

§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; [PL 2003, c. 636, §18 (NEW).]

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 [PL 2003, c. 636, §18 (NEW).]

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. [PL 2003, c. 636, §18 (NEW).]

[PL 2003, c. 636, §18 (NEW).]

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.

[PL 2003, c. 636, §18 (NEW).]

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.

[PL 2003, c. 636, §18 (NEW).]

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; [PL 2003, c. 636, §18 (NEW).]

B. Federal, state or local law enforcement or regulatory officials or their employees, agents or representatives; [PL 2003, c. 636, §18 (NEW).]

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; [PL 2003, c. 636, §18 (NEW).]

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 [PL 2003, c. 636, §18 (NEW).]

E. The life insurer that issued the life insurance policy covering the life of the insured. [PL 2003, c. 636, §18 (NEW).]

[PL 2003, c. 636, §18 (NEW).]

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. [PL 2003, c. 636, §18 (NEW).]

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. [PL 2003, c. 636, §18 (NEW).]

C. This subsection does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in subsection 4. [PL 2003, c. 636, §18 (NEW).]
[PL 2003, c. 636, §18 (NEW).]

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. [PL 2003, c. 636, §18 (NEW).]

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. [PL 2003, c. 636, §18 (NEW).]

C. Release of documents and evidence under paragraph B does not abrogate or modify the privilege granted in paragraph A. [PL 2003, c. 636, §18 (NEW).]
[PL 2003, c. 636, §18 (NEW).]

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; [PL 2003, c. 636, §18 (NEW).]

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 [PL 2003, c. 636, §18 (NEW).]

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. [PL 2003, c. 636, §18 (NEW).]
[PL 2003, c. 636, §18 (NEW).]

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. [PL 2003, c. 636, §18 (NEW).]

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 antifraud 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. [PL 2003, c. 636, §18 (NEW).]

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. [PL 2003, c. 636, §18 (NEW).]

[PL 2003, c. 636, §18 (NEW).]

SECTION HISTORY

PL 2003, c. 636, §18 (NEW).

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