



General Assembly

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Amendment

LCO No. 5036

SB0091605036SR0

Offered by:

SEN. DELUCA, 32nd Dist.

To: Senate Bill No. 916

File No. 205

Cal. No. 165

"AN ACT CONCERNING VIATICAL SETTLEMENTS."

1 In lines 4, 266, 312, 378, 420, 437, 544 and 964, strike "15" and insert
2 "16" in lieu thereof

3 After line 143, insert the following:

4 "(7) "Fraudulent viatical settlement act" includes:

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

9 (i) Presenting, causing to be presented or preparing with knowledge
10 or belief that it will be presented to or by a viatical settlement provider,
11 viatical settlement broker, viatical settlement purchaser, viatical
12 settlement investment agent, financing entity, insurer, insurance
13 producer or any other person, false material information, or concealing
14 material information, as part of, in support of or concerning a fact

15 material to one or more of the following: (I) An application for the
16 issuance of a viatical settlement contract or insurance policy; (II) the
17 underwriting of a viatical settlement contract or insurance policy; (III)
18 a claim for payment or benefit pursuant to a viatical settlement
19 contract or insurance policy; (IV) premiums paid on an insurance
20 policy, or as a result of a viatical settlement purchase agreement; (V)
21 payments and changes in ownership or beneficiary made in
22 accordance with the terms of a viatical settlement contract, viatical
23 settlement purchase agreement or insurance policy; (VI) the
24 reinstatement or conversion of an insurance policy; (VII) the
25 solicitation, offer, effectuation or sale of a viatical settlement contract,
26 insurance policy or viatical settlement purchase agreement; (VIII) the
27 issuance of written evidence of viatical settlement contract, a viatical
28 settlement purchase agreement or insurance; or (IX) a financing
29 transaction; and

30 (ii) Employing any device, scheme or artifice to defraud related to
31 viaticated policies;

32 (B) In the furtherance of a fraud or to prevent the detection of a
33 fraud any person commits or permits its employees or its agents to:

34 (i) Remove, conceal, alter, destroy or sequester from the
35 commissioner the assets or records of a licensee or other person
36 engaged in the business of viatical settlements;

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

39 (iii) Transact the business of viatical settlements in violation of laws
40 requiring a license, certificate of authority or other legal authority for
41 the transaction of the business of viatical settlements; or

42 (iv) File with the commissioner or the chief insurance regulatory
43 official of another jurisdiction a document containing false information
44 or otherwise conceal information about a material fact from the
45 commissioner;

46 (C) Embezzlement, theft, misappropriation or conversion of
47 moneys, funds, premiums, credits or other property of a viatical
48 settlement provider, insurer, insured, viator, insurance policyowner or
49 any other person engaged in the business of viatical settlements or
50 insurance;

51 (D) Recklessly entering into, brokering, or otherwise dealing in a
52 viatical settlement contract, the subject of which is a life insurance
53 policy that was obtained by presenting false information concerning
54 any fact material to the policy or by concealing, for the purpose of
55 misleading another, information concerning any fact material to the
56 policy, where the viator or the viator's agent intended to defraud the
57 policy's issuer. As used in this subparagraph, "recklessly" means
58 engaging in the conduct in conscious and clearly unjustifiable
59 disregard of a substantial likelihood of the existence of the relevant
60 facts or risks, such disregard involving a gross deviation from
61 acceptable standards of conduct; or

62 (E) Attempting to commit, assisting, aiding or abetting in the
63 commission of, or conspiring to commit the acts or omissions specified
64 in this subdivision."

