

Bill No. CS for CS for SB 1242

Amendment No.

| | <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
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| 11 | Senator Geller moved the following amendment: | | |
| 12 | | | |
| 13 | Senate Amendment (with title amendment) | | |
| 14 | Delete everything after the enacting clause | | |
| 15 | | | |
| 16 | and insert: | | |
| 17 | Section 1. Section 626.9911, Florida Statutes, 1998 | | |
| 18 | Supplement, is amended to read: | | |
| 19 | 626.9911 Definitions.--As used in this act, the term: | | |
| 20 | (1) "Department" means the Department of Insurance. | | |
| 21 | (2) "Independent third-party trustee or escrow agent" | | |
| 22 | means an attorney, certified public accountant, financial | | |
| 23 | institution, or other person providing escrow services under | | |
| 24 | the authority of a regulatory body. The term does not include | | |
| 25 | any person associated, affiliated, or under common control | | |
| 26 | with a viatical settlement provider or viatical settlement | | |
| 27 | broker. | | |
| 28 | (3) "Person" has the meaning specified in s. 1.01. | | |
| 29 | (4) "Viatical settlement broker" means a person who, | | |
| 30 | <u>on behalf of a viator and for a fee, commission, or other</u> | | |
| 31 | valuable consideration, offers or attempts to negotiate | | |

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1 viatical settlement contracts between a viator resident in
2 this state and one or more viatical settlement providers.
3 Notwithstanding the manner in which the viatical settlement
4 broker is compensated, a viatical settlement broker is deemed
5 to represent only the viator and owes a fiduciary duty to the
6 viator to act according to the viator's instructions and in
7 the best interest of the viator. The term does not include an
8 attorney, licensed Certified Public Accountant, or investment
9 adviser lawfully registered with the Department of Banking and
10 Finance under chapter 517 financial planner, or person acting
11 under a power of attorney from the viator, who is retained to
12 represent the viator and whose compensation is paid directly
13 solely by or at the direction and on behalf of the viator
14 without regard to whether a viatical settlement contract is
15 effected.

16 (5) "Viatical settlement contract" means a written
17 agreement settlement entered into between a viatical
18 settlement provider, or its related provider trust, and a
19 viator. The agreement must establish the terms under which
20 the viatical settlement provider will pay compensation or
21 anything of value, which compensation or value is less than
22 the expected death benefit of the insurance policy or
23 certificate, in return for the viator's assignment, transfer,
24 sale, devise, or bequest of the death benefit or ownership of
25 all or a portion of the insurance policy or certificate of
26 insurance to the viatical settlement provider. A viatical
27 settlement contract also includes a contract for a loan or
28 other financial transaction secured primarily by an individual
29 or group life insurance policy, other than a loan by a life
30 insurance company pursuant to the terms of the life insurance
31 contract, or a loan secured by the cash value of a policy.

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1 (6) "Viatical settlement provider" means a person
2 other than a viator who, in this state, or from this state, or
3 with a resident of this state, effectuates ~~enters into~~ a
4 viatical settlement contract ~~with a viator~~. The term does not
5 include:

6 (a) Any bank, savings bank, savings and loan
7 association, credit union, or other licensed lending
8 institution that takes an assignment of a life insurance
9 policy as collateral for a loan;

10 (b) A life and health insurer that has lawfully issued
11 a life insurance policy that provides accelerated benefits to
12 terminally ill policyholders or certificateholders; or

13 (c) Any natural person who enters into no more than
14 one viatical settlement contract with a viator in 1 calendar
15 year, unless such natural person has previously been licensed
16 under this act or is currently licensed under this act.

17 (d) A trust that meets the definition of a "related
18 provider trust."

19 (e) A viatical settlement provider who enters into a
20 viatical settlement contract with a viator who is a resident
21 of a state other than Florida, which has enacted statutes or
22 promulgated regulations governing viatical settlement
23 contracts, shall be governed in the effectuation of that
24 viatical settlement contract, under the statutes and
25 regulations governing viatical settlement contracts in the
26 viator's state of residence.

