

hbd-032

Bill No. CS/HB 767

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

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Brown and Bennett offered the following:

Amendment (with title amendment)

On page 1, line 24,

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 in the
29 secondary market, that is, purchases from any person other
30 than the provider who effectuated the viatical settlement
31 contract or an entity affiliated with the provider. The term

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

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

6 And the title is amended as follows:

7 On page 1, line 2,
8 remove from the title of the bill: all of said line,

9

10 and insert in lieu thereof:

11 An act relating to financial settlements;
12 amending s. 626.9911, F.S.; revising
13 definitions; amending s. 626.9921, F.S.;
14 providing for approval of forms; amending s.
15 626.99235, F.S.; providing for applicability;
16 amending s. 626.99236, F.S.; requiring certain
17 purchases to be handled by an independent
18 third-party trustee; amending s. 626.9924,
19 F.S.; revising procedures for tracking the
20 insured; amending s. 626.99245, F.S.;
21 clarifying the application of licensing
22 requirements to viatical settlement providers;

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