

MAINE STATE LEGISLATURE

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L.D. 2091

2 Date: 3/18/8

(Filing No. H-774)

3 **INSURANCE AND FINANCIAL SERVICES**

4 Reproduced and distributed under the direction of the Clerk of the House.

5 **STATE OF MAINE**
6 **HOUSE OF REPRESENTATIVES**
7 **123RD LEGISLATURE**
8 **SECOND REGULAR SESSION**

9 COMMITTEE AMENDMENT "A" to H.P. 1477, L.D. 2091, Bill, "An Act To
10 Protect Life Insurance Consumers"

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

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

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

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

23 (a) An application for the issuance of a settlement contract or insurance
24 policy;

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

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

28 (d) Premiums paid on an insurance policy;

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

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

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- 1 (g) The solicitation, offer, effectuation or sale of a settlement contract or
- 2 insurance policy;
- 3 (h) The issuance of written evidence of a settlement contract or insurance
- 4 policy; or
- 5 (i) A financing transaction; ~~or~~
- 6 (2) Employing any device, scheme or artifice to defraud related to policies
- 7 acquired pursuant to a settlement contract;
- 8 (3) Entering into stranger-originated life insurance; or
- 9 (4) Failing to disclose to the insurer when requested by the insurer that the
- 10 prospective insured has undergone a life expectancy evaluation by any person
- 11 other than the insurer or its authorized representatives in connection with the
- 12 issuance of a policy;

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

14 **6-A. Life expectancy evaluation.** "Life expectancy evaluation" means the process
15 to determine the arithmetic mean of the number of months the insured under the life
16 insurance policy to be settled can be expected to live considering medical records and
17 appropriate experiential data.

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

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

21 **9-A. Settlement contract.** "Settlement contract" means a written agreement
22 between a viator and a settlement provider establishing the terms under which
23 compensation or anything of value will be paid, which compensation or value is less than
24 the expected death benefit of the insurance policy or certificate, in return for the viator's
25 assignment, transfer, sale, devise or bequest of the death benefit or ownership of any
26 portion of the insurance policy or certificate of insurance. "Settlement contract" includes
27 the transfer for compensation or value of ownership or beneficial interest in a trust or
28 other entity that owns such policy if the trust or other entity was formed or availed of for
29 the principal purpose of acquiring one or more life insurance contracts, which life
30 insurance contract insures the life of a person residing in this State. "Settlement contract"
31 includes a premium finance loan made for a life insurance policy by a lender to a viator
32 on or before the date of issuance of the policy when the viator or the insured receives on
33 the date of the premium finance loan a guarantee of a future settlement value of the policy
34 or when the viator or the insured agrees on the date of the premium finance loan to sell
35 the policy or any portion of its death benefit on any date following the issuance of the
36 policy. "Settlement contract" does not include:

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

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- 1 (1) Premiums for the policy; and
- 2 (2) The costs of the loan, including, without limitation, interest, arrangement
3 fees, utilization fees and similar fees, closing costs, legal fees and expenses,
4 trustee fees and expenses and 3rd-party collateral provider fees and expenses,
5 including fees payable to letter of credit issuers;
- 6 D. A loan made by a bank or other licensed financial institution in which the lender
7 takes an interest in a life insurance policy solely to secure repayment of a loan or, if
8 there is a default on the loan and the policy is transferred, the transfer of such a policy
9 by the lender, as long as neither the default itself nor the transfer of the policy in
10 connection with such default is pursuant to an agreement or understanding with any
11 other person for the purpose of evading regulation under this chapter;
- 12 E. Unless the premium finance loan otherwise constitutes a settlement contract under
13 this subsection, a loan made by a lender that does not violate Title 9-A, Article 2;
- 14 F. An agreement in which all the parties are closely related to the insured by blood or
15 law or have a lawful substantial economic interest in the continued life, health and
16 bodily safety of the person insured or are trusts established primarily for the benefit
17 of such parties;
- 18 G. Any designation, consent or agreement by an insured who is an employee of an
19 employer in connection with the purchase by the employer, or by a trust established
20 by the employer, of life insurance on the life of the employee;
- 21 H. A bona fide business succession planning arrangement:
- 22 (1) Between shareholders in a corporation or between a corporation and one or
23 more of its shareholders or one or more trusts established by its shareholders;
- 24 (2) Between partners in a partnership or between a partnership and one or more
25 of its partners or one or more trusts established by its partners; or
- 26 (3) Between members in a limited liability company or between a limited
27 liability company and one or more of its members or one or more trusts
28 established by its members;
- 29 I. An agreement entered into by a service recipient, or a trust established by the
30 service recipient, and a service provider, or a trust established by the service provider,
31 who performs significant services for the service recipient's trade or business; or
- 32 J. Any contract, transaction or arrangement other than those set forth in paragraphs A
33 to I exempted from the definition of "settlement contract" by the superintendent by
34 rule based on a determination that the contract, transaction or arrangement is not of
35 the type intended to be regulated by this chapter. Rules adopted pursuant to this
36 paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-
37 A.
- 38 **Sec. 5. 24-A MRS §6802-A, sub-§12-A is enacted to read:**
- 39 **12-A. Stranger-originated life insurance.** "Stranger-originated life insurance"
40 means an act or practice to initiate a life insurance policy for the benefit of a person who,

1 at the time of the origination of the policy, has no insurable interest in the insured.
2 "Stranger-originated life insurance" includes, but is not limited to, cases in which life
3 insurance is purchased with resources or guarantees from or through a person who, at the
4 time of the inception of the policy, could not lawfully initiate the policy and when, at the
5 time of policy inception, there is an arrangement or agreement to directly or indirectly
6 transfer the ownership of the policy or the policy benefits to another person. A trust that
7 is created to give the appearance of insurable interest and is used to initiate policies for
8 investors violates insurable interest laws and the prohibition against wagering on life.
9 "Stranger-originated life insurance" does not include those practices set forth in
10 subsection 9-A.

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

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

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

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

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

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

30 **Sec. 7. Review by Bureau of Insurance.** The Superintendent of Insurance shall
31 review current state law, other state laws and model laws relating to life settlements. In
32 conducting the review, the superintendent shall consult with insurance companies,
33 persons or companies or their trade or professional organizations licensed in this or other
34 jurisdictions to do the business of life settlements and insurance producers. The
35 superintendent shall develop recommendations relating to the solicitation of life insurance
36 for the purpose of settling policies, the use of premium finance agreements in association
37 with viatical and life settlements and the disclosures made to viators and owners of life
38 insurance policies. The superintendent shall submit any recommendations, including
39 recommendations for legislation, to the joint standing committee of the Legislature
40 having jurisdiction over insurance and financial service matters not later than March 1,
41 2009. The joint standing committee of the Legislature having jurisdiction over insurance
42 and financial services matters may submit legislation to the First Regular Session of the
43 124th Legislature related to the report submitted by the superintendent.'

SUMMARY

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

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

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

FISCAL NOTE REQUIRED
(See attached)



123rd MAINE LEGISLATURE

LD 2091

LR 3217(02)

An Act To Protect Life Insurance Consumers

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Insurance and Financial Services

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - Other Special Revenue Funds

Fiscal Detail and Notes

Any additional costs to the Bureau of Insurance in the Department of Professional and Financial Regulation can be absorbed by the department utilizing existing budget resources.