



General Assembly

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Amendment

LCO No. 5389

SB0091605389SR0

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) An act or omission committed knowingly or with intent to
6 defraud for the purpose of depriving another of property or for
7 pecuniary gain including:

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

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

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

31 (B) An act or omission in the furtherance of a fraud or to prevent the
32 detection of a fraud including:

33 (i) Removing, concealing, altering, destroying or sequestering from
34 the commissioner the assets or records of a licensee or other person
35 engaged in the business of viatical settlements;

36 (ii) Misrepresenting or concealing the financial condition of a
37 licensee, financing entity, insurer or other person;

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

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

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

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

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

64 (F) Permitting employees or agents to commit the acts or omissions
65 specified in this subdivision."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

82 In line 288, strike "and"

83 After line 288, insert the following:

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

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

87 Strike lines 692 to 700, inclusive, in their entirety

88 In line 701, strike "(g)" and insert "(f)" in lieu thereof

89 After line 1289, add the following:

90 "Sec. 16. (NEW) (*Effective October 1, 2003*) (a) (1) No person may
91 commit a fraudulent viatical settlement act. Any person who commits
92 a fraudulent viatical settlement act is guilty of a class A misdemeanor
93 for a first offense and a class D felony for any subsequent offense.

94 (2) No person may knowingly or intentionally interfere with the
95 enforcement of the provisions of sections 38a-465 to 38a-465m of the
96 general statutes, as amended by this act, and sections 12 to 16,

97 inclusive, of this act or investigations of suspected or actual violations
98 of sections 38a-465 to 38a-465m of the general statutes, as amended by
99 this act, and sections 12 to 16, inclusive, of this act.

100 (3) No person in the business of viatical settlements may knowingly
101 or intentionally permit any person convicted of a felony involving
102 dishonesty or breach of trust to participate in the business of viatical
103 settlements.

104 (b) (1) Viatical settlements contracts and purchase agreement forms
105 and applications for viatical settlements, regardless of the form of
106 transmission, shall contain the following statement or a substantially
107 similar statement: "Any person who knowingly presents false
108 information in an application for insurance or viatical settlement
109 contract or a viatical settlement purchase agreement may be guilty of a
110 crime and may be subject to a fine or a term of imprisonment, or
111 both."

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

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

121 (2) Any other person having knowledge or a reasonable belief that a
122 fraudulent viatical settlement act is being, will be or has been
123 committed may provide to the commissioner, the insurer and other
124 persons or entities licensed by the commissioner the information
125 required by the commissioner in such form as the commissioner
126 prescribes.

127 (d) (1) No civil liability shall be imposed on, and no cause of action

128 shall arise from, a person's furnishing information concerning
129 suspected, anticipated or completed fraudulent viatical settlement acts
130 or suspected or completed fraudulent insurance acts, if the information
131 is provided to or received from:

132 (A) The commissioner or the commissioner's employees, agents or
133 representatives;

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

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

139 (D) The National Association of Insurance Commissioners, the
140 National Association of Securities Dealers, the North American
141 Securities Administrators Association, or the employees, agents or
142 representatives of said associations or any other regulatory body
143 overseeing life insurance, viatical settlements, securities or investment
144 fraud; or

145 (E) The life insurer that issued the life insurance policy covering the
146 life of the insured.

147 (2) The provisions of subdivision (1) of this subsection shall not
148 apply to statements made with actual malice. In any action brought
149 against a person for filing a report or furnishing other information
150 concerning a fraudulent viatical settlement act or a fraudulent
151 insurance act, any party bringing an action based on malice shall plead
152 specifically any allegation that subdivision (1) of this subsection does
153 not apply because the person filing the report or furnishing the
154 information did so with actual malice.

155 (3) A person identified in subdivision (1) of this subsection shall be
156 entitled to an award of attorney's fees and costs if the person is the
157 prevailing party in a civil action for libel, slander or any other relevant

158 tort arising out of activities in carrying out the provisions of sections
159 38a-465 to 38a-465m of the general statutes, as amended by this act,
160 and sections 12 to 16, inclusive, of this act and the party bringing the
161 action was not substantially justified in doing so. For purposes of this
162 section an action is "substantially justified" if the action had a
163 reasonable basis in law or fact at the time that it was filed.

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

167 (e) (1) The documents and evidence provided pursuant to
168 subsection (d) of this section or obtained by the commissioner in an
169 investigation of a suspected or actual fraudulent viatical settlement act
170 shall be privileged and confidential and shall not be a public record, as
171 defined in section 1-200 of the general statutes, and shall not be subject
172 to discovery or subpoena in a civil or criminal action.

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

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

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

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

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

188 (f) This section shall not:

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

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

195 (3) Limit the powers granted elsewhere by the laws of this state to
196 the commissioner or an insurance fraud unit to investigate and
197 examine possible violations of law and to take appropriate action
198 against violators.

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

209 (1) The use of fraud investigators who may be viatical settlement
210 provider or viatical settlement broker employees or independent
211 contractors; and

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

214 (A) A description of the procedures for detecting and investigating
215 possible fraudulent viatical settlement acts and procedures for
216 resolving material inconsistencies between medical records and
217 insurance applications;

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

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

222 (D) A description or chart outlining the organizational arrangement
223 of the antifraud personnel who are responsible for investigating and
224 reporting possible fraudulent viatical settlement acts and investigating
225 unresolved material inconsistencies between medical records and
226 insurance applications.

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