HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 487 Viatical Settlements
SPONSOR(S): Hasner
TIED BILLS: **IDEN./SIM. BILLS:** SB 1904

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Regulation (Sub)		Cheek	Schulte
2) Insurance			
3) Appropriations			
4)			
5)			

SUMMARY ANALYSIS

A viatical settlement is an agreement under which the owner of a life insurance policy with a terminal illness (the "viator") sells the policy to another person in exchange for an up-front payment, which is generally less than the expected death benefit under the policy. The person 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 Office of Insurance Regulation of the Financial Services Commission regulates the viatical settlement industry. The major elements of regulation under the law are: licensure of viatical settlement providers, brokers, and sales agents; prior approval of viatical settlement contract forms; examination of providers' records; mandatory disclosures to viators and purchasers; and unfair trade practices and prohibited acts.

This bill:

- Makes an investment in a viatical a "security" with all the existing consumer protections;
- Eliminates the license requirement for "viatical settlement broker";
- Reassigns statutory authority currently assigned to the Department of Insurance to the Office of Insurance Regulation or the Financial Services Commission, to conform to the 2002 act (chapter 2002-404, L.O.F.) that created the Department of Financial Services and the Financial Services Commission, both of which were effective January 7, 2003; and
- Makes various other miscellaneous changes regarding definitions, audits, deposits, forms, and fraud plan requirements.

There does not appear to be a substantial fiscal impact to state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[x]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[]	No[]	N/A[x]
4. Increase personal responsibility?	Yes[]	No[]	N/A[x]
5. Empower families?	Yes[]	No[]	N/A[x]

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Viatical Settlements

A viatical settlement contract is a written agreement under which the owner of a life insurance policy with a terminal illness ("viator") sells the policy to another person in exchange for a bargained-for payment, which is generally less than the expected death benefit under the policy. The person 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 viatical settlement industry has arisen in recent years for terminally ill persons who need money immediately, and who are willing to take immediate payment rather than have their beneficiaries