

# 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 electronic originals  
(may include minor formatting differences from printed original)

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

**AS PASSED BY THE**  
**ONE HUNDRED AND TWENTY-FIRST LEGISLATURE**

**FIRST SPECIAL SESSION**  
**August 21, 2003 to August 22, 2003**

**The General Effective Date For**  
**First Special Session**  
**Non-Emergency Laws Is**  
**November 22, 2003**

**SECOND REGULAR SESSION**  
**January 7, 2004 to January 30, 2004**

**The General Effective Date For**  
**Second Regular Session**  
**Non-Emergency Laws Is**  
**April 30, 2004**

**SECOND SPECIAL SESSION**  
**February 3, 2004 to April 30, 2004**

**The General Effective Date For**  
**Second Special Session**  
**Non-Emergency Laws Is**  
**July 30, 2004**

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

---

---

**Penmor Lithographers**  
**Lewiston, Maine**  
**2004**



**Sec. 2. 24-A MRSA c. 85**, as amended, is further amended by repealing the chapter headnote and enacting the following in its place:

### CHAPTER 85

#### VIATICAL AND LIFE SETTLEMENTS ACT

**Sec. 3. 24-A MRSA §6801**, as enacted by PL 1997, c. 430, §1 and affected by §2, is amended to read:

##### **§6801. Short title**

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

**Sec. 4. 24-A MRSA §6802**, as enacted by PL 1997, c. 430, §1 and affected by §2, is repealed.

**Sec. 5. 24-A MRSA §6802-A** is enacted to read:

##### **§6802-A. Definitions**

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

**1. Advertising.** "Advertising" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet or a similar communications medium, including film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to sell a life insurance policy pursuant to a settlement contract.

**2. Business of settlements.** "Business of settlements" means any activity involved in, but not limited to, the offering, solicitation, negotiation, procurement, effectuation, purchasing, financing, monitoring, tracking, underwriting, selling, transferring, assigning, pledging, hypothecating or in any other manner engaging in the business of settlement contracts.

**3. Chronically ill.** "Chronically ill" means:

A. Being unable to perform at least 2 activities of daily living, including, but not limited to, eating, moving from one place to another, bathing, dressing, voiding the bladder, eliminating the bowel or maintaining continence;

B. Requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment; or

C. Having a level of disability similar to that described in paragraph A, as determined by the United States Secretary of Health and Human Services.

**4. Financing entity.** "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, purchaser of a policy or certificate from a settlement provider, credit enhancer or any entity that has a direct ownership in a policy or certificate that is the subject of a settlement contract:

A. Whose principal activity related to the transaction is providing funds to effect the settlement or purchase of one or more purchased policies or to provide credit enhancement; and

B. Who has an agreement in writing with one or more licensed settlement providers to finance the acquisition of settlement contracts or to provide stop loss insurance.

"Financing entity" does not include a nonaccredited investor.

**5. Financing transaction.** "Financing transaction" means any transaction in which a licensed settlement provider obtains financing for the purchase, acquisition, transfer or other assignment of one or more settlement contracts or policies acquired pursuant to a settlement contract or interests therein, 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 settlement contract or policy acquired pursuant to a settlement contract or interest therein.

**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;

(g) The solicitation, offer, effectuation or sale of a settlement contract or insurance policy;

(h) The issuance of written evidence of a settlement contract or insurance policy; or

(i) A financing transaction; or

(2) Employing any device, scheme or artifice to defraud related to policies acquired pursuant to a settlement contract;

B. In the furtherance of a fraud or to prevent the detection of a fraud committing or permitting one's employees or agents to:

(1) Remove, conceal, alter, destroy or sequester from the superintendent the assets or records of a licensee or other person engaged in the business of settlements;

(2) Misrepresent or conceal the financial condition of a licensee, financing entity, insurer or other person;

(3) Transact the business of settlements in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of settlements; or

(4) File with the superintendent or the chief insurance regulatory official of another jurisdiction a document containing false information or otherwise concealing information about a material fact from the superintendent;

C. Embezzlement, theft, misappropriation or conversion of money, funds, premiums, credits or other property of a settlement provider, insurer, insured, viator, insurance policyowner or any other person engaged in the business of settlements or insurance;

D. Recklessly entering into, brokering or otherwise dealing in a settlement contract, the subject of which is a life insurance policy that was obtained by presenting false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, when the viator or the viator's agent intended to defraud the policy's issuer. For the purposes of this paragraph, "recklessly" means engaging in conduct in consciously and clearly unjustifiable disregard of a substantial likelihood of the existence of the relevant facts or risks, such disregard involving a gross deviation from acceptable standards of conduct; or

E. Attempting to commit; assisting, aiding or abetting in the commission of; or conspiring to commit the acts or omissions specified in this subsection.

**7. Policy.** "Policy" means an individual or group policy, group certificate, contract or arrangement of life insurance affecting the rights of a resident of this State or bearing a reasonable relation to this State, regardless of whether delivered or issued for delivery in this State.

