

Bill No. CS for SB 1530

Amendment No.      Barcode 150574

<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. 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 financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction ~~entering into or owning viatical settlement contracts.~~ 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

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1 available to the department as if those records and files were  
2 maintained directly by the licensed viatical settlement  
3 provider. 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 by  
21 viatical settlement purchasers from any person other than the  
22 provider who effectuated the viatical settlement contract.

23 (10) "Viatical settlement purchaser" means a person  
24 who gives a sum of money as consideration for a life insurance  
25 policy or an equitable or legal interest in the death benefits  
26 of a life insurance policy that has been or will be the  
27 subject of a viatical settlement contract, for the purpose of  
28 deriving an economic benefit, including purchases made from  
29 any person other than the provider who effectuated the  
30 viatical settlement contract or an entity affiliated with the  
31 provider. The term does not include, ~~other than~~ a licensee

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1 under this part, an accredited investor as defined in Rule  
2 501, Regulation D of the Securities Act Rules, or a qualified  
3 institutional buyer as defined by Rule 144(a) of the Federal  
4 Securities Act, ~~or a special purpose entity, a financing~~  
5 ~~entity, or a contingency insurer who gives a sum of money as~~  
6 ~~consideration for a life insurance policy or an equitable or~~  
7 ~~legal interest in the death benefits of a life insurance~~  
8 ~~policy which has been or will be the subject of a viatical~~  
9 ~~settlement contract, for the purpose of deriving an economic~~  
10 ~~benefit.~~ The above references to Rule 501, Regulation D and  
11 Rule 144(a) of the Federal Securities Act are used strictly  
12 for defining purposes and shall not be interpreted in any  
13 other manner. Any person who claims to be an accredited  
14 investor shall sign an affidavit stating that he or she is an  
15 accredited investor, the basis of that claim, and that he or  
16 she understands that as an accredited investor he or she will  
17 not be entitled to certain protections of the Viatical Act.  
18 This affidavit must be kept with other documents required to  
19 be maintained by this act.

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

30 (15) "Financing entity" means an underwriter,  
31 placement agent, lender, purchaser of securities, or purchaser

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1 of a policy or certificate from a viatical settlement  
 2 provider, credit enhancer, or any entity person that ~~may be a~~  
 3 ~~party to a viatical settlement contract and that~~ has direct  
 4 ownership in a policy or certificate that is the subject of a  
 5 viatical settlement contract, but whose principal sole  
 6 activity related to the transaction is providing funds or  
 7 credit enhancement to effect the viatical settlement or the  
 8 purchase of one or more viatical policies and who has an  
 9 agreement in writing with one or more licensed viatical  
 10 settlement providers to finance the acquisition of viatical  
 11 settlement contracts ~~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 may 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:

28 626.99235 Disclosures to viatical settlement  
 29 purchasers; misrepresentations.--

30 (3) The requirements of this section also apply to  
 31 purchases made from any person other than the provider who

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1 effectuated the viatical settlement contract which are the  
2 subject of a viatical settlement purchase agreement.

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

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

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

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

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

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

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

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

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

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

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

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

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

31 (5) The requirements of subsections (1), (2), and (3)

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1 also apply to purchases made from any person other than the  
2 provider who effectuated the viatical settlement contract that  
3 are the subject of a viatical settlement purchase agreement.

4 Section 5. Subsection (10) is added to section  
5 626.9924, Florida Statutes, to read:

6 626.9924 Viatical settlement contracts; procedures;  
7 rescission.--

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

22 Section 6. Subsection (3) is added to section  
23 626.99245, Florida Statutes, to read:

24 626.99245 Conflict of regulation of viaticals.--

25 (3) This section does not affect the requirement of  
26 ss. 626.9911(6) and 626.9912(1) that a viatical settlement  
27 provider doing business from this state must obtain a viatical  
28 settlement license from the department. As used in this  
29 subsection, the term "doing business from this state" includes  
30 effectuating viatical settlement contracts and effectuating  
31 viatical settlement purchase agreements from offices in this

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1 state, regardless of the state of residence of the viator or  
2 the viatical settlement purchaser.

3 Section 7. Transfers of structured-settlement-payment  
4 rights.--

5 (1) PURPOSE.--The purpose of this section is to  
6 protect recipients of structured settlements who are involved  
7 in the process of transferring structured-settlement-payment  
8 rights.

9 (2) DEFINITIONS.--As used in this section, the term:

10 (a) "Annuity issuer" means an insurer that has issued  
11 an annuity contract to be used to fund periodic payments under  
12 a structured settlement.

