

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**  
**ONE HUNDRED AND SEVENTEENTH LEGISLATURE**

**SECOND SPECIAL SESSION**  
**September 5, 1996 to September 7, 1996**

**ONE HUNDRED AND EIGHTEENTH LEGISLATURE**

**FIRST REGULAR SESSION**  
**December 4, 1996 to March 27, 1997**

**FIRST SPECIAL SESSION**  
**March 27, 1997 to June 20, 1997**

**THE GENERAL EFFECTIVE DATE FOR**  
**FIRST REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**JUNE 26, 1997**

**FIRST SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**SEPTEMBER 19, 1997**

**PUBLISHED BY THE REVISOR OF STATUTES**  
**IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,**  
**TITLE 3, SECTION 163-A, SUBSECTION 4.**

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**J.S. McCarthy Company**  
**Augusta, Maine**  
**1997**

**Sec. C-34. 13-A MRSA §616, sub-§3**, as enacted by PL 1971, c. 439, §1, is amended to read:

3. Unless noted on the face or back of the share certificates representing such shares, a restriction on transfer imposed either by agreement under subsection 1 or by the articles or bylaws under subsection 2 ~~shall be~~ is ineffective, except against a person who had actual knowledge of it at the time ~~he~~ the person acquired the shares. This subsection ~~shall be~~ is construed in the light of Title 11, section ~~8-204~~ 8-1204 and the statutory definitions applicable thereto.

**Sec. C-35. 30-A MRSA §5706, sub-§2**, as amended by PL 1995, c. 664, §2, is further amended to read:

2. **Repurchase agreements.** In repurchase agreements ~~secured by~~ with respect to obligations of the United States Government, as defined in section 5712, subsection 1, as long as the market value of the underlying obligation is equal to or greater than the amount of the municipality's investment and either the municipality's security entitlement with respect to the underlying obligation is created pursuant to the provisions of Title 11, article 8-A and other applicable law or the municipality's security interest is perfected pursuant to the provisions of Title 11, sections ~~8-313 and 8-321~~ article 9 and other applicable law, except that, if the term of the repurchase agreement is not in excess of 96 hours, the municipality's security interest ~~is~~ with respect to the underlying security obligation need not be perfected as long as an executed Public Securities Association form of master repurchase agreement is on file with the counterparty prior to the date of the transaction;

## PART D

**Sec. D-1. Legislative intent.** This Act is the Maine enactment of the Uniform Commercial Code, Articles 5 and 8 as revised by the National Conference of Commissioners on Uniform State Laws. The text of that uniform Act has been changed to conform to Maine statutory conventions and the Articles are enacted as Articles 5-A and 8-A. The changes are technical in nature and it is the intent of the Legislature that this Act be interpreted as substantively the same as the revised Articles 5 and 8 of the uniform Act.

See title page for effective date.

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## CHAPTER 430

H.P. 1115 - L.D. 1558

### An Act to Regulate Viatical Companies

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

**Sec. 1. 24-A MRSA c. 85** is enacted to read:

## CHAPTER 85

### VIATICAL SETTLEMENTS ACT

#### §6801. Short title

This chapter may be known and cited as the "Viatical Settlements Act."

#### §6802. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**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.

**2. Financing transaction.** "Financing transaction" means any transaction in which a licensed viatical settlement provider obtains financing for the purchase, acquisition, transfer or other assignment of one or more viatical settlement contracts, viaticated policies or interests in viatical settlement contracts or viaticated policies, including, without limitation, any secured or unsecured financing, securitization transaction or securities offering, either registered or exempt from registration under federal and state securities law, or otherwise sells, assigns, transfers, pledges, hypothecates or otherwise disposes of a viatical settlement contract, viaticated policy or interest in a viatical settlement contract or viaticated policy.

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

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

**5. Participant.** "Participant" means, with respect to a financing transaction, any underwriter, placement agent, lender, purchaser of securities, credit enhancer or other person, other than the viatical settlement provider, in any financing transaction.

