

MAINE STATE LEGISLATURE

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INSURANCE AND FINANCIAL SERVICES

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STATE OF MAINE

SENATE

124TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 397, L.D. 1063, Bill, "An Act To Provide Consumer Disclosures and Protect Consumer Options in Life Insurance"

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

Sec. 1. 24-A MRSA §6802-A, sub-§6, as amended by PL 2007, c. 543, §1, is further amended to read:

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

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

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

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

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

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

(d) Premiums paid on an insurance policy;

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

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

COMMITTEE AMENDMENT

- 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;
- 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 B. In the furtherance of a fraud or to prevent the detection of a fraud committing or
- 14 permitting one's employees or agents to:
 - 15 (1) Remove, conceal, alter, destroy or sequester from the superintendent the
 - 16 assets or records of a licensee or other person engaged in the business of
 - 17 settlements;
 - 18 (2) Misrepresent or conceal the financial condition of a licensee, financing
 - 19 entity, insurer or other person;
 - 20 (3) Transact the business of settlements in violation of laws requiring a license,
 - 21 certificate of authority or other legal authority for the transaction of the business
 - 22 of settlements; or
 - 23 (4) File with the superintendent or the chief insurance regulatory official of
 - 24 another jurisdiction a document containing false information or otherwise
 - 25 concealing information about a material fact from the superintendent;
- 26 C. Embezzlement, theft, misappropriation or conversion of money, funds, premiums,
- 27 credits or other property of a settlement provider, insurer, insured, viator, insurance
- 28 policyowner or any other person engaged in the business of settlements or insurance;
- 29 D. Recklessly entering into, brokering or otherwise dealing in a settlement contract,
- 30 the subject of which is a life insurance policy that was obtained by presenting false
- 31 information concerning any fact material to the policy or by concealing, for the
- 32 purpose of misleading another, information concerning any fact material to the
- 33 policy, when the viator or the viator's agent intended to defraud the policy's issuer.
- 34 For the purposes of this paragraph, "recklessly" means engaging in conduct in
- 35 consciously and clearly unjustifiable disregard of a substantial likelihood of the
- 36 existence of the relevant facts or risks, such disregard involving a gross deviation
- 37 from acceptable standards of conduct; or
- 38 E. Attempting to commit; assisting, aiding or abetting in the commission of; or
- 39 conspiring to commit the acts or omissions specified in this subsection;

1 F. Engaging in any transaction, practice or course of business by a person who
2 knows or reasonably should have known that the intent was to avoid the notice
3 requirements of this chapter;

4 G. With respect to a settlement producer, knowingly soliciting an offer from,
5 effectuating a life settlement contract with or making a sale to any settlement
6 provider, financing entity or related provider trust that is controlling, controlled by or
7 under common control with the producer, unless this relationship is disclosed to the
8 viator;

9 H. With respect to a settlement provider, knowingly entering into a settlement
10 contract if anything of value will be paid to a settlement producer controlling,
11 controlled by or under common control with the provider or the financing entity or
12 related provider trust that is involved in the settlement contract, unless this
13 relationship is disclosed to the viator; and

14 I. Any statement or representation to the applicant or policyholder in connection with
15 the sale or financing of a life insurance policy to the effect that the insurance is free
16 or without cost to the policyholder for any period of time, unless free coverage is
17 provided in the policy in the manner described.

18 **Sec. 2. 24-A MRSA §6802-A, sub-§6-A**, as enacted by PL 2007, c. 543, §2, is
19 amended to read:

20 **6-A. Life expectancy evaluation.** "Life expectancy evaluation" means ~~the process~~
21 ~~to determine the arithmetic mean~~ any evaluation of the number of months the insured
22 under the life insurance policy to be settled can be expected to live, or of the probability
23 that the insured will live beyond a specified date, considering medical records and
24 appropriate experiential data.

25 **Sec. 3. 24-A MRSA §6802-A, sub-§9-A**, as enacted by PL 2007, c. 543, §4, is
26 amended to read:

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

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

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

COMMITTEE AMENDMENT

1 **Sec. 4. 24-A MRSA §6802-A, sub-§10**, as enacted by PL 2003, c. 636, §5, is
2 amended to read:

3 **10. Settlement producer.** "Settlement producer" means any person who has life
4 insurance producer authority, who acts or aids in any manner in the soliciting of a
5 settlement on behalf of a viator and for a fee, commission or other valuable consideration
6 offers or attempts to negotiate settlement contracts between a viator and one or more
7 settlement providers. "Settlement producer" does not include an attorney, accountant,
8 financing entity or person exercising a power of attorney granted by the viator retained to
9 represent the viator and whose compensation is paid solely by the viator without regard to
10 whether the settlement is effected. "Settlement producer" does not include a credit union
11 or an employer or association that makes its employees or members aware of settlement
12 contracts. ~~Irrespective of the manner in which the settlement producer is compensated, a~~
13 ~~settlement producer is deemed to represent only the interests of the viator and owes a~~
14 ~~fiduciary duty to the viator.~~

15 **Sec. 5. 24-A MRSA §6802-A, sub-§12-A**, as enacted by PL 2007, c. 543, §5, is
16 amended to read:

