

MAINE STATE LEGISLATURE

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DATE: 5-22-97

(Filing No. H-654)

BANKING AND INSURANCE

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
118TH LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to H.P. 1115, L.D. 1558, Bill, "An Act to Regulate Viatical Companies"

Amend the bill in section 1 in that part designated "S6802." by striking out all of subsection 1 (page 1, lines 19 to 22 in L.D.) and inserting in its place the following:

'1. Financing entity. "Financing entity" means any participant or transferee of or successor to the interest of a participant other than the viator in any viatical settlement financing transaction.'

Further amend the bill in section 1 in that part designated "S6802." in subsection 2 in the 3rd line (page 1, line 26 in L.D.) by inserting after the following: "financing for" the following: 'the purchase, acquisition, transfer or other assignment of one or more'

Further amend the bill in section 1 in that part designated "S6802." by inserting after subsection 2 the following:

'3. Independent viatical producer. "Independent viatical producer" means any person who has independent producer authority and who offers or advertises the availability of viatical settlements, introduces viators to viatical settlement providers and offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers. "Independent viatical producer" does not include an attorney or accountant retained to represent the viator whose compensation is paid by or at the direction of the viator nor does the term include a viatical settlement provider operating in this State or a viatical producer, a credit union or an employer or association

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2 that makes its employees or members aware of viatical settlement
3 contracts. Irrespective of the manner in which the independent
4 viatical producer is compensated, an independent viatical
5 producer is deemed to represent only the interests of the viator
6 and owes a fiduciary duty to the viator.

7 4. Institutional investor. "Institutional investor" means
8 a bank, trust company, insurance company, mutual fund or pension
9 fund that owns in the aggregate at least \$1,000,000 in assets.'

10 Further amend the bill in section 1 in that part designated
11 "§6802." in subsection 3 in the 3rd line (page 1, line 38 in
12 L.D.) by striking out the following: "participant" and inserting
13 in its place the following: 'person'

14 Further amend the bill in section 1 in that part designated
15 "§6802." by striking out all of subsections 4 to 9 and inserting
16 in their place the following:

17 '4. Viatical producer. "Viatical producer" means any person
18 who has producer authority, who acts or aids in any manner in the
19 soliciting of a viatical settlement on behalf of a viatical
20 settlement provider. "Viatical producer" does not include an
21 attorney, accountant, financing entity, independent viatical
22 producer or person exercising a power of attorney granted by the
23 viator, retained to represent the viator and whose compensation
24 is paid solely by the viator without regard to whether the
25 viatical settlement is effected. The term also does not include
26 a credit union or an employer or association that makes its
27 employees or members aware of viatical settlement contracts. A
28 viatical producer is deemed to represent the viatical settlement
29 provider for which that producer is appointed.

30 5. Viatical settlement. "Viatical settlement" means a
31 transaction in which a person pays compensation or anything of
32 value, when that compensation or value is less than the expected
33 death benefit of the life insurance policy or certificate, in
34 return for the assignment, transfer, sale or bequest of a death
35 benefit or ownership of the life insurance policy or certificate
36 to the person or the person's designee by the policyowner or
37 certificate holder.

38 6. Viatical settlement provider. "Viatical settlement
39 provider" means a person who pays compensation or anything of
40 value to a viator under a viatical settlement. The term does not
41 include:

42 A. A bank, savings bank, savings and loan association,
43 credit union or other licensed lending institution that

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takes an assignment of a life insurance policy as collateral for a loan;

B. The issuer of a life insurance policy providing accelerated benefits under section 2555;

C. A viator's friend or family member who enters into no more than one agreement in a calendar year for the assignment, transfer, sale, devise or bequest of life insurance policies for any value less than the expected death benefit; or

D. A financing entity.

7. Viaticated policy. "Viaticated policy" means any interest in a life insurance policy or a certificate of group life insurance held by a viatical settlement provider directly or indirectly through a viatical settlement contract.

8. Viator. "Viator" means a person who assigns, transfers, sells or bequeaths a death benefit or ownership of a life insurance policy or certificate under a viatical settlement. "Viator" does not include a viatical settlement provider or a financing entity.'

Further amend the bill in section 1 in that part designated "§6802." by renumbering the subsections to read consecutively.

