settlement contracts or policies  
41 acquired pursuant to a settlement contract or interests therein,  
42 including, without limitation, any secured or unsecured  
43 financing, securitization transaction or securities offering,  
44 either registered or exempt from registration under federal and  
45 state securities law, or otherwise sells, assigns, transfers,  
46 pledges, hypothecates or otherwise disposes of a settlement  
47 contract or policy acquired pursuant to a settlement contract or  
48 interest therein.

50

2 6. Fraudulent viatical or life settlement act. "Fraudulent  
3 viatical or life settlement act" includes:

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

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

17 (a) An application for the issuance of a  
18 settlement contract or insurance policy;

19 (b) The underwriting of a settlement contract or  
20 insurance policy;

21 (c) A claim for payment or benefit pursuant to a  
22 settlement contract or insurance policy;

23 (d) Premiums paid on an insurance policy;

24 (e) Payments and changes in ownership or  
25 beneficiary made in accordance with the terms of a  
26 settlement contract or insurance policy;

27 (f) The reinstatement or conversion of an  
28 insurance policy;

29 (g) The solicitation, offer, effectuation or sale  
30 of a settlement contract or insurance policy;

31 (h) The issuance of written evidence of a  
32 settlement contract or insurance policy; or

33 (i) A financing transaction; or

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

2 B. In the furtherance of a fraud or to prevent the  
3 detection of a fraud committing or permitting one's  
4 employees or agents to:

5 (1) Remove, conceal, alter, destroy or sequester from  
6 the superintendent the assets or records of a licensee  
7 or other person engaged in the business of settlements;

8 (2) Misrepresent or conceal the financial condition of  
9 a licensee, financing entity, insurer or other person;

10 (3) Transact the business of settlements in violation  
11 of laws requiring a license, certificate of authority  
12 or other legal authority for the transaction of the  
13 business of settlements; or

14 (4) File with the superintendent or the chief  
15 insurance regulatory official of another jurisdiction a  
16 document containing false information or otherwise  
17 concealing information about a material fact from the  
18 superintendent;

19 C. Embezzlement, theft, misappropriation or conversion of  
20 money, funds, premiums, credits or other property of a  
21 settlement provider, insurer, insured, viator, insurance  
22 policyowner or any other person engaged in the business of  
23 settlements or insurance;

24 D. Recklessly entering into, brokering or otherwise dealing  
25 in a settlement contract, the subject of which is a life  
26 insurance policy that was obtained by presenting false  
27 information concerning any fact material to the policy or by  
28 concealing, for the purpose of misleading another,  
29 information concerning any fact material to the policy, when  
30 the viator or the viator's agent intended to defraud the  
31 policy's issuer. For the purposes of this paragraph,  
32 "recklessly" means engaging in conduct in consciously and  
33 clearly unjustifiable disregard of a substantial likelihood  
34 of the existence of the relevant facts or risks, such  
35 disregard involving a gross deviation from acceptable  
36 standards of conduct; or

37 E. Attempting to commit; assisting, aiding or abetting in  
38 the commission of; or conspiring to commit the acts or  
39 omissions specified in this subsection.

40 7. Policy. "Policy" means an individual or group policy,  
41 group certificate, contract or arrangement of life insurance  
42 affecting the rights of a resident of this State or bearing a

2 reasonable relation to this State, regardless of whether  
3 delivered or issued for delivery in this State.

4 **8. Related provider trust.** "Related provider trust" means  
5 a titling trust or other trust established by a licensed  
6 settlement provider or a financing entity for the sole purpose of  
7 holding the ownership or beneficial interest in purchased  
8 policies in connection with a financing transaction. The trust  
9 must have a written agreement with the licensed settlement  
10 provider under which the licensed settlement provider is  
11 responsible for ensuring compliance with all statutory and  
12 regulatory requirements and under which the trust agrees to make  
13 all records and files related to settlement transactions  
14 available to the superintendent as if those records and files  
15 were maintained directly by the licensed settlement provider.

16 **9. Settlement contract.** "Settlement contract" means:

17 **A.** A written agreement establishing the terms under which  
18 compensation or anything of value will be paid, which  
19 compensation or value is less than the expected death  
20 benefit of the insurance policy or certificate, in return  
21 for the viator's assignment, transfer, sale, devise or  
22 bequest of the death benefit or ownership of any portion of  
23 the insurance policy or certificate of insurance;

24 **B.** A contract for a loan or other financing transaction  
25 with a viator secured primarily by an individual or group  
26 life insurance policy other than a loan by a life insurance  
27 company pursuant to the terms of the life insurance contract  
28 or a loan secured by the cash value of a policy; or

29 **C.** An agreement with a viator to transfer ownership or  
30 change the beneficiary designation at a later date  
31 regardless of the date that compensation is paid to the  
32 viator.

33 For purposes of this chapter, the individual insured who is the  
34 subject of the insurance policy or certificate of insurance does  
35 not have to be diagnosed as terminally ill or chronically ill at  
36 the time a settlement contract is executed.

37 **10. Settlement producer.** "Settlement producer" means any  
38 person who has life insurance producer authority, who acts or  
39 aids in any manner in the soliciting of a settlement on behalf of  
40 a viator and for a fee, commission or other valuable  
41 consideration offers or attempts to negotiate settlement  
42 contracts between a viator and one or more settlement providers.  
43 "Settlement producer" does not include an attorney, accountant,  
44 financing entity or person exercising a power of attorney  
45 or any other person who is not a licensed settlement provider.

2 granted by the viator retained to represent the viator and whose  
3 compensation is paid solely by the viator without regard to  
4 whether the settlement is effected. "Settlement producer" does  
5 not include a credit union or an employer or association that  
6 makes its employees or members aware of settlement contracts.  
7 Irrespective of the manner in which the settlement producer is  
8 compensated, a settlement producer is deemed to represent only  
9 the interests of the viator and owes a fiduciary duty to the  
10 viator.

11 **11. Settlement provider.** "Settlement provider" means a  
12 person other than the viator that enters into or effectuates a  
13 settlement contract. "Settlement provider" does not include:

14 A. A bank, savings bank, savings and loan association,  
15 credit union or other licensed lending institution that  
16 takes an assignment of a life insurance policy as collateral  
17 for a loan;

18 B. The issuer of a life insurance policy providing  
19 accelerated benefits under section 2555 and pursuant to the  
20 contract;

21 C. An authorized or eligible insurer that provides  
22 stop-loss coverage to a settlement provider, purchaser,  
23 financing entity, special purpose entity or related provider  
24 trust;

25 D. A viator's friend or family member or other natural  
26 person who enters into no more than one agreement in a  
27 calendar year for the assignment, transfer, sale, devise or  
28 bequest of a life insurance policy for any value less than  
29 the expected death benefit;

30 E. A financing entity;

31 F. A special purpose entity;

32 G. A related provider trust;

33 H. A settlement purchaser; or

34 I. An accredited investor or qualified institutional buyer  
35 as defined respectively in Regulation D, Rule 501 and Rule  
36 144A of the Federal Securities Act of 1933, as amended, and  
37 who acquires a policy from a settlement provider.

38 **12. Special purpose entity.** "Special purpose entity" means  
39 a corporation, partnership, trust, limited liability company or  
40 similar entity formed solely to provide either directly or  
41 indirectly to the viator.



2 indirectly access to institutional capital markets for a  
3 financing entity or licensed settlement provider.

4 13. Terminally ill. "Terminally ill" means having an  
5 illness or sickness that can reasonably be expected to result in  
6 death within 24 months or less.

8 14. Viator. "Viator" means a person who assigns, transfers,  
9 sells, devises or bequeaths or seeks to assign, transfer, sell,  
10 devise or bequeath a death benefit or ownership of a life  
11 insurance policy or certificate under a settlement contract.  
12 "Viator" does not include:

14 A. A settlement provider licensed under this chapter;

16 B. An accredited investor or qualified institutional buyer  
17 as defined respectively in Regulation D, Rule 501 and Rule  
18 144A of the Federal Securities Act of 1933, as amended;

20 C. A financing entity;

22 D. A special purpose entity; or

24 E. A related provider trust.

26 **Sec. 6. 24-A MRSA §6803**, as amended by PL 1997, c. 592, §§76  
27 to 80, is further amended to read:

28 **§6803. Settlement provider and producer license; license**  
29 **requirements**

32 **1. License required.** Licenses are required in accordance  
33 with this subsection.

34 A. A person may not act as a viatical settlement provider  
35 without a license from the superintendent issued pursuant to  
36 this section and subject to the provisions of this chapter.

38 B. A person may not perform the functions of, or otherwise  
39 act as, a viatical settlement producer without a license  
40 from the superintendent as a life and--health insurance  
41 producer.