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

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

**8. Viatical settlement provider.** "Viatical settlement provider" means a person who pays compensation or anything of value to a viator under a viatical settlement. The term does not include:

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

**9. 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.

**10. 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.

### **§6803. License requirements**

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

E. Notwithstanding the provisions of this section, if a person acts as a viatical settlement provider, a viatical producer or an independent viatical producer without being licensed, the person is subject to all other provisions of this chapter as if this person were licensed as a viatical settlement provider or viatical settlement independent producer.

**2. Application; fee.** Application for a viatical settlement provider license must be made to the superintendent by the applicant on a form prescribed by the superintendent. The application must be accompanied by a fee of \$400.

**3. Renewal.** A license for a viatical settlement provider is renewed for one year upon payment of a fee of \$400. Failure to pay the fee within the terms prescribed may result in the revocation of the license unless cured within 5 days of written notice of failure to pay to the principal office of the licensee.

**4. Information required.** The applicant shall provide such information as the superintendent

requires and the information must be submitted on forms prepared by the superintendent. The superintendent may at any time require the applicant to disclose fully the identity of all stockholders, partners, officers and employees and the superintendent may, in the exercise of the superintendent's discretion, refuse to issue a license to an applicant if not satisfied that any stockholder, partner or employee of the applicant who may materially influence the applicant's conduct meets the criteria set forth in subsection 6.

**5. Authority under license.** A license issued to any person authorizes all officers, partners and key management personnel of that person to act on behalf of the viatical settlement provider or the independent viatical producer under the license. All officers, partners and key management personnel of the person must be named in the application and any supplements to the application.

**6. Investigation.** Upon the filing of an application and the payment of the license fee, the superintendent shall make an investigation of the applicant and shall issue a license if the superintendent finds that the applicant:

- A. Has provided a detailed plan of operation;
- B. Is competent and trustworthy and intends to act in good faith in the capacity required by the license;
- C. Has a good business reputation and has had experience, training or education so as to be qualified in the business to which the license relates;
- D. If organized under the laws of this State, has provided a certificate of good standing from this State. If the applicant is a foreign entity, it must provide a certificate of good standing from its state of organization and a certificate of good standing from this State; and
- E. Or any officer, partner or key management personnel of the applicant has not been convicted of a felony of which fraud was an element.

**7. Financial responsibility.** The following evidence of financial responsibility must be provided to the superintendent before a license may be issued.

- A. A viatical settlement provider shall provide evidence of a binding and committed lending facility of at least \$1,000,000 with a term of at least one year or a net worth in excess of \$100,000.
- B. An independent viatical producer shall provide evidence of a surety bond in the amount of \$5,000.

**8. Nonresidents.** The superintendent may not issue a license to a nonresident applicant unless a written designation of an agent for service of process is filed and maintained with the superintendent or the applicant has filed with the superintendent the applicant's written irrevocable consent that an action against the applicant may be commenced against the applicant by service of process on the superintendent.

**9. List.** The superintendent shall maintain a complete list of all viatical settlement providers and independent viatical producers licensed or with license pending in this State. The list must be available upon request to the general public.

#### **§6804. License revocation and administrative assessments**

**1. Superintendent's authority.** The superintendent may deny, suspend, revoke or refuse to renew the license of a viatical settlement if the superintendent finds just cause to do so, which may include, but is not limited to, a finding that:

- A. There was any material misrepresentation in the application for the license or other information submitted to the superintendent;
- B. The licensee or any officer, partner or key management personnel of the licensee has been convicted of fraudulent or dishonest practices, is subject to a final administrative action to suspend or revoke a viatical license or is otherwise shown to be untrustworthy or incompetent to act as a viatical settlement provider or viatical settlement broker;
- C. The licensee as a viatical settlement provider demonstrates unreasonable payments to viators;
- D. The licensee or any officer, partner or key management personnel of the licensee has been convicted of any felony of which criminal fraud is an element; or
- E. The licensee has violated any of the provisions of this chapter or any rules adopted pursuant to this chapter.

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

**3. Administrative penalty.** The superintendent may, in addition to denying a license application or suspending or revoking a license, assess an administrative civil forfeiture of \$500 for each willful violation of this chapter. This section may not be construed to diminish the penalties available for any

violation of chapter 23, in addition to any penalties authorized under section 12-A.