**8. Related provider trust.** "Related provider trust" means a titling trust or other trust established by a licensed settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust must have a written agreement with the licensed settlement provider under which the licensed settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to settlement transactions available to the superintendent as if those records and files were maintained directly by the licensed settlement provider.

**9. Settlement contract.** "Settlement contract" means:

A. A written agreement establishing the terms under which compensation or anything of value will be paid, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise or bequest of the

death benefit or ownership of any portion of the insurance policy or certificate of insurance;

B. A contract for a loan or other financing transaction with a viator secured primarily by an individual or group life insurance policy other than a loan by a life insurance company pursuant to the terms of the life insurance contract or a loan secured by the cash value of a policy; or

C. An agreement with a viator to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator.

For purposes of this chapter, the individual insured who is the subject of the insurance policy or certificate of insurance does not have to be diagnosed as terminally ill or chronically ill at the time a settlement contract is executed.

**10. Settlement producer.** "Settlement producer" means any person who has life insurance producer authority, who acts or aids in any manner in the soliciting of a settlement on behalf of a viator and for a fee, commission or other valuable consideration offers or attempts to negotiate settlement contracts between a viator and one or more settlement providers. "Settlement producer" does not include an attorney, accountant, financing entity 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 settlement is effected. "Settlement producer" does not include a credit union or an employer or association that makes its employees or members aware of settlement contracts. Irrespective of the manner in which the settlement producer is compensated, a settlement producer is deemed to represent only the interests of the viator and owes a fiduciary duty to the viator.

**11. Settlement provider.** "Settlement provider" means a person other than the viator that enters into or effectuates a settlement contract. "Settlement provider" does not include:

A. A supervised lender, as defined in Title 9-A, section 1-301, subsection 39, 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 and pursuant to the contract;

C. An authorized or eligible insurer that provides stop-loss coverage to a settlement provider, purchaser, financing entity, special purpose entity or related provider trust;

D. A viator's friend or family member or other natural person who enters into no more than one agreement in a calendar year for the assignment, transfer, sale, devise or bequest of a life insurance policy for any value less than the expected death benefit;

E. A financing entity;

F. A special purpose entity;

G. A related provider trust; or

H. An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 and Rule 144A of the Federal Securities Act of 1933, as amended, and who acquires a policy from a settlement provider.

**12. Special purpose entity.** "Special purpose entity" means a corporation, partnership, trust, limited liability company or similar entity formed solely to provide either directly or indirectly access to institutional capital markets for a financing entity or licensed settlement provider.

**13. Terminally ill.** "Terminally ill" means having an illness or sickness that can reasonably be expected to result in death within 24 months or less.

**14. Viator.** "Viator" means a person who assigns, transfers, sells, devises or bequeaths or seeks to assign, transfer, sell, devise or bequeath a death benefit or ownership of a life insurance policy or certificate under a settlement contract. "Viator" does not include:

A. A settlement provider licensed under this chapter;

B. An accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 and Rule 144A of the Federal Securities Act of 1933, as amended;

C. A financing entity;

D. A special purpose entity; or

E. A related provider trust.

**Sec. 6. 24-A MRSA §6803**, as amended by PL 1997, c. 592, §§76 to 80, is further amended to read:

**§6803. Settlement provider and producer license; 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 issued pursuant to this section and subject to the provisions of this chapter.

B. A person may not perform the functions of, or otherwise act as, a viatical settlement 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.~~

C-1. If there is more than one viator on a single policy and the viators are residents of different states, the settlement contract is governed by the law of the state in which the viator having the largest percentage ownership resides or, if the viators hold equal ownership, the state of residence of one viator agreed upon in writing by all viators.

~~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, unless such activity requires a license under another provision of this Title. 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 not to exceed \$400 in accordance with section 601.

**3. Renewal.** A license for a ~~viatical~~ settlement provider is continuous ~~so~~ as long as the licensee remains qualified. The ~~viatical~~ settlement provider must pay an annual fee of not to exceed \$400 in accordance with section 601. 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 for a settlement provider license shall provide such information as the superintendent requires and the information must be submitted on forms prepared required by the superintendent. The superintendent may at any time require the applicant to disclose fully the identity of all stockholders except stockholders owning less than 5% of the shares of an applicant whose shares are publicly traded, partners, officers, directors, members 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, director, member or employee of the applicant who may materially influence the applicant's conduct meets the criteria set forth in subsection 6. A settlement provider shall provide to the superintendent new or revised information about officers, stockholders controlling 10% or more of stock, partners, directors, members or designated employees within 30 days of the change.

**5. Authority under license.** A settlement provider license issued to any person authorizes all officers, partners, directors, members and key management personnel of that person to act on behalf of the viatical settlement provider, unless such activity requires a license under another provision of this Title. All officers, partners, directors, members and key management personnel of the person must be named in the application and any supplements to the application. ~~The licensed producer of a viatical settlement provider must be regarded as in the place of the viatical settlement provider in all respects regarding the solicitation of viatical settlements on behalf of the viatical settlement provider. A producer authorized by a viatical settlement provider is the provider's agent in all matters of viatical settlements.~~

**6. Investigation.** Upon the filing of an application and the payment of the settlement provider 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 of a settlement provider;
- 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 as a settlement provider;
- 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~~ Has no officer, partner, director, member or key management personnel of the applicant ~~that has not been convicted of a felony of which fraud was an element, been found guilty of, or has pleaded guilty or nolo contendere to, any crime involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court; and~~

F. Has provided an antifraud plan that meets the requirements of section 6818.

**7. Financial responsibility.** ~~The following evidence~~ Evidence of financial responsibility must be provided to the superintendent ~~before a license may be issued in accordance with this subsection.~~

A. A ~~viatical~~ settlement provider shall provide evidence of financial accountability. Such evidence may include, but is not limited to, 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.

**8. Nonresidents.** The superintendent may not issue a settlement provider 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 any 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 licensed or with license pending in this State. The list must be available upon request to the general public.

**Sec. 7. 24-A MRSA §6804,** as amended by PL 1997, c. 562, Pt. D, §5, is further amended to read:

**§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 provider 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.~~

**1-A. Superintendent's authority.** The superintendent may deny, suspend, revoke or refuse to renew the license of a settlement provider 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, director, member 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 settlement provider license or is otherwise shown to be untrustworthy or incompetent to act as a settlement provider;

C. The licensee as a settlement provider demonstrates an unreasonable pattern of payments to viators;

D. The licensee or any officer, partner, director, member or key management personnel of the licensee has been found guilty of, or has pleaded guilty or nolo contendere to, any crime involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;

E. The settlement provider has entered into any settlement contract that has not been approved pursuant to this chapter;

F. The settlement provider has failed to honor contractual obligations set out in a settlement contract;

G. The settlement provider no longer meets the requirements for initial licensure;

H. The settlement provider has assigned, transferred or pledged a policy acquired pursuant to a



settlement contract to a person other than a settlement provider licensed in this State, an accredited investor or qualified institutional buyer as defined respectively in Regulation D, Rule 501 and Rule 144A of the Federal Securities Act of 1933, as amended, a financing entity, a special purpose entity or a related provider trust; or

I. 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 or applicant has an opportunity for a hearing in accordance with Title 5, chapter 375, subchapter ~~IV~~ 4.

**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.

**Sec. 8. 24-A MRSA §6805**, as enacted by PL 1997, c. 430, §1 and affected by §2, is amended to read:

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

~~A viatical settlement provider or independent viatical producer person~~ may not use any contract, disclosure statement or application form in with a viator who is a resident of this State when dealing with a viator unless it has been filed with and approved by the superintendent, pursuant to sections 2412 and 2413. The superintendent shall disapprove a settlement contract form or disclosure statement form if, in the superintendent's opinion, the contract or provisions contained therein are unreasonable, contrary to the interests of the public or otherwise misleading or unfair to the viator. All such forms must be approved or denied by the superintendent within 60 calendar days following receipt of submission by the superintendent.

**Sec. 9. 24-A MRSA §6806**, as amended by PL 1997, c. 592, §81, is further amended to read:

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

**1. Annual report.** A settlement provider 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 or relates to transactions when the viator is not a resident of this State. The superintendent may not request, collect or compile personal information that identifies any viator or insured except in connection with the investigation of a specific complaint and with the prior written permission of the viator or insured or the viator's or insured's estate or representative to collect that information.

**1-A. Fee for filing annual report.** The fee for filing the annual report is the same as for an insurer as provided in section 601. On or before July 1st of each year, the superintendent shall forward to each ~~viatical~~ settlement provider an itemized bill for the amount due for the filing of the annual statement and the amount due for the certificate of authority annual fee.

**2. Privacy protection.** Except as otherwise required or permitted by law, a ~~viatical~~ settlement provider, ~~viatical settlement~~ 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, or the insured's financial or medical information, 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 necessary to effectuate a settlement contract between the viator and a settlement provider and the viator and the insured have provided prior written consent to the disclosure;~~

B. ~~Is provided in response to an investigation or examination by the superintendent or any other government officer or agency pursuant to section 6807; or~~

C. ~~Is necessary to facilitate permit a financing transaction and is made either to a licensed viatical settlement provider or to an institutional investor, entity, related provider trust or special purpose entity to finance the purchase of policies by a settlement provider and the viator and insured have provided prior written consent to the disclosure;~~

D. Is a term or condition to the transfer of a policy by one settlement provider to another settlement provider;

E. Is necessary to allow the settlement provider or insurance producer or an authorized representative to make contacts for the purpose of determining health status; or

F. Is required to purchase stop-loss coverage.

~~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.

**Sec. 10. 24-A MRSA §§6807 and 6808**, as enacted by PL 1997, c. 430, §1 and affected by §2, are amended to read:

### **§6807. Examinations and investigations**

~~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.~~

1-A. Examinations. The superintendent may conduct examinations in accordance with this subsection.

A. The superintendent may conduct an examination under this chapter of a licensee as often as the superintendent in the superintendent's sole discretion considers appropriate.