13 (b) "Applicable law" means any of the following, as  
14 applicable in interpreting the terms of a structured  
15 settlement:

16 1. The laws of the United States;

17 2. The laws of this state, including principles of  
18 equity applied in the courts of this state; and

19 3. The laws of any other jurisdiction:

20 a. That is the domicile of the payee or any other  
21 interested party;

22 b. Under whose laws a structured-settlement agreement  
23 was approved by a court; or

24 c. In whose courts a settled claim was pending when  
25 the parties entered into a structured-settlement agreement.

26 (c) "Applicable federal rate" means the most recently  
27 published applicable rate for determining the present value of  
28 an annuity, as issued by the United States Internal Revenue  
29 Service pursuant to section 7520 of the United States Internal  
30 Revenue Code, as amended.

31 (d) "Assignee" means any party that acquires

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1 structured-settlement-payment rights directly or indirectly  
2 from a transferee of such rights.

3 (e) "Dependents" means a payee's spouse and minor  
4 children and all other family members and other persons for  
5 whom the payee is legally obligated to provide support,  
6 including spousal maintenance.

7 (f) "Discount and finance charge" means the sum of all  
8 charges that are payable directly or indirectly from assigned  
9 structured-settlement payments and imposed directly or  
10 indirectly by the transferee and that are incident to a  
11 transfer of structured-settlement-payment rights, including:

12 1. Interest charges, discounts, or other compensation  
13 for the time value of money;

14 2. All application, origination, processing,  
15 underwriting, closing, filing, and notary fees and all similar  
16 charges, however denominated; and

17 3. All charges for commissions or brokerage,  
18 regardless of the identity of the party to whom such charges  
19 are paid or payable.

20  
21 The term does not include any fee or other obligation incurred  
22 by a payee in obtaining independent professional advice  
23 concerning a transfer of structured-settlement-payment rights.

24 (g) "Discounted present value" means, with respect to  
25 a proposed transfer of structured-settlement-payment rights,  
26 the fair present value of future payments, as determined by  
27 discounting the payments to the present using the most  
28 recently published applicable federal rate as the discount  
29 rate.

30 (h) "Independent professional advice" means advice of  
31 an attorney, certified public accountant, actuary, or other

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1 licensed professional adviser:

2 1. Who is engaged by a payee to render advice  
3 concerning the legal, tax, and financial implications of a  
4 transfer of structured-settlement-payment rights;

5 2. Who is not in any manner affiliated with or  
6 compensated by the transferee of the transfer; and

7 3. Whose compensation for providing the advice is not  
8 affected by whether a transfer occurs or does not occur.

9 (i) "Interested parties" means:

10 1. The payee;

11 2. Any beneficiary irrevocably designated under the  
12 annuity contract to receive payments following the payee's  
13 death or, if such designated beneficiary is a minor, the  
14 designated beneficiary's parent or guardian;

15 3. The annuity issuer;

16 4. The structured-settlement obligor; or

17 5. Any other party who has continuing rights or  
18 obligations under the structured settlement.

19 (j) "Payee" means an individual who is receiving  
20 tax-free damage payments under a structured settlement and  
21 proposes to make a transfer of payment rights under the  
22 structured settlement.

23 (k) "Qualified-assignment agreement" means an  
24 agreement providing for a qualified assignment, as authorized  
25 by Title 26, section 130 of the United States Internal Revenue  
26 Code, as amended.

27 (l) "Settled claim" means the original tort claim  
28 resolved by a structured settlement.

29 (m) "Structured settlement" means an arrangement for  
30 periodic payment of damages for personal injuries established  
31 by settlement or judgment in resolution of a tort claim.

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1           (n) "Structured-settlement agreement" means the  
2 agreement, judgment, stipulation, or release embodying the  
3 terms of a structured settlement, including the rights of the  
4 payee to receive periodic payments.

5           (o) "Structured-settlement obligor" means the party  
6 who is obligated to make continuing periodic payments to the  
7 payee under a structured-settlement agreement or a  
8 qualified-assignment agreement.

9           (p) "Structured-settlement-payment rights" means  
10 rights to receive periodic payments, including lump-sum  
11 payments under a structured settlement, whether from the  
12 structured-settlement obligor or the annuity issuer, if:

13           1. The payee or any other interested party is  
14 domiciled in this state;

15           2. The structured settlement agreement was approved by  
16 a court of this state; or

17           3. The settled claim was pending before the courts of  
18 this state when the parties entered into the  
19 structured-settlement agreement.

20           (q) "Terms of the structured settlement" means the  
21 terms of the structured-settlement agreement; the annuity  
22 contract; a qualified-assignment agreement; or an order or  
23 approval of a court or other government authority authorizing  
24 or approving the structured settlement.