65 In line 144, strike "(7)" and insert "(8)" in lieu thereof

66 In line 147, strike "(8)" and insert "(9)" in lieu thereof

67 In line 149, strike "(9)" and insert "(10)" in lieu thereof

68 In line 153, strike "(10)" and insert "(11)" in lieu thereof

69 In line 156, strike "(11)" and insert "(12)" in lieu thereof

70 In line 161, strike "(12)" and insert "(13)" in lieu thereof

71 In line 165, strike "(13)" and insert "(14)" in lieu thereof

72 In line 168, strike "(14)" and insert "(15)" in lieu thereof

73 In line 174, strike "(15)" and insert "(16)" in lieu thereof

74 In line 184, strike "(16)" and insert "(17)" in lieu thereof

75 In line 197, strike "(17)" and insert "(18)" in lieu thereof

76 In line 202, strike "(18)" and insert "(19)" in lieu thereof

77 In line 223, strike "(19)" and insert "(20)" in lieu thereof

78 In line 228, strike "(20)" and insert "(21)" in lieu thereof

79 In line 241, strike "(21)" and insert "(22)" in lieu thereof

80 In line 244, strike "(22)" and insert "(23)" in lieu thereof

81 In line 288, strike "and"

82 After line 288, insert the following:

83 "(5) The applicant has provided an antifraud plan that meets the
84 requirements of section 16 of this act; and"

85 In line 289, strike "(5)" and insert "(6)" in lieu thereof

86 After line 1289, add the following:

87 "Sec. 16. (NEW) (*Effective October 1, 2003*) (a) (1) No person may
88 commit a fraudulent viatical settlement act.

89 (2) A person shall not knowingly or intentionally interfere with the
90 enforcement of the provisions of sections 38a-465 to 38a-465m of the
91 general statutes, as amended by this act, and sections 12 to 16,
92 inclusive, of this act or investigations of suspected or actual violations
93 of sections 38a-465 to 38a-465m of the general statutes, as amended by
94 this act, and sections 12 to 16, inclusive, of this act.

95 (3) A person in the business of viatical settlements shall not
96 knowingly or intentionally permit any person convicted of a felony
97 involving dishonesty or breach of trust to participate in the business of
98 viatical settlements.

99 (b) (1) Viatical settlements contracts and purchase agreement forms
100 and applications for viatical settlements, regardless of the form of
101 transmission, shall contain the following statement or a substantially
102 similar statement: "Any person who knowingly presents false
103 information in an application for insurance or viatical settlement
104 contract or a viatical settlement purchase agreement is guilty of a crime
105 and may be subject to fines and confinement in prison."

106 (2) The lack of a statement as required in subdivision (1) of this
107 subsection shall not constitute a defense in any prosecution for a
108 fraudulent viatical settlement act.

109 (c) (1) Any person engaged in the business of viatical settlements
110 having knowledge or a reasonable belief that a fraudulent viatical
111 settlement act is being, will be or has been committed shall provide to
112 the commissioner, the insurer and other persons authorized by the
113 commissioner, the information required by the commissioner in such
114 form as the commissioner prescribes.

115 (2) Any other person having knowledge or a reasonable belief that a
116 fraudulent viatical settlement act is being, will be or has been
117 committed may provide to the commissioner, the insurer and other
118 persons or entities licensed by the commissioner the information
119 required by the commissioner in such form as the commissioner
120 prescribes.

121 (d) (1) No civil liability shall be imposed on and no cause of action
122 shall arise from a person's furnishing information concerning
123 suspected, anticipated or completed fraudulent viatical settlement acts
124 or suspected or completed fraudulent insurance acts, if the information
125 is provided to or received from:

126 (A) The commissioner or the commissioner's employees, agents or
127 representatives;

128 (B) Federal, state or local law enforcement or regulatory officials or
129 their employees, agents or representatives;

130 (C) A person involved in the prevention and detection of fraudulent
131 viatical settlement acts or that person's agents, employees or
132 representatives;

133 (D) The National Association of Insurance Commissioners, the
134 National Association of Securities Dealers, the North American
135 Securities Administrators Association, or their employees, agents or
136 representatives, or other regulatory body overseeing life insurance,
137 viatical settlements, securities or investment fraud; or

138 (E) The life insurer that issued the life insurance policy covering the
139 life of the insured.

140 (2) The provisions of subdivision (1) of this subsection shall not
141 apply to statements made with actual malice. In an action brought
142 against a person for filing a report or furnishing other information
143 concerning a fraudulent viatical settlement act or a fraudulent
144 insurance act, the party bringing the action shall plead specifically any
145 allegation that subdivision (1) of this subsection does not apply
146 because the person filing the report or furnishing the information did
147 so with actual malice.