44 ~~C. A person may not act as an independent viatical producer~~  
45 ~~without a license from the superintendent as a life and~~  
46 ~~health insurance producer with independent authority.~~

48 C-1. If there is more than one viator on a single policy  
49 and the viators are residents of different states, the  
50 settlement contract is governed by the law of the state in

2 which the viator having the largest percentage ownership  
3 resides or, if the viators hold equal ownership, the state  
4 of residence of one viator agreed upon in writing by all  
5 viators.

6 ~~D. A viatical settlement provider license issued to a person~~  
7 ~~authorizes all partners, officers and key management~~  
8 ~~personnel of that person to act on that person's behalf as~~  
9 ~~if these individuals are also licensed, unless such activity~~  
10 ~~requires a license under another provision of this Title.~~  
11 ~~These persons must be named in the application and any~~  
12 ~~supplements to the application and the authorization~~  
13 ~~terminates upon the expiration, suspension or revocation of~~  
14 ~~the license.~~

15 ~~E. Notwithstanding the provisions of this section, if a~~  
16 ~~person acts as a viatical settlement provider, a viatical~~  
17 ~~producer or an independent viatical producer without being~~  
18 ~~licensed, the person is subject to all other provisions of~~  
19 ~~this chapter as if this person were licensed as a viatical~~  
20 ~~settlement provider or viatical settlement independent~~  
21 ~~producer.~~

22  
23  
24 **2. Application; fee.** Application for a viatical settlement  
25 provider license must be made to the superintendent by the  
26 applicant on a form prescribed by the superintendent. The  
27 application must be accompanied by a fee of not to exceed \$400 in  
28 accordance with section 601.

29  
30 **3. Renewal.** A license for a viatical settlement provider  
31 is continuous so as long as the licensee remains qualified. The  
32 viatical settlement provider must pay an annual fee of not to  
33 exceed \$400 in accordance with section 601. Failure to pay the  
34 fee within the terms prescribed may result in the revocation of  
35 the license unless cured within 5 days of written notice of  
36 failure to pay to the principal office of the licensee.

37  
38 **4. Information required.** The applicant for a settlement  
39 provider license shall provide such information as the  
40 superintendent requires and the information must be submitted on  
41 forms prepared required by the superintendent. The  
42 superintendent may at any time require the applicant to disclose  
43 fully the identity of all stockholders except stockholders owning  
44 less than 5% of the shares of an applicant whose shares are  
45 publicly traded, partners, officers, directors, members and  
46 employees and the superintendent may, in the exercise of the  
47 superintendent's discretion, refuse to issue a license to an  
48 applicant if not satisfied that any stockholder, partner,  
49 director, member or employee of the applicant who may materially  
50 influence the applicant's conduct meets the criteria set forth in

2 subsection 6. A settlement provider shall provide to the  
3 superintendent new or revised information about officers,  
4 stockholders controlling 10% or more of stock, partners,  
5 directors, members or designated employees within 30 days of the  
6 change.

7 **5. Authority under license.** A settlement provider license  
8 issued to any person authorizes all officers, partners,  
9 directors, members and key management personnel of that person to  
10 act on behalf of the ~~viatical~~ settlement provider, unless such  
11 activity requires a license under another provision of this  
12 Title. All officers, partners, directors, members and key  
13 management personnel of the person must be named in the  
14 application and any supplements to the application. ~~The licensed~~  
15 ~~producer of a viatical settlement provider must be regarded as in~~  
16 ~~the place of the viatical settlement provider in all respects~~  
17 ~~regarding the solicitation of viatical settlements on behalf of~~  
18 ~~the viatical settlement provider. A producer authorized by a~~  
19 ~~viatical settlement provider is the provider's agent in all~~  
20 ~~matters of viatical settlements.~~

21 **6. Investigation.** Upon the filing of an application and  
22 the payment of the settlement provider license fee, the  
23 superintendent shall make an investigation of the applicant and  
24 shall issue a license if the superintendent finds that the  
25 applicant:

26 A. Has provided a detailed plan of operation;

27 B. Is competent and trustworthy and intends to act in good  
28 faith in the capacity ~~required by the~~ license of a  
29 settlement provider;

30 C. Has a good business reputation and has had experience,  
31 training or education so as to be qualified ~~in the business~~  
32 ~~to which the license relates~~ as a settlement provider;

33 D. If organized under the laws of this State, has provided  
34 a certificate of good standing from this State. If the  
35 applicant is a foreign entity, it must provide a certificate  
36 of good standing from its state of organization and a  
37 certificate of good standing from this State; and

38 E. ~~Or any~~ Has no officer, partner, director, member or key  
39 management personnel of the applicant that has ~~not been~~  
40 ~~convicted of a felony of which fraud was an element, been~~  
41 found guilty of, or has pleaded guilty or nolo contendere  
42 to, any crime involving fraud or moral turpitude, regardless  
43 of whether a judgment of conviction has been entered by the  
44 court; and

2           F. Has provided an antifraud plan that meets the  
3           requirements of section 6818.

4           **7. Financial responsibility.** ~~The following evidence~~  
5           Evidence of financial responsibility must be provided to the  
6           superintendent before a license may be issued in accordance with  
7           this subsection.

10           A. ~~A viatical settlement provider shall provide evidence of~~  
11           financial accountability. Such evidence may include, but is  
12           not limited to, a binding and committed lending facility of  
13           at least \$1,000,000 with a term of at least one year or a  
14           net worth in excess of \$100,000.

16           **8. Nonresidents.** ~~The superintendent may not issue a~~  
17           settlement provider license to a nonresident applicant unless a  
18           written designation of an agent for service of process is filed  
19           and maintained with the superintendent or the applicant has filed  
20           with the superintendent the applicant's written irrevocable  
21           consent that any action against the applicant may be commenced  
22           against the applicant by service of process on the superintendent.

24           **9. List.** ~~The superintendent shall maintain a complete list~~  
25           of all viatical settlement providers licensed or with license  
26           pending in this State. The list must be available upon request  
27           to the general public.

28           **Sec. 7. 24-A MRSA §6804,** as amended by PL 1997, c. 562, Pt.  
29           D, §5, is further amended to read:

32           **§6804. License revocation and administrative assessments**

34           ~~1. Superintendent's authority. The superintendent may~~  
35           ~~deny, suspend, revoke or refuse to renew the license of a~~  
36           ~~viatical settlement provider if the superintendent finds just~~  
37           ~~cause to do so, which may include, but is not limited to, a~~  
38           ~~finding that:~~

40           ~~A. There was any material misrepresentation in the~~  
41           ~~application for the license or other information submitted~~  
42           ~~to the superintendent;~~

44           ~~B. The licensee or any officer, partner or key management~~  
45           ~~personnel of the licensee has been convicted of fraudulent~~  
46           ~~or dishonest practices, is subject to a final administrative~~  
47           ~~action to suspend or revoke a viatical license or is~~  
48           ~~otherwise shown to be untrustworthy or incompetent to act as~~  
49           ~~a viatical settlement provider or viatical settlement broker;~~

50

2 C. ~~The licensee as a viatical settlement provider demonstrates unreasonable payments to viators;~~

4 D. ~~The licensee or any officer, partner or key management personnel of the licensee has been convicted of any felony of which criminal fraud is an element; or~~

6 E. ~~The licensee has violated any of the provisions of this chapter or any rules adopted pursuant to this chapter.~~

8  
10 **1-A. Superintendent's authority.** The superintendent may deny, suspend, revoke or refuse to renew the license of a settlement provider if the superintendent finds just cause to do so, which may include, but is not limited to, a finding that:

12  
14 A. There was any material misrepresentation in the application for the license or other information submitted to the superintendent;

16  
18 B. The licensee or any officer, partner, director, member or key management personnel of the licensee has been convicted of fraudulent or dishonest practices, is subject to a final administrative action to suspend or revoke a settlement provider license or is otherwise shown to be untrustworthy or incompetent to act as a settlement provider;

20  
22 C. The licensee as a settlement provider demonstrates an unreasonable pattern of payments to viators;

24  
26 D. The licensee or any officer, partner, director, member or key management personnel of the licensee has been found guilty of, or has pleaded guilty or nolo contendere to, any crime involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;

28  
30 E. The settlement provider has entered into any settlement contract that has not been approved pursuant to this chapter;

32  
34 F. The settlement provider has failed to honor contractual obligations set out in a settlement contract;

36  
38 G. The settlement provider no longer meets the requirements for initial licensure;

40  
42 H. The settlement provider has assigned, transferred or pledged a policy acquired pursuant to a settlement contract to a person other than a settlement provider licensed in this State, an accredited investor or qualified

2 institutional buyer as defined respectively in Regulation D,  
3 Rule 501 and Rule 144A of the Federal Securities Act of  
4 1933, as amended, a financing entity, a special purpose  
5 entity or a related provider trust; or

6 I. The licensee has violated any of the provisions of this  
7 chapter or any rules adopted pursuant to this chapter.

8  
9  
10 2. **Hearing.** Before the superintendent may deny a license  
11 application or suspend, revoke or refuse to renew the license of  
12 a ~~viatical~~ settlement provider, the licensee or applicant has an  
13 opportunity for a hearing in accordance with Title 5, chapter  
14 375, subchapter IV 4.

