

508E.15 Fraud prevention and control.

1. *Fraudulent viatical settlement acts — interference, and participation of convicted felons prohibited.*

- a. A person shall not commit a fraudulent viatical settlement act.
- b. A person shall not knowingly or intentionally interfere with the enforcement of the provisions of [this chapter](#) or investigations of suspected or actual violations of [this chapter](#).
- c. A person in the business of viatical settlements shall not knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.

2. *Fraud warning required.*

a. A viatical settlement contract and application for a viatical settlement, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

Any person who knowingly presents false information in an application for insurance or viatical settlement contract is guilty of a crime and may be subject to fines and confinement in prison.

b. The lack of a statement as required in paragraph “a” does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

3. *Mandatory reporting of fraudulent viatical settlement acts.*

a. Any person engaged in the business of viatical settlements having knowledge or a reasonable suspicion that a fraudulent viatical settlement act is being, will be, or has been committed shall provide to the commissioner such information as required by and in a manner prescribed by rules adopted by the commissioner.

b. Any other person having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed may provide to the commissioner the information required by and in a manner prescribed by rules adopted by the commissioner.

4. *Immunity from liability.*

a. No civil liability shall be imposed on and no cause of action shall arise from a person who, acting reasonably and in good faith, furnishes information concerning suspected, anticipated, or completed fraudulent viatical settlement acts or suspected or completed fraudulent insurance acts, if the information is provided to or received from any of the following:

- (1) The commissioner or the commissioner’s employees, agents, or representatives.
- (2) A federal, state, or local law enforcement or regulatory official or the official’s employees, agents, or representatives.
- (3) A person involved in the prevention and detection of fraudulent viatical settlement acts or that person’s agents, employees, or representatives.
- (4) The national association of insurance commissioners; the national association of securities dealers; the North American securities administrators association; their employees, agents, or representatives; or other regulatory body overseeing life insurance, viatical settlements, securities, or investment fraud.
- (5) A life insurer that issued the life insurance policy covering the life of the insured.

b. Paragraph “a” does not apply to a statement made in bad faith or with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent viatical settlement act, the party bringing the action shall plead specifically any allegation that paragraph “a” does not apply because the person filing the report or furnishing the information did so in bad faith or with actual malice.

c. A person furnishing information as identified in paragraph “a” shall be entitled to an award of attorney fees and costs if the person is the prevailing party in a civil cause of action for libel, slander, or any other relevant tort arising out of an activity in carrying out the provisions of [this chapter](#) and the party bringing the action was not substantially justified in doing so. For purposes of this paragraph, a proceeding is substantially justified if it had a reasonable basis in law or fact at the time that it was initiated. However, such an award does not apply to any person furnishing information concerning the person’s own fraudulent viatical settlement act.

d. [This section](#) does not abrogate or modify a common law or statutory privilege or immunity enjoyed by a person described in paragraph “a”.

5. *Confidentiality.*

a. A document or evidence provided pursuant to [subsection 4](#) or obtained by the commissioner in an investigation of a suspected or actual fraudulent viatical settlement act shall be privileged and confidential, notwithstanding [chapter 22](#), shall not be a public record, and shall not be subject to discovery or subpoena in a civil or criminal action.

b. Paragraph “a” does not prohibit the release by the commissioner of a document or evidence obtained in an investigation of a suspected or actual fraudulent viatical settlement act if any of the following applies:

(1) In an administrative or judicial proceeding to enforce laws administered by the commissioner.

(2) To a federal, state, or local law enforcement or regulatory agency, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts, or to the national association of insurance commissioners.

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

c. Release of a document or evidence under paragraph “b” does not abrogate or modify the privilege granted in paragraph “a”.

6. *Other law enforcement or regulatory authority.* [This chapter](#) shall not do any of the following:

a. Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine, and prosecute suspected violations of law.

b. Prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the commissioner.

c. Limit the powers granted elsewhere by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

7. *Viatical settlement antifraud initiatives.*

a. A viatical settlement provider or viatical settlement broker shall have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent viatical settlement acts. At the discretion of the commissioner, the commissioner may order, or a licensee may request and the commissioner may grant, such modifications of the following required initiatives as necessary to ensure an effective antifraud program. The modifications may be more or less restrictive than the required initiatives so long as the modifications may reasonably be expected to accomplish the purpose of [this section](#).

b. Antifraud initiatives shall include all of the following:

(1) A fraud investigator, who may be a viatical settlement provider, viatical settlement broker, a viatical settlement provider’s or viatical settlement broker’s employee, or an independent contractor.

(2) An antifraud plan, which shall be submitted to the commissioner. The antifraud plan shall include, but is not limited to all of the following:

(a) 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.

(b) A description of the procedures for reporting possible fraudulent viatical settlement acts to the commissioner.

(c) A description of the plan for antifraud education and training of underwriters and other personnel.

(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 settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

c. An antifraud plan submitted to the commissioner shall be privileged and confidential,

notwithstanding [chapter 22](#), shall not be a public record, and shall not be subject to discovery or subpoena in a civil or criminal action.

[2008 Acts, ch 1155, §15](#)

Referred to in [§508E.3](#), [§508E.5](#), [§508E.6](#)