

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1530

SPONSOR: Banking and Insurance Committee and Senator Geller

SUBJECT: Viatical Transactions

DATE: April 9, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

In 1996, Florida established the framework for regulation of the viatical industry by the Department of Insurance (ch. 96-336, L.O.F., creating part XI of ch. 626, F.S.). In general, a viatical settlement is an agreement under which the owner of a life insurance policy (“viator”) sells the policy to another person (“viatical settlement provider”) in exchange for an up-front payment, which is generally less than the expected death benefit under the policy. Last session, substantial changes were enacted expanding viatical settlement regulation by the department to cover any person who sells a life insurance policy, not just individuals with a “life threatening” illness (ch. 2000-344, Laws of Florida). The legislation also provided disclosures to be made by viatical settlement providers to viatical settlement purchasers, the requirement for licensees to maintain certain records, and increased penalties for specified unlawful acts.

Committee Substitute for Senate Bill 1530 provides for disclosures, form filings, and other protections, which are currently afforded to consumers engaged in viatical settlement transactions in the primary market to apply to such persons in the secondary market. Secondary market viatical settlement transactions pertain to those purchases made from any person or entity other than the viatical settlement provider who effectuated the viatical settlement contract, that is, who originally viaticated the policy.

The bill provides that viatical settlement sales agents be responsible for disclosures to purchasers in the secondary market, that viatical settlement purchase transactions in the secondary market be completed only through the use of escrow agents or third-party trustees, that all funds paid by purchasers be deposited with such trustees or agents, and that the funds must not be released to the seller until after a 3-day voidable period has expired. Also, the bill provides requirements that the viatical settlement provider who initially purchased the policy from the viator be responsible for monitoring the insured as to health status, premium payments and submission of the death

claim. The bill expands certain terms relating to trusts, financing and special purpose entities, purchasers, and purchase agreements. Finally, the bill clarifies that providers who have offices in Florida, but who only transact business outside of the state, must be licensed in Florida.

This bill substantially amends the following sections of the Florida Statutes: 626.9911, 626.9921, 626.99235, 626.99236, 626.99234, and 626.99245.

II. Present Situation:

Viatical Settlements

In 1996, Florida established the framework for regulation of the viatical industry by the Department of Insurance (ch. 96-336, L.O.F., creating part XI of ch. 626, F.S.). Last session, substantial changes were enacted expanding viatical settlement regulation by the department to cover any person who sells a life insurance policy, not just individuals with a "life threatening" illness (ch. 2000-344, L.O.F.). The legislation also provided disclosures to viatical settlement purchasers, the requirement to maintain certain records, and increased penalties for specified unlawful acts.

In general, a viatical settlement is an agreement under which the owner of a life insurance policy ("viator") sells the policy to another person ("viatical settlement provider") in exchange for an up-front payment, which is generally less than the expected death benefit under the policy. The viatical settlement provider who buys the policy from the original policy owner takes over premium payments and, upon the death of the original policy owner, collects the death benefit under the policy. The amount paid to the viator depends on the viator's life expectancy and on market forces. Although many life insurance policies contain accelerated benefit provisions under which a policy owner may receive immediate payment in lieu of death benefits, many viators prefer a smaller but earlier payment to the payment available under the accelerated benefits option.

Common Terms

The following terms are used in viatical transactions and are defined as follows:

- A "viator" is the owner of a life insurance policy who enters or seeks to enter into a viatical settlement contract.
- A "viatical settlement provider" is a person or entity that enters into a viatical settlement contract with a viator. A provider does not include a financial institution that takes an assignment of a policy as collateral for a loan, an life and health insurer that has issued a life insurance policy that provides accelerated benefits provisions to terminally ill policyholders, or an individual who enters into no more than one viatical settlement contract in a calendar year.
- A "viatical settlement purchaser" is an investor who gives a sum of money as consideration for a life insurance policy for the purpose of deriving an economic benefit.
- A "viatical settlement broker" means a person or entity, that, on behalf of the viator and for a fee, arranges viatical transactions between providers and viators.
- A "viatical sales agent" is a person, other than a provider, who locates investors willing to accept the risk inherent in investing in the life insurance policy.
- A "viatical settlement contract" is a written agreement between the provider, or a related provider trust, and a viator.