15  
16 3. **Administrative penalty.** The superintendent may, in  
17 addition to denying a license application or suspending or  
18 revoking a license, assess an administrative civil forfeiture of  
19 \$500 for each willful violation of this chapter. This section  
20 may not be construed to diminish the penalties available for any  
21 violation of chapter 23, in addition to any penalties authorized  
22 under section 12-A.

23 **Sec. 8. 24-A MRSA §6805**, as enacted by PL 1997, c. 430, §1  
24 and affected by §2, is amended to read:

25 **§6805. Approval of settlements contracts; disclosure statements**  
26 **and applications**

27  
28 A ~~viatical--settlement--provider--or--independent--viatical~~  
29 ~~producer~~ person may not use any contract, disclosure statement or  
30 application form in with a viator who is a resident of this State  
31 ~~when dealing with a viator~~ unless it has been filed with and  
32 approved by the superintendent, pursuant to sections 2412 and  
33 2413. The superintendent shall disapprove a settlement contract  
34 form or disclosure statement form if, in the superintendent's  
35 opinion, the contract or provisions contained therein are  
36 unreasonable, contrary to the interests of the public or  
37 otherwise misleading or unfair to the viator. All such forms  
38 must be approved or denied by the superintendent within 60  
39 calendar days following receipt of submission by the  
40 superintendent.

41  
42 **Sec. 9. 24-A MRSA §6806**, as amended by PL 1997, c. 592, §81,  
43 is further amended to read:

44  
45 **§6806. Reporting requirements; confidentiality of information**

46  
47 1. **Annual report.** A settlement provider licensee shall file  
48 with the superintendent by March 1st of each year an annual  
49 statement containing such information as the superintendent  
50

2 prescribes by rule. The superintendent may not adopt any rule  
3 that requires the submission of information that permits the  
4 identification of a viator or relates to transactions when the  
5 viator is not a resident of this State. The superintendent may  
6 not request, collect or compile personal information that  
7 identifies any viator or insured except in connection with the  
8 investigation of a specific complaint and with the prior written  
9 permission of the viator or insured or the viator's or insured's  
10 estate or representative to collect that information.

11 **1-A. Fee for filing annual report.** The fee for filing the  
12 annual report is the same as for an insurer as provided in  
13 section 601. On or before July 1st of each year, the  
14 superintendent shall forward to each ~~viatical~~ settlement provider  
15 an itemized bill for the amount due for the filing of the annual  
16 statement and the amount due for the certificate of authority  
17 annual fee.

18 **2. Privacy protection.** Except as otherwise required or  
19 permitted by law, a ~~viatical~~ settlement provider, ~~viatical~~  
20 settlement producer, ~~independent-viatical-producer,-institutional~~  
21 ~~investor,~~ insurance company, insurance producer, independent  
22 insurance producer, information bureau, rating company or any  
23 other person with actual knowledge of the identity of a viator,  
24 or of the insured if other than the viator, may not disclose that  
25 identity, or the insured's financial or medical information, to  
26 any other person unless the ~~viator,-or-the-insured-if-other-than~~  
27 ~~the-viator,-provides-written-consent-to-the-disclosure-and-the~~  
28 disclosure:

29 A. ~~Is made-to-a-viatical-settlement-provider,-a-viatical~~  
30 ~~producer,-an-independent-viatical-producer,-an-institutional~~  
31 ~~investor-or-other-person-determined-by-rule-and-is-necessary~~  
32 ~~to-effect-the-viatical-settlement-between-the-viator-and-the~~  
33 ~~viatical--settlement--provider~~ necessary to effectuate a  
34 settlement contract between the viator and a settlement  
35 provider and the viator and the insured have provided prior  
36 written consent to the disclosure;

37 B. Is provided in response to an investigation or  
38 examination by the superintendent or any other government  
39 officer or agency pursuant to section 6807; or

40 C. Is necessary to facilitate permit a financing transaction  
41 ~~and--is--made--either--to--a--licensed--viatical--settlement~~  
42 ~~provider--or--to--an--institutional--investor,~~ entity, related  
43 provider trust or special purpose entity to finance the  
44 purchase of policies by a settlement provider and the viator  
45 and insured have provided prior written consent to the  
46 disclosure;

- 2           D. Is a term or condition to the transfer of a policy by  
           one settlement provider to another settlement provider;
- 4
- 6           E. Is necessary to allow the settlement provider or  
           insurance producer or an authorized representative to make  
           contacts for the purpose of determining health status; or
- 8
- 10          F. Is required to purchase stop-loss coverage.

12           ~~3. Sale or transfer. A viatical settlement provider may not~~  
 14           ~~sell or transfer a viaticated policy to a financing entity other~~  
 16           ~~than an institutional investor or a licensed viatical settlement~~  
 18           ~~provider.~~

20           **Sec. 10. 24-A MRSA §§6807 and 6808**, as enacted by PL 1997, c.  
 22           430, §1 and affected by §2, are amended to read:

24           **§6807. Examinations and investigations**

26           ~~1. Complaint. In response to a complaint concerning a~~  
 28           ~~licensee or in connection with an application for a license, the~~  
 30           ~~superintendent may examine the business and affairs of any~~  
 32           ~~licensee or applicant for a license. Subject to the provisions~~  
 34           ~~of section 6806, the superintendent may order a licensee or~~  
 36           ~~applicant to produce records, books, files or other information~~  
 38           ~~reasonably necessary to ascertain whether the licensee or~~  
 40           ~~applicant is acting or has acted in violation of this chapter or~~  
 42           ~~rules adopted under this chapter. The expenses incurred in~~  
 44           ~~conducting an examination must be paid by the licensee or~~  
 46           ~~applicant.~~

48           1-A. Examinations. The superintendent may conduct  
 50           examinations in accordance with this subsection.

A. The superintendent may conduct an examination under this  
           chapter of a licensee as often as the superintendent in the  
           superintendent's sole discretion considers appropriate.

B. For purposes of completing an examination of a licensee  
           under this chapter, subject to the provisions of section  
           6806, the superintendent may examine or investigate any  
           person, or the business of any person, insofar as the  
           examination or investigation is, in the sole discretion of  
           the superintendent, considered necessary or material to the  
           examination of the licensee.

C. In lieu of an examination under this chapter of any  
           foreign or alien licensee licensed in this State, the  
           superintendent may, at the superintendent's discretion,



2           accept an examination report on the licensee as prepared by  
3           the superintendent of insurance for the licensee's state of  
4           domicile or port-of-entry state.

5           ~~2. Confidential information. Names and individual~~  
6           ~~identification data for all viators are confidential information~~  
7           ~~and may not be disclosed by the superintendent unless required by~~  
8           ~~law.~~

10          3. **Records.** Records of all viatical settlement transactions  
11          must be maintained by the settlement provider licensee and,  
12          ~~subject to the provisions of section 6806, must be available to~~  
13          ~~the superintendent for 3 years after policy maturity for~~  
14          ~~inspection during reasonable business hours in accordance with~~  
15          ~~this subsection.~~

16           A. A settlement provider required to be licensed by this  
17           chapter shall retain for 5 years copies of all:

18           (1) Proposed, offered or executed settlement  
19           contracts, settlement purchase agreements, underwriting  
20           documents, policy forms and applications from the date  
21           of the proposal, offer or execution of the settlement  
22           contract or settlement purchase agreement, whichever is  
23           later;

24           (2) Checks, drafts or other evidence and documentation  
25           related to the payment, transfer, deposit or release of  
26           funds from the date of the transaction; and

27           (3) Other records and documents related to the  
28           requirements of this chapter.

29           B. This subsection does not relieve a settlement provider  
30           licensee of the obligation to produce these documents to the  
31           superintendent after the retention period has expired if the  
32           person has retained the documents.

33           C. Subject to the provisions of section 6806, records  
34           required to be retained by this subsection must be legible  
35           and complete and may be retained in paper, photographic,  
36           microprocess, magnetic, mechanical or electronic media or by  
37           any process that accurately reproduces or forms a durable  
38           medium for the reproduction of a record.

39          4. **Immunity.** ~~A licensee responding to an order of the~~  
40          ~~superintendent issued pursuant to this section is immune from any~~  
41          ~~civil action arising out of compliance with the order and is not~~  
42          ~~required to challenge the authority or validity of the order as a~~  
43          ~~condition of the order.~~

~~prerequisite to receiving immunity~~ Immunity from liability is determined in accordance with this subsection.

A. A cause of action may not arise against the superintendent, the superintendent's authorized representatives or any examiner appointed by the superintendent for any statements made or conduct performed in good faith while carrying out the provisions of this chapter.

