

BY: Health and Government Operations Committee

AMENDMENTS TO SENATE BILL NO. 439

(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 13, after the second semicolon insert “clarifying who is eligible to negotiate viatical settlement contracts between a viator and one or more settlement providers; requiring viatical settlement contracts and applications for viatical settlement contracts to contain a certain statement; providing that the absence of a certain statement does not constitute a certain defense; providing that it is a fraudulent insurance act for a person knowingly or willfully to present, or cause to be presented, certain documentation or a certain statement with knowledge that the documentation or statement contains certain false or misleading information; requiring certain persons to report suspected insurance fraud under certain circumstances and in a certain manner; providing that certain information, documentation, or evidence provided by a viatical settlement provider or a viatical settlement broker in connection with an investigation of suspected insurance fraud is not subject to public inspection under certain circumstances; requiring a viatical settlement provider to have in place a certain antifraud plan, notify the Commissioner in writing within a certain timeframe after instituting or modifying the antifraud plan, and file its antifraud plan with the Commissioner; specifying certain items to be included in the antifraud plan; providing for the confidentiality of the antifraud plan; providing for the approval and disapproval of the antifraud plan and for submission of a new antifraud plan under certain circumstances;”; in line 16, after the semicolon insert “authorizing certain individuals to act as viatical settlement brokers notwithstanding certain provisions of this Act, under certain circumstances;”; in line 23, strike “8-610” and substitute “8-611”; and after line 26, insert:

“BY repealing and reenacting, with amendments,

Article - Insurance

Section 27-403, 27-802, and 27-804

Annotated Code of Maryland

(2002 Replacement Volume and 2003 Supplement)

(Over)

BY adding to

Article - Insurance

Section 27-804

Annotated Code of Maryland

(2002 Replacement Volume and 2003 Supplement)".

On page 2, after line 35 insert:

“(F) “FRAUDULENT VIATICAL SETTLEMENT ACT” MEANS A FRAUDULENT INSURANCE ACT AS DESCRIBED IN § 27-403(6) OF THIS ARTICLE.”.

On page 3, in lines 1, 5, 20, 25, and 28, strike “(F)”, “(G)”, “(H)”, “(I)”, and “(J)”, respectively, and substitute “(G)”, “(H)”, “(I)”, “(J)”, and “(K)”, respectively.

On page 4, in lines 6, 24, 31, and 33, strike “(K)”, “(L)”, “(M)”, and “(N)”, respectively, and substitute “(L)”, “(M)”, “(N)”, and “(O)”, respectively.

AMENDMENT NO. 2

On page 3, in line 28, strike “A PERSON THAT” and substitute “AN INSURANCE PRODUCER WHO:

(I) IS LICENSED UNDER TITLE 10, SUBTITLE 1 OF THIS ARTICLE TO SELL LIFE INSURANCE; AND

(II);

and in lines 33 and 34, strike “: (I)”.

On pages 3 and 4, strike beginning with the semicolon in line 38 on page 3 down through “YEAR” in line 5 on page 4.

AMENDMENT NO. 3

On page 5, in lines 6 and 7, strike “OR VIATICAL SETTLEMENT BROKER”; after line 7, insert:

“(B) (1) EXCEPT FOR AN INDIVIDUAL LISTED IN § 8-601(K)(2) OF THIS SUBTITLE, ONLY AN INDIVIDUAL WHO IS A VIATICAL SETTLEMENT BROKER MAY NEGOTIATE VIATICAL SETTLEMENT CONTRACTS BETWEEN A VIATOR AND ONE OR

MORE SETTLEMENT PROVIDERS.

(2) NOT LATER THAN 30 DAYS AFTER NEGOTIATING A VIATICAL SETTLEMENT CONTRACT ON BEHALF OF A VIATOR, A VIATICAL SETTLEMENT BROKER SHALL REGISTER WITH THE COMMISSIONER IN ACCORDANCE WITH § 8-604 OF THIS SUBTITLE.”;

and in line 8, strike “(B)” and substitute “(C)”.

AMENDMENT NO. 4

On page 11, after line 10, insert:

“8-611.

(A) VIATICAL SETTLEMENT CONTRACTS AND APPLICATIONS FOR VIATICAL SETTLEMENT CONTRACTS SHALL CONTAIN THE FOLLOWING STATEMENT OR A SUBSTANTIALLY SIMILAR STATEMENT:

“ANY PERSON WHO KNOWINGLY PRESENTS FALSE INFORMATION IN AN APPLICATION FOR INSURANCE OR AN APPLICATION FOR A VIATICAL SETTLEMENT CONTRACT HAS COMMITTED A FRAUDULENT VIATICAL SETTLEMENT ACT AND ON CONVICTION IS SUBJECT TO FINES, IMPRISONMENT, OR BOTH, UNDER § 27-408 OF THE INSURANCE ARTICLE OF THE ANNOTATED CODE OF MARYLAND.”

