WEST VIRGINIA CODE: §33-13C-14

§33-13C-14. Fraud prevention and control.

(a) Fraudulent viatical settlement acts, interference and participation of convicted felons prohibited. --

(1) A person shall not commit a fraudulent viatical settlement act.

(2) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this article or investigations of suspected or actual violations of this article.

(3) 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.

(b) Fraud warning required. --

(1) Viatical settlement contracts and applications for viatical settlements, 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."

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

(c) (1) 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 such information to the commissioner.

(2) 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, the commissioner.

(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 without actual malice and is provided to or received from:

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

(B) Federal, state or local law enforcement or regulatory officials or their employees, agents

WV Legislature

or representatives;

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

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

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

(2) A person furnishing information pursuant to subdivision (1) of this subsection shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this article and the party bringing the action was not substantially justified in doing so.

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

(e) (1) Documents and evidence provided pursuant to subsection (d) of this section or obtained by the commissioner in an investigation of suspected or actual fraudulent viatical settlement acts 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.

(2) The commissioner may release documents and evidence obtained in an investigation of suspected or actual fraudulent viatical settlement acts in administrative or judicial proceedings to enforce laws administered by the commissioner; to federal, state or local law enforcement or regulatory agencies, to an organization established for the purpose of detecting and preventing fraudulent viatical settlement acts or to the NAIC; or, at the discretion of the commissioner, to a person in the business of viatical settlements that is aggrieved by a fraudulent viatical settlement act: Provided, That release of documents and evidence under this subdivision does not abrogate or modify the privilege granted in subdivision (1) of this subsection.

(f) This section does not:

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

(2) Prevent or prohibit a person from disclosing voluntarily information concerning viatical settlement fraud to a law enforcement or regulatory agency other than the insurance department; or

(3) Limit the powers granted elsewhere by the laws of this state to the commissioner or an

WV Legislature

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 have in place antifraud initiatives reasonably computed 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.

(2) Antifraud initiatives shall include:

(A) Fraud investigators who may be viatical settlement provider or viatical settlement broker employees or independent contractors; and

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

(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 commissioner;

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

(iv) A description or chart outlining the organization 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.

(3) Antifraud plans 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.

WV Legislature