



General Assembly

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Amendment

LCO No. 5391

SB0091605391SR0

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 Strike lines 692 to 700, inclusive, in their entirety

87 In line 701, strike "g" and insert "f" in lieu thereof

88 After line 1289, add the following:

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

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

99 (3) A person in the business of viatical settlements shall not
100 knowingly or intentionally permit any person convicted of a felony
101 involving dishonesty or breach of trust to participate in the business of
102 viatical settlements.

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

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

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

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

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

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

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

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

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

143 (E) The life insurer that issued the life insurance policy covering the
144 life of the insured.

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

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

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

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

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

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

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

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

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

186 (f) This section shall not:

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

190 (2) Prevent or prohibit a person from voluntarily disclosing

191 information concerning viatical settlement fraud to a law enforcement
192 or regulatory agency other than the Insurance Department; or

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

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

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

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

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

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

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

220 (D) A description or chart outlining the organizational arrangement

221 of the antifraud personnel who are responsible for the investigation
222 and reporting of possible fraudulent viatical settlement acts and
223 investigating unresolved material inconsistencies between medical
224 records and insurance applications.

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