

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1693

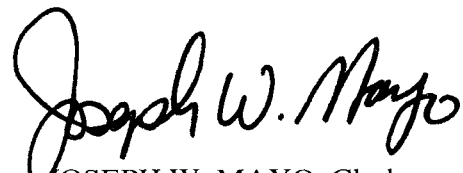
H.P. 1182

House of Representatives, March 4, 1999

An Act to Clarify the Regulation of Viatical Settlement Contracts When Sold as Investments.

Submitted by the Department of Professional and Financial Regulation pursuant to Joint Rule 204.

Reference to the Committee on Business and Economic Development suggested and ordered printed.


JOSEPH W. MAYO, Clerk

Presented by Representative O'NEIL of Saco.
Cosponsored by Senator ABROMSON of Cumberland.

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

2
4
6
8
10
12
14
16
18
20
22
24
26
28
30
32
34
36
38
40
42
44
46
48
50

Sec. 1. 32 MRSA §10302, sub-§2, ¶C, as enacted by PL 1985, c. 400, §2, is amended to read:

C. A sales representative acting for an issuer effecting offers or sales of securities in transactions exempt by one or more paragraphs of section 10502, subsection 2, except paragraph 5;

Sec. 2. 32 MRSA §10501, sub-§9, ¶D is enacted to read:

D. The "issuer" of a fractional or pooled interest in a viatical settlement contract means the person who creates, for the purpose of sale, the fractional or pooled interest. The "issuer" of a viatical settlement contract that is not fractionalized or pooled means the person effecting the transaction with the investor in such a contract but does not include a broker-dealer or sales representative.

Sec. 3. 32 MRSA §10501, sub-§18, as amended by PL 1997, c. 168, §23, is further amended to read:

18. Security. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit-sharing agreement; any limited partnership interest; ~~collateral---~~collateral-trust certificate; preorganization certificate or subscription; transferable share; investment contract; viatical settlement contract; voting-trust certificate; certificate of deposit for a security; documents of title to and certificates of interest in an oil, gas or other mineral lease or in payments out of production under such lease, right or royalty; any put, call, straddle or option entered into a national securities exchange relating to foreign currency; any put, call, straddle or option on any security, certificate of deposit or group or index of securities, including any interest therein or based on the value thereof; or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or some other specified period or any interest in a contributory or noncontributory pension or welfare plan subject to the United States Employee Retirement Income Security Act of 1974.

Sec. 4. 32 MRSA §10501, sub-§21 is enacted to read:

2 21. Viatical settlement contract. "Viatical settlement
3 contract" means an agreement for the purchase, sale, assignment,
4 transfer, devise or bequest of any portion of the death benefit
5 or ownership of a life insurance policy or certificate for
6 consideration that is less than the expected death benefit of the
7 life insurance policy or certificate. "Viatical settlement
8 contract" does not include:

9
10 A. The assignment, transfer, sale, devise or bequest of a
11 death benefit, life insurance policy or certificate of
12 insurance by the viator to the viatical settlement provider
13 pursuant to the Viatical Settlements Act;

14 B. The assignment, transfer, sale, devise or bequest of a
15 life insurance policy, for any value less than the expected
16 death benefit, by the viator to a friend or family member
17 who enters into no more than one such agreement in a
18 calendar year;

19 C. An assignment of a life insurance policy to a bank,
20 savings bank, savings and loan association, credit union or
21 other licensed lending institution as collateral for a loan;
22 or

23 D. The exercise of accelerated benefits pursuant to the
24 terms of the Maine Insurance Code and of the life insurance
25 policy.

26
27 **Sec. 5. 32 MRSA §10502, sub-§2, ¶Q,** as amended by PL 1989, c.
28 542, §42, is further amended to read:

29
30
31 Q. Any offer or sale of securities of a corporation
32 organized under the laws of this State, if the number of
33 holders of securities of the entity, exclusive of persons
34 specified in section 10501, subsection 4, will in
35 consequence of the sale exceed 10, but will not in
36 consequence of the sale exceed 25 in number and if the
37 securities sold in reliance on this subsection have not been
38 offered to the public by general advertisement or general
39 solicitation. Any person who relies on this exemption shall
40 file with the administrator a notification for exemption
41 which shall that must be in such form as may be prescribed
42 by the administrator and which shall require requires only
43 the following information: The name, address and telephone
44 number of the issuer; the state and date of incorporation of
45 the issuer; the name, address and telephone number of
46 persons who may respond to inquiries about the issuer; the
47 location at which the books and records of the issuer shall
48 be are kept and whether they will--be are available for
49 inspection by shareholders; a description of all classes of
50 securities of the issuer, including newly authorized classes
51 of securities, providing the number of authorized units of
52