B. For purposes of completing an examination of a licensee under this chapter, subject to the provisions of section 6806, the superintendent may examine or investigate any person, or the business of any person, insofar as the examination or investigation is, in the sole discretion of the superintendent, considered necessary or material to the examination of the licensee.

C. In lieu of an examination under this chapter of any foreign or alien licensee licensed in this State, the superintendent may, at the superintendent's discretion, accept an examination report on the licensee as prepared by the superintendent of insurance for the licensee's state of domicile or port-of-entry state.

~~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 settlement transactions must be maintained by the settlement provider 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 in accordance with this subsection.

A. A settlement provider required to be licensed by this chapter shall retain for 5 years copies of all:

(1) Proposed, offered or executed settlement contracts, settlement purchase agreements, underwriting documents, policy forms and applications from the date of the proposal, offer or execution of the settlement contract or settlement purchase agreement, whichever is later;

(2) Checks, drafts or other evidence and documentation related to the payment, transfer, deposit or release of funds from the date of the transaction; and

(3) Other records and documents related to the requirements of this chapter.

B. This subsection does not relieve a settlement provider licensee of the obligation to produce these documents to the superintendent after the retention period has expired if the person has retained the documents.

C. Subject to the provisions of section 6806, records required to be retained by this subsection must be legible and complete and may be retained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces or forms a durable medium for the reproduction of a record.

~~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. A cause of action may not arise against any person for the act of communicating or delivering information or data to the superintendent or the superintendent's authorized representative or examiner pursuant to an examination made under this chapter if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This subsection does not abrogate or modify in any way any common law or

statutory privilege or immunity heretofore enjoyed by the superintendent, the superintendent's authorized representatives or any examiner appointed by the superintendent.

A. A cause of action may not arise against the superintendent, the superintendent's authorized representatives or any examiner appointed by the superintendent for any statements made or conduct performed in good faith while carrying out the provisions of this chapter.

B. A cause of action may not arise against any person for the act of communicating or delivering information or data to the superintendent or the superintendent's authorized representative or examiner pursuant to an examination made under this chapter if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. This paragraph does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in paragraph A.

C. A person identified in paragraph A or B is entitled to an award of attorney's fees and costs if that person is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this chapter and the party bringing the action was not substantially justified in doing so. For purposes of this paragraph, a proceeding is "substantially justified" if the proceeding had a reasonable basis in law or fact at the time that it was initiated.

5. Conduct of examinations. The following provisions govern the conduct of examinations.

A. Upon determining that an examination should be conducted, the superintendent shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures as the superintendent considers appropriate.

B. Every licensee or person from whom information is sought and its officers, directors and agents shall provide to the examiners timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents, assets and computer or other recordings relating to the property, assets, business and affairs of the licensee or person being examined. The officers, directors, employees and agents of the licensee or person shall facilitate the examination and aid in the ex-

amination insofar as it is in their power to do so. The refusal of a licensee, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the superintendent is grounds for suspension or refusal of, or nonrenewal of, any license or authority held by the licensee to engage in the business of settlements or other business subject to the superintendent's jurisdiction. Any proceedings for suspension, revocation or refusal of any license or authority must be conducted pursuant to Title 5, chapter 375, subchapter 4.

C. The superintendent has the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the superintendent may petition a court of competent jurisdiction and, upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order is punishable as contempt of court.

D. When making an examination under this chapter, the superintendent may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals or specialists as examiners, the reasonable cost of which must be borne by the licensee that is the subject of the examination.

E. This chapter may not be construed to limit the superintendent's authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this State. Findings of fact and conclusions made pursuant to any examination are prima facie evidence in any legal or regulatory action.

F. This chapter may not be construed to limit the superintendent's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or licensee workpapers or other documents or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action that the superintendent may, in the superintendent's sole discretion, consider appropriate.

6. Examination reports. Examination reports may be composed only of facts appearing upon the books, records or other documents of the licensee or its agents or other persons examined or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs and of such conclusions and recommendations as the examiners

find reasonably warranted from the facts. No later than 60 days following completion of the examination, the examiner in charge shall file under oath with the superintendent a verified written report of examination. Upon receipt of the verified report, the superintendent shall transmit the report to the licensee examined, together with a notice that affords the licensee examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report. In the event the superintendent determines that regulatory action is appropriate as a result of an examination, the superintendent may initiate any proceedings or actions provided by law.

**7. Confidentiality of examination information.** The disclosure of information is governed by this subsection.

A. Names and individual identification data for all viators and insured persons are considered private and confidential information and may not be disclosed by the superintendent, unless required by law.

B. Except as otherwise provided in this chapter, all examination reports, workpapers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the superintendent or any other person in the course of an examination made under this chapter, or in the course of analysis or investigation by the superintendent of the financial condition or market conduct of a licensee, are confidential by law and privileged, are not subject to subpoena and are not subject to discovery or admissible in evidence in any private civil action. The superintendent is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the superintendent's official duties.

For the purposes of this paragraph and paragraph C, "chapter" includes the law of another state or jurisdiction that is substantially similar to this chapter.

C. Documents, materials or other information, including, but not limited to, all workpapers and copies thereof, in the possession or control of the National Association of Insurance Commissioners, or its successor organization, and its affiliates and subsidiaries are confidential by law and privileged, are not subject to subpoena and are not subject to discovery or admissible in evidence in any private civil action if they are:

(1) Created, produced or obtained by or disclosed to the National Association of Insurance Commissioners, or its successor

organization, and its affiliates and subsidiaries in the course of assisting an examination made under this chapter or assisting a superintendent in the analysis or investigation of the financial condition or market conduct of a licensee; or

(2) Disclosed to the National Association of Insurance Commissioners, or its successor organization, and its affiliates and subsidiaries under paragraph D by a superintendent.

D. The superintendent and any person that receives documents, material or other information while acting under the authority of the superintendent, including the National Association of Insurance Commissioners, or its successor organization, and its affiliates and subsidiaries, may not testify in any private civil action concerning any confidential documents, materials or information subject to paragraph A.

E. In order to assist in the performance of the superintendent's duties, the superintendent:

(1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to paragraph A, with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners, or its successor organization, and its affiliates and subsidiaries and with state, federal and international law enforcement authorities, as long as the recipient agrees to maintain the confidentiality and privileged status of the documents, materials, communication or other information; and

(2) May receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners, or its successor organization, and its affiliates and subsidiaries and from regulatory and law enforcement officials of foreign or other domestic jurisdictions and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

F. A waiver of any applicable privilege or claim of confidentiality in the documents, materials or

information does not occur as a result of disclosure to the superintendent under this section or as a result of sharing as authorized in paragraph E.

G. A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection is available and enforced in any proceeding in, and in any court of, this State.

H. This chapter may not prevent or be construed as prohibiting the superintendent from disclosing the content of an examination report or preliminary examination report or results, or any matter relating thereto, to the superintendent of insurance of any other state or country or to law enforcement officials of this State or any other state or an agency of the Federal Government at any time or to the National Association of Insurance Commissioners, or its successor organization, as long as such agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this chapter.

**8. Conflict of interest.** The following provisions apply.

A. An examiner may not be appointed by the superintendent if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this chapter. This section may not be construed to automatically preclude an examiner from being:

(1) A viator;

(2) An insured in an insurance policy acquired pursuant to a settlement contract; or

(3) A beneficiary in an insurance policy that is proposed to be acquired pursuant to a settlement contract.

B. Notwithstanding the requirements of this subsection, the superintendent may retain from time to time, on an individual basis, qualified actuaries, certified public accountants or similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this chapter.

**9. Investigative authority of superintendent.** In addition to the authority granted pursuant to section 220, the superintendent may investigate persons engaged in the business of settlements and persons suspected of engaging in fraudulent viatical or life settlement acts.

## **§6808. Disclosure**

A viatical settlement provider or independent viatical producer shall disclose in writing at least the following information disclosures to the viator prior to the date the viatical settlement contract is signed by the viator. Disclosure to a viator must include distribution of a brochure, approved by the superintendent, describing the process of settlements. The disclosures must be provided to the viator no later than the time the application for the settlement contract is signed by all parties and must be signed by the viator and the settlement provider and provide the following information:

**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 death benefits or policy loans 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 contract 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 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 proceeds of the viatical settlement could be subject to the claims of creditors;

**5. Effect on government benefits.** The fact that receipts receipt of viatical settlements the proceeds of the settlement 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 fact that the viator has the right to rescind a viatical settlement contract before the earlier of the 30th day 30 calendar days after the date upon which the viatical settlement contract is executed by both all parties or the 15th day 15 calendar days after the date upon which payment is received by the viator as provided in section 6809; and. If exercised by the

viator, rescission is effective only if both notice of the rescission is given and repayment of all proceeds and any premiums, loans and loan interest to the settlement provider is made within the rescission period. If the insured dies during the rescission period, the settlement contract is deemed to have been rescinded, subject to repayment of all proceeds and any premiums, loans and loan interest to the settlement provider;

**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, entering into a settlement contract may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator and that assistance should be sought from a financial adviser;

**8. Funds.** The fact that funds will be sent to the viator within 3 business days after the settlement provider has received the insurer's or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated; and

**9. Privacy disclosure.** A statement containing the following language: "All medical, financial or personal information solicited or obtained by a settlement provider or settlement producer about an insured, including the insured's identity or the identity of family members, a spouse or a significant other, may be disclosed as necessary to effect the settlement contract between the viator and the settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every 2 years."

**Sec. 11. 24-A MRSA §6808-A** is enacted to read:

**§6808-A. Contact with insured; additional disclosures**

**1. Contact with insured.** The insured may be contacted by either the settlement provider or its authorized representative for the purpose of determining the insured's health status. This contact is limited to once every 3 months if the insured has a life expectancy of more than one year and no more than once per month if the insured has a life expectancy of one year or less.