Further amend the bill in section 1 in that part designated "§6803." by striking out all of subsection 1 and inserting in its place the following:

'1. License required. Licenses are required in accordance with this subsection.

A. A person may not act as a viatical settlement provider without a license from the superintendent.

B. A person may not act as a viatical producer without a license from the superintendent as a life and health insurance producer.

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

D. A viatical settlement provider license issued to a person authorizes all partners, officers and key management personnel of that person to act on that person's behalf as if these individuals are also licensed. These persons must be named in the application and any supplements to the

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2 application and the authorization terminates upon the
3 expiration, suspension or revocation of the license.

4 E. Notwithstanding the provisions of this section, if a
5 person acts as a viatical settlement provider, a viatical
6 producer or an independent viatical producer without being
7 licensed, the person is subject to all other provisions of
8 this chapter as if this person were licensed as a viatical
9 settlement provider or viatical settlement independent
10 producer.'

12 Further amend the bill in section 1 in that part designated
13 "\$6803." in subsection 2 in the 2nd line (page 3, line 34 in
14 L.D.) by striking out the following: "or a viatical settlement
15 broker license"

16 Further amend the bill in section 1 in that part designated
17 "\$6803." in subsection 2 in the last line (page 3, line 37 in
18 L.D.) by striking out the following: "\$100" and inserting in its
19 place the following: '\$400'

22 Further amend the bill in section 1 in that part designated
23 "\$6803." in subsection 3 by striking out all of the first
24 sentence (page 3, lines 39 to 41 in L.D.) and inserting in its
25 place the following: 'A license for a viatical settlement
26 provider is renewed for one year upon payment of a fee of \$400.'

28 Further amend the bill in section 1 in that part designated
29 "\$6803." in subsection 5 in the 4th line (page 4, line 8 in L.D.)
30 by striking out the following: "viatical settlement broker" and
31 inserting in its place the following: 'independent viatical
32 producer'

34 Further amend the bill in section 1 in that part designated
35 "\$6803." in subsection 7 in paragraph B in the first line (page
36 4, line 46 in L.D.) by striking out the following: "viatical
37 settlement broker" and inserting in its place the following:
38 'independent viatical producer'

40 Further amend the bill in section 1 in that part designated
41 "\$6803." in subsection 9 in the 2nd and 3rd lines (page 5, lines
42 5 and 6 in L.D.) by striking out the following: "viatical
43 settlement brokers" and inserting in its place the following:
44 'independent viatical producers'

46 Further amend the bill in section 1 in that part designated
47 "\$6804." in subsection 1 by striking out all of the first
48 sentence (page 5, lines 11 to 14 in L.D.) and inserting in its
49 place the following: 'The superintendent may deny, suspend,
50 revoke or refuse to renew the license of a viatical settlement if

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2 the superintendent finds just cause to do so, which may include,
but is not limited to, a finding that:'

4 Further amend the bill in section 1 in that part designated
"§6804." in subsection 1 in paragraph E in the 2nd line (page 5,
6 line 35 in L.D.) by inserting after the following: "chapter" the
following: 'or any rules adopted pursuant to this chapter'

8 Further amend the bill in section 1 in that part designated
10 "§6804." by striking out all of subsections 2 and 3 and inserting
in their place the following:

12 '2. Hearing. Before the superintendent may deny a license
14 application or suspend, revoke or refuse to renew the license of
a viatical settlement provider, the licensee has an opportunity
16 for a hearing in accordance with Title 5, chapter 375, subchapter
IV.

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

26 Further amend the bill in section 1 in that part designated
28 "§6805." by striking out all of the first paragraph (page 5,
lines 51 and 52 and page 6, lines 1 to 9 in L.D.) and inserting
30 in its place the following:

32 'A viatical settlement provider or independent viatical
34 producer may not use any contract, disclosure statement or
application form in this State when dealing with a viator unless
it has been filed with and approved by the superintendent,
36 pursuant to sections 2412 and 2413.'

38 Further amend the bill in section 1 by striking out all of
that part designated "§6806." and inserting in its place the
40 following:

42 '§6806. Reporting requirements; confidentiality of information

44 1. Annual report. A licensee shall file with the
superintendent by March 1st of each year an annual statement
46 containing such information as the superintendent prescribes by
rule. The superintendent may not adopt any rule that requires
48 the submission of information that permits the identification of
a viator. The superintendent may not request, collect or compile
50 personal information that identifies any viator except in

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2 connection with the investigation of a specific complaint and
3 with the prior written permission of the viator or the viator's
4 estate or representative to collect that information.

