

Bill No. CS for CS for SB 1242

Amendment No.     

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senator Geller moved the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Section 626.9911, Florida Statutes, 1998 Supplement, is amended to read:

626.9911 Definitions.--As used in this act, the term:

(1) "Department" means the Department of Insurance.

(2) "Independent third-party trustee or escrow agent" means an attorney, certified public accountant, financial institution, or other person providing escrow services under the authority of a regulatory body. The term does not include any person associated, affiliated, or under common control with a viatical settlement provider or viatical settlement broker.

(3) "Person" has the meaning specified in s. 1.01.

(4) "Viatical settlement broker" means a person who, on behalf of a viator and for a fee, commission, or other 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 who, in this state, or from this state, or with a resident of  
3 this state, effectuates ~~enters into~~ a viatical settlement  
4 contract ~~with a viator~~. The term does not include:

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

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

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

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

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

28           (f) A viatical settlement provider who, from this  
29 state, enters into a viatical settlement contract with a  
30 viator who is resident of a state, other than Florida, which  
31 has enacted statutes or promulgated regulations governing

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1 viatical settlement contracts. Such viatical settlement  
2 contracts shall be governed in the effectuation of that  
3 viatical settlement contract, under the statutes and  
4 regulations governing viatical settlement contracts in the  
5 viator's state of residence.

6 (g) A viator in this state.

7 (h) A viatical settlement purchaser.

8 (7) "Viator" means the owner of a life insurance  
9 policy or a certificateholder under a group policy insuring  
10 the life of an individual with a natural person who has a  
11 catastrophic or life-threatening illness or condition and who  
12 enters or seeks to enter into a viatical settlement contract  
13 has the right to assign, transfer, sell, devise, or bequeath  
14 the benefits of his or her life insurance policy. This term  
15 does not include a viatical settlement purchaser or a viatical  
16 settlement provider or any person acquiring a policy or  
17 interest in a policy from a viatical settlement provider, nor  
18 does it include an independent third-party trustee or escrow  
19 agent.

20 (8) "Related provider trust" means a trust established  
21 by a viatical settlement provider for the sole purpose of  
22 entering into or owning viatical settlement contracts. This  
23 term does not include an independent third-party trustee or  
24 escrow agent or a trust that does not enter into agreements  
25 with a viatical settlement purchaser. A related provider  
26 trust shall be subject to all provisions of this act that  
27 apply to the viatical settlement provider who established the  
28 related provider trust, except s. 626.9912, which shall not be  
29 applicable. A viatical settlement provider may establish no  
30 more than one related provider trust, and the sole trustee of  
31 such related provider trust shall be the viatical settlement

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1 provider licensed under s. 626.9912. The name of the licensed  
2 viatical settlement provider shall be included within the name  
3 of the related provider trust.

4 (9) "Viatical settlement purchase agreement" means a  
5 contract or agreement, entered into by a viatical settlement  
6 purchaser, to which the viator is not a party, to purchase a  
7 life insurance policy or an interest in a life insurance  
8 policy, which is entered into for the purpose of deriving an  
9 economic benefit.

10 (10) "Viatical settlement purchaser" means a person,  
11 other than a licensee under this part, an accredited investor  
12 as defined in Rule 501, Regulation D of the Securities Act  
13 Rules, or a qualified institutional buyer as defined by Rule  
14 144(a) of the Federal Securities Act, or a special purpose  
15 entity which is created solely to act as a financing source  
16 for the viatical settlement provider, who gives a sum of money  
17 as consideration for a life insurance policy or an interest in  
18 the death benefits of a life insurance policy which has been  
19 or will be the subject of a viatical settlement contract, for  
20 the purpose of deriving an economic benefit. The above  
21 reference to Rule 501, Regulation D and Rule 144(a) of the  
22 Federal Securities Act are used strictly for defining purposes  
23 and shall not be interpreted in any other manner.

24 (11) "Viatical settlement sales agent" means a person  
25 other than a licensed viatical settlement provider who  
26 arranges the purchase through a viatical settlement purchase  
27 agreement of a life insurance policy or an interest in a life  
28 insurance policy.

29 Section 2. Section 626.99181, Florida Statutes, is  
30 created to read:

31 626.99181 Viatical settlement broker's

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1 compensation.--A viatical settlement broker shall disclose to  
2 a prospective viator the amount and method of calculating the  
3 broker's compensation. The term "compensation" includes  
4 anything of value paid or given to a viatical settlement  
5 broker for the placement of a policy.

