

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## An Act To Protect Life Insurance Consumers

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

**Sec. 1. 24-A MRSA §6802-A, sub-§9**, as enacted by PL 2003, c. 636, §5, is repealed.

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

**9-A. Settlement contract.** "Settlement contract" means a written agreement between a viator and a settlement provider or any affiliate of the settlement provider 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. "Settlement contract" includes a premium finance loan made for a life insurance policy by a lender to a viator on, before or after the date of issuance of the policy when the viator or the insured receives on the date of the premium finance loan a guarantee of a future settlement value of the policy, or when the viator or the insured agrees on the date of the premium finance loan to sell the policy or any portion of its death benefit on any date following the issuance of the policy. "Settlement contract" does not include:

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

B. Loan proceeds that are used solely to pay:

(1) Premiums for the policy; or

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

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

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

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

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

G. A bona fide business succession planning arrangement:

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

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

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

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

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

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

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

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

**5. Prohibition on settlements.** It is a violation of this chapter for any person to enter into a settlement contract within a ~~2-year~~5-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~~5-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~~60 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~~5-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;
- (3) The viator's spouse dies or no remaining beneficiaries are then surviving;
- (4) The viator divorces a spouse;
- (5) The viator retires from full-time employment;
- (6) The viator becomes physically or mentally disabled and a physician determines that the disability prevents the viator from maintaining full-time employment; or
- (7) A final order, judgment or decree is entered by a court of competent jurisdiction on the application of a creditor of the viator adjudicating the viator in default, bankrupt or insolvent or approving a petition seeking reorganization of the viator or appointing a receiver, trustee or liquidator to all or a substantial part of the viator's assets; and

C. The viator enters into a settlement contract more than 2 years after the date of issuance of a policy and the following conditions are met:

- (1) Policy premiums have been funded exclusively with unencumbered assets provided by the insured or by a person who is closely related to the insured by blood or law or who has a lawful substantial economic interest in the continued life, health and bodily safety of the insured;
- (2) There is no agreement or understanding between the insured and any other person to guarantee any liability or to purchase, or stand ready to purchase, the policy, including through an assumption or forgiveness of a loan; and
- (3) Neither the insured nor the policy has been evaluated for settlement in connection with the issuance of the policy.

## **SUMMARY**

This bill amends the Viatical and Life Settlements Act to:

1. Expand the definition of a "viatical settlement contract" to more specifically exempt from the definition those premium finance transactions and other transactions that are not settlement contracts;
2. Extend from 2 to 5 years the general waiting period for settlements;
3. Expand the specified exceptions under which policyholders could settle their policies and not be subject to the 5-year settlement waiting period; and
4. Specifically require disclosure to a viator that a viatical settlement broker represents exclusively the viator.