

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:		
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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 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, as defined by Rule 144(a) of the Federal Securities
14 Act, or a qualified institutional buyer, 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 repealed June 1, 2000.

12 Section 15. This act shall take effect upon becoming a
 13 law.

14
 15

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

17 And the title is amended as follows:

18 Delete everything before the enacting clause

19

20 and insert:

21 A bill to be entitled
 22 An act relating to the regulation of insurance
 23 and investments in insurance products industry;
 24 amending s. 626.9911, F.S.; defining "viatical
 25 settlement purchaser," "viatical settlement
 26 purchase agreement," and "viatical settlement
 27 sales agent"; revising definitions of the terms
 28 "viatical settlement broker," "viatical
 29 settlement contract," "viatical settlement
 30 provider," "related provider trust," and
 31 "viator"; creating s. 626.99181, F.S.;

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1 requiring disclosure of certain information
2 regarding viatical settlement broker fees;
3 amending s. 626.9919, F.S.; requiring viatical
4 settlement sales agents to give notice of
5 change of certain information; amending s.
6 626.992, F.S.; requiring viatical settlement
7 sales agents to be licensed by the Department
8 of Insurance; amending s. 626.9922, F.S.;
9 revising requirements for examination; amending
10 s. 626.99235, F.S.; revising requirements for
11 disclosure to viatical settlement purchasers
12 and providing for disclosure forms to be
13 adopted by the department; amending s.
14 626.9925; revising rulemaking authority of the
15 department; amending s. 626.9926, F.S.;
16 providing that viatical settlement purchase
17 agreement rates are not regulated; amending s.
18 626.9927, F.S.; including viatical settlement
19 purchase agreements; creating s. 626.99272,
20 F.S.; providing for cease and desist orders;
21 providing for administrative fines; creating s.
22 626.99275, F.S.; prohibiting certain practices;
23 creating s. 626.99277, F.S.; prohibiting false
24 representations; amending s. 626.9929, F.S.;
25 establishing a grace period for viatical
26 settlement sales agents transacting business in
27 this state; repealing s. 626.993, F.S.,
28 relating to viators with dependent children;
29 providing an effective date.

30
31