

Amendment No. 1 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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ORIGINAL STAMP BELOW

The Committee on Insurance offered the following:

**Amendment (with title amendment)**

Remove from the bill: Everything after the enacting clause  
and insert in lieu thereof:

Section 1. Subsections (8), (9), (10), (14), and (15)  
of section 626.9911, Florida Statutes, are amended to read:

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

(8) "Related provider trust" means a titling trust or other trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust must have a written agreement with a licensed viatical settlement provider or financing entity under which the licensed viatical settlement provider or financing entity is responsible for insuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files relating to viatical settlement transactions available to the department as if those records and files were

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1 maintained directly by the licensed viatical settlement  
2 provider entering into or owning viatical settlement  
3 contracts. This term does not include an independent  
4 third-party trustee or escrow agent or a trust that does not  
5 enter into agreements with a viator. A related provider trust  
6 shall be subject to all provisions of this act that apply to  
7 the viatical settlement provider who established the related  
8 provider trust, except s. 626.9912, which shall not be  
9 applicable. A viatical settlement provider may establish no  
10 more than one related provider trust, and the sole trustee of  
11 such related provider trust shall be the viatical settlement  
12 provider licensed under s. 626.9912. The name of the licensed  
13 viatical settlement provider shall be included within the name  
14 of the related provider trust.

15 (9) "Viatical settlement purchase agreement" means a  
16 contract or agreement, entered into by a viatical settlement  
17 purchaser, to which the viator is not a party, to purchase a  
18 life insurance policy or an interest in a life insurance  
19 policy, which is entered into for the purpose of deriving an  
20 economic benefit. The term also includes purchases made in  
21 the secondary market, that is, purchases from any person other  
22 than the provider who effectuated the viatical settlement  
23 contract.

24 (10) "Viatical settlement purchaser" means a person  
25 who gives a sum of money as consideration for a life insurance  
26 policy or an equitable or legal interest in the death benefits  
27 of a life insurance policy which has been or will be the  
28 subject of a viatical settlement contract, for the purpose of  
29 deriving an economic benefit, including purchases made in the  
30 secondary market, that is, purchases from any person other  
31 than the provider who effectuated the viatical settlement

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1 contract or an entity affiliated with the provider.

2 The term does not include,~~other than~~ a licensee under  
3 this part, an accredited investor as defined in Rule 501,  
4 Regulation D of the Securities Act Rules, or a qualified  
5 institutional buyer as defined by Rule 144(a) of the Federal  
6 Securities Act, or a special purpose entity ~~who gives a sum of~~  
7 ~~money as consideration for a life insurance policy or an~~  
8 ~~equitable or legal interest in the death benefits of a life~~  
9 ~~insurance policy which has been or will be the subject of a~~  
10 ~~viatical settlement contract, for the purpose of deriving an~~  
11 ~~economic benefit.~~

12 The above references to Rule 501, Regulation D and Rule  
13 144(a) of the Federal Securities Act are used strictly for  
14 defining purposes and shall not be interpreted in any other  
15 manner. Any person who claims to be an accredited investor  
16 shall sign an affidavit stating that he or she is an  
17 accredited investor, the basis of that claim, and that he or  
18 she understands that as an accredited investor he or she will  
19 not be entitled to certain protections of the Viatical Act.  
20 This affidavit must be kept with other documents required to  
21 be maintained by this act.

22 (14) "Special purpose entity" means an entity  
23 established by a licensed viatical settlement provider, which  
24 may be a corporation, partnership, trust, limited liability  
25 company, or other similar entity formed solely to provide,  
26 either directly or indirectly, access to ~~act as a vehicle to~~  
27 ~~permit a lender to the provider to access~~ institutional  
28 capital markets to a viatical settlement for the provider or a  
29 financing entity. A special purpose entity shall not enter  
30 into a viatical settlement contract or a viatical settlement  
31 purchase agreement.

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1           (15) "Financing entity" means an underwriter,  
2 placement agent, lender, purchaser of securities, or purchaser  
3 of a policy or certificate from a viatical settlement  
4 provider, credit enhancer, or any entity person that ~~may be a~~  
5 ~~party to a viatical settlement contract and that~~ has direct  
6 ownership in a policy or certificate that is the subject of a  
7 viatical settlement contract, but whose principal sole  
8 activity related to the transaction is providing funds or  
9 credit enhancement to effect the viatical settlement and who  
10 has an agreement in writing with one or more licensed viatical  
11 settlement providers ~~a licensed viatical settlement provider~~  
12 ~~to act as a participant in a financing transaction.~~ The term  
13 does not include a nonaccredited investor, a viatical  
14 settlement purchaser, or other natural person. A financing  
15 entity shall not enter into a viatical settlement contract.

16           Section 2. Subsection (1) of section 626.9921, Florida  
17 Statutes, is amended to read:

18           626.9921 Filing of forms; required procedures;  
19 approval.--

20           (1) A viatical settlement contract form, viatical  
21 settlement purchase agreement form, escrow form, or related  
22 form may be used in this state only after ~~the viatical~~  
23 ~~settlement provider or any related provider trust has filed~~  
24 the form has been filed with the department and only after the  
25 form has been approved by the department.

26           Section 3. Subsection (3) is added to section  
27 626.99235, Florida Statutes, to read: 626.99235 Disclosures  
28 to viatical settlement purchasers; misrepresentations.--

29           (3) The requirements of this section also apply to  
30 purchases made in the secondary market, which involve  
31 purchases from any person other than the provider who

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1 effectuated the viatical settlement contract.