**§6805. Approval of viatical settlements contracts, disclosure statements and applications**

A viatical settlement provider or independent viatical 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, pursuant to sections 2412 and 2413.

**§6806. Reporting requirements; confidentiality of information**

1. Annual report. A licensee shall file with the superintendent by March 1st of each year an annual statement containing such information as the superintendent prescribes by rule. The superintendent may not adopt any rule that requires the submission of information that permits the identification of a viator. The superintendent may not request, collect or compile personal information that identifies any viator except in connection with the investigation of a specific complaint and with the prior written permission of the viator or the viator's estate or representative to collect that information.

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

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

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

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

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

**§6807. Examination**

1. Complaint. In response to a complaint concerning a licensee or in connection with an application for a license, the superintendent may examine the business and affairs of any licensee or applicant for a license. Subject to the provisions of section 6806, the superintendent may order a licensee or applicant to produce records, books, files or other information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of this chapter or rules adopted under this chapter. The expenses incurred in conducting an examination must be paid by the licensee or applicant.

2. Confidential information. Names and individual identification data for all viators are confidential information and may not be disclosed by the superintendent unless required by law.

3. Records. Records of all viatical transactions must be maintained by the licensee and, subject to the provisions of section 6806, must be available to the superintendent for 3 years after policy maturity for inspection during reasonable business hours.

4. Immunity. A licensee responding to an order of the superintendent issued pursuant to this section is immune from any civil action arising out of compliance with the order and is not required to challenge the authority or validity of the order as a prerequisite to receiving immunity.

**§6808. Disclosure**

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

1. Alternatives or options. Possible alternatives to or options that can be used in conjunction with viatical settlement contracts for persons with catastrophic or life-threatening illnesses, including, but not limited to, accelerated benefits offered by the issuer of the life insurance policy;

2. Federal tax implications. The fact that some or all of the proceeds of the viatical settlement may be free from federal income tax under the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191; and that restrictions, qualifications and other tax laws, particularly those of the state in which the viator resides, may apply and assistance should be sought from a professional tax advisor;

3. State tax implications. The fact that some or all of the proceeds of the viatical settlement may be free from state income tax under section 6809; and that restrictions, qualifications and other tax laws, including those of the State in which the viator resides, may apply and assistance should be sought from a professional tax advisor;

**4. Claims of creditors.** The fact that the viatical settlement could be subject to the claims of creditors;

**5. Effect on government benefits.** The fact that receipts of viatical settlements may adversely affect the recipient's eligibility for Medicaid or other means-based government programs, benefits or entitlements and that advice should be obtained from the appropriate agencies;

**6. Right to rescind.** The policy owner's or certificate holder's right to rescind a viatical settlement contract before the earlier of the 30th day after the date upon which the viatical settlement contract is executed by both parties or the 15th day after the date upon which payment is received by the viator as provided in section 6809; and

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

**§6809. General provisions for viatical settlement contracts**

**1. Prior conditions.** A viatical settlement provider entering into a viatical settlement contract with a viator shall first obtain:

A. If the viator is the insured, a written statement from a licensed attending physician that the viator is of sound mind and under no constraint or undue influence;

B. A witnessed document in which the viator consents to the viatical settlement contract, acknowledges that the insured has a catastrophic or life-threatening illness, represents that the insured has a full and complete understanding of the viatical settlement contract and that the insured has a full and complete understanding of the benefits of the life insurance policy and acknowledges that the insured has entered into the viatical settlement contract freely and voluntarily; and

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

**2. Confidentiality of medical information.** All medical information solicited or obtained by any licensee is subject to the applicable provisions of state law relating to confidentiality of medical information.

**3. Unconditional rescission.** All viatical settlement contracts entered into in this State or entered into with residents of this State must contain a provision for an unconditional rescission period of the earlier of the 30th day after the date upon which the viatical settlement contract is executed by both parties or the 15th day after the date upon which payment is received by the viator. Rescission if exercised by the viator is effective only if both notice of the rescission is given and a full return of funds to the trustee or escrow agent is made within the rescission period.