6 Section 3. Section 626.9919, Florida Statutes, is  
7 amended to read:

8 626.9919 Notice of change of address or name; viatical  
9 settlement provider licensees, and broker licensees, and  
10 viatical settlement sales agent licensees.--Each viatical  
11 settlement provider licensee, and each viatical settlement  
12 broker licensee, and viatical settlement sales agent licensee  
13 must provide the department at least 30 days' advance notice  
14 of any change in the licensee's name, residence address,  
15 principal business address, or mailing address.

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

18 626.992 Use of viatical settlement licensed brokers,  
19 and providers, and viatical settlement sales agents  
20 required.--

21 (1) A licensed viatical settlement provider may not  
22 use any person to perform the functions of a viatical  
23 settlement broker as defined in this act unless such person  
24 holds a current, valid license as a viatical settlement  
25 broker. Salaried individuals employed by viatical settlement  
26 providers shall engage in viatical settlement broker  
27 activities only when accompanied by a viatical settlement  
28 broker who holds a current valid license issued under this  
29 act. A viatical settlement provider may not use any person to  
30 perform the functions of a viatical settlement sales agent  
31 unless the person holds a current, valid license as provided

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1 in subsection (4).

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

6 (3) A viatical settlement sales agent may not use any  
7 person to perform the functions of a viatical settlement  
8 broker unless such person holds a current, valid license as a  
9 viatical settlement broker.

10 (4) A person may not perform the functions of a  
11 viatical settlement sales agent unless licensed as a life  
12 agent as defined in s. 626.051 and as provided in this  
13 chapter.

14 Section 5. Section 626.9922, Florida Statutes, is  
15 amended to read:

16 626.9922 Examination.--

17 (1) The department may examine the business and  
18 affairs of any licensee or applicant for a license. The  
19 department may order any licensee or applicant to produce any  
20 records, books, files, advertising and solicitation materials,  
21 or other information and may take statements under oath to  
22 determine whether the licensee or applicant is in violation of  
23 the law or is acting contrary to the public interest. The  
24 expenses incurred in conducting any examination or  
25 investigation must be paid by the licensee or applicant.  
26 Examinations and investigations must be conducted as provided  
27 in chapter 624, and licensees are subject to all applicable  
28 provisions of the insurance code.

29 (2) All accounts, records, documents, files, and other  
30 information relating to all transactions of viatical  
31 settlement contracts or viatical settlement purchase

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1 agreements must be maintained by the licensee for a period of  
2 at least 3 years after the death of the insured viator and  
3 must be available to the department for inspection during  
4 reasonable business hours.

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

7 626.99235 Disclosures to viatical settlement  
8 purchasers ~~investors~~; misrepresentations.--

9 (1) No person shall misrepresent the nature of the  
10 return or the duration of time to obtain the return of any  
11 investment related to one or more viatical settlements sold by  
12 a viatical settlement provider or related provider trust.

13 (2) The viatical settlement provider and the viatical  
14 settlement sales agent, themselves ~~itself~~ or through another  
15 person, shall provide in writing the following disclosures to  
16 any viatical settlement purchaser ~~investor~~ or purchaser  
17 ~~investor~~ prospect:

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

22 (b) If a return is represented, the disclosure shall  
23 indicate the projected life span ~~or date of death~~ of the  
24 insured or insureds ~~viator or viators~~ whose life or lives are  
25 tied to the return.

26 (c) If required by the terms of the viatical  
27 settlement purchase agreement ~~investment contract~~, that the  
28 viatical settlement purchaser shall ~~investor~~ ~~may~~ be  
29 responsible for the payment of insurance premiums on the life  
30 of the insured, ~~viator~~ ~~or~~ late or surrender fees, ~~or~~ other  
31 costs related to the life insurance policy on the life of the



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1 insured or insureds ~~viator or viators~~ which may reduce the  
2 return.

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

6 (e) The name and address of the person responsible for  
7 tracking the insured.

8 (f) That group policies may contain limitations or  
9 caps in the conversion rights, that additional premiums may  
10 have to be paid if the policy is converted, and that the party  
11 responsible for the payment of such additional premiums shall  
12 be identified.

13 (g) That the life expectancy and rate of return are  
14 only estimates and cannot be guaranteed.

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

19 (i) The name and address of the person with the  
20 responsibility for paying the premium until the death of the  
21 insured.