2 Section 4. Section 626.99236, Florida Statutes, is  
3 amended to read:

4 626.99236 Further disclosures to viatical settlement  
5 purchasers.--

6 (1) No later than 5 days prior to the assignment,  
7 transfer, sale, devise, or bequest of the death benefit or  
8 ownership of all or a portion of the insurance policy or  
9 certificate of insurance to the purchaser, the viatical  
10 settlement provider and the viatical settlement sales agent,  
11 themselves, itself or through another person, shall provide in  
12 writing the following disclosures to any viatical settlement  
13 purchaser:

14 (a) All the life expectancy certifications obtained by  
15 the provider.

16 (b) The name and address of the insurance company, the  
17 policy number, and the date of original issue of the  
18 viaticated policy.

19 (c) The experience and qualifications of the person  
20 issuing the life expectancy certification, and that person's  
21 relationship to the viatical settlement provider, the viatical  
22 settlement broker, the viatical settlement sales agent, and  
23 the viator.

24 (d) The name and address of any person providing  
25 escrow services, and that person's relationship to the  
26 viatical settlement provider, the viatical settlement broker,  
27 the viatical settlement sales agent, and the viator.

28 (e) The type of life insurance policy offered or sold,  
29 including a statement as to whether the policy is whole life,  
30 term life, universal life, or a group policy certificate; a  
31 statement as to whether the policy is in lapse status or has

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1 lapsed in the last 2 years; and a statement as to whether the  
2 purchaser is entitled to benefits contained in the policy  
3 other than the death benefit of the policy.

4 (f) The procedure to be used by the provider to  
5 provide the status of the health condition of the insured to a  
6 purchaser.

7 (2) The viatical settlement purchase agreement is  
8 voidable by the purchaser at any time within 3 days after the  
9 disclosures mandated by this section are received by the  
10 purchaser.

11 (3) At the time the disclosures in subsection (1) are  
12 made, the viatical settlement purchaser shall be advised to  
13 seek independent financial advice from a person not  
14 compensated by the viatical settlement provider or viatical  
15 settlement broker or the viatical settlement sales agent. The  
16 viatical settlement purchaser shall sign an affidavit that he  
17 or she has received the disclosures and understands their  
18 importance.

19 (4) A viatical settlement purchase transaction in the  
20 secondary market, which involves purchases from any person  
21 other than the provider who effectuated the viatical  
22 settlement contract, may be completed only through the use of  
23 an independent third-party trustee or escrow agent. All funds  
24 to be paid by the purchaser must be deposited by the purchaser  
25 with the independent third-party trustee or escrow agent. The  
26 independent third-party trustee or escrow agent shall not  
27 release the deposited funds to the seller until after the 3  
28 day voidable period established by subsection (2) has expired.

29 (5) The requirements of subsections (1), (2), and (3)  
30 of this section also apply to purchases made in the secondary  
31 market, which involve purchases occurring from any person

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1 other than the provider who effectuated the viatical  
2 settlement contract.

3 Section 5. Subsection (10) is added to section  
4 626.9924, Florida Statutes, to read: 626.9924 Viatical  
5 settlement contracts; procedures; rescission.--

6 (10) The viatical settlement provider who effectuated  
7 the viatical settlement contract with the viator (the "initial  
8 provider") is responsible for tracking the insured, including  
9 but not limited to, keeping track of the insured's whereabouts  
10 and health status, submission of death claims or assisting the  
11 beneficiary in the submission of death claims, and the status  
12 of the payment of premiums until the death of the insured.  
13 This responsibility may be contracted out to a third party,  
14 however, the ultimate responsibility remains with the initial  
15 provider. This responsibility continues with the initial  
16 provider, notwithstanding any transfers of the viaticated  
17 policy in the secondary market. This subsection only applies  
18 to those viaticated policies that are, or are to become, the  
19 subject of viatical settlement purchase agreements.

20 Section 6. Subsection (3) is added to section  
21 626.9945, Florida Statutes, to read: 626.99245 Conflict of  
22 regulation of viaticals.--

23 (3) This section does not affect the requirements of  
24 ss. 626.9911(6) and 626.9912(1) that a viatical settlement  
25 provider doing business from this state must obtain a viatical  
26 settlement license from the department. "Doing business from  
27 this state" includes effectuating viatical settlement  
28 contracts and effectuating viatical settlement purchase  
29 agreements from offices in this state, regardless of the state  
30 of residence of the viator or the viatical settlement  
31 purchaser.

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1           Section 7. This act shall take effect July 1, 2001.

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

5 And the title is amended as follows:

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On page 1,

7

remove from the title of the bill: The entire title

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9

and insert in lieu thereof:

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A bill to be entitled

11

An act relating to viatical settlement

12

contracts; amending s. 626.9911, F.S.; revising

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definitions; amending s. 626.9921, F.S.;

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providing for approval of forms; amending s.

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626.99235, F.S.; providing for applicability to

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purchase in the secondary market; amending s.

17

626.99236, F.S.; requiring certain purchases to

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be handled by an independent third party

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trustee; amending s. 626.9924, F.S.; providing

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additional responsibilities of viatical

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settlement provider; amending s. 626.99245,

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F.S.; clarifying application of licensing

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requirements to viatical settlement providers;

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providing an effective date.

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