**2. Additional disclosures.** A settlement provider shall provide the viator with at least the following disclosures no later than the date the settlement

contract is signed by all parties. The disclosures must be conspicuously displayed in the settlement contract or in a separate document signed by the viator and the settlement provider or settlement producer and must provide the following information:

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

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

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

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

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

**3. Notice of change in ownership or beneficiary.** If the settlement provider transfers ownership or changes the beneficiary of the insurance policy, the settlement provider shall communicate the change in ownership or beneficiary to the insured within 20 days after the change.

**Sec. 12. 24-A MRSA §6809**, as amended by PL 2003, c. 320, §1, is further amended to read:

**§6809. General provisions for 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 to enter into a settlement contract;

B. ~~A~~ Prior to or at the time of execution of the settlement contract, 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 viator has a full and complete understanding of the viatical settlement contract and that the insured viator has a full and complete understanding of the benefits of the life insurance policy and, acknowledges that the insured viator has entered into the viatical settlement contract freely and voluntarily and, for persons who are terminally ill or chronically ill, acknowledges that the insured is terminally ill or chronically ill and that the terminal or chronic illness was diagnosed after the life insurance policy was issued; 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 to a settlement provider and, if the life insurance policy was issued less than 2 years from the date of application for a settlement contract to the insurance company that issued the life insurance policy covering the life of the insured.

The insurer shall respond to a request for verification of coverage submitted by a settlement provider not later than 30 calendar days from the date the request is received. The request for verification of coverage must be made on a form approved by the superintendent. In its response, the insurer shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation regarding the validity of the insurance contract.

**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 that the viator has the right to rescind a settlement contract before the earlier of 30 calendar days after the date upon which the settlement contract is executed by all parties or 15 calendar days after the date upon which payment is received by the viator as provided in section 6808. Rescission~~ Rescission if exercised by the viator is effective only if both notice of the ~~rescission~~ rescission is given and a full ~~return of funds to the trustee or escrow agent~~ repayment of all proceeds and any premiums, loans

and loan interest to the settlement provider is made within the ~~rescission~~ rescission period. If the insured dies during the rescission period, the settlement contract is deemed to have been rescinded, subject to repayment of all proceeds and any premiums, loans and loan interest to the settlement provider.

**4. Transfer of insurance policy.** ~~Immediately upon receipt from the viator of documents to effect the transfer of the insurance policy, the viatical~~ The 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, whose deposits are insured by the Federal Deposit Insurance Corporation or its successor, pending acknowledgment of the transfer by the issuer of the policy 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. 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 until the time consideration is tendered to and accepted by the viator.

**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 settlement 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 settlement provider, independent producer or producer. Contacts with the insured for the purpose of determining the health status 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 contract is entered into~~. 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. Settlement providers are responsible for the actions of their authorized representatives.

**Sec. 13. 24-A MRSA §§6810 to 6812**, as enacted by PL 1997, c. 430, §1 and affected by §2, are amended to read:

### **§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 ~~H-A~~ 2-A. Rules may be adopted to:

**1. Standards for evaluating reasonableness of payments.** Establish standards for evaluating the reasonableness of payments to viators under a settlement contract only when the insured in the policy

that is the subject of a settlement contract is terminally ill or chronically ill. This authority includes, but is not limited to, regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise or bequest of a benefit under a life insurance policy;

**2. Licensing requirements and standards.** Establish appropriate licensing requirements and standards for continued licensure for settlement providers;

**3. Mechanism for financial accountability.** Require a bond or other mechanism for financial accountability for settlement providers;

**4. Govern relationship and responsibilities.** Govern the relationship and responsibilities of both insurers and settlement providers and settlement producers and others in the business of settlement during the period of consideration or effectuation of a settlement contract; and

**5. Implement other requirements.** Implement any other requirements of this chapter.

### **§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~~ a person 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~~ A person 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~~ A person also has the right to assign, transfer, sell, devise 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 a person~~ under the terms of the individual or group life insurance policy.

B. ~~An insured~~ A person 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 a person~~ 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, devised 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.

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

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

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

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

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

**6. Submission of certification.** If the settlement provider submits to the insurer a copy of the owner's or insured's certification described in subsection 5 when the settlement provider submits a request to the insurer to effect the transfer of the policy or certificate to the settlement provider, the copy is deemed to conclusively establish that the settlement contract satisfies the requirements of this section and the insurer shall timely respond to the request.

**§6812. Insurance company practices**

**1. Duty to provide information.** ~~A~~ In addition to the provisions in section 6809, 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 or settlement 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 producer~~ and

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

Requests for the following items related to the policy or certificate ~~being viaticated that is the subject of a settlement transaction~~ 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~~ acquired pursuant to a settlement contract.

**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~~ acquired pursuant to settlement contracts or any interest therein.