B. A cause of action may not arise against any person for the act of communicating or delivering information or data to the superintendent or the superintendent's authorized representative or examiner pursuant to an examination made under this chapter if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This paragraph does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in paragraph A.

C. A person identified in paragraph A or B is entitled to an award of attorney's fees and costs if that person is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this paragraph, a proceeding is "substantially justified" if the proceeding had a reasonable basis in law or fact at the time that it was initiated.

5. Conduct of examinations. The following provisions govern the conduct of examinations.

A. Upon determining that an examination should be conducted, the superintendent shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures as the superintendent considers appropriate.

B. Every licensee or person from whom information is sought and its officers, directors and agents shall provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets and computer or other recordings relating to the property, assets, business and affairs of the licensee or person being examined. The officers, directors, employees and agents of the licensee or

2 person shall facilitate the examination and aid in the  
3 examination insofar as it is in their power to do so. The  
4 refusal of a licensee, by its officers, directors, employees  
5 or agents, to submit to examination or to comply with any  
6 reasonable written request of the superintendent is grounds  
7 for suspension or refusal of, or nonrenewal of, any license  
8 or authority held by the licensee to engage in the business  
9 of settlements or other business subject to the  
10 superintendent's jurisdiction. Any proceedings for  
11 suspension, revocation or refusal of any license or  
12 authority must be conducted pursuant to Title 5, chapter  
13 375, subchapter 4.

14 C. The superintendent has the power to issue subpoenas, to  
15 administer oaths and to examine under oath any person as to  
16 any matter pertinent to the examination. Upon the failure  
17 or refusal of a person to obey a subpoena, the  
18 superintendent may petition a court of competent  
19 jurisdiction and, upon proper showing, the court may enter  
20 an order compelling the witness to appear and testify or  
21 produce documentary evidence. Failure to obey the court  
22 order is punishable as contempt of court.

24 D. When making an examination under this chapter, the  
25 superintendent may retain attorneys, appraisers, independent  
26 actuaries, independent certified public accountants or other  
27 professionals or specialists as examiners, the reasonable  
28 cost of which must be borne by the licensee that is the  
29 subject of the examination.

30 E. This chapter may not be construed to limit the  
31 superintendent's authority to terminate or suspend an  
32 examination in order to pursue other legal or regulatory  
33 action pursuant to the insurance laws of this State.  
34 Findings of fact and conclusions made pursuant to any  
35 examination are prima facie evidence in any legal or  
36 regulatory action.

38 F. This chapter may not be construed to limit the  
39 superintendent's authority to use and, if appropriate, to  
40 make public any final or preliminary examination report, any  
41 examiner or licensee workpapers or other documents or any  
42 other information discovered or developed during the course  
43 of any examination in the furtherance of any legal or  
44 regulatory action that the superintendent may, in the  
45 superintendent's sole discretion, consider appropriate.

48 6. Examination reports. Examination reports may be composed  
49 only of facts appearing upon the books, records or other  
50 documents of the licensee or its agents or other persons examined

2 or as ascertained from the testimony of its officers or agents or  
3 other persons examined concerning its affairs and of such  
4 conclusions and recommendations as the examiners find reasonably  
5 warranted from the facts. No later than 60 days following  
6 completion of the examination, the examiner in charge shall file  
7 under oath with the superintendent a verified written report of  
8 examination. Upon receipt of the verified report, the  
9 superintendent shall transmit the report to the licensee  
10 examined, together with a notice that affords the licensee  
11 examined a reasonable opportunity of not more than 30 days to  
12 make a written submission or rebuttal with respect to any matters  
13 contained in the examination report. In the event the  
14 superintendent determines that regulatory action is appropriate  
15 as a result of an examination, the superintendent may initiate  
16 any proceedings or actions provided by law.

17 7. Confidentiality of examination information. The  
18 disclosure of information is governed by this subsection.

19 A. Names and individual identification data for all viators  
20 and insured persons are considered private and confidential  
21 information and may not be disclosed by the superintendent,  
22 unless required by law.

23 B. Except as otherwise provided in this chapter, all  
24 examination reports, workpapers, recorded information,  
25 documents and copies thereof produced by, obtained by or  
26 disclosed to the superintendent or any other person in the  
27 course of an examination made under this chapter, or in the  
28 course of analysis or investigation by the superintendent of  
29 the financial condition or market conduct of a licensee, are  
30 confidential by law and privileged, are not subject to  
31 subpoena and are not subject to discovery or admissible in  
32 evidence in any private civil action. The superintendent is  
33 authorized to use the documents, materials or other  
34 information in the furtherance of any regulatory or legal  
35 action brought as part of the superintendent's official  
36 duties.

37 For the purposes of this paragraph and paragraph C,  
38 "chapter" includes the law of another state or jurisdiction  
39 that is substantially similar to this chapter.

40 C. Documents, materials or other information, including,  
41 but not limited to, all workpapers and copies thereof, in  
42 the possession or control of the National Association of  
43 Insurance Commissioners, or its successor organization, and  
44 its affiliates and subsidiaries are confidential by law and  
45 privileged, are not subject to subpoena and are not subject  
46 to discovery or admissible in evidence in any private civil  
47 action.

2 to discovery or admissible in evidence in any private civil  
3 action if they are:

4 (1) Created, produced or obtained by or disclosed to  
5 the National Association of Insurance Commissioners, or  
6 its successor organization, and its affiliates and  
7 subsidiaries in the course of assisting an examination  
8 made under this chapter or assisting a superintendent  
9 in the analysis or investigation of the financial  
10 condition or market conduct of a licensee; or

11 (2) Disclosed to the National Association of Insurance  
12 Commissioners, or its successor organization, and its  
13 affiliates and subsidiaries under paragraph D by a  
14 superintendent.

15 D. The superintendent and any person that receives  
16 documents, material or other information while acting under  
17 the authority of the superintendent, including the National  
18 Association of Insurance Commissioners, or its successor  
19 organization, and its affiliates and subsidiaries, may not  
20 testify in any private civil action concerning any  
21 confidential documents, materials or information subject to  
22 paragraph A.

23 E. In order to assist in the performance of the  
24 superintendent's duties, the superintendent:

25 (1) May share documents, materials or other  
26 information, including the confidential and privileged  
27 documents, materials or information subject to  
28 paragraph A, with other state, federal and  
29 international regulatory agencies, with the National  
30 Association of Insurance Commissioners, or its  
31 successor organization, and its affiliates and  
32 subsidiaries and with state, federal and international  
33 law enforcement authorities, as long as the recipient  
34 agrees to maintain the confidentiality and privileged  
35 status of the documents, materials, communication or  
36 other information; and

37 (2) May receive documents, materials, communications or  
38 information, including otherwise confidential and  
39 privileged documents, materials or information, from  
40 the National Association of Insurance Commissioners, or  
41 its successor organization, and its affiliates and  
42 subsidiaries and from regulatory and law enforcement  
43 officials of foreign or other domestic jurisdictions  
44 and shall maintain as confidential or privileged any  
45 document, material or information received with notice  
46

2                   or the understanding that it is confidential or  
3                   privileged under the laws of the jurisdiction that is  
4                   the source of the document, material, or information.

5                   F. A waiver of any applicable privilege or claim of  
6                   confidentiality in the documents, materials or information  
7                   does not occur as a result of disclosure to the  
8                   superintendent under this section or as a result of sharing  
9                   as authorized in paragraph E.

10                   G. A privilege established under the law of any state or  
11                   jurisdiction that is substantially similar to the privilege  
12                   established under this subsection is available and enforced  
13                   in any proceeding in, and in any court of, this State.

14                   H. This chapter may not prevent or be construed as  
15                   prohibiting the superintendent from disclosing the content  
16                   of an examination report or preliminary examination report  
17                   or results, or any matter relating thereto, to the  
18                   superintendent of insurance of any other state or country or  
19                   to law enforcement officials of this State or any other  
20                   state or an agency of the Federal Government at any time or  
21                   to the National Association of Insurance Commissioners, or  
22                   its successor organization, as long as such agency or office  
23                   receiving the report or matters relating thereto agrees in  
24                   writing to hold it confidential and in a manner consistent  
25                   with this chapter.

26                   **8. Conflict of interest.** The following provisions apply.

27                   A. An examiner may not be appointed by the superintendent  
28                   if the examiner, either directly or indirectly, has a  
29                   conflict of interest or is affiliated with the management of  
30                   or owns a pecuniary interest in any person subject to  
31                   examination under this chapter. This section may not be  
32                   construed to automatically preclude an examiner from being:

33                   (1) A viator;

34                   (2) An insured in an insurance policy acquired pursuant  
35                   to a settlement contract; or

36                   (3) A beneficiary in an insurance policy that is  
37                   proposed to be acquired pursuant to a settlement  
38                   contract.

39                   B. Notwithstanding the requirements of this subsection, the  
40                   superintendent may retain from time to time, on an  
41                   individual basis, qualified actuaries, certified public  
42                   accountants or similar individuals who are independently  
43                   employed.