- A “viatical settlement purchase agreement” is a contract or agreement entered into by a purchaser, to which the viator is not a party, to purchase a life insurance policy for an economic benefit.
- A “related provider trust” is a trust established by the provider for the sole purpose of entering into or owning viatical settlement contracts.
- A “special purpose entity” is established by the provider which may be a corporation or other similar entity formed solely as a vehicle to permit a lender to the provider to access institutional capital markets for the provider.
- A “financing entity” means an underwriter or purchaser of a policy that has direct ownership in a policy that is the subject of a viatical settlement contract.

According to representatives from the Department of Insurance, this bill is necessary because there are problems which exist in the viatical “secondary market” due to unlicensed secondary market entities which sell interests in previously viaticated policies to investors or purchasers, and there are no protections afforded to such investors or purchasers.¹ For example, disclosures and rescission rights afforded to purchasers in the primary market are not required for purchasers in the secondary market. Also, there is no entity which has the responsibility to monitor the original insured’s health status and whether timely premium payments are being made for viaticated policies. Further, escrow agents or independent third-party trustees are needed to protect the funds deposited by purchasers involved in viatical settlement transactions in the secondary market.

III. Effect of Proposed Changes:

Section 1. Amends s. 626.9911, F.S., to expand the definition of a “related provider trust” to provide that such trust can be established by a financing entity for the purpose of holding the ownership or beneficial interest in purchased policies in connection with a financial transaction. Such trust can have an agreement with a provider or financing entity under which the provider or financing entity is responsible for all statutory and regulatory requirements. The definition for a “special purpose entity” is expanded to include a limited liability company which provides access to capital markets to a viatical settlement provider or a financing entity. Also, the definition for a “financing entity” is clarified to mean that such an entity shall not enter into a viatical settlement contract.

The bill amends a “viatical settlement purchase agreement” to include purchases made in the secondary market, “that is, purchases from any person other than the provider who effectuated the viatical settlement contract.” The “viatical settlement purchaser” definition is expanded to include purchases made in the secondary market.

Section 2. Amends s. 626.9921, F.S., to provide that specified viatical settlement forms may be used in this state only after such forms have been filed with and approved by the Department of Insurance. Under present law, only the provider or related provider trust had the responsibility to file forms for approval with the department.

¹ The “secondary market” involves purchases made from any person, other than the provider who effectuated the viatical settlement contract, that is, who originally viaticated the policy.

Section 3. Amends s. 626.99235, F.S., to provide that disclosures made to viatical settlement purchasers by providers and sales agents, also apply to purchases made in the secondary market which involves purchases from any person other than the provider who effectuated the viatical settlement contract.

Section 4. Amends s. 626.99236, F.S., to require viatical settlement sales agents to make disclosures to purchasers. Present law requires only providers to make such disclosures. The bill also requires that a viatical settlement purchase transaction in the secondary market may be completed only through the use of an independent third-party trustee or escrow agent; that all funds to be paid by the purchaser must be deposited with such trustee or agent; and, such trustee or agent shall not release the deposited funds to the seller until after the 3-day voidable period has expired. Under present law, a purchase agreement is voidable by the purchaser at any time within 3 days after the disclosures are received by the purchaser.

Finally, the bill provides that the specified disclosures under current law also apply to purchases made in the secondary market. These disclosures include the 3-day voidable period; specified information as to the following: life expectancy certifications, name and address of the insurance company, policy number and date of issuance of the viaticated policy, information about the escrow services, information about the type of life insurance policy; and, the provision for the purchaser to seek independent financial advice and the signing of an affidavit by the purchaser as to receipt of disclosures.

Section 5. Amends s. 626.9924, F.S., to require a viatical settlement provider who initially purchased the policy from the viator to be responsible for “tracking” the insured. Tracking the insured means monitoring the insured’s whereabouts and health status, submission of death claims, or assisting the beneficiary in the submission of a death claim, and the status of the payment of premiums until the insured. Under present law, no person is currently required to monitor the viator. The bill provides that this responsibility may be contracted out to a third party, however, the ultimate responsibility remains with the initial provider.

Section 6. Amends s. 626.99245, F.S., relating to conflict of the regulation of viaticals, to clarify the terms “doing business from this state.” This phrase includes effectuating viatical settlement contracts and purchase agreements from offices in this state, regardless of the state of residence of the viator or settlement purchaser. In essence, this provision requires that providers located in Florida must be licensed in this state, even if such providers only viaticate policies to purchasers in other states.

Section 7. Provides that the act shall take effect July 1, 2001.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill enhances consumer protections by strengthening viatical regulations as to disclosures and rescissions rights for purchasers involved in viatical transactions in the secondary market.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