27 (7) "Viator" means the owner of a life insurance
28 policy or a certificateholder under a group policy insuring
29 the life of an individual with ~~a natural person who has a~~
30 catastrophic or life-threatening illness or condition ~~and~~ who
31 enters or seeks to enter into a viatical settlement contract

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1 ~~has the right to assign, transfer, sell, devise, or bequeath~~
2 ~~the benefits of his or her life insurance policy. This term~~
3 ~~does not include a viatical settlement purchaser or a viatical~~
4 ~~settlement provider or any person acquiring a policy or~~
5 ~~interest in a policy from a viatical settlement provider, nor~~
6 ~~does it include an independent third-party trustee or escrow~~
7 ~~agent.~~

8 (8) "Related provider trust" means a trust established
9 by a viatical settlement provider for the sole purpose of
10 entering into or owning viatical settlement contracts. This
11 term does not include an independent third-party trustee or
12 escrow agent or a trust that does not enter into agreements
13 with a viatical settlement purchaser. A related provider
14 trust shall be subject to all provisions of this act that
15 apply to the viatical settlement provider who established the
16 related provider trust, except s. 626.9912, which shall not be
17 applicable. A viatical settlement provider may establish no
18 more than one related provider trust, and the sole trustee of
19 such related provider trust shall be the viatical settlement
20 provider licensed under s. 626.9912. The name of the licensed
21 viatical settlement provider shall be included within the name
22 of the related provider trust.

23 (9) "Viatical settlement purchase agreement" means a
24 contract or agreement, entered into by a viatical settlement
25 purchaser, to which the viator is not a party, to purchase a
26 life insurance policy or an interest in a life insurance
27 policy, which is entered into for the purpose of deriving an
28 economic benefit.

29 (10) "Viatical settlement purchaser" means a person,
30 other than a licensee under this part, an accredited investor
31 as defined in Rule 501, Regulation D of the Securities Act

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1 Rules, or a qualified institutional buyer, or a special
2 purpose entity which is created solely to act as a financing
3 source for the viatical settlement provider, who gives a sum
4 of money as consideration for a life insurance policy or an
5 interest in the death benefits of a life insurance policy
6 which has been or will be the subject of a viatical settlement
7 contract, for the purpose of deriving an economic benefit. The
8 above reference to Rule 501, Regulation D is used strictly for
9 defining purposes and shall not be interpreted in any other
10 manner.

11 (11) "Viatical settlement sales agent" means a person
12 other than a licensed viatical settlement provider who
13 arranges the purchase through a viatical settlement purchase
14 agreement of a life insurance policy or an interest in a life
15 insurance policy.

16 Section 2. Section 626.99181, Florida Statutes, is
17 created to read:

18 626.99181 Viatical settlement broker's
19 compensation.--A viatical settlement broker shall disclose to
20 a prospective viator the amount and method of calculating the
21 broker's compensation. The term "compensation" includes
22 anything of value paid or given to a viatical settlement
23 broker for the placement of a policy.

24 Section 3. Section 626.9919, Florida Statutes, is
25 amended to read:

26 626.9919 Notice of change of address or name; viatical
27 settlement provider licensees, ~~and~~ broker licensees, and
28 viatical settlement sales agent licensees.--Each viatical
29 settlement provider licensee, ~~and each~~ viatical settlement
30 broker licensee, and viatical settlement sales agent licensee
31 must provide the department at least 30 days' advance notice

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1 of any change in the licensee's name, residence address,
2 principal business address, or mailing address.

3 Section 4. Section 626.992, Florida Statutes, is
4 amended to read:

5 626.992 Use of viatical settlement licensed brokers,
6 ~~and~~ providers, and viatical settlement sales agents
7 required.--

8 (1) A licensed viatical settlement provider may not
9 use any person to perform the functions of a viatical
10 settlement broker as defined in this act unless such person
11 holds a current, valid license as a viatical settlement
12 broker. Salaried individuals employed by viatical settlement
13 providers shall engage in viatical settlement broker
14 activities only when accompanied by a viatical settlement
15 broker who holds a current valid license issued under this
16 act. A viatical settlement provider may not use any person to
17 perform the functions of a viatical settlement sales agent
18 unless the person holds a current, valid license as provided
19 in subsection (4).