2 practicing their professions, even though these persons may  
3 from time to time be similarly employed or retained by  
4 persons subject to examination under this chapter.

6 9. Investigative authority of superintendent. In addition  
7 to the authority granted pursuant to section 220, the  
8 superintendent may investigate persons engaged in the business of  
9 settlements and persons suspected of engaging in fraudulent  
10 viatical or life settlement acts.

12 **§6808. Disclosure**

14 ~~A--viatical~~ With each application for a settlement, a  
15 settlement provider ~~or--independent--viatical--producer~~ shall  
16 disclose in writing at least the following information  
17 disclosures to the--viator--prior--to--the--date--the--viatical  
18 settlement--contract--is--signed--by--the a viator~~†~~. Disclosure to a  
19 viator must include distribution of a brochure, approved by the  
20 superintendent, describing the process of settlements. The  
21 disclosures must be provided to the viator no later than the  
22 time the application for the settlement contract is signed by all  
23 parties and must be signed by the viator and the settlement  
24 provider and provide the following information:

26 **1. Alternatives or options.** Possible alternatives to or  
27 options that can be used in conjunction with ~~viatical~~ settlement  
28 contracts ~~for--persons--with--catastrophic--or--life-threatening~~  
29 illnesses, including, but not limited to, accelerated death  
30 benefits or policy loans offered by the issuer of the life  
31 insurance policy;

32 **2. Federal tax implications.** The fact that some or all of  
33 the proceeds of the ~~viatical~~ settlement contract may be free from  
34 federal income tax under the federal Health Insurance Portability  
35 and Accountability Act of 1996, Public Law 104-191; and that  
36 restrictions, qualifications and other tax laws, particularly  
37 those of the state in which the viator resides, may apply and  
38 assistance should be sought from a professional tax advisor;

40 **3. State tax implications.** The fact that some or all of  
41 the proceeds of the ~~viatical~~ settlement may be free from state  
42 income tax under section 6809~~†~~ and that restrictions,  
43 qualifications and other tax laws, including those of the State  
44 state in which the viator resides, may apply and assistance  
45 should be sought from a professional tax advisor;

46 **4. Claims of creditors.** The fact that proceeds of the  
47 ~~viatical~~ settlement could be subject to the claims of creditors;

2           **5. Effect on government benefits.** The fact that ~~receipts~~  
3           receipt of viatical-settlements the proceeds of the settlement  
4           may adversely affect the recipient's eligibility for Medicaid or  
5           other means-based government programs, benefits or entitlements  
6           and that advice should be obtained from the appropriate agencies;

7           **6. Right to rescind.** The ~~policy-owner's-or-certificate~~  
8           holder's fact that the viator has the right to rescind a viatical  
9           settlement contract before the earlier of the--30th--day 30  
10           calendar days after the date upon which the viatical settlement  
11           contract is executed by both all parties or the--15th--day 15  
12           calendar days after the date upon which payment is received by  
13           the viator as provided in section 6809--and. If exercised by the  
14           viator, rescission is effective only if both notice of the  
15           rescission is given and repayment of all proceeds and any  
16           premiums, loans and loan interest to the settlement provider is  
17           made within the rescission period. If the insured dies during  
18           the rescission period, the settlement contract is deemed to have  
19           been rescinded, subject to repayment of all proceeds and any  
20           premiums, loans and loan interest to the settlement provider;

21           **7. Potential reduction or loss of benefits to beneficiary.**  
22           The fact that ~~a-consequence-of-the-viatical-settlement-will-be~~  
23           ~~the-loss-of-some-or-all-of-the-death-benefit-payable-under-the~~  
24           ~~life-insurance-policy-or-certificate-to-the-current-beneficiary~~  
25           ~~or-beneficiaries-of-the-policy-or-certificate-being-viaticated,~~  
26           ~~entering into a settlement contract may cause other rights or~~  
27           ~~benefits, including conversion rights and waiver of premium~~  
28           ~~benefits that may exist under the policy or certificate, to be~~  
29           ~~forfeited by the viator and that assistance should be sought from~~  
30           ~~a financial adviser;~~

31           **8. Funds.** The fact that funds will be sent to the viator  
32           within 3 business days after the settlement provider has received  
33           the insurer's or group administrator's acknowledgment that  
34           ownership of the policy or interest in the certificate has been  
35           transferred and the beneficiary has been designated; and

36           **9. Privacy disclosure.** A statement containing the  
37           following language: "All medical, financial or personal  
38           information solicited or obtained by a settlement provider or  
39           settlement producer about an insured, including the insured's  
40           identity or the identity of family members, a spouse or a  
41           significant other, may be disclosed as necessary to effect the  
42           settlement contract between the viator and the settlement  
43           provider. If you are asked to provide this information, you will  
44           be asked to consent to the disclosure. The information may be  
45           provided to someone who buys the policy or provides funds for the  
46           purchase. You may be asked to renew your permission to share  
47           information every 2 years."



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Sec. 11. 24-A MRSA §6808-A is enacted to read:

**§6808-A. Contact with insured; additional disclosures**

**1. Contact with insured.** The insured may be contacted by either the settlement provider or its authorized representative for the purpose of determining the insured's health status. This contact is limited to once every 3 months if the insured has a life expectancy of more than one year and no more than once per month if the insured has a life expectancy of one year or less.

**2. Additional disclosures.** A settlement provider shall provide the viator with at least the following disclosures no later than the date the settlement contract is signed by all parties. The disclosures must be conspicuously displayed in the settlement contract or in a separate document signed by the viator and the settlement provider or settlement producer and must provide the following information:

A. The affiliation, if any, between the settlement provider and the issuer of the insurance policy to be acquired pursuant to a settlement contract;

B. The name, address and telephone number of the settlement provider;

C. If an insurance policy to be purchased has been issued as a joint policy or involves family riders or any coverage of a life other than the insured's under the policy to be purchased, information regarding the possible loss of coverage on the other lives under the policy and advice to consult with the viator's insurance producer or the insurer issuing the policy for advice on the proposed settlement;

D. The dollar amount of the current death benefit payable to the settlement provider under the policy or certificate. If known, the settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the settlement provider's interest in those benefits; and

E. The name, business address and telephone number of the independent 3rd-party escrow agent and the fact that the viator may inspect or receive copies of the relevant escrow or trust agreements or documents.

2 3. Notice of change in ownership or beneficiary. If the  
3 settlement provider transfers ownership or changes the  
4 beneficiary of the insurance policy, the settlement provider  
5 shall communicate the change in ownership or beneficiary to the  
6 insured within 20 days after the change.

7 **Sec. 12. 24-A MRSA §6809**, as amended by PL 2003, c. 320, §1,  
8 is further amended to read:

9 **§6809. General provisions for settlement contracts**

10 **1. Prior conditions.** A viatical settlement provider  
11 entering into a viatical settlement contract with a viator shall  
12 first obtain:

13 A. If the viator is the insured, a written statement from a  
14 licensed attending physician that the viator is of sound  
15 mind and under no constraint or undue influence to enter  
16 into a settlement contract;

17 B. --A- Prior to or at the time of execution of the  
18 settlement contract, a witnessed document in which the  
19 viator consents to the viatical settlement contract,  
20 acknowledges--that--the--insured--has--a--catastrophic--or  
21 life-threatening-illness, represents that the insured viator  
22 has a full and complete understanding of the viatical  
23 settlement contract and that the insured viator has a full  
24 and complete understanding of the benefits of the life  
25 insurance policy and, acknowledges that the insured viator  
26 has entered into the viatical settlement contract freely and  
27 voluntarily and, for persons who are terminally ill or  
28 chronically ill, acknowledges that the insured is terminally  
29 ill or chronically ill and that the terminal or chronic  
30 illness was diagnosed after the life insurance policy was  
31 issued; and

32 C. Notwithstanding section 2159, subsection 3 or any other  
33 provisions of state law, a witnessed document in which the  
34 insured consents to the release of the insured's medical  
35 records to a settlement provider and, if the life insurance  
36 policy was issued less than 2 years from the date of  
37 application for a settlement contract to the insurance  
38 company that issued the life insurance policy covering the  
39 life of the insured.

40 The insurer shall respond to a request for verification of  
41 coverage submitted by a settlement provider not later than 30  
42 calendar days of the date the request is received. The request  
43 for verification of coverage must be made on a form approved by  
44 the superintendent. In its response, the insurer shall indicate

2 whether, based on the medical evidence and documents provided,  
3 the insurer intends to pursue an investigation regarding the  
4 validity of the insurance contract.

6 **2. Confidentiality of medical information.** All medical  
7 information solicited or obtained by any licensee is subject to  
8 the applicable provisions of state law relating to  
9 confidentiality of medical information.