**4. Transfer of insurance policy.** Immediately upon receipt from the viator of documents to effect the transfer of the insurance policy, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account managed by an independent trustee or escrow agent in a state-chartered or federally chartered financial institution that is a member of the federal reserve system, pending acknowledgment of the transfer by the issuer of the policy. The trustee or escrow agent shall transfer the proceeds due to the viator or otherwise according to the viator's written instructions immediately upon receipt of acknowledgment of the transfer from the insurer.

**5. Effect of failure to tender consideration.** Failure to tender consideration for the viatical settlement under the terms of the viatical settlement contract renders the contract voidable for lack of consideration.

**6. Unlicensed provider.** An independent viatical producer or viatical producer may not receive a fee, commission or other valuable consideration for services from a viatical settlement provider not licensed in this State as a viatical settlement provider with respect to viatical settlements in this State.

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

**8. Advertising standards.** The following requirements apply to advertising.

A. Advertising must be truthful and may not mislead by fact or implication.

B. The names of licensed viatical settlement providers, viatical producers and independent viatical producers must be clearly identified in all advertisements placed by these entities.

**9. Contacts with the insured.** An insured may designate one or more adult individuals in regular contact with the insured as the individual for all inquiries regarding the insured's health status and, if

that designation is made, a viatical settlement provider, viatical producer or independent viatical producer may not make these inquiries to the insured unless the provider, producer or independent producer is unable, for more than 30 days, to contact the designee after diligent effort. The insured may change this designation at any time upon written notice to the provider, independent producer or producer. Contacts with the insured for the purpose of determining the health of the insured after the viatical settlement has occurred are limited to once every 3 months for insureds with an estimated life expectancy of more than one year and once per month for insureds with a life expectancy of one year or less. The viatical settlement provider or viatical settlement broker shall explain to the insured the procedure for these contacts prior to the time the insured enters into the viatical settlement. The limitation in this rule on contacts does not apply to contacts made for reasons other than determining the insured's health status or necessary to maintain the policy in force.

#### **§6810. Rules**

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

#### **§6811. Prohibited practices and provisions under policies**

**1. Assignment.** The following provisions govern assignment.

A. A policy of individual or group life insurance that permits assignment issued or delivered in this State may not, in any way, restrict the insured from making an absolute assignment of rights for consideration. Prohibited restrictions include, but are not limited to, assignments only as a gift and without consideration, assignments only to a limited class of persons and assignments only to a natural person and not to a legal entity.

B. A life insurance company that acknowledges and records an absolute assignment of life insurance policy or rights under a group life insurance policy may rely solely on the authorization of the assignor to make the assignment and the life insurance company is not obligated to inquire into the validity, sufficiency or terms of the assignment. In acknowledging and recording an assignment, a life insurance company acting in good faith and reliance on the presentation of the absolute assignment, acts in a ministerial capacity and may exhibit no discretion as to whether an assignor may make the assignment or whether the assignment conforms with applicable law.

**2. Rights under an assignment.** The following provisions apply to an assignment.

**A. For life insurance contracts that permit assignment:**

(1) An insured has the right to assign, transfer, sell or bequeath the ownership of or death benefit payable under a life insurance policy or certificate at any time for any remaining portion of that coverage after exercising any option for accelerated benefits;

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

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

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

**3. Failure to give notice under group life insurance policy.** If the rights under a group life insurance policy have been assigned and the administrator of the policy fails to give notice to the assignee that the insured is no longer a covered person under the group and of the right to convert the policy to an individual life insurance policy, the period of time during which the assignee must make application for conversion under the terms of the group life insurance policy begins from the date the notice is given to the assignee.



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

#### **§6812. Insurance company practices**

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

A. An authorization signed by the viator to release specified information regarding the policy or certificate to a named licensed viatical settlement provider, viatical settlement agent or viatical settlement broker; and

B. A request in writing from the named licensed viatical settlement provider, viatical settlement agent or viatical settlement broker for the specified policy or certificate information.

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

**2. Conversion of group insurance.** An issuer or 3rd-party administrator of a group life insurance policy shall promptly issue an individual conversion policy if the conversion is being requested for the purpose of entering into a viatical settlement contract. For the purposes of this section, issuance of such a policy is deemed timely if it meets relevant standards for timeliness under chapter 23. This subsection may not be construed to create any new conversion rights

not already granted by the policy or certificate being viaticated.