20 (2) A licensed viatical settlement broker may not use
21 any person to perform the functions of a viatical settlement
22 provider as defined in this act unless such person holds a
23 current, valid license as a viatical settlement provider.

24 (3) A viatical settlement sales agent may not use any
25 person to perform the functions of a viatical settlement
26 broker unless such person holds a current, valid license as a
27 viatical settlement broker.

28 (4) A person may not perform the functions of a
29 viatical settlement sales agent unless licensed as a life
30 agent as defined in s. 626.051 and as provided in this
31 chapter.

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1 Section 5. Section 626.9922, Florida Statutes, is
2 amended to read:

3 626.9922 Examination.--

4 (1) The department may examine the business and
5 affairs of any licensee or applicant for a license. The
6 department may order any licensee or applicant to produce any
7 records, books, files, advertising and solicitation materials,
8 or other information and may take statements under oath to
9 determine whether the licensee or applicant is in violation of
10 the law or is acting contrary to the public interest. The
11 expenses incurred in conducting any examination or
12 investigation must be paid by the licensee or applicant.
13 Examinations and investigations must be conducted as provided
14 in chapter 624, and licensees are subject to all applicable
15 provisions of the insurance code.

16 (2) All accounts, records, documents, files, and other
17 information relating to all transactions of viatical
18 settlement contracts or viatical settlement purchase
19 agreements must be maintained by the licensee for a period of
20 at least 3 years after the death of the insured viator and
21 must be available to the department for inspection during
22 reasonable business hours.

23 Section 6. Section 626.99235, Florida Statutes, 1998
24 Settlement, is amended to read:

25 626.99235 Disclosures to viatical settlement
26 purchasers ~~investors~~; misrepresentations.--

27 (1) No person shall misrepresent the nature of the
28 return or the duration of time to obtain the return of any
29 investment related to one or more viatical settlements sold by
30 a viatical settlement provider or related provider trust.

31 (2) The viatical settlement provider and the viatical

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1 settlement sales agent, themselves ~~itself~~ or through another
2 person, shall provide in writing the following disclosures to
3 any viatical settlement purchaser ~~investor~~ or purchaser
4 ~~investor~~ prospect:

5 (a) That the return represented as being available
6 under the viatical settlement purchase agreement ~~investment~~ is
7 directly tied to the projected life span ~~or date of death~~ of
8 one or more insureds. ~~viators~~

9 (b) If a return is represented, the disclosure shall
10 indicate the projected life span ~~or date of death~~ of the
11 insured or insureds ~~viator or viators~~ whose life or lives are
12 tied to the return.

13 (c) If required by the terms of the viatical
14 settlement purchase agreement ~~investment contract~~, that the
15 viatical settlement purchaser shall ~~investor~~ ~~may~~ be
16 responsible for the payment of insurance premiums on the life
17 of the insured, ~~viator~~ ~~or~~ late or surrender fees, ~~or~~ other
18 costs related to the life insurance policy on the life of the
19 insured or insureds ~~viator or viators~~ which may reduce the
20 return.

21 (d) The amount of any trust fees, commissions,
22 deductions, ~~or~~ other expenses, if any, to be charged to the
23 viatical settlement purchaser ~~investor~~.

24 (e) The name and address of the person responsible for
25 tracking the insured.

26 (f) That group policies may contain limitations or
27 caps in the conversion rights, that additional premiums may
28 have to be paid if the policy is converted, and that the party
29 responsible for the payment of such additional premiums shall
30 be identified.

31 (g) That the life expectancy and rate of return are

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1 only estimates and cannot be guaranteed.

2 (h) That the purchase of a viatical settlement
3 contract should not be considered a liquid purchase, since it
4 is impossible to predict the exact timing of its maturity and
5 the funds may not be available until the death of the insured.

6 (i) The name and address of the person with the
7 responsibility for paying the premium until the death of the
8 insured.