148 (3) A person identified in subdivision (1) of this subsection shall be
149 entitled to an award of attorney's fees and costs if the person is the
150 prevailing party in a civil cause of action for libel, slander or any other
151 relevant tort arising out of activities in carrying out the provisions of
152 sections 38a-465 to 38a-465m of the general statutes, as amended by
153 this act, and sections 12 to 16, inclusive, of this act and the party
154 bringing the action was not substantially justified in doing so. For
155 purposes of this section a proceeding is "substantially justified" if it
156 had a reasonable basis in law or fact at the time that it was initiated.

157 (4) This section does not abrogate or modify common law or
158 statutory privileges or immunities enjoyed by a person described in
159 subdivision (1) of this subsection.

160 (e) (1) The documents and evidence provided pursuant to

161 subsection (d) of this section or obtained by the commissioner in an
162 investigation of suspected or actual fraudulent viatical settlement acts
163 shall be privileged and confidential and shall not be a public record, as
164 defined in section 1-200 of the general statutes, and shall not be subject
165 to discovery or subpoena in a civil or criminal action.

166 (2) Subdivision (1) of this subsection shall not prohibit release by the
167 commissioner of documents and evidence obtained in an investigation
168 of suspected or actual fraudulent viatical settlement acts:

169 (A) In administrative or judicial proceedings to enforce laws
170 administered by the commissioner;

171 (B) To federal, state or local law enforcement or regulatory agencies,
172 to an organization established for the purpose of detecting and
173 preventing fraudulent viatical settlement acts or to the National
174 Association of Insurance Commissioners; or

175 (C) At the discretion of the commissioner, to a person in the
176 business of viatical settlements that is aggrieved by a fraudulent
177 viatical settlement act.

178 (3) Release of documents and evidence under subdivision (2) of this
179 subsection shall not abrogate or modify the privilege granted in
180 subdivision (1) of this subsection.

181 (f) This section shall not:

182 (1) Preempt the authority or relieve the duty of other law
183 enforcement or regulatory agencies to investigate, examine and
184 prosecute suspected violations of law;

185 (2) Prevent or prohibit a person from voluntarily disclosing
186 information concerning viatical settlement fraud to a law enforcement
187 or regulatory agency other than the Insurance Department; or

188 (3) Limit the powers granted elsewhere by the laws of this state to
189 the commissioner or an insurance fraud unit to investigate and

190 examine possible violations of law and to take appropriate action
191 against wrongdoers.

192 (g) Viatical settlement providers and viatical settlement brokers
193 shall have in place antifraud initiatives reasonably calculated to detect,
194 prosecute and prevent fraudulent viatical settlement acts. At the
195 discretion of the commissioner, the commissioner may order, or a
196 licensee may request and the commissioner may grant, such
197 modifications of the following required initiatives as necessary to
198 ensure an effective antifraud program. The modifications may be more
199 or less restrictive than the required initiatives so long as the
200 modifications may reasonably be expected to accomplish the purpose
201 of this section. Antifraud initiatives shall include:

202 (1) The use of fraud investigators, who may be viatical settlement
203 provider or viatical settlement broker employees or independent
204 contractors; and

205 (2) An antifraud plan, which shall be submitted to the
206 commissioner. The antifraud plan shall include, but not be limited to:

207 (A) A description of the procedures for detecting and investigating
208 possible fraudulent viatical settlement acts and procedures for
209 resolving material inconsistencies between medical records and
210 insurance applications;

211 (B) A description of the procedures for reporting possible
212 fraudulent viatical settlement acts to the commissioner;

213 (C) A description of the plan for antifraud education and training of
214 underwriters and other personnel; and

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

220 (3) Antifraud plans submitted to the commissioner shall be
221 privileged and confidential and shall not be a public record, as defined
222 in section 1-200 of the general statutes, and shall not be subject to
223 discovery or subpoena in a civil or criminal action."