10 **3. Unconditional rescission.** All viatical settlement  
11 contracts ~~entered into in this State or entered into with~~  
12 ~~residents of this State~~ must contain a provision ~~for an~~  
13 ~~unconditional rescission period of the earlier of the 30th day~~  
14 ~~after the date upon which the viatical settlement contract is~~  
15 ~~executed by both parties or the 15th day after the date upon~~  
16 ~~which payment is received by the viator~~ that the viator has the  
17 right to rescind a settlement contract before the earlier of 30  
18 calendar days after the date upon which the settlement contract  
19 is executed by all parties or 15 calendar days after the date  
20 upon which payment is received by the viator as provided in  
21 section 6808. Rescission Rescission if exercised by the viator is  
22 effective only if both notice of the ~~rescission~~ rescission is  
23 given and a full ~~return of funds to the trustee or escrow agent~~  
24 repayment of all proceeds and any premiums, loans and loan  
25 interest to the settlement provider is made within the rescission  
26 period. If the insured dies during the rescission  
27 period, the settlement contract is deemed to have been rescinded,  
28 subject to repayment of all proceeds and any premiums, loans and  
29 loan interest to the settlement provider.

30 **4. Transfer of insurance policy.** ~~Immediately upon receipt~~  
31 ~~from the viator of documents to effect the transfer of the~~  
32 ~~insurance policy, the viatical~~ The settlement provider shall pay  
33 ~~the proceeds of the settlement to an escrow or trust account~~  
34 ~~managed by an independent trustee or escrow agent in a~~  
35 ~~state chartered or federally chartered financial institution,~~  
36 ~~whose deposits are insured by the Federal Deposit Insurance~~  
37 ~~Corporation or its successor, pending acknowledgment of the~~  
38 ~~transfer by the issuer of the policy~~ instruct the viator to send  
39 the executed documents required to effect the change in ownership  
40 or assignment or change in beneficiary directly to the  
41 independent escrow agent. Within 3 business days after the date  
42 the escrow agent receives the document, or from the date the  
43 settlement provider receives the documents, if the viator  
44 erroneously provides the documents directly to the provider, the  
45 settlement provider shall pay or transfer the proceeds of the  
46 settlement into an escrow or trust account maintained in a state  
47 or federally chartered financial institution whose deposits are  
48 insured by the Federal Deposit Insurance Corporation or its  
49 successor. Upon payment of the settlement proceeds into the  
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2 escrow account, the escrow agent shall deliver the original  
4 change in ownership or assignment or change in beneficiary forms  
6 to the settlement provider or related provider trust. Upon the  
8 escrow agent's receipt of the acknowledgment of the properly  
10 completed transfer of ownership or assignment or designation of  
12 beneficiary from the insurance company, the escrow agent shall  
14 pay the settlement proceeds to the viator. The trustee or escrow  
16 agent shall transfer the proceeds due to the viator or otherwise  
18 according to the viator's written instructions immediately upon  
20 receipt of acknowledgment of the transfer from the insurer.

12 **5. Effect of failure to tender consideration.** Failure to  
14 tender consideration for the viatical settlement under the terms  
16 of the viatical settlement contract renders the contract voidable  
18 for lack of consideration until the time consideration is  
20 tendered to and accepted by the viator.

18 **6. Unlicensed provider.** ~~An independent viatical producer~~  
20 ~~or viatical producer may not receive a fee, commission or other~~  
22 ~~valuable consideration for services from a viatical settlement~~  
24 ~~provider not licensed in this State as a viatical settlement~~  
26 ~~provider with respect to viatical settlements in this State.~~

24 **7. Income.** ~~Income received by the original policyowner or~~  
26 ~~original certificate holder from a viatical settlement contract~~  
28 ~~is subject to state income tax only to the extent the income is~~  
30 ~~subject to federal income tax.~~

30 **8. Advertising standards.** ~~The following requirements apply~~  
32 ~~to advertising.~~

32 **A.** ~~Advertising must be truthful and may not mislead by fact~~  
34 ~~or implication.~~

34 **B.** ~~The names of licensed viatical settlement providers,~~  
36 ~~viatical producers and independent viatical producers must~~  
38 ~~be clearly identified in all advertisements placed by these~~  
40 ~~entities.~~

40 **9. Contacts with the insured.** An insured may designate one  
42 or more adult individuals in regular contact with the insured as  
44 the individual for all inquiries regarding the insured's health  
46 status and, if that designation is made, a viatical settlement  
48 provider, ~~viatical producer or independent viatical producer~~ may  
50 not make these inquiries to the insured unless the settlement  
provider, ~~producer or independent producer~~ is unable, for more  
than 30 days, to contact the designee after diligent effort. The  
insured may change this designation at any time upon written  
notice to the settlement provider, ~~independent producer or~~  
~~producer.~~ Contacts with the insured for the purpose of

2 determining the health status of the insured after the viatical  
3 settlement has occurred are limited to once every 3 months for  
4 insureds with an estimated life expectancy of more than one year  
5 and once per month for insureds with a life expectancy of one  
6 year or less. The viatical settlement provider ~~or viatical~~  
7 ~~settlement broker~~ shall explain to the insured the procedure for  
8 these contacts prior to the time ~~the insured enters into~~ the  
9 viatical settlement contract is entered into. The limitation in  
10 this rule on contacts does not apply to contacts made for reasons  
11 other than determining the insured's health status or necessary  
12 to maintain the policy in force. Settlement providers are  
13 responsible for the actions of their authorized representatives.

14 **Sec. 13. 24-A MRSA §§6810 to 6812**, as enacted by PL 1997, c.  
15 430, §1 and affected by §2, are amended to read:

16 **§6810. Rules**

17 The superintendent may adopt rules implementing this  
18 chapter, ~~including establishing standards for reasonableness of~~  
19 ~~payments to viators under a viatical settlement contract.~~ These  
20 rules are routine technical rules under Title 5, chapter 375,  
21 subchapter II-A 2-A. Rules may be adopted to:

22 **1. Standards for evaluating reasonableness of payments.**  
23 Establish standards for evaluating the reasonableness of payments  
24 to viators under a viatical settlement contract only when the  
25 insured in the policy that is the subject of a settlement  
26 contract is terminally ill or chronically ill. This authority  
27 includes, but is not limited to, regulation of discount rates  
28 used to determine the amount paid in exchange for assignment,  
29 transfer, sale, devise or bequest of a benefit under a life  
30 insurance policy;

31 **2. Licensing requirements and standards.** Establish  
32 appropriate licensing requirements and standards for continued  
33 licensure for settlement providers;

34 **3. Mechanism for financial accountability.** Require a bond  
35 or other mechanism for financial accountability for settlement  
36 providers;

37 **4. Govern relationship and responsibilities.** Govern the  
38 relationship and responsibilities of both insurers and settlement  
39 providers and settlement producers and others in the business of  
40 settlement during the period of consideration or effectuation of  
41 a settlement contract; and

42 **5. Implement other requirements.** Implement any other  
43 requirements of this chapter.  
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2       **§6811. Prohibited practices and provisions under policies**

4           **1. Assignment.** The following provisions govern assignment.

6           A. A policy of individual or group life insurance that  
8           permits assignment issued or delivered in this State may  
10           not, in any way, restrict ~~the-insured~~ a person from making  
12           an absolute assignment of rights for consideration.  
14           Prohibited restrictions include, but are not limited to,  
          assignments only as a gift and without consideration,  
          assignments only to a limited class of persons and  
          assignments only to a natural person and not to a legal  
          entity.

16           B. A life insurance company that acknowledges and records  
18           an absolute assignment of life insurance policy or rights  
20           under a group life insurance policy may rely solely on the  
22           authorization of the assignor to make the assignment and the  
24           life insurance company is not obligated to inquire into the  
26           validity, sufficiency or terms of the assignment. In  
28           acknowledging and recording an assignment, a life insurance  
          company acting in good faith and reliance on the  
          presentation of the absolute assignment, acts in a  
          ministerial capacity and may exhibit no discretion as to  
          whether an assignor may make the assignment or whether the  
          assignment conforms with applicable law.

30           **2. Rights under an assignment.** The following provisions  
          apply to an assignment.

32           A. For life insurance contracts that permit assignment:

34           (1) ~~An--insured~~ A person has the right to assign,  
36           transfer, sell or bequeath the ownership of or death  
38           benefit payable under a life insurance policy or  
40           certificate at any time for any remaining portion of  
          that coverage after exercising any option for  
          accelerated benefits;

42           (2) ~~An-insured~~ A person also has the right to assign,  
44           transfer, sell, devise or bequeath the ownership of or  
46           death benefit payable under a life insurance policy or  
          certificate if that coverage is on disability waiver of  
          premium at any time; and

48           (3) The absolute assignee of an individual life  
50           insurance policy or of all rights under a group life  
          insurance policy has all rights at law or in equity as  
          the assignor held under that policy, including, but not

2 limited to, the right to convert the coverage to an  
individual policy, the right to timely notice of the  
4 right to that conversion at the time that right  
accrues, the right to make premium payments or take  
6 such other action as may be necessary under the policy  
in order to preserve the value of the coverage  
8 assigned, the right to receive information concerning  
the coverage, the right to receive notice of a lapse or  
10 discontinuation of coverage, the exclusive right to  
exercise any options concerning the assigned coverage  
12 during an open enrollment period and all such other  
rights and privileges initially granted to ~~the-insured~~  
14 a person under the terms of the individual or group  
life insurance policy.