25           (r) "Transfer" means a sale, assignment, pledge,  
26 hypothecation, or other form of alienation or encumbrance made  
27 by a payee for consideration.

28           (s) "Transfer agreement" means the agreement providing  
29 for transfer of structured-settlement-payment rights from a  
30 payee to a transferee.

31           (t) "Transferee" means a person who is receiving or

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1 who will receive structured-settlement-payment rights  
2 resulting from a transfer.

3 (3) CONDITIONS TO TRANSFERS OF  
4 STRUCTURED-SETTLEMENT-PAYMENT RIGHTS AND STRUCTURED-SETTLEMENT  
5 AGREEMENTS.--

6 (a) A direct or indirect transfer of  
7 structured-settlement-payment rights is not effective and a  
8 structured-settlement obligor or annuity issuer is not  
9 required to make a payment directly or indirectly to a  
10 transferee of structured-settlement-payment rights unless the  
11 transfer is authorized in advance in a final order by a court  
12 of competent jurisdiction which is based on the written  
13 express findings by the court that:

14 1. The transfer complies with this section and does  
15 not contravene other applicable law;

16 2. At least 10 days before the date on which the payee  
17 first incurred an obligation with respect to the transfer, the  
18 transferee provided to the payee a disclosure statement in  
19 bold type, no smaller than 14 points in size, which specifies:

20 a. The amounts and due dates of the  
21 structured-settlement payments to be transferred;

22 b. The aggregate amount of the payments;

23 c. The discounted present value of the payments,  
24 together with the discount rate used in determining the  
25 discounted present value;

26 d. The gross amount payable to the payee in exchange  
27 for the payments;

28 e. An itemized listing of all brokers' commissions,  
29 service charges, application fees, processing fees, closing  
30 costs, filing fees, referral fees, administrative fees, legal  
31 fees, and notary fees and other commissions, fees, costs,

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1 expenses, and charges payable by the payee or deductible from  
2 the gross amount otherwise payable to the payee;

3 f. The net amount payable to the payee after deducting  
4 all commissions, fees, costs, expenses, and charges described  
5 in sub-subparagraph e.;

6 g. The quotient, expressed as a percentage, obtained  
7 by dividing the net payment amount by the discounted present  
8 value of the payments, which must be disclosed in the  
9 following statement: "The net amount that you will receive  
10 from us in exchange for your future structured-settlement  
11 payments represent \_\_ percent of the estimated current value  
12 of the payments based upon the discounted value using the  
13 applicable federal rate";

14 h. The effective annual interest rate, which must be  
15 disclosed in the following statement: "Based on the net amount  
16 that you will receive from us and the amounts and timing of  
17 the structured-settlement payments that you are turning over  
18 to us, you will, in effect, be paying interest to us at a rate  
19 of \_\_ percent per year"; and

20 i. The amount of any penalty and the aggregate amount  
21 of any liquidated damages, including penalties, payable by the  
22 payee in the event of a breach of the transfer agreement by  
23 the payee;

24 3. The payee has established that the transfer is in  
25 the best interests of the payee, taking into account the  
26 welfare and support of the payee's dependents;

27 4. The payee has received, or waived his or her right  
28 to receive, independent professional advice regarding the  
29 legal, tax, and financial implications of the transfer;

30 5. The transferee has given written notice of the  
31 transferee's name, address, and taxpayer identification number

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1 to the annuity issuer and the structured-settlement obligor  
2 and has filed a copy of the notice with the court;

3 6. The transfer agreement provides that if the payee  
4 is domiciled in this state, any disputes between the parties  
5 will be governed in accordance with the laws of this state and  
6 that the domicile state of the payee is the proper venue to  
7 bring any cause of action arising out of a breach of the  
8 agreement; and

9 7. The court has determined that the net amount  
10 payable to the payee is fair, just, and reasonable under the  
11 circumstances then existing.

12 (b) If a proposed transfer would contravene the terms  
13 of the structured settlement, upon the filing of a written  
14 objection by any interested party and after considering the  
15 objection and any response to it, the court may grant, deny,  
16 or impose conditions upon the proposed transfer which the  
17 court deems just and proper given the facts and circumstances  
18 and in accordance with established principles of law. Any  
19 order approving a transfer must require that the transferee  
20 indemnify the annuity issuer and the structured-settlement  
21 obligor for any liability, including reasonable costs and  
22 attorney's fees, which arises from compliance by the issuer or  
23 obligor with the order of the court.

24 (c) Any provision in a transfer agreement which gives  
25 a transferee power to confess judgment against a payee is  
26 unenforceable to the extent that the amount of the judgment  
27 would exceed the amount paid by the transferee to the payee,  
28 less any payments received from the structured-settlement  
29 obligor or payee.