(B) THE ABSENCE OF A STATEMENT AS REQUIRED IN SUBSECTION (A) OF THIS SECTION DOES NOT CONSTITUTE A DEFENSE IN ANY PROSECUTION FOR A FRAUDULENT VIATICAL SETTLEMENT ACT.

27-403.

It is a fraudulent insurance act for a person:

(1) knowingly to fail to return any moneys or premiums paid for a policy to an insured, designee of the insured, or another person entitled to the moneys or premiums if the

(Over)

insurance contracted for is not ultimately provided;

(2) to present or cause to be presented to an insurer documentation or an oral or written statement made in support of a claim, including a claim that alleges the theft of a motor vehicle, with knowledge that the documentation or statement contains false or misleading information about a matter material to the claim;

(3) except for the prepayment of periodic payments or excess contributions allowed under the terms of the policy, willfully to collect as a premium a sum in excess of the premium applicable to the insurance under approved classifications and rates or, for cases in which classifications and rates are not subject to approval, the premiums and charges applicable to the insurance as specified in the policy and set by the insurer;

(4) to misappropriate or withhold unreasonably funds received or held if the funds represent premiums or return premiums; [and]

(5) to misappropriate benefits under a policy; AND

(6) KNOWINGLY OR WILLFULLY TO PRESENT, OR CAUSE TO BE PRESENTED, DOCUMENTATION OR AN ORAL OR WRITTEN STATEMENT MADE IN, WITH REFERENCE TO, OR IN SUPPORT OF AN APPLICATION FOR A VIATICAL SETTLEMENT CONTRACT, THE FINANCING OF A VIATICAL SETTLEMENT CONTRACT, THE TRANSFER OF A VIATICAL SETTLEMENT CONTRACT, OR THE SETTLEMENT IN SUPPORT OF A CLAIM MADE UNDER A VIATICAL SETTLEMENT CONTRACT WITH KNOWLEDGE THAT THE DOCUMENTATION OR STATEMENT CONTAINS FALSE OR MISLEADING INFORMATION ABOUT MATTERS MATERIAL TO THE APPLICATION, FINANCING, TRANSFER, SETTLEMENT, OR CLAIM.

27-802.

(a) (1) An authorized insurer, its employees, fund producers, or insurance producers, A VIATICAL SETTLEMENT PROVIDER, OR A VIATICAL SETTLEMENT BROKER who in good faith [have] HAS cause to believe that insurance fraud has been or is being committed shall report the suspected insurance fraud in writing to the Commissioner, the Fraud Division, or the appropriate federal, State, or local law enforcement authorities.

(2) An independent insurance producer shall meet the reporting requirement of this subsection by reporting the suspected insurance fraud in writing to the Fraud Division.

(b) In addition to any protection provided under § 10-618 of the State Government Article, any information, documentation, or other evidence provided under this section by an insurer, its employees, fund producers, or insurance producers, A VIATICAL SETTLEMENT PROVIDER, OR A VIATICAL SETTLEMENT BROKER to the Commissioner, the Fraud Division, or a federal, State, or local law enforcement authority in connection with an investigation of suspected insurance fraud is not subject to public inspection for as long as the Commissioner, Fraud Division, or law enforcement authority considers the withholding to be necessary to complete an investigation of the suspected fraud or to protect the person investigated from unwarranted injury.

(c) A person is not subject to civil liability for a cause of action by virtue of reporting suspected insurance fraud if:

(1) the report was made to the Commissioner, Fraud Division, or an appropriate federal, State, or local law enforcement authority; and

(2) the person that reported the suspected insurance fraud acted in good faith when making the report.

27-804.

(A) EACH VIATICAL SETTLEMENT PROVIDER SHALL HAVE IN PLACE AN ANTIFRAUD PLAN REASONABLY CALCULATED TO DETECT, PROSECUTE, AND PREVENT FRAUDULENT VIATICAL SETTLEMENT ACTS.

(B) WITHIN 30 DAYS AFTER INSTITUTING OR MODIFYING AN ANTIFRAUD PLAN, THE VIATICAL SETTLEMENT PROVIDER SHALL NOTIFY THE COMMISSIONER IN WRITING.

(C) EACH ANTIFRAUD PLAN SHALL INCLUDE:

(Over)

(1) THE USE OF FRAUD INVESTIGATORS;

(2) A DESCRIPTION OF THE PROCEDURES FOR DETECTING AND INVESTIGATING POSSIBLE FRAUDULENT VIATICAL SETTLEMENT ACTS AND PROCEDURES FOR RESOLVING MATERIAL INCONSISTENCIES BETWEEN MEDICAL RECORDS AND INSURANCE APPLICATIONS;

(3) A DESCRIPTION OF THE PROCEDURES FOR REPORTING POSSIBLE FRAUDULENT VIATICAL SETTLEMENT ACTS TO THE COMMISSIONER;

(4) A DESCRIPTION OF THE PLAN FOR ANTIFRAUD EDUCATION AND TRAINING OF UNDERWRITERS, AND OTHER PERSONNEL; AND

(5) A DESCRIPTION OR CHART OUTLINING THE ORGANIZATIONAL ARRANGEMENT OF THE ANTIFRAUD PERSONNEL WHO ARE RESPONSIBLE FOR THE INVESTIGATION AND REPORTING OF POSSIBLE FRAUDULENT VIATICAL SETTLEMENT ACTS AND INVESTIGATING UNRESOLVED MATERIAL INCONSISTENCIES BETWEEN MEDICAL RECORDS AND INSURANCE APPLICATIONS.

(D) AN ANTIFRAUD PLAN SUBMITTED TO THE COMMISSIONER SHALL BE PRIVILEGED AND CONFIDENTIAL AND SHALL NOT BE A PUBLIC RECORD AND SHALL NOT BE SUBJECT TO DISCOVERY OR SUBPOENA IN A CIVIL OR CRIMINAL ACTION.

(E) (1) EACH VIATICAL SETTLEMENT PROVIDER SHALL FILE ITS ANTIFRAUD PLAN WITH THE COMMISSIONER.

(2) THE COMMISSIONER MAY REVIEW EACH ANTIFRAUD PLAN TO DETERMINE WHETHER IT COMPLIES WITH THE REQUIREMENTS OF THIS SECTION.

(3) AN ANTIFRAUD PLAN IS DEEMED APPROVED UNLESS DISAPPROVED BY THE COMMISSIONER WITHIN 30 DAYS AFTER THE DATE OF FILING.

(F) (1) IF THE COMMISSIONER FINDS THAT AN ANTIFRAUD PLAN DOES NOT COMPLY WITH THE REQUIREMENTS OF THIS SECTION, THE COMMISSIONER SHALL DISAPPROVE THE ANTIFRAUD PLAN AND SEND A NOTICE OF DISAPPROVAL.

INCLUDING THE REASONS FOR DISAPPROVAL, TO THE VIATICAL SETTLEMENT PROVIDER.

(2) IF THE COMMISSIONER DISAPPROVES AN ANTIFRAUD PLAN, THE VIATICAL SETTLEMENT PROVIDER SHALL SUBMIT A NEW ANTIFRAUD PLAN TO THE COMMISSIONER WITHIN 60 DAYS AFTER THE DATE OF DISAPPROVAL.

(G) IT IS A VIOLATION OF THIS SUBTITLE IF THE COMMISSIONER FINDS THAT A VIATICAL SETTLEMENT PROVIDER HAS FAILED TO:

(1) FILE AN ANTIFRAUD PLAN;

(2) FILE A REVISED ANTIFRAUD PLAN AFTER DISAPPROVAL BY THE COMMISSIONER OF THE INITIAL ANTIFRAUD PLAN; OR

(3) COMPLY WITH THE ANTIFRAUD PLAN FILED BY THE VIATICAL SETTLEMENT PROVIDER.

[27-804.] 27-805.

The penalty for a violation of this subtitle is as provided in §§ 4-113 and 4-114 of this article.”.

AMENDMENT NO. 5

On page 11, in lines 29 and 30, strike “Economic Matters” and substitute “Health and Government Operations”; after line 26 insert:

“SECTION 4. AND BE IT FURTHER ENACTED, That, notwithstanding § 8-601(k)(1) of the Insurance Article, as enacted by Section 1 of this Act, an individual who is not licensed under Title 10, Subtitle 1 of the Insurance Article to sell life insurance may act as a viatical settlement broker if the individual:

(1) prior to October 1, 2004, has negotiated viatical settlement contracts between a viator and one or more viatical settlement providers for at least 1 year;

(Over)

(2) on or before November 1, 2004, registers with the Commissioner as a viatical settlement broker in accordance with § 8-604 of the Insurance Article, as enacted by Section 1 of this Act; and

(3) on or before October 1, 2005, becomes an insurance producer licensed under Title 10, Subtitle 1 of the Insurance Article to sell life insurance.”;

and in lines 27 and 37, strike “4.” and “5.”, respectively, and substitute “5.” and “6.”, respectively.