9
10 The written disclosure required under this subsection shall be
11 conspicuously displayed in any viatical settlement purchase
12 investment agreement, and in any solicitation material
13 furnished to the viatical settlement purchaser investor by
14 such viatical settlement provider, related provider trust, or
15 person, and shall be in contrasting color and in not less than
16 10-point type or no smaller than the largest type on the page
17 if larger than 10-point type. The department is authorized to
18 adopt by rule the disclosure form to be used. The disclosures
19 need not be furnished in an invitation to inquire, the
20 objective of which is to create a desire to inquire further
21 about entering into a viatical settlement purchase agreement.
22 The invitation to inquire may not quote rates of return, may
23 not include material attendant to the execution of any
24 specific viatical settlement purchase agreement, and may not
25 relate to any specific viator.

26 Section 7. Section 626.9925, Florida Statutes, is
27 amended to read:

28 626.9925 Rules.--The department may adopt rules to
29 implement this act, including rules establishing standards for
30 evaluating advertising by licensees and rules providing for
31 the collection of data and recordkeeping requirements relating

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1 to executed viatical settlement contracts and viatical
 2 settlement purchase agreements.

3 Section 8. Section 626.9926, Florida Statutes, is
 4 amended to read:

5 626.9926 Rate regulation not authorized.--Nothing in
 6 this act shall be construed to authorize the department to
 7 directly or indirectly regulate the amount paid as
 8 consideration for entry into a viatical settlement contract or
 9 viatical settlement purchase agreement.

10 Section 9. Subsection (1) of section 626.9927, Florida
 11 Statutes, is amended to read:

12 626.9927 Unfair trade practices; cease and desist;
 13 injunctions; civil remedy.--

14 (1) A violation of this act is an unfair trade
 15 practice under ss. 626.9521 and 626.9541 and is subject to the
 16 penalties provided in the insurance code. Part X of this
 17 chapter applies to a licensee under this act or a transaction
 18 subject to this act as if a viatical settlement contract and a
 19 viatical settlement purchase agreement were an insurance
 20 policy.

21 Section 10. Section 626.99272, Florida Statutes, is
 22 created to read:

23 626.99272 Cease and desist orders and fines.--

24 (1) The department may issue a cease and desist order
 25 upon a person that violates any provision of this part, any
 26 rule or order adopted by the department, or any written
 27 agreement entered into with the department.

28 (2) When the department finds that such an action
 29 presents an immediate danger to the public which requires an
 30 immediate final order, it may issue an emergency cease and
 31 desist order reciting with particularity the facts underlying

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1 such findings. The emergency cease and desist order is
2 effective immediately upon service of a copy of the order on
3 the respondent and remains effective for 90 days. If the
4 department begins nonemergency cease and desist proceedings
5 under subsection (1), the emergency cease and desist order
6 remains effective, absent an order by an appellate court of
7 competent jurisdiction pursuant to ss. 120.68, until the
8 conclusion of proceedings under ss. 120.569 and 120.57.

9 (3) The department may impose and collect an
10 administrative fine not to exceed \$10,000 for each nonwillful
11 violation and \$25,000 for each willful violation of any
12 provision of this part.

13 Section 11. Section 626.99275, Florida Statutes, is
14 created to read:

15 626.99275 Prohibited practices.--It is unlawful for
16 any person:

17 (1) To knowingly enter into a viatical settlement
18 contract the subject of which is a life insurance policy that
19 was obtained by means of a false, deceptive, or misleading
20 application for the life insurance policy.

21 (2) In the solicitation or sale of a viatical
22 settlement purchase agreement:

23 (a) To employ any device, scheme, or artifice to
24 defraud;

25 (b) To obtain money or property by means of an untrue
26 statement of a material fact or by any omission to state a
27 material fact necessary in order to make the statements made,
28 in light of the circumstances under which they were made, not
29 misleading; or

30 (c) To engage in any transaction, practice, or course
31 of business which operates or would operate as a fraud or

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1 deceit upon a person.

2 Section 12. Section 626.99277, Florida Statutes, is
3 created to read:

4 626.99277 False representations; deceptive words.--

5 (1) It is unlawful for a person in the advertisement,
6 offer, or sale of a viatical settlement purchase agreement to
7 misrepresent that such an agreement has been guaranteed,
8 sponsored, recommended, or approved by the state, or any
9 agency or officer of the state or by the United States or any
10 agency or officer of the United States.