22  
23 The written disclosure required under this subsection shall be  
24 conspicuously displayed in any viatical settlement purchase  
25 investment agreement, and in any solicitation material  
26 furnished to the viatical settlement purchaser ~~investor~~ by  
27 such viatical settlement provider, related provider trust, or  
28 person, and shall be in contrasting color and in not less than  
29 10-point type or no smaller than the largest type on the page  
30 if larger than 10-point type. The department is authorized to  
31 adopt by rule the disclosure form to be used. The disclosures

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1 need not be furnished in an invitation to inquire, the  
2 objective of which is to create a desire to inquire further  
3 about entering into a viatical settlement purchase agreement.  
4 The invitation to inquire may not quote rates of return, may  
5 not include material attendant to the execution of any  
6 specific viatical settlement purchase agreement, and may not  
7 relate to any specific viator.

8 Section 7. Section 626.9925, Florida Statutes, is  
9 amended to read:

10 626.9925 Rules.--The department may adopt rules to  
11 implement this act, including rules establishing standards for  
12 evaluating advertising by licensees and rules providing for  
13 the collection of data and recordkeeping requirements relating  
14 to executed viatical settlement contracts and viatical  
15 settlement purchase agreements.

16 Section 8. Section 626.9926, Florida Statutes, is  
17 amended to read:

18 626.9926 Rate regulation not authorized.--Nothing in  
19 this act shall be construed to authorize the department to  
20 directly or indirectly regulate the amount paid as  
21 consideration for entry into a viatical settlement contract or  
22 viatical settlement purchase agreement.

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

25 626.9927 Unfair trade practices; cease and desist;  
26 injunctions; civil remedy.--

27 (1) A violation of this act is an unfair trade  
28 practice under ss. 626.9521 and 626.9541 and is subject to the  
29 penalties provided in the insurance code. Part X of this  
30 chapter applies to a licensee under this act or a transaction  
31 subject to this act as if a viatical settlement contract and a

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1 viatical settlement purchase agreement were an insurance  
2 policy.

3 Section 10. Section 626.99272, Florida Statutes, is  
4 created to read:

5 626.99272 Cease and desist orders and fines.--

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

10 (2) When the department finds that such an action  
11 presents an immediate danger to the public which requires an  
12 immediate final order, it may issue an emergency cease and  
13 desist order reciting with particularity the facts underlying  
14 such findings. The emergency cease and desist order is  
15 effective immediately upon service of a copy of the order on  
16 the respondent and remains effective for 90 days. If the  
17 department begins nonemergency cease and desist proceedings  
18 under subsection (1), the emergency cease and desist order  
19 remains effective, absent an order by an appellate court of  
20 competent jurisdiction pursuant to ss. 120.68, until the  
21 conclusion of proceedings under ss. 120.569 and 120.57.

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

26 Section 11. Section 626.99275, Florida Statutes, is  
27 created to read:

28 626.99275 Prohibited practices.--It is unlawful for  
29 any person:

30 (1) To knowingly enter into a viatical settlement  
31 contract the subject of which is a life insurance policy that

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1 was obtained by means of a false, deceptive, or misleading  
2 application for the life insurance policy.

3 (2) In the solicitation or sale of a viatical  
4 settlement purchase agreement:

5 (a) To employ any device, scheme, or artifice to  
6 defraud;

7 (b) To obtain money or property by means of an untrue  
8 statement of a material fact or by any omission to state a  
9 material fact necessary in order to make the statements made,  
10 in light of the circumstances under which they were made, not  
11 misleading; or

12 (c) To engage in any transaction, practice, or course  
13 of business which operates or would operate as a fraud or  
14 deceit upon a person.

15 Section 12. Section 626.99277, Florida Statutes, is  
16 created to read:

17 626.99277 False representations; deceptive words.--

18 (1) It is unlawful for a person in the advertisement,  
19 offer, or sale of a viatical settlement purchase agreement to  
20 misrepresent that such an agreement has been guaranteed,  
21 sponsored, recommended, or approved by the state, or any  
22 agency or officer of the state or by the United States or any  
23 agency or officer of the United States.

24 (2) It is unlawful for a person in conjunction with  
25 the sale of a viatical settlement purchase agreement to  
26 directly or indirectly misrepresent that the person has been  
27 sponsored, recommended, or approved, or that his or her  
28 abilities or qualifications have in any respect been passed  
29 upon, by this state or any other state, or any agency or  
30 officer thereof, or by the United States or any agency or  
31 officer thereof.