16 B. ~~An-insured~~ A person has the right to exercise any option  
for accelerated benefits under the terms of any individual  
18 or group life insurance policy at any time for any  
unassigned portion of that policy or certificate.

20 **3. Failure to give notice under group life insurance**  
22 **policy.** If the rights under a group life insurance policy have  
been assigned and the administrator of the policy fails to give  
24 notice to the assignee that ~~the-insured~~ a person is no longer a  
covered person under the group and of the right to convert the  
26 policy to an individual life insurance policy, the period of time  
during which the assignee must make application for conversion  
28 under the terms of the group life insurance policy begins from  
the date the notice is given to the assignee.

30 **4. Riders and postsettlement increases or additions.** With  
32 respect to policies containing a provision for double or  
additional indemnity for accidental death or any other riders or  
34 additional death benefits, including the increase in the death  
benefit in excess of the amount of the death benefits of the date  
36 the ~~viatical~~ settlement contract is effected at the time the  
policy is assigned, transferred, sold, devised or bequeathed,  
38 unless otherwise mutually agreed to in writing by the viator and  
the ~~viatical~~ settlement provider, the additional amount remains  
40 payable to the beneficiary last named by the viator prior to  
entering into the ~~viatical~~ settlement contract or to such other  
42 beneficiary other than the ~~viatical~~ settlement provider as the  
viator may thereafter designate or, in the absence of a  
44 designation, to the estate of the viator.

46 **5. Prohibition on settlements.** It is a violation of this  
chapter for any person to enter into a settlement contract within  
48 a 2-year period commencing with the date of issuance of the  
insurance policy or certificate unless the viator certifies to

2 the settlement provider that one or more of the following  
3 conditions have been met within the 2-year period:

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

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

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

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

22 6. Submission of certification. If the settlement provider  
23 submits to the insurer a copy of the owner or insured's  
24 certification described in subsection 5 when the settlement  
25 provider submits a request to the insurer to effect the transfer  
26 of the policy or certificate to the settlement provider, the copy  
27 is deemed to conclusively establish that the settlement contract  
28 satisfies the requirements of this section and the insurer shall  
29 timely respond to the request.

#### 30 **§6812. Insurance company practices**

31 **1. Duty to provide information.** An In addition to the  
32 provisions in section 6809, an insurance company that is licensed  
33 to do business in this State shall promptly respond to reasonable  
34 requests for policy information from a viatical settlement  
35 provider, ~~viatical~~ or settlement producer ~~or independent viatical~~  
36 producer upon the receipt of the following documents in the  
37 office of the insurance company:

38 A. An authorization signed by the viator to release  
39 specified information regarding the policy or certificate to  
40 a named licensed viatical settlement provider, ~~viatical~~  
41 settlement ~~agent~~ or viatical settlement broker producer;  
42 and



2 B. A request in writing from the ~~named-licensed-viatical~~  
3 settlement provider, ~~--viatical--settlement-agent~~ or ~~viatical~~  
4 settlement ~~broker~~ producer for the specified policy or  
certificate information.

6 Requests for the following items related to the policy or  
7 certificate ~~being-viated~~ that is the subject of a settlement  
8 transaction are deemed to be reasonable: ownership of and death  
9 benefits under the policy or certificate; premium information on  
10 the policy or certificate; liens, assignments and additional  
11 benefits; waiver of premium; and ownership and assignment  
12 provisions. The information provided must be the most recent  
13 information on file. By rule, the superintendent may specify  
14 additional criteria for information requests deemed reasonable  
15 under this section by a ~~viatical~~ settlement provider ~~or--an~~  
16 ~~independent-viatical-producer~~.

18 **2. Conversion of group insurance.** An issuer or 3rd-party  
19 administrator of a group life insurance policy shall promptly  
20 issue an individual conversion policy if the conversion is being  
21 requested for the purpose of entering into a ~~viatical~~ settlement  
22 contract. For the purposes of this section, issuance of such a  
23 policy is deemed timely if it meets relevant standards for  
24 timeliness under chapter 23. This subsection may not be  
25 construed to create any new conversion rights not already granted  
26 by the policy or certificate being ~~viated~~ acquired pursuant  
27 to a settlement contract.

28 **3. Right to assign rights or benefits.** Subsection 1 or 2  
29 does not prohibit a viator under a group life insurance policy  
30 from assigning rights or benefits under the policy to a licensed  
31 ~~viatical~~ settlement provider or converting the coverage to an  
32 individual life insurance policy.

34 **4. Assignment restrictions prohibited.** A policy of group  
35 life insurance issued or in existence in this State that permits  
36 any assignment of a viator's rights may not restrict the viator  
37 from making assignments other than by gift.

40 **5. Purchase of securities.** This chapter does not require  
41 notice to the superintendent of, or restrict an insurance company  
42 from investing in, or participating in, or purchasing any  
43 securities issued in any transaction including without limitation  
44 any financing, securitization transaction or securities offering  
45 in which the licensed ~~viatical~~ settlement provider sells,  
46 assigns, transfers, pledges, hypothecates or otherwise disposes  
47 of ~~viatical~~ settlement contracts, ~~viated~~ policies acquired  
48 pursuant to settlement contracts or any interest therein.

2           **Sec. 14. 24-A MRSA §6813**, as enacted by PL 1997, c. 430, §1  
and affected by §2, is repealed.

4           **Sec. 15. 24-A MRSA §6815**, as enacted by PL 1997, c. 430, §1  
and affected by §2, is amended to read:

6           **§6815. Assignment or resale of policies**

8  
10           **1. Prohibited transfers.** A viatical settlement provider  
may not sell, assign, transfer or pledge a ~~viaticated~~ policy  
12           acquired pursuant to a settlement contract except to a licensed  
viatical settlement provider or a person exempt from licensing  
under section 6803 ~~or-6813~~.

14           **2. Securities registration.** Any sale by a viatical  
16           settlement provider of viatical settlement contracts, ~~viaticated~~  
policies acquired pursuant to settlement contracts or interests  
18           ~~in-a-viatical-settlement-contract-or-viaticated-policy~~ therein  
that constitute a "security" within the meaning of the United  
20           States Securities Act of 1933, as amended, or the Revised Maine  
Securities Act, as amended, must be registered under those  
22           statutes unless there is an available exemption from registration  
under those statutes.

24           **Sec. 16. 24-A MRSA §6816**, as enacted by PL 1997, c. 430, §1  
and affected by §2, is repealed.

26           **Sec. 17. 24-A MRSA §§6817 to 6819** are enacted to read:

28           **§6817. Advertising of settlements**

30           **1. Advertising for settlements.** Every settlement provider  
32           licensee shall establish and at all times maintain a system of  
34           control over the content, form and method of dissemination of all  
36           advertisements of its contracts, products and services. All  
38           advertisements, regardless of by whom written, created, designed  
or presented, are the responsibility of the settlement provider  
40           licensee, as well as the individual who created or presented the  
advertisement. A system of control must include providing  
42           regular routine notification, at least once a year, to agents and  
others authorized by the settlement licensee to disseminate  
44           advertisements; the notification must include the requirements  
and procedures for approval of any advertisements not furnished  
46           by the settlement provider licensee prior to the advertisements'  
use.

48           **2. Form and content.** Advertisements must be truthful and  
not misleading in fact or by implication. The form and content of  
50           an advertisement of a settlement contract must be sufficiently  
complete and clear so as to avoid deception. It may not have the

2 capacity or tendency to mislead or deceive. Whether an  
4 advertisement has the capacity or tendency to mislead or deceive  
6 must be determined by the superintendent from the overall  
8 impression that the advertisement may be reasonably expected to  
10 create upon a person of average education or intelligence within  
12 the segment of the public to which it is directed.

14 3. Standards for disclosure. An advertisement must comply  
16 with standards for disclosure determined by rule by the  
18 superintendent.

20 4. Applicability. This section applies to any advertisement  
22 of settlement contracts or related products or services intended  
24 for dissemination in this State, including advertising on the  
26 Internet viewed by persons located in this State. If disclosure  
28 requirements are established pursuant to federal regulation, this  
30 section must be interpreted so as to minimize or eliminate  
32 conflict with federal regulation whenever possible.