6 2. Disclosure. Except as otherwise required or permitted
7 by law, a viatical settlement provider, viatical producer,
8 independent viatical producer, institutional investor, insurance
9 company, insurance producer, independent insurance producer,
10 information bureau, rating company or any other person with
11 actual knowledge of the identity of a viator, or of the insured
12 if other than the viator, may not disclose that identity to any
13 other person unless the viator, or the insured if other than the
14 viator, provides written consent to the disclosure and the
15 disclosure:

16 A. Is made to a viatical settlement provider, a viatical
17 producer, an independent viatical producer, an institutional
18 investor or other person determined by rule and is necessary
19 to effect the viatical settlement between the viator and the
20 viatical settlement provider;

22 B. Is provided in response to an investigation by the
23 superintendent; or

26 C. Is necessary to facilitate a financing transaction and is
27 made either to a licensed viatical settlement provider or to
28 an institutional investor.

30 3. Sale or transfer. A viatical settlement provider may not
31 sell or transfer a viaticated policy to a financing entity other
32 than an institutional investor or a licensed viatical settlement
33 provider.'

34 Further amend the bill in section 1 in that part designated
35 "§6808." by striking out all of the first paragraph (page 7,
36 lines 6 to 9 in L.D.) and inserting in its place the following:

38 'A viatical settlement provider or independent viatical
39 producer shall disclose in writing the following information to
40 the viator prior to the date the viatical settlement contract is
41 signed by the viator:'

44 Further amend the bill in section 1 in that part designated
45 "§6808." in subsection 5 in the last line (page 7, line 39 in
46 L.D.) by striking out the following: "and"

48 Further amend the bill in section 1 in that part designated
49 "§6808." in subsection 6 in the last line (page 7, line 46 in
50 L.D.) by striking out the following: "." and inserting in its
place the following: '; and'

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2 Further amend the bill in section 1 in that part designated
"§6808." by inserting after subsection 6 the following:

4 '7. Potential reduction or loss of benefits to
6 beneficiary. The fact that a consequence of the viatical
8 settlement will be the loss of some or all of the death benefit
10 payable under the life insurance policy or certificate to the
current beneficiary or beneficiaries of the policy or certificate
being viaticated.'

12 Further amend the bill in section 1 in that part designated
14 "§6809." in subsection 1 by striking out all of paragraph C (page
8, lines 16 and 17 in L.D.) and inserting in its place the
following:

16 'C. Notwithstanding section 2159, subsection 3 or any other
18 provisions of state law, a witnessed document in which the
20 insured consents to the release of the insured's medical
records.'

22 Further amend the bill in section 1 in that part designated
24 "§6809." in subsection 6 in the first and 2nd lines (page 9,
lines 1 and 2 in L.D.) by striking out the following: "viatical
26 settlement broker or viatical settlement agent" and inserting in
its place the following: 'independent viatical producer or
viatical producer'

28 Further amend the bill in section 1 in that part designated
30 "§6809." by striking out all of subsection 7 (page 9, lines 8 to
12 in L.D.) and inserting in its place the following:

32 '7. Income. Income received by the original policyowner or
34 original certificate holder from a viatical settlement contract
36 is subject to state income tax only to the extent the income is
subject to federal income tax.'

38 Further amend the bill in section 1 in that part designated
40 "§6809." in subsection 8 in paragraph B in the 2nd line (page 9,
line 21 in L.D.) by striking out the following: "viatical
42 settlement agents and viatical settlement brokers" and inserting
in its place the following: 'viatical producers and independent
viatical producers'

44 Further amend the bill in section 1 in that part designated
46 "§6809." in subsection 9 in the first line (page 9, line 25 in
L.D.) by inserting after the following: "insured." the
48 following: 'An insured may designate one or more adult
individuals in regular contact with the insured as the individual
50 for all inquiries regarding the insured's health status and, if

2 that designation is made, a viatical settlement provider,
3 viatical producer or independent viatical producer may not make
4 these inquiries to the insured unless the provider, producer or
5 independent producer is unable, for more than 30 days, to contact
6 the designee after diligent effort. The insured may change this
7 designation at any time upon written notice to the provider,
8 independent producer or producer.'