**3. Right to assign rights or benefits.** Subsection 1 or 2 does not prohibit a viator under a group life insurance policy from assigning rights or benefits under the policy to a licensed viatical settlement provider or converting the coverage to an individual life insurance policy.

**4. Assignment restrictions prohibited.** A policy of group life insurance issued or in existence in this State that permits any assignment of a viator's rights may not restrict the viator from making assignments other than by gift.

**5. Purchase of securities.** This chapter does not require notice to the superintendent of, or restrict an insurance company from investing in, or participating in, or purchasing any securities issued in any transaction including without limitation any financing, securitization transaction or securities offering in which the licensed viatical settlement provider sells, assigns, transfers, pledges, hypothecates or otherwise disposes of viatical settlement contracts, viaticated policies or any interest therein.

#### **§6813. Financing**

**1. Financing entity.** A financing entity is not required to obtain a license as a viatical settlement provider or an independent viatical producer.

**2. Fee.** This chapter does not restrict a person from receiving a fee, commission or other valuable consideration for services in connection with a financing transaction.

#### **§6814. Unfair trade practices**

A violation of this chapter is an unfair trade practice under Title 5, chapter 10 and subject to the penalties contained in that chapter.

#### **§6815. Assignment or resale of viaticated policies**

**1. Prohibited transfers.** A viatical settlement provider may not sell, assign, transfer or pledge a viaticated policy except to a licensed viatical settlement provider or a person exempt from licensing under section 6803 or 6813.

**2. Securities registration.** Any sale by a viatical settlement provider of viatical settlement contracts, viaticated policies or interests in a viatical settlement contract or viaticated policy that constitute a "security" within the meaning of the United States Securities Act of 1933, as amended, or the Revised Maine Securities Act, as amended, must be registered under those statutes unless there is an available exemption from registration under those statutes.

**§6816. Permitted operations before formal approval**

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.

**Sec. 2. Effective date.** This Act takes effect October 1, 1997.

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

	1997-98	1998-99
<b>PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF</b>		
<b>Bureau of Insurance</b>		
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.		
<b>DEPARTMENT OF PROFESSIONAL AND FINANCIAL REGULATION</b>		
<b>TOTAL</b>	\$23,786	\$26,814

Effective October 1, 1997.

**CHAPTER 431**

**H.P. 24 - L.D. 49**

**An Act to Exempt Contract Dance Instructors and National Service Volunteers from the Unemployment Tax**

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Maine communities presently benefit from the community service performed by state citizens participating in national service programs

funded by the federal agency known as the Corporation for National Service; and

Whereas, national service participants in AmeriCorps\*USA, AmeriCorps\*VISTA, Learn and Service America Students and Senior Corps not only help communities carry out projects that would remain undone were it not for the assistance of national service but also engage local citizens as volunteers to build the communities' capacity to sustain the service project; and

Whereas, some national service programs require a time commitment that precludes employment and, therefore, make it possible for citizens of all socioeconomic backgrounds to serve their communities by providing a modest living allowance; and

Whereas, national service participants in AmeriCorps\*USA and AmeriCorps\*VISTA become eligible for educational awards held in trust under the system established by the federal National and Community Service Trust Act of 1993; and

Whereas, the federal laws and regulations pertaining to national service programs clearly state that national service participants are not employees, are not serving for the purpose of gaining employment skills and may not displace workers and that national service participants are not eligible to collect unemployment benefits from the federal system under a determination by the United States Department of Labor; and

Whereas, under the standards of Maine law, the stipend and educational award have been determined to be compensation; and

Whereas, this discrepancy creates a fiscal impact for the State which not only benefits from the service activities of these volunteers but also administers national service programs; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1. 26 MRSA §1043, sub-§11, ¶F,** as corrected by RR 1995, c. 2, §62, is amended by amending subparagraphs (38) and (39) to read:

(38) Services performed by a person licensed as a guide as required by Title 12, section 7311, as long as that employment is