34 **§6818. Fraud prevention and control**

36 1. Fraudulent viatical or life settlement acts prohibited.  
38 Notwithstanding any other provision of law to the contrary:

40 A. A person may not commit a fraudulent viatical or life  
42 settlement act;

44 B. A person may not knowingly or intentionally interfere  
46 with the enforcement of the provisions of this chapter or  
48 investigations of suspected or actual violations of this  
50 chapter; and

C. A person in the business of settlements may not  
knowingly or intentionally permit any person convicted of a  
crime involving dishonesty or breach of trust to participate  
in the business of settlements.

2. Fraud warning required. Settlement contracts and  
applications for settlements, regardless of the form of  
transmission, must contain the following statement or a  
substantially similar statement: "Any person who knowingly  
presents false information in an application for insurance or a  
settlement contract is guilty of a crime and may be subject to  
 fines and confinement in prison." The lack of a statement as  
required in this subsection does not constitute a defense in any  
prosecution for a fraudulent viatical or life settlement act.

3. Mandatory reporting of fraudulent viatical or life  
settlement acts. Any person engaged in the business of  
settlements having knowledge or a reasonable belief that a

2 fraudulent viatical or life settlement act is being, will be or  
3 has been committed shall provide to the superintendent the  
4 information required by, and in a manner prescribed by, the  
5 superintendent. Any other person having knowledge or a  
6 reasonable belief that a fraudulent viatical or life settlement  
7 act is being, will be or has been committed may provide to the  
8 superintendent the information required by, and in a manner  
9 prescribed by, the superintendent.

10 4. Immunity from liability. Except as provided in  
11 subsection 5, civil liability may not be imposed on and a cause  
12 of action may not arise from a person's furnishing information  
13 concerning suspected, anticipated or completed fraudulent  
14 viatical or life settlement acts or suspected or completed  
15 fraudulent insurance acts if the information is provided to or  
16 received from:

17 A. The superintendent or the superintendent's employees,  
18 agents or representatives;

19 B. Federal, state or local law enforcement or regulatory  
20 officials or their employees, agents or representatives;

21 C. The National Association of Insurance Commissioners or  
22 its successor organization, National Association of  
23 Securities Dealers or its successor organization, the North  
24 American Securities Administrators Association or its  
25 successor organization, or their employees, agents or  
26 representatives of these organization, or other regulatory  
27 body overseeing life insurance, settlements securities or  
28 investment fraud;

29 D. A person involved in the prevention and detection of  
30 fraudulent viatical or life settlement acts or that person's  
31 agents, employees or representatives; or

32 E. The life insurer that issued the life insurance policy  
33 covering the life of the insured.

34 5. Exception. The following provisions apply to the  
35 imposition of civil liability arising from information provided  
36 to or received from the superintendent or the superintendent's  
37 employees, agents or representatives.

38 A. Subsection 4 does not apply to statements made with  
39 actual malice. In an action brought against a person for  
40 filing a report or furnishing other information concerning a  
41 fraudulent viatical or life settlement act or a fraudulent  
42 insurance act, the party bringing the action shall plead  
43 specifically any allegation that subsection 4  
44

2 does not apply because the person filing the report or  
furnishing the information did so with actual malice.

4 B. Subsection 4 does not apply to a person's furnishing  
information concerning that person's own suspected,  
6 anticipated or completed fraudulent viatical or life  
settlement acts or suspected or completed fraudulent  
8 insurance acts.

10 C. A person identified in subsection 4 is entitled to an  
award of attorney's fees and costs if that person is the  
12 prevailing party in a civil cause of action for libel,  
slander or any other relevant tort arising out of activities  
14 in carrying out the provisions of this chapter and the party  
bringing the action was not substantially justified in doing  
16 so. For purposes of this paragraph, a proceeding is  
"substantially justified" if it had a reasonable basis in  
18 law or fact at the time that it was initiated.

20 D. This subsection does not abrogate or modify common law  
or statutory privileges or immunities enjoyed by a person  
22 described in subsection 4.

24 6. Confidentiality. The following provisions apply.

26 A. The documents and evidence provided pursuant to  
subsection 4 or obtained by the superintendent in an  
28 investigation of suspected or actual fraudulent viatical or  
life settlement acts is privileged and confidential and is  
30 not a public record under Title 1, chapter 13 and is not  
subject to discovery or subpoena in a civil or criminal  
32 action.

34 B. Paragraph A does not prohibit release by the  
superintendent of documents and evidence obtained in an  
36 investigation of suspected or actual fraudulent viatical or  
life settlement acts:

38 (1) In administrative or judicial proceedings to  
40 enforce laws administered by the superintendent:

42 (2) To federal, state or local law enforcement or  
regulatory agencies, to an organization established for  
44 the purpose of detecting and preventing fraudulent  
viatical or life settlement acts or to the National  
46 Association of Insurance Commissioners or its successor  
organization; or

48

2           (3) At the discretion of the superintendent, to a  
4           person in the business of settlements that is aggrieved  
          by a fraudulent viatical or life settlement act.

6           C. Release of documents and evidence under paragraph B does  
          not abrogate or modify the privilege granted in paragraph A.

8           7. Other law enforcement or regulatory authority. This  
10          section does not:

12          A. Preempt the authority or relieve the duty of other law  
14          enforcement or regulatory agencies to investigate, examine  
          and prosecute suspected violations of law;

16          B. Prevent or prohibit a person from disclosing voluntarily  
18          information concerning viatical or life settlement fraud to  
          a law enforcement or regulatory agency other than the  
          bureau; or

20          C. Limit the powers granted elsewhere by the laws of this  
22          State to the superintendent or an insurance fraud unit to  
24          investigate and examine possible violations of law and to  
          take appropriate action against wrongdoers.

26          8. Viatical or life settlement antifraud initiatives. In  
28          accordance with this subsection, a settlement provider licensee  
30          must have in place antifraud initiatives reasonably calculated to  
          detect, prosecute and prevent fraudulent viatical or life  
          settlement acts.

32          A. At the discretion of the superintendent, the  
34          superintendent may order, or a licensee may request and the  
36          superintendent may grant, such modifications of the required  
38          initiatives under paragraph B as necessary to ensure an  
          effective antifraud program. The modifications may be more  
          or less restrictive than the required initiatives as long as  
          the modifications may reasonably be expected to accomplish  
          the purpose of this subsection.

40          B. Antifraud initiatives must include:

42           (1) Fraud investigators, who may be employees of a  
44           settlement provider or independent contractors; and

46           (2) An antifraud plan, which must be submitted to the  
48           superintendent. The antifraud plan must include, but is  
          not limited to:

50           (a) A description of the procedures for detecting  
          and investigating possible fraudulent viatical or

2 life settlement acts and procedures for resolving  
3 material inconsistencies between medical records  
4 and insurance applications;

5 (b) A description of the procedures for reporting  
6 possible fraudulent viatical or life settlement  
7 acts to the superintendent;

8 (c) A description of the plan for antifraud  
9 education and training of underwriters and other  
10 personnel; and

11 (d) A description or chart outlining the  
12 organizational arrangement of the antifraud  
13 personnel who are responsible for the  
14 investigation and reporting of possible fraudulent  
15 viatical or life settlement acts and investigating  
16 unresolved material inconsistencies between  
17 medical records and insurance applications.

18 C. Antifraud plans submitted to the superintendent are  
19 privileged and confidential and are not a public record  
20 under Title 1, chapter 13 or subject to discovery or  
21 subpoena in a civil or criminal action.

22 **§6819. Civil remedies; individual remedy**

23 **1. Civil remedies and enforcement.** In addition to the  
24 penalties available pursuant to section 6814, the superintendent  
25 may assess fines or take any other enforcement action permitted  
26 under section 12-A against any person who violates any provision  
27 of this chapter.

28 **2. Superior Court action.** Any person who is injured by any  
29 action of a person in violation of this chapter may bring an  
30 action in Superior Court. The requirements for notice and filing  
31 of a cause of action under this subsection are governed by the  
32 Maine Rules of Civil Procedure. The person may recover damages,  
33 together with costs and disbursements.

34 **3. No private right of action.** Except as specifically  
35 provided in subsection 2, this chapter provides no express or  
36 implied private right of action.

37 **SUMMARY**

38 This bill is submitted pursuant to Public Law 2003, chapter  
39 320, which directed the Superintendent of Insurance to convene a  
40 working group to review current law on viatical settlement

contracts and to submit recommended legislation to specifically  
2 permit life settlement contracts and to make any other necessary  
changes to the laws regulating viatical settlement contracts.  
4 Maine law currently permits the use of viatical settlements but  
does not permit life settlements. While both settlements involve  
6 the sale of a life insurance policy or certificate for  
consideration, viatical settlements may be entered into only when  
8 the insured is either chronically or terminally ill, whereas,  
under a life settlement contract, these criteria need not be  
10 present. This bill amends Maine's current law on viatical  
settlement contracts to expressly permit life settlement  
12 contracts in accordance with requirements similar to those  
applicable to viatical settlements. The proposed amendments are  
14 consistent with the most recently adopted National Association of  
Insurance Commissioners Viatical Settlements Model Act.