30 (d) In negotiating a structured settlement of claims  
31 brought by or on behalf of a claimant who is domiciled in this

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1 state, the structured-settlement obligor must disclose in  
 2 writing to the claimant or the claimant's legal representative  
 3 all of the following information that is not otherwise  
 4 specified in the structured-settlement agreement:

5 1. The amounts and due dates of the periodic payments  
 6 to be made under the structured-settlement agreement. In the  
 7 case of payments that will be subject to periodic percentage  
 8 increases, the amounts of future payments may be disclosed by  
 9 identifying the base payment amount, the amount and timing of  
 10 scheduled increases, and the manner in which increases will be  
 11 compounded;

12 2. The amount of the premium payable to the annuity  
 13 issuer;

14 3. The discounted present value of all periodic  
 15 payments that are not life-contingent, together with the  
 16 discount rate used in determining the discounted present  
 17 value;

18 4. The nature and amount of any costs that may be  
 19 deducted from any of the periodic payments;

20 5. Where applicable, that any transfer of the periodic  
 21 payments is prohibited by the terms of the structured  
 22 settlement and may otherwise be prohibited or restricted under  
 23 applicable law; and

24 6. That any transfer of the periodic payments by the  
 25 claimant may subject the claimant to serious adverse tax  
 26 consequences.

27 (4) JURISDICTION; PROCEDURE FOR APPROVAL OF  
 28 TRANSFERS.--At least 20 days before the scheduled hearing on  
 29 an application for authorizing a transfer of  
 30 structured-settlement-payment rights under this section, the  
 31 transferee must file with the court and all interested parties

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1 a notice of the proposed transfer and the application for its  
2 authorization. The notice must include:

3 (a) A copy of the transferee's application to the  
4 court;

5 (b) A copy of the transfer agreement;

6 (c) A copy of the disclosure statement required under  
7 subsection (3);

8 (d) Notification that an interested party may support,  
9 oppose, or otherwise respond to the transferee's application,  
10 in person or by counsel, by submitting written comments to the  
11 court or by participating in the hearing; and

12 (e) Notification of the time and place of the hearing  
13 and notification of the manner in which and the time by which  
14 any written response to the application must be filed in order  
15 to be considered by the court. A written response to an  
16 application must be filed within 15 days after service of the  
17 transferee's notice.

18 (5) WAIVER PROHIBITED; NO PENALTIES INCURRED.--

19 (a) The provisions of this section may not be waived.

20 (b) If a transfer of structured-settlement-payment  
21 rights fails to satisfy the conditions of subsection (3), the  
22 payee who proposed the transfer does not incur any penalty,  
23 forfeit any application fee or other payment, or otherwise  
24 incur any liability to the proposed transferee.

25 (6) NONCOMPLIANCE.--

26 (a) If a transferee violates the requirements for  
27 stipulating the discount and finance charge provided for in  
28 subsection (3), neither the transferee nor any assignee may  
29 collect from the transferred payments, or from the payee, any  
30 amount in excess of the net advance amount, and the payee may  
31 recover from the transferee or any assignee:



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1 that any transferee has violated this section, any interested  
2 party may bring a civil action for injunctive relief,  
3 penalties, and any other relief that is appropriate to secure  
4 compliance with this section.

5 Section 8. This act shall take effect October 1, 2001.

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

9 And the title is amended as follows:

10 Delete everything before the enacting clause

11

12 and insert:

13

A bill to be entitled

14

An act relating to financial settlements;

15

amending s. 626.9911, F.S.; revising

16

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

17

providing for approval of forms; amending s.

18

626.99235, F.S.; providing for applicability;

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amending s. 626.99236, F.S.; requiring certain

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purchases to be handled by an independent

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third-party trustee; amending s. 626.9924,

22

F.S.; revising procedures for tracking the

23

insured; amending s. 626.99245, F.S.;

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clarifying the application of licensing

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requirements to viatical settlement providers;

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specifying the purpose of the act; providing

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definitions; providing requirements for the

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direct or indirect transfer of

29

structured-settlement-payment rights; requiring

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that any such transfer be approved by a court;

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requiring that the court make certain findings

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1 with respect to the transfer; authorizing an  
2 interested party to file an objection to a  
3 proposed transfer; providing requirements for  
4 an order approving a transfer; requiring that  
5 an obligor make certain disclosures to a  
6 claimant in negotiating a settlement of claims;  
7 requiring a transferee to provide certain  
8 notice with respect to a proposed transfer of  
9 structured-settlement-payment rights; providing  
10 for penalties to be imposed for certain  
11 violations of the act; authorizing an  
12 interested party to bring an action for  
13 injunctive relief; providing an effective date.

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