

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 2, 1998 Revised: _____

Subject: Viatical Settlement Contract

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Deffenbaugh</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

A viatical settlement contract is a written agreement under which the owner of a life insurance policy who has a terminal illness (“viator”) sells the policy to another person in exchange for a bargained-for payment, which is generally less than the expected death benefit under the policy. The person who buys the policy from the original policy owner takes over premium payments, and, upon the death of the original policy owner, collects the death benefit under the policy. In 1996 Florida enacted the Viatical Settlement Act to provide for regulation of viatical settlement contracts and providers by the Department of Insurance.

The bill authorizes a viatical settlement provider to establish a “related provider trust” for the sole purpose of entering into or owning viatical settlement contracts. The effect would be that the trust, as owner of the contract, is independent of the provider and would not be subject to claims against the provider. A related provider trust would be subject to all provisions of the act that apply to viatical settlement providers except that a separate license would not be required for the trust. Only one such trust could be established by a viatical settlement provider, who would be the sole trustee. The licensed provider would be liable and responsible for the performance of all obligations of the related provider trust under all viatical settlement contracts entered into by the trust. Any violation of the act by the related provider trust would be deemed a violation of the act by the provider as well as the trust. If the trust violates any provisions of the act, the department could exercise all remedies for such violations against the viatical settlement provider, as well as the trust. The provider would be required to file notice of its intention to use a related provider trust, including a copy of the trust agreement, and include all information requested by the department regarding the trust in all statements filed with the department.

This bill substantially amends the following sections of the Florida Statutes: 626.9911, 626.9913, 626.9914, and 626.9921.

II. Present Situation:

A viatical settlement contract is a written agreement under which the owner of a life insurance policy who has a terminal illness (“viator”) sells the policy to another person in exchange for a bargained-for payment, which is generally less than the expected death benefit under the policy. The person who buys the policy from the original policy owner takes over premium payments, and, upon the death of the original policy owner, collects the death benefit under the policy.

Viatical settlements arose as a result of the AIDS epidemic. A viatical settlement industry has arisen in recent years for terminally ill persons who need money immediately, and who are willing to take immediate payment rather than have their beneficiaries recover under the policy. The amount paid to the policy owner (known as the “viator”) depends on the person's life expectancy and on market forces. Although many life insurance policies contain accelerated benefit provisions, under which a policy owner may receive immediate payment in lieu of death benefits, many viators prefer a smaller but earlier payment to the payment available under the accelerated benefits option.

(Ch. 96-336, L.O.F., creating part XI of chapter 626, F.S.) The major elements of regulation under the law are licensure of providers and brokers, prior approval of viatical settlement contract forms, examination of providers’ records by the department, mandatory disclosures to policy owners, and the right to rescind a contract within a specified time period. Violations are declared unfair insurance trade practices. A “viatical settlement provider” is a person or entity that enters into viatical settlement contracts with a “viator,” who is a terminally ill person who has the right to sell or transfer death benefits or ownership of his life insurance policy. The term does not include a financial institution that takes an assignment of a policy as collateral for a loan, an insurer with respect to accelerated benefits provisions of life insurance policies, or an individual who enters into no more than one viatical settlement contract in a calendar year. A “viatical settlement broker” is a person or entity that arranges viatical transactions between providers and viators.

One viatical settlement provider has requested the department to allow it to establish a trust for the purpose of owning a viatical settlement contract independently of the licensed provider. The avowed goal is to protect both investors and viators from possible unrelated third party claims against the viatical settlement provider, without imposing the burden on the viatical settlement provider of licensing a new entity. The department believes that legislation would be needed to allow for this.

III. Effect of Proposed Changes:

The bill authorizes a viatical settlement provider to establish a “related provider trust” for the sole purpose of entering into or owning viatical settlement contracts. The purpose of such trust, though not expressly provided in the bill, is to provide that the trust, as owner of the contract, is

independent of the provider and is not subject to claims against the provider. The section by section analysis, below, provides additional details.

Section 1. Amends s. 626.9911, F.S., to revise the definition of “viatical settlement contract” to include a written settlement entered into between a related provider trust of a viatical settlement provider and a viator. The bill adds a definition of “related provider trust” to authorize a viatical settlement provider to establish such a trust for the sole purpose of entering into or owning viatical settlement contracts. A related provider trust would be subject to all provisions of the act that apply to the viatical settlement provider, except that a separate license would not be required for the trust. Only one such trust could be established by a viatical settlement provider, who would be the sole trustee.

Section 2. Amends s. 626.9913, F.S., to require a viatical settlement provider to include in all statements filed with the department all information requested by the department regarding a related provider trust established by the viatical settlement provider. No additional annual license fee or deposit would be required for a related provider trust established by a viatical settlement provider.

Section 3. Amends s. 626.9914, F.S., to provide that the licensed viatical settlement provider would be liable and responsible for the performance of all obligations of the related provider trust under all viatical settlement contracts entered into by the trust and for compliance of the related provider trust with all provisions of the act (chapter). Any violation of the act (chapter) by the related provider trust would be deemed a violation of the act by the provider as well as the trust. If the trust violates any provisions of the act (chapter), the department could exercise all remedies for such violations against the viatical settlement provider, as well as the trust.

Section 4. Amends s. 626.9921, F.S., to require the viatical settlement provider to file notice of its intention to use a related provider trust, including a copy of the trust agreement.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill would have the effect of protecting both investors and viators from potential unrelated third party claims against the viatical settlement provider, without imposing the burden on the viatical settlement provider of licensing a new entity. Creditors and persons with judgements against a viatical settlement provider may have their interests impaired to that extent.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None

VII. Related Issues:

None

VIII. Amendments:

None