11 (2) It is unlawful for a person in conjunction with
12 the sale of a viatical settlement purchase agreement to
13 directly or indirectly misrepresent that the person has been
14 sponsored, recommended, or approved, or that his or her
15 abilities or qualifications have in any respect been passed
16 upon, by this state or any other state, or any agency or
17 officer thereof, or by the United States or any agency or
18 officer thereof.

19 (3) It is unlawful for a person in the offer or sale
20 of a viatical settlement purchase agreement to obtain money or
21 property by:

22 (a) A misrepresentation that the viatical settlement
23 purchase agreement purchased, offered, or sold is guaranteed,
24 sponsored, recommended, or approved by this state or any other
25 state, or any agency or officer thereof, or by the United
26 States or any agency or officer thereof.

27 (b) A misrepresentation that the person is sponsored,
28 recommended, or approved, or that the person's abilities or
29 qualifications have in any respect been passed upon, by this
30 state or any other state, or any agency or officer thereof, or
31 by the United States or any agency or officer thereof.

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1 (4) Neither subsection (1) nor subsection (2) may be
2 construed to prohibit a statement that the person is licensed
3 or appointed under this part if such a statement is required
4 by this part or rules adopted under this part, if the
5 statement is true in fact, and if the effect of the statement
6 is not misrepresented.

7 (5) A person may not represent that a viatical
8 settlement purchase agreement is guaranteed by any insurance
9 guaranty fund.

10 (6) A person may not represent that the investment in
11 a viatical settlement purchase agreement is "guaranteed," that
12 the principal is "safe," or that the investment is free of
13 risk.

14 Section 13. Section 626.9929, Florida Statutes, is
15 amended to read:

16 626.9929 Grace period.--A viatical settlement sales
17 agent provider or viatical settlement broker that was
18 transacting business in this state on June 30, 1999 ~~1996~~, may
19 continue to transact such business, in the absence of any
20 orders by the department to the contrary, until the department
21 approves or disapproves the sales agent's provider's or
22 broker's application for licensure if the sales agent provider
23 or broker files with the department no later than November 1,
24 1999, an application for licensure ~~and all forms currently in~~
25 ~~use no later than November 1, 1996,~~ and if the sales agent
26 provider or broker complies with all other provisions of this
27 act.

28 Section 14. Section 626.993, Florida Statutes, is
29 repealed June 1, 2000.

30 Section 15. This act shall take effect upon becoming a
31 law.

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 Delete everything before the enacting clause

4

5 and insert:

6

A bill to be entitled

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An act relating to the regulation of insurance

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and investments in insurance products industry;

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amending s. 626.9911, F.S.; defining "viatical

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settlement purchaser," "viatical settlement

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purchase agreement," and "viatical settlement

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sales agent"; revising definitions of the terms

13

"viatical settlement broker," "viatical

14

settlement contract," "viatical settlement

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provider," "related provider trust," and

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"viator"; creating s. 626.99181, F.S.;

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requiring disclosure of certain information

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regarding viatical settlement broker fees;

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amending s. 626.9919, F.S.; requiring viatical

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settlement sales agents to give notice of

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change of certain information; amending s.

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626.992, F.S.; requiring viatical settlement

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sales agents to be licensed by the Department

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of Insurance; amending s. 626.9922, F.S.;

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revising requirements for examination; amending

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s. 626.99235, F.S.; revising requirements for

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disclosure to viatical settlement purchasers

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and providing for disclosure forms to be

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adopted by the department; amending s.

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626.9925; revising rulemaking authority of the

31

department; amending s. 626.9926, F.S.;

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1 providing that viatical settlement purchase
2 agreement rates are not regulated; amending s.
3 626.9927, F.S.; including viatical settlement
4 purchase agreements; creating s. 626.99272,
5 F.S.; providing for cease and desist orders;
6 providing for administrative fines; creating s.
7 626.99275, F.S.; prohibiting certain practices;
8 creating s. 626.99277, F.S.; prohibiting false
9 representations; amending s. 626.9929, F.S.;

10 establishing a grace period for viatical
11 settlement sales agents transacting business in
12 this state; repealing s. 626.993, F.S.,
13 relating to viators with dependent children;
14 providing an effective date.

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