**Sec. 14. 24-A MRSA §6813**, as enacted by PL 1997, c. 430, §1 and affected by §2, is repealed.

**Sec. 15. 24-A MRSA §6815**, as enacted by PL 1997, c. 430, §1 and affected by §2, is amended to read:

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

**1. Prohibited transfers.** A ~~viatical settlement provider~~ may not sell, assign, transfer or pledge a ~~viaticated policy~~ acquired pursuant to a settlement contract 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~~ acquired pursuant to settlement contracts or interests in a viatical settlement contract or viaticated policy therein 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.

**Sec. 16. 24-A MRSA §6815-A** is enacted to read:

**§6815-A. Regulatory requirements under Revised Maine Securities Act**

This chapter does not preempt the regulatory requirements set forth in the Revised Maine Securities Act, as amended, including but not limited to the regulation of securities transactions in settlement contracts or viatical settlement contracts and the licensing of any person or entity engaged in the sale of securities.

**Sec. 17. 24-A MRSA §6816**, as enacted by PL 1997, c. 430, §1 and affected by §2, is repealed.

**Sec. 18. 24-A MRSA §§6817 to 6819** are enacted to read:

**§6817. Advertising of settlements**

**1. Advertising for settlements.** Every settlement provider licensee shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its contracts, products and services. All advertisements, regardless of by whom written, created, designed or presented, are the responsibility of the settlement provider licensee, as well as the individual who created or presented the advertisement. A system of control must include providing regular routine notification, at least once a year, to agents and others authorized by the settlement licensee to disseminate advertisements; the notification must include the requirements and procedures for approval of any advertisements not furnished by the settlement provider licensee prior to the advertisements' use.

**2. Form and content.** Advertisements must be truthful and not misleading in fact or by implication. The form and content of an advertisement of a settlement contract must be sufficiently complete and clear so as to avoid deception. It may not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive must be determined by the superintendent from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.

**3. Standards for disclosure.** An advertisement must comply with standards for disclosure determined by rule by the superintendent.

**4. Applicability.** This section applies to any advertisement of settlement contracts or related products or services intended for dissemination in this State, including advertising on the Internet viewed by persons located in this State. If disclosure requirements are established pursuant to federal regulation, this section must be interpreted so as to minimize or eliminate conflict with federal regulation whenever possible.

#### **§6818. Fraud prevention and control**

**1. Fraudulent viatical or life settlement acts prohibited.** Notwithstanding any other provision of law to the contrary:

A. A person may not commit a fraudulent viatical or life settlement act;

B. A person may not knowingly or intentionally interfere with the enforcement of the provisions of this chapter or investigations of suspected or actual violations of this chapter; and

C. A person in the business of settlements may not knowingly or intentionally permit any person

convicted of a crime involving dishonesty or breach of trust to participate in the business of settlements.

**2. Fraud warning required.** Settlement contracts and applications for settlements, regardless of the form of transmission, must contain the following statement or a substantially similar statement: "Any person who knowingly presents false information in an application for insurance or a settlement contract is guilty of a crime and may be subject to fines and confinement in prison." The lack of a statement as required in this subsection does not constitute a defense in any prosecution for a fraudulent viatical or life settlement act.

**3. Mandatory reporting of fraudulent viatical or life settlement acts.** Any person engaged in the business of settlements having knowledge or a reasonable belief that a fraudulent viatical or life settlement act is being, will be or has been committed shall provide to the superintendent the information required by, and in a manner prescribed by, the superintendent. Any other person having knowledge or a reasonable belief that a fraudulent viatical or life settlement act is being, will be or has been committed may provide to the superintendent the information required by, and in a manner prescribed by, the superintendent.

**4. Immunity from liability.** Except as provided in subsection 5, civil liability may not be imposed on and a cause of action may not arise from a person's furnishing information concerning suspected, anticipated or completed fraudulent viatical or life settlement acts or suspected or completed fraudulent insurance acts if the information is provided to or received from:

A. The superintendent or the superintendent's employees, agents or representatives;

B. Federal, state or local law enforcement or regulatory officials or their employees, agents or representatives;

C. The National Association of Insurance Commissioners or its successor organization, National Association of Securities Dealers or its successor organization, the North American Securities Administrators Association or its successor organization, or their employees, agents or representatives of these organizations, or other regulatory body overseeing life insurance, settlements securities or investment fraud;

D. A person involved in the prevention and detection of fraudulent viatical or life settlement acts or that person's agents, employees or representatives; or

E. The life insurer that issued the life insurance policy covering the life of the insured.

**5. Exception.** The following provisions apply to the imposition of civil liability arising from information provided to or received from the superintendent or the superintendent's employees, agents or representatives.

A. Subsection 4 does not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical or life settlement act or a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that subsection 4 does not apply because the person filing the report or furnishing the information did so with actual malice.

B. Subsection 4 does not apply to a person's furnishing information concerning that person's own suspected, anticipated or completed fraudulent viatical or life settlement acts or suspected or completed fraudulent insurance acts.

C. This subsection does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in subsection 4.

**6. Confidentiality.** The following provisions apply.

A. The documents and evidence provided pursuant to subsection 4 or obtained by the superintendent in an investigation of suspected or actual fraudulent viatical or life settlement acts is privileged and confidential and is not a public record under Title 1, chapter 13 and is not subject to discovery or subpoena in a civil or criminal action.