9 Further amend the bill in section 1 in that part designated
10 "§6809." in subsection 9 by striking out all of the last sentence
11 (page 9, lines 33 to 35 in L.D.) and inserting in its place the
12 following: 'The limitation in this rule on contacts does not
13 apply to contacts made for reasons other than determining the
14 insured's health status or necessary to maintain the policy in
15 force.'

16 Further amend the bill in section 1 in that part designated
17 "§6810." by striking out all of subsections 1 and 2 (page 9,
18 lines 39 to 47 in L.D.) and inserting in their place the
19 following:

20 'The superintendent may adopt rules implementing this
21 chapter, including establishing standards for reasonableness of
22 payments to viators under a viatical settlement contract. These
23 rules are routine technical rules under Title 5, chapter 375,
24 subchapter II-A.'

25 Further amend the bill in section 1 in that part designated
26 "§6811." in subsection 1 in the first line (page 9, line 51 in
27 L.D.) by striking out the following: "Policy rights are freely
28 assignable." and inserting in its place the following: 'The
29 following provisions govern assignment.'

30 Further amend the bill in section 1 in that part designated
31 "§6811." in subsection 1 in paragraph A in the first line (page
32 10, line 1 in L.D.) by inserting after the following:
33 "insurance" the following: 'that permits assignment'

34 Further amend the bill in section 1 in that part designated
35 "§6811." in subsection 2 by striking out all of paragraphs A to C
36 and inserting in their place the following:

- 37 'A. For life insurance contracts that permit assignment:
38
39 (1) An insured has the right to assign, transfer, sell
40 or bequeath the ownership of or death benefit payable
41 under a life insurance policy or certificate at any
42 time for any remaining portion of that coverage after
43 exercising any option for accelerated benefits;

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2 (2) An insured also has the right to assign, transfer,
3 sell or bequeath the ownership of or death benefit
4 payable under a life insurance policy or certificate if
5 that coverage is on disability waiver of premium at any
6 time; and

8 (3) The absolute assignee of an individual life
9 insurance policy or of all rights under a group life
10 insurance policy has all rights at law or in equity as
11 the assignor held under that policy, including, but not
12 limited to, the right to convert the coverage to an
13 individual policy, the right to timely notice of the
14 right to that conversion at the time that right
15 accrues, the right to make premium payments or take
16 such other action as may be necessary under the policy
17 in order to preserve the value of the coverage
18 assigned, the right to receive information concerning
19 the coverage, the right to receive notice of a lapse or
20 discontinuation of coverage, the exclusive right to
21 exercise any options concerning the assigned coverage
22 during an open enrollment period and all such other
23 rights and privileges initially granted to the insured
24 under the terms of the individual or group life
25 insurance policy.

26
27 B. An insured has the right to exercise any option for
28 accelerated benefits under the terms of any individual or
29 group life insurance policy at any time for any unassigned
30 portion of that policy or certificate.'

31 Further amend the bill in section 1 in that part designated
32 "§6811." by striking out all of subsections 4 and 5 and inserting
33 in their place the following:

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

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2 Further amend the bill in section 1 in that part designated
3 "§6812." in subsection 1 by striking out all of the first
4 paragraph (page 11, lines 33 to 38 in L.D.) and inserting in its
5 place the following:

6
7 '1. Duty to provide information. An insurance company that
8 is licensed to do business in this State shall promptly respond
9 to reasonable requests for policy information from a viatical
10 settlement provider, viatical producer or independent viatical
11 producer upon the receipt of the following documents in the
12 office of the insurance company:'

13 Further amend the bill in section 1 in that part designated
14 "§6812." in subsection 1 by inserting after paragraph B the
15 following:

16
17 'Requests for the following items related to the policy or
18 certificate being viaticated are deemed to be reasonable:
19 ownership of and death benefits under the policy or certificate;
20 premium information on the policy or certificate; liens,
21 assignments and additional benefits; waiver of premium; and
22 ownership and assignment provisions. The information provided
23 must be the most recent information on file. By rule, the
24 superintendent may specify additional criteria for information
25 requests deemed reasonable under this section by a viatical
26 settlement provider or an independent viatical producer.'