17 **12-A. Stranger-originated life insurance.** "Stranger-originated life insurance"
18 means an act or practice to initiate a life insurance policy for the benefit of a person who,
19 at the time of the origination of the policy, has no insurable interest in the insured.
20 "Stranger-originated life insurance" includes, but is not limited to, cases in which life
21 insurance is purchased with resources or guarantees from or through a person who, at the
22 time of the inception of the policy, could not lawfully initiate the policy and when, at the
23 time of policy inception, there is an arrangement or agreement to directly or indirectly
24 transfer the ownership of the policy or the policy benefits to another person. A "Stranger-
25 originated life insurance" also includes the creation of a trust ~~that is created to give the~~
26 ~~appearance of insurable interest and is used~~ the use of such a trust in order to initiate
27 policies for investors violates in circumvention or violation of insurable interest laws and
28 the prohibition against wagering on life. "Stranger-originated life insurance" does not
29 include those practices set forth in subsection 9-A, paragraphs A to J or other lawful
30 settlement transactions.

31 **Sec. 6. 24-A MRSA §6803-A** is enacted to read:

32 **§6803-A. Fiduciary obligation of settlement producer**

33 Irrespective of the manner in which the settlement producer is compensated, a
34 settlement producer may represent only the interests of the viator and owes a fiduciary
35 duty to the viator.

36 **Sec. 7. 24-A MRSA §6805**, as amended by PL 2003, c. 636, §8, is further
37 amended to read:

38 **§6805. Approval of settlements contracts; disclosure statements and applications**

39 A settlement contract must be in writing and signed by all parties to the contract. A
40 person may not use any contract, disclosure statement or application form with a viator
41 who is a resident of this State unless it has been filed with and approved by the
42 superintendent, pursuant to sections 2412 and 2413. The superintendent shall disapprove

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1 a settlement contract form or disclosure statement form if, in the superintendent's opinion,
2 the contract or provisions contained therein are unreasonable, contrary to the interests of
3 the public or otherwise misleading or unfair to the viator. All such forms must be
4 approved or denied by the superintendent within 60 calendar days following receipt of
5 submission by the superintendent.

6 **Sec. 8. 24-A MRSA §6806, sub-§1**, as amended by PL 2003, c. 636, §9, is
7 further amended to read:

8 **1. Annual report.** A settlement provider licensee shall file with the superintendent
9 by March 1st of each year an annual statement containing such information as the
10 superintendent prescribes by rule, including information related to settlement transactions
11 on policies settled within 5 years of policy issuance. The superintendent may not adopt
12 any rule that requires the submission of information that permits the identification of a
13 viator or relates to transactions when the viator is not a resident of this State. The
14 superintendent may not request, collect or compile personal information that identifies
15 any viator or insured except in connection with the investigation of a specific complaint
16 and with the prior written permission of the viator or insured or the viator's or insured's
17 estate or representative to collect that information.

18 **Sec. 9. 24-A MRSA §6808, sub-§7-A** is enacted to read:

19 **7-A. Potential inability to purchase additional insurance.** The fact that, because
20 of limits insurers may set on the amount of insurance on a single life, a change of
21 ownership could leave the viator without the ability to purchase insurance in the future to
22 replace the transferred policy;

23 **Sec. 10. 24-A MRSA §6808-A, sub-§2**, as enacted by PL 2003, c. 636, §11, is
24 amended to read:

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

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

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

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

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

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

4 F. A reconciliation of the settlement provider's gross offer to the net amount to be
5 received by the viator;

6 G. The identity of all persons compensated directly or indirectly by the settlement
7 provider for the settlement contract, the amount of compensation paid to each and the
8 method of calculating that compensation;

9 H. Notice that the insured may be contacted as permitted by subsection 1 for the
10 purpose of determining the insured's health;

11 I. An offer to disclose to the insured all life expectancy estimates obtained by the
12 provider; and

13 J. Notice that complaints and inquiries may be brought to the attention of the
14 superintendent.

15 **Sec. 11. 24-A MRSA §6808-A, sub-§2-A is enacted to read:**

16 2-A. Disclosure by settlement producers. A settlement producer shall provide the
17 viator with at least the following disclosures no later than the date the settlement contract
18 is signed by all parties. The disclosures must be conspicuously displayed in the settlement
19 contract or in a separate document signed by the viator and the settlement producer and
20 must provide the following information:

21 A. Notice that a settlement producer must exclusively represent the viator, not the
22 insurer or the settlement provider, and owes a fiduciary duty to the viator;

23 B. A description of all offers, counteroffers, acceptances and rejections relating to
24 any proposed settlement of the policy;

25 C. If any other persons are compensated directly or indirectly by the settlement
26 producer for the settlement contract, their identity, the amount of compensation paid
27 to each and the method of calculating that compensation; and

28 D. Notice that complaints and inquiries may be brought to the attention of the
29 superintendent.

30 **Sec. 12. 24-A MRSA §6808-A, sub-§4 is enacted to read:**

31 4. Disclosure of policyowner's rights. The superintendent shall develop an
32 informational brochure to apprise consumers of their rights as owners of life insurance
33 policies. The document must be made available at no cost to all insurance companies and
34 life insurance producers and written in lay terms.

