

MAINE STATE LEGISLATURE

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123rd MAINE LEGISLATURE

SECOND REGULAR SESSION-2008

Legislative Document

No. 2091

H.P. 1477

House of Representatives, December 27, 2007

An Act To Protect Life Insurance Consumers

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

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

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative BRAUTIGAM of Falmouth.
Cosponsored by Senator SULLIVAN of York and
Representatives: BLISS of South Portland, CANAVAN of Waterville, CONOVER of Oakland,
CROCKETT of Augusta, JONES of Mount Vernon, TREAT of Hallowell, WAGNER of
Lewiston, Senator: BARTLETT of Cumberland.

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

2 **Sec. 1. 24-A MRSA §6802-A, sub-§9**, as enacted by PL 2003, c. 636, §5, is
3 repealed.

4 **Sec. 2. 24-A MRSA §6802-A, sub-§9-A** is enacted to read:

5 **9-A. Settlement contract.** "Settlement contract" means a written agreement between
6 a viator and a settlement provider or any affiliate of the settlement provider establishing
7 the terms under which compensation or anything of value will be paid, which
8 compensation or value is less than the expected death benefit of the insurance policy or
9 certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the
10 death benefit or ownership of any portion of the insurance policy or certificate of
11 insurance. "Settlement contract" includes a premium finance loan made for a life
12 insurance policy by a lender to a viator on, before or after the date of issuance of the
13 policy when the viator or the insured receives on the date of the premium finance loan a
14 guarantee of a future settlement value of the policy, or when the viator or the insured
15 agrees on the date of the premium finance loan to sell the policy or any portion of its
16 death benefit on any date following the issuance of the policy. "Settlement contract" does
17 not include:

18 A. A policy loan or accelerated death benefit made by the insurer pursuant to the
19 policy's terms;

20 B. Loan proceeds that are used solely to pay:

21 (1) Premiums for the policy; or

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

26 C. A loan made by a bank or other licensed financial institution in which the lender
27 takes an interest in a life insurance policy solely to secure repayment of a loan or, if
28 there is a default on the loan and the policy is transferred, the transfer of such a policy
29 by the lender, as long as the default itself is not pursuant to an agreement or
30 understanding with any other person for the purpose of evading regulation under this
31 chapter;

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

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

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

1 G. A bona fide business succession planning arrangement:

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

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

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

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

12 I. Any other contract, transaction or arrangement exempted from the definition of
13 "settlement contract" by the superintendent based on a determination that the
14 contract, transaction or arrangement is not of the type intended to be regulated by this
15 chapter.

16 **Sec. 3. 24-A MRSA §6808, sub-§1-A** is enacted to read:

17 **1-A. Duty.** The fact that a viatical settlement broker represents exclusively the
18 viator, and not the insurer or the viatical settlement provider, and owes a fiduciary duty to
19 the viator, including a duty to act according to the viator's instructions and in the best
20 interest of the viator;

21 **Sec. 4. 24-A MRSA §6811, sub-§5,** as enacted by PL 2003, c. 636, §13, is
22 amended to read:

23 **5. Prohibition on settlements.** It is a violation of this chapter for any person to
24 enter into a settlement contract within a ~~2-year~~ 5-year period commencing with the date
25 of issuance of the insurance policy or certificate unless the viator certifies to the
26 settlement provider that one or more of the following conditions have been met within the
27 ~~2-year~~ 5-year period:

28 A. The policy was issued upon the viator's exercise of conversion rights arising out
29 of a group or individual policy, as long as the total of the time covered under the
30 conversion policy plus the time covered under the prior policy is at least ~~24~~ 60
31 months. The time covered under a group policy must be calculated without regard to
32 any change in insurance carriers, as long as the coverage has been continuous and
33 under the same group sponsorship; ~~and~~

34 B. The viator submits independent evidence to the settlement provider that one or
35 more of the following conditions have been met within the ~~2-year~~ 5-year period:

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

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