27 Further amend the bill in section 1 in that part designated
28 "§6812." by striking out all of subsection 2 (page 11, lines 50
29 to 52 and page 12, lines 1 to 5 in L.D.) and inserting in its
30 place the following:

31
32 '2. Conversion of group insurance. An issuer or 3rd-party
33 administrator of a group life insurance policy shall promptly
34 issue an individual conversion policy if the conversion is being
35 requested for the purpose of entering into a viatical settlement
36 contract. For the purposes of this section, issuance of such a
37 policy is deemed timely if it meets relevant standards for
38 timeliness under chapter 23. This subsection may not be
39 construed to create any new conversion rights not already granted
40 by the policy or certificate being viaticated.'

41 Further amend the bill in section 1 in that part designated
42 "§6813." in subsection 1 in the 2nd and 3rd lines (page 12, lines
43 31 and 32 in L.D.) by striking out the following: "viatical
44 settlement broker" and inserting in its place the following:
45 'independent viatical producer'

46 Further amend the bill in section 1 in that part designated

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"§6816." in the first paragraph by striking out all of the first sentence (page 13, lines 10 to 14 in L.D.) and inserting in its place the following: 'A viatical settlement provider or independent viatical producer that is currently acting lawfully in this State may continue to operate pending approval or disapproval of the applicant's license under this chapter if an application is filed with the superintendent pursuant to this chapter prior to January 1, 1998.'

Further amend the bill in section 2 in the first line (page 13, line 16 in L.D.) by striking out the following: "November" and inserting in its place the following: 'October'

Further amend the bill by inserting after section 2 the following:

'Sec. 3. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1997-98	1998-99
PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF		
Bureau of Insurance		
Positions - Legislative Count	(.500)	(.500)
Personal Services	\$14,995	\$20,993
All Other	8,791	5,821
Allocates funds for one additional half-time Senior Insurance Analyst position and necessary operating costs to administer certain regulatory responsibilities pertaining to viatical companies.		
DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION		
TOTAL	\$23,786	\$26,814'

Further amend the bill by inserting at the end before the summary the following:

'FISCAL NOTE

	1997-98	1998-99
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2 APPROPRIATIONS/ALLOCATIONS

4 Other Funds \$23,786 \$26,814

6 The Bureau of Insurance within the Department of
Professional and Financial Regulation will require additional
8 Other Special Revenue allocations of \$23,786 and \$26,814 in
fiscal years 1997-98 and 1998-99, respectively, for one
10 additional half-time Senior Insurance Analyst position and
necessary operating costs to administer certain regulatory
12 responsibilities pertaining to viatical companies. The bureau
has adequate resources to cover this additional expense on an
14 annual basis.

16 The licensure of viatical companies will result in
insignificant increases of dedicated revenue to the Bureau of
18 Insurance from license fees.

20 The additional workload and administrative costs associated
with the minimal number of new cases filed in the court system
22 can be absorbed within the budgeted resources of the Judicial
Department. The collection of additional fines may increase
24 General Fund revenue by minor amounts.'

26 SUMMARY

28 This amendment does the following.

30 1. It clarifies the definitions in the bill and adds new
32 definitions for "institutional investor," "viatical settlement"
and "viator."

34 2. It replaces the use of the terms "agent" and "broker"
36 with the terms "producer" and "independent producer."

38 3. It eliminates separate licensing and fee requirements
for independent viatical producers already licensed as
40 independent producers.

42 4. It increases the licensing and renewal fees for viatical
settlement providers.

44 5. It provides that a viatical settlement provider has an
46 opportunity for hearing before the Superintendent of Insurance
denies, suspends, revokes or refuses to renew a license, rather
48 than requiring a hearing in all instances.

50 6. It adds provisions governing confidentiality and
disclosure.

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2 7. It makes income from viatical settlements taxable under
state income tax laws only to the extent the income is subject to
4 federal tax.

6 8. It clarifies the provisions relating to rights under
assignment.

8
10 9. It removes the provisions relating to incontestability
and limits on defense that may be raised by insurance companies
in disputes.

12
14 10. It clarifies the provisions relating to conversion from
a group to an individual life insurance policy.

16 11. It changes the effective date from November 1, 1997 to
October 1, 1997.

18
20 The amendment also adds an allocation section and a fiscal
note to the bill.

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