B. Paragraph A does not prohibit release by the superintendent of documents and evidence obtained in an investigation of suspected or actual fraudulent viatical or life settlement acts:

(1) In administrative or judicial proceedings to enforce laws administered by the superintendent;

(2) To federal, state or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical or life settlement acts or to the National Association of Insurance Commissioners or its successor organization; or

(3) At the discretion of the superintendent, to a person in the business of settlements that is aggrieved by a fraudulent viatical or life settlement act.

C. Release of documents and evidence under paragraph B does not abrogate or modify the privilege granted in paragraph A.

**7. Other law enforcement or regulatory authority.** This section does not:

A. Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;

B. Prevent or prohibit a person from disclosing voluntarily information concerning viatical or life settlement fraud to a law enforcement or regulatory agency other than the bureau; or

C. Limit the powers granted elsewhere by the laws of this State to the superintendent or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

**8. Viatical or life settlement antifraud initiatives.** In accordance with this subsection, a settlement provider licensee must have in place antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent viatical or life settlement acts.

A. At the discretion of the superintendent, the superintendent may order, or a licensee may request and the superintendent may grant, such modifications of the required initiatives under paragraph B as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives as long as the modifications may reasonably be expected to accomplish the purpose of this subsection.

B. Antifraud initiatives must include:

(1) Fraud investigators, who may be employees of a settlement provider or independent contractors; and

(2) An antifraud plan, which must be submitted to the superintendent. The antifraud plan must include, but is not limited to:

(a) A description of the procedures for detecting and investigating possible fraudulent viatical or life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(b) A description of the procedures for reporting possible fraudulent viatical or life settlement acts to the superintendent;

(c) A description of the plan for anti-fraud education and training of underwriters and other personnel; and

(d) A description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent viatical or life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

C. Antifraud plans submitted to the superintendent are privileged and confidential and are not a public record under Title 1, chapter 13 or subject to discovery or subpoena in a civil or criminal action.

**§6819. Civil remedies; individual remedy**

1. Civil remedies and enforcement. In addition to the penalties available pursuant to section 6814, the superintendent may assess fines or take any other enforcement action permitted under section 12-A against any person who violates any provision of this chapter.

2. Superior Court action. Any person who is injured by any action of a person in violation of this chapter may bring an action in Superior Court. The requirements for notice and filing of a cause of action under this subsection are governed by the Maine Rules of Civil Procedure. The person may recover damages, together with costs and disbursements.

3. No private right of action. Except as specifically provided in subsection 2, this chapter provides no express or implied private right of action.

**Sec. 19. Bureau of Insurance report.** The Superintendent of Insurance shall prepare a report that addresses the market conditions for life settlements in this State and identifies any problem areas or issues within the market for life settlements, including any consumer complaints received by the Bureau of Insurance. The superintendent shall submit the report no later than February 1, 2006 to the joint standing committee of the Legislature having jurisdiction over insurance and financial services matters. The committee may report out legislation to the Second Regular Session of the 122nd Legislature to make any changes to the laws regulating life settlements.

See title page for effective date.

**CHAPTER 637**

**S.P. 705 - L.D. 1858**

**An Act To Change the Point System for Clearing Vegetation Adjacent to Protected Natural Resources**

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

**Sec. 1. 38 MRSA §480-Q, sub-§23,** as enacted by PL 2001, c. 618, §5, is amended to read:

**23. Cutting or clearing subject to mandatory shoreland zoning laws.** Cutting or clearing of upland vegetation adjacent to those protected natural resources listed in section 480-C, subsection 1, paragraph A or B for a purpose other than forest management as long as:

A. The cutting or clearing is subject to the jurisdiction of a municipality pursuant to chapter 3, subchapter ~~1~~ 1, article 2-B; or

B. If the cutting or clearing is not subject to the jurisdiction of a municipality pursuant to chapter 3, subchapter ~~1~~ 1, article 2-B, vegetation within the adjacent area is maintained as follows:

(1) There is no cleared opening greater than 250 square feet in the forest canopy as measured from the outer limits of the tree crown, except that a footpath may be ~~constructed~~ established for the purpose of access to water if it does not exceed 6 feet in width as measured between tree trunks and has at least one bend in its path to divert channelized runoff;

(2) Any selective cutting of trees within the buffer strip leaves a well-distributed stand of trees and other natural vegetation.

(a) For the purposes of this subparagraph, a "well-distributed stand of trees ~~and other natural vegetation~~" is defined as maintaining a rating score of ~~8~~ 16 or more points in a 25-foot by ~~25-foot square~~ 50-foot rectangular area as determined by the following rating system.

(i) A tree with a diameter at 4 1/2 feet above ground level of ~~2 to 4~~ 2.0 to less than 4.0 inches has a point value of one.

(ii) A tree with a diameter at 4 1/2 feet above ground level of ~~more than 4 inches and up to and~~