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

4           (a) A misrepresentation that the viatical settlement  
5 purchase agreement purchased, offered, or sold is guaranteed,  
6 sponsored, recommended, or approved by this state or any other  
7 state, or any agency or officer thereof, or by the United  
8 States or any agency or officer thereof.

9           (b) A misrepresentation that the person is sponsored,  
10 recommended, or approved, or that the person's abilities or  
11 qualifications have in any respect been passed upon, by this  
12 state or any other state, or any agency or officer thereof, or  
13 by the United States or any agency or officer thereof.

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

20           (5) A person may not represent that a viatical  
21 settlement purchase agreement is guaranteed by any insurance  
22 guaranty fund.

23           (6) A person may not represent that the investment in  
24 a viatical settlement purchase agreement is "guaranteed," that  
25 the principal is "safe," or that the investment is free of  
26 risk.

27           Section 13. Section 626.9929, Florida Statutes, is  
28 amended to read:

29           626.9929 Grace period.--A viatical settlement sales  
30 agent provider or viatical settlement broker that was  
31 transacting business in this state on June 30, 1999 ~~1996~~, may

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1 continue to transact such business, in the absence of any  
 2 orders by the department to the contrary, until the department  
 3 approves or disapproves the sales agent's ~~provider's or~~  
 4 ~~broker's~~ application for licensure if the sales agent ~~provider~~  
 5 ~~or broker~~ files with the department no later than November 1,  
 6 1999, an application for licensure ~~and all forms currently in~~  
 7 ~~use no later than November 1, 1996,~~ and if the sales agent  
 8 ~~provider or broker~~ complies with all other provisions of this  
 9 act.

10 Section 14. Section 626.993, Florida Statutes, is  
 11 amended to read:

12 626.993 Viators with dependent children.--

13 (1) Before a viatical settlement provider may enter  
 14 into a viatical settlement with a viator, the viatical  
 15 settlement provider must ascertain if the viator has any  
 16 dependent children. If the viator has any dependent children,  
 17 the viator may not viaticate more than 50 percent of the face  
 18 value of the policy.

19 (2) A contract entered into with a viator who is a  
 20 resident of a state other than Florida which has not enacted  
 21 statutes or promulgated regulations governing viatical  
 22 settlement contracts is not subject to this section.

23 Section 15. Section 626.993, Florida Statutes, as  
 24 amended by this act, is repealed June 1, 2000.

25 Section 16. This act shall take effect upon becoming a  
 26 law.

27

28

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

30 And the title is amended as follows:

31 Delete everything before the enacting clause

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1 and insert:

2                                   A bill to be entitled  
3           An act relating to the regulation of insurance  
4           and investments in insurance products industry;  
5           amending s. 626.9911, F.S.; defining "viatical  
6           settlement purchaser," "viatical settlement  
7           purchase agreement," and "viatical settlement  
8           sales agent"; revising definitions of the terms  
9           "viatical settlement broker," "viatical  
10          settlement contract," "viatical settlement  
11          provider," "related provider trust," and  
12          "viator"; creating s. 626.99181, F.S.;  
13          requiring disclosure of certain information  
14          regarding viatical settlement broker fees;  
15          amending s. 626.9919, F.S.; requiring viatical  
16          settlement sales agents to give notice of  
17          change of certain information; amending s.  
18          626.992, F.S.; requiring viatical settlement  
19          sales agents to be licensed by the Department  
20          of Insurance; amending s. 626.9922, F.S.;  
21          revising requirements for examination; amending  
22          s. 626.99235, F.S.; revising requirements for  
23          disclosure to viatical settlement purchasers  
24          and providing for disclosure forms to be  
25          adopted by the department; amending s.  
26          626.9925; revising rulemaking authority of the  
27          department; amending s. 626.9926, F.S.;  
28          providing that viatical settlement purchase  
29          agreement rates are not regulated; amending s.  
30          626.9927, F.S.; including viatical settlement  
31          purchase agreements; creating s. 626.99272,

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1 F.S.; providing for cease and desist orders;  
2 providing for administrative fines; creating s.  
3 626.99275, F.S.; prohibiting certain practices;  
4 creating s. 626.99277, F.S.; prohibiting false  
5 representations; amending s. 626.9929, F.S.;  
6 establishing a grace period for viatical  
7 settlement sales agents transacting business in  
8 this state; amending s. 626.993, F.S.;  
9 providing an exemption for nonresident viators  
10 with dependent children; providing for future  
11 repeal of s. 626.993, F.S.; providing an  
12 effective date.

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