35 A. The brochure must advise the consumer:

36 (1) That life insurance is a critical part of a broader financial plan and that the
37 consumer is encouraged, and has a right, to seek additional financial advice and
38 opinions;

39 (2) That possible alternatives to the lapse of the policy exist; and

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(3) Of the definitions of common industry terms.

B. The brochure must contain the following statement in large, bold or otherwise conspicuous typeface calculated to draw the eye: "Life insurance is a critical part of a broader financial plan. There are many options available, and you have the right to shop around and seek advice from different financial advisers in order to find the option best suited to your needs."

C. The brochure may include brief descriptions of common products available from settlement providers. These products must be described in general terms for informative purposes only and not identify any specific settlement provider.

D. If the insured under an individual life insurance policy is 60 years of age or older, or is known by the insurer to be terminally ill or chronically ill, the insurer shall send notice to the policyowner that there may be alternative transactions available, including a copy of the superintendent's brochure, whenever:

- (1) The policyowner has requested the surrender of the policy in whole or in part;
- (2) The policyowner has requested an accelerated death benefit;
- (3) The insurer sends an initial notice that the policy may lapse; or
- (4) As the superintendent may require by rule.

Sec. 13. 24-A MRSA §6809, sub-§4, as amended by PL 2003, c. 636, §12, is further amended to read:

4. Transfer of insurance policy. The settlement provider shall designate an independent escrow agent and instruct the viator to send the executed documents required to effect the change in ownership or assignment or change in beneficiary directly to the independent escrow agent. Within 3 business days after the date the escrow agent receives the document, or from the date the settlement provider receives the documents, if the viator erroneously provides the documents directly to the provider, the settlement provider shall pay or transfer the proceeds of the settlement into an escrow or trust account maintained in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation or its successor. Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership or assignment or change in beneficiary forms to the settlement provider or related provider trust. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership or assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the viator.

Sec. 14. 24-A MRSA §6812, sub-§6 is enacted to read:

6. Protection of policyholder's rights. An insurer may not engage in a transaction, act, practice or course of business or dealing that restricts, limits or impairs in any way the lawful transfer of ownership, change of beneficiary or assignment of a policy. This subsection does not prohibit a lawful contract provision granting irrevocable rights to a beneficiary or lawfully prohibiting assignment.

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Sec. 15. 24-A MRSA §6812-A is enacted to read:

§6812-A. Inquiries and optional disclosures by life insurers

1. Permitted inquiries regarding premium financing. In addition to any other information a life insurer may lawfully request in an application for insurance, the insurer may ask whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing, and if so, whether:

A. The applicant has entered into any agreement or arrangement providing for the future sale of this life insurance policy;

B. The loan arrangement for the policy provides funds sufficient to pay for some or all of the premiums, costs and expenses associated with obtaining and maintaining the applicant's life insurance policy;

C. The applicant has entered into any agreement by which the applicant is to receive consideration in exchange for procuring the policy; and

D. The borrower has an insurable interest in the insured.

2. Prohibited transactions. If the information obtained by the life insurer demonstrates that the loan provides funds that can be used for a purpose other than paying for the premiums, costs and expenses associated with obtaining and maintaining the life insurance policy and loan or that the transaction otherwise violates this chapter, the insurer shall reject the application.

3. Optional disclosures by the life insurer. The insurer may make disclosures to the applicant, the insured and other affected persons, either on the application, an amendment to the application or a separate document, in the following form:

"If you have entered into a loan arrangement in which the policy is used as collateral and the policy does change ownership at some point in the future in satisfaction of the loan, the following may be true:

A. A change of ownership could lead to a stranger owning an interest in the insured's life;

B. Your ability to purchase future insurance on the insured's life could be limited because there is a limit to how much coverage insurers will issue on one life;

C. Should there be a change of ownership and should you wish to obtain more insurance coverage on the insured's life in the future, the insured's higher issue age, a change in health status or other factors may reduce the ability to obtain coverage or may result in significantly higher premiums; and

D. You should consult a professional advisor because a change in ownership in satisfaction of the loan may result in tax consequences to the owner, depending on the structure of the loan."

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SUMMARY

This amendment replaces the bill. The amendment requires additional disclosures to consumers related to viatical and life settlements. The amendment requires the Superintendent of Insurance to develop a brochure informing consumers about their rights as owners of life insurance policies, including the alternatives to the lapse of a life insurance policy. The amendment requires life insurance companies to provide the brochure to consumers who are 60 years of age or older or have a chronic or terminal illness under certain circumstances. The amendment also makes technical changes to current law based on recommendations from the Department of Professional and Financial Regulation, Bureau of Insurance.

FISCAL NOTE REQUIRED

(See attached)



124th MAINE LEGISLATURE

LD 1063

LR 1097(02)

An Act To Provide Consumer Disclosures and Protect Consumer Options in Life Insurance

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

Additional costs to the Bureau of Insurance in the Department of Professional and Financial Regulation can be absorbed by the bureau utilizing existing budgeted resources.