2 each class, par value per unit and the number of units of
each class as are issued and outstanding; a description of
4 the class of securities ~~as shall be~~ offered for sale,
including the number of units authorized, par value per
6 unit, the number of units currently outstanding, the number
of units being offered for sale, the number of units to be
8 outstanding and the price at which each unit is offered for
sale; a description of the rights of holders of the
10 securities offered pursuant to this exemption, including
voting rights and if cumulative or noncumulative liquidation
12 rights, preemptive rights and any other rights or
limitations applicable to the securities; the date the
14 annual meeting of the shareholders ~~will be~~ is held, the
location and time of the meeting, a description of how the
shareholders ~~will be~~ are notified and if an annual financial
16 statement and report of activity ~~will be~~ is available to
shareholders; a brief description of how the proceeds of the
18 offering will be used and ~~if whether~~ proceeds shall will be
returned to investors if minimum amounts are not raised by a
20 specific date; a brief description of the issuer's plan of
business and whether the business is currently operational;
22 and a list of the significant risks assumed by the investor,
including management experience, competitive and economic
24 factors, net worth position of the issuer and improbable or
limited opportunity for release of the securities. A copy of
26 the notification of exemption ~~shall~~ must be made available
to each offeree of securities sold in reliance on this
28 exemption and ~~shall~~ must contain such legends as the
administrator ~~shall prescribe~~ prescribes, notifying the
30 offeree that the securities have not been registered with
the administrator, that they may be deemed considered
32 restricted securities and that the issuer is under an
obligation to make a reasonable finding that the securities
34 are a suitable investment for the offeree. The administrator
may ~~promulgate~~ adopt such rules as are considered necessary
36 to further define or implement this subsection consistent
with the intent of this subsection; and

38 **Sec. 6. 32 MRSA §10502, sub-§2, ¶R**, as amended by PL 1997, c.
40 168, §25, is further amended to read:

42 R. Any transaction by an issuer not involving any public
offering within the meaning of the United States Securities
44 Act of 1933, Section 4(2) and the rules ~~promulgated~~ adopted
under that Act, including, but not limited to, any
46 transaction exempt from registration with the United States
Securities and Exchange Commission under the United States
48 Securities and Exchange Commission, Rule 506, or any
successor rule adopted under the United States Securities
50 Act of 1933, and any transaction constituting a nonpublic
offering under rules adopted by the administrator, if no
52 later than 15 days after the first sale in this State of a

2 security in reliance on the exemption from registration
provided in this subsection, the issuer shall file with the
4 administrator a notice on United States Securities and
Exchange Commission Form D, as amended, and the consent to
6 service of process required by section 10704, and pay a
filing fee of \$300 for each security sold in this State; and

8 **Sec. 7. 32 MRSA §10502, sub-§2, ¶S** is enacted to read:

10 S. Any offer or sale of a viatical settlement contract, if:

12 (1) The underlying viatical settlement transaction
14 with the viator was not in violation of the Viatical
Settlements Act; and

16 (2) Such disclosure documents as the administrator, by
18 rule or order, requires are delivered to each offeree
or purchaser.

20 **Sec. 8. 32 MRSA §10502, sub-§7** is enacted to read:

22 7. Rules. Rules adopted pursuant to this section are
24 routine technical rules as defined in Title 5, chapter 375,
subchapter II-A.

26 **Sec. 9. 32 MRSA §10504, sub-§1**, as enacted by PL 1997, c. 168,
28 §28, is amended to read:

30 **1. Filing of sales and advertising literature.** The
32 administrator, by rule or order, may require the filing of any
prospectus, pamphlet, circular, form letter, advertisement or
34 other sales literature or advertising communication addressed or
intended for distribution to prospective investors, including
36 clients or prospective clients of an investment adviser, unless
the security is a federal covered security or the security or
transaction qualifies for an exemption under section 10502,
subsection 2, paragraphs A to R for which the filing of a notice
38 with the administrator is not required ex--the--security--is--a
federal-covered-security.

40 **Sec. 10. 32 MRSA §10607-A** is enacted to read:

42 **§10607-A. Right to rescission applicable to sales of**
44 **viatical settlement contracts**

46 **1. Right to rescind transaction.** In addition to any other
rights provided for under this Act or otherwise, an investor who
48 purchases a viatical settlement contract may rescind the
investment by giving written notice of rescission to the entity
designated for such notice in the disclosure documents, by
50 ordinary mail postage prepaid, within 3 business days following
52 the later of:

