



Ohio Revised Code

Section 3916.18 Prohibiting fraudulent acts.

Effective: September 11, 2008

Legislation: House Bill 404 - 127th General Assembly

(A)(1) No person shall knowingly or intentionally interfere with the enforcement of the provisions of this chapter or investigations of suspected or actual violations of this chapter.

(2) No person in the business of viatical settlements shall knowingly or intentionally permit any person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.

(B)(1) Each viatical settlement contract and each 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 imprisonment."

(2) The lack of a statement as required in division (B)(1) of this section does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

(C)(1) Every person engaged in the business of viatical settlements having knowledge or a reasonable belief that a fraudulent viatical settlement act is being, will be, or has been committed shall provide to the superintendent of insurance the information required by the superintendent. The person shall provide the information in a manner prescribed by the superintendent.

(2) Every person having knowledge or a reason to believe that a fraudulent viatical settlement act is being, will be, or has been committed may provide to the superintendent the information required by the superintendent. The person shall provide the information under this division in a manner prescribed by the superintendent.

(3) Any life insurer that has a good faith belief that a person is participating or has participated in a stranger-originated life insurance transaction shall report the person to the superintendent in a form



and manner prescribed by the superintendent. Upon receipt of the insurer's report, the superintendant shall conduct an investigation to determine whether there is probable cause, based on the totality of the facts and circumstances that the person has or had engaged in a stranger-originated life insurance transaction. If the superintendent finds probable cause, the superintendent shall do one of the following:

(a) If the person is licensed or regulated by the department of insurance, the superintendent shall provide the person an opportunity for notice and hearing pursuant to Chapter 119. of the Revised Code. If the person waives or does not request a hearing pursuant to Chapter 119. of the Revised Code, or a hearing is held and the person is found to have participated in one or more stranger-originated life insurance transactions, the superintendent shall publish the order on the department's web site, and shall notify each insurance company licensed in this state that the person has been adjudicated as having participated in one or more stranger-originated life insurance transactions.

(b) If the person is not licensed or regulated by the department the superintendent shall provide the superintendent's findings to the appropriate licensing or regulatory authority.

(D)(1) No civil liability shall be imposed on, and no cause of action shall arise from, a person's furnishing 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:

(a) The superintendent, or the superintendent's employees, agents, or representatives;

(b) Law enforcement or regulatory officials of this state, another state, the United States, or a political subdivision of this state or another state, or any employee, agent, or representative of any of those officials;

(c) A person involved in the prevention and detection of fraudulent viatical settlement acts or any agent, employee, or representative of any person so involved;

(d) The NAIC, financial industry regulatory authority (FINRA), the north American securities administrators association (NASAA), any employee, agent, or representative of any of those



associations, or other regulatory body overseeing life insurance, viatical settlements, securities, or investment fraud;

(e) The life insurer that issued the policy covering the life of the insured.

(2) The immunity provided in division (D)(1) of this section shall not apply to any statement made 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 the immunity provided in division (D)(1) of this section does not apply because the person filing the report or furnishing the information did so with actual malice.

(3) If a person is the prevailing party in a civil action for libel, slander, or any other relevant tort arising out of activities in carrying out the provisions of this chapter, if the prevailing party is a person identified in division (D)(1) of this section and the immunity described in that division applies to the person, and if the party who brought the action was not substantially justified in doing so, the person who is the prevailing party is entitled to an award of attorney's fees and costs arising out of the action. However, the person is not entitled to an award of attorney's fees if the person provided information about the person's own fraudulent viatical settlement acts. For purposes of this division, an action is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

(4) This section does not abrogate or modify any common law or statutory privilege or immunity enjoyed by a person described in division (D)(1) of this section.

(E)(1) The documents and evidence provided pursuant to division (D) of this section or obtained by the superintendent in an investigation of any suspected or actual fraudulent viatical settlement act is privileged and confidential, is not a public record open for inspection under section 149.43 of the Revised Code, and is not subject to discovery or subpoena in a civil or criminal action.

(2) Division (E)(1) of this section does not prohibit release by the superintendent of any document or evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts, in any of the following manners or circumstances:



- (a) In any administrative or judicial proceeding to enforce any laws administered by the superintendent;
- (b) To any law enforcement or regulatory agency of this state, another state, the United States, or a political subdivision of this state or another state, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts, or to the NAIC;
- (c) At the discretion of the superintendent, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act.
- (3) Release of documents and evidence under division (E)(2) of this section does not abrogate or modify the privilege granted in division (E)(1) of this section.
- (F) The provisions of this chapter do not do any of the following:
- (1) Preempt the authority or relieve the duty of any other law enforcement or regulatory agencies to investigate, examine, or prosecute suspected violations of law;
- (2) Prevent or prohibit a person from disclosing voluntarily any information concerning fraudulent viatical settlement acts to a law enforcement or regulatory agency other than the department of insurance;
- (3) Limit any power granted elsewhere by the law 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.
- (G)(1) Viatical settlement providers and viatical settlement brokers shall adopt and have in place antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent viatical settlement acts. At the discretion of the superintendent, the superintendent may order, or a viatical settlement provider or viatical settlement broker may request and the superintendent may grant, any modifications of the following required initiatives described in divisions (G)(1)(a) and (b) of this section that are 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. Antifraud initiatives under this division shall include all of the following:

(a) Fraud investigators, who may be licensed viatical settlement provider or licensed viatical settlement broker employees or independent contractors;

(b) An antifraud plan that includes, but is not limited to, all of the following:

(i) 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;

(ii) A description of the procedures for reporting possible fraudulent viatical settlement acts to the superintendent;

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

(iv) 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;

(v) A description of the procedures used to perform initial and continuing review of the accuracy of life expectancies used in connection with a viatical settlement contract.

(2) The superintendent, by rule adopted in accordance with Chapter 119. of the Revised Code, may require that antifraud plans required under division (G)(1) of this section be submitted to the superintendent. If the superintendent requires that antifraud plans be submitted to the superintendent, the plans so submitted are privileged and confidential, are not a public record open for inspection under section 149.43 of the Revised Code, and are not subject to discovery or subpoena in a civil or criminal action.



(H) No insurer that issued a policy being viaticated shall be responsible, under this chapter, for any act or omission of a viatical settlement broker or viatical settlement provider arising out of or in connection with the viatical settlement transaction unless the insurer receives compensation for the placement of a viatical settlement contract from the viatical settlement provider or viatical settlement broker in connection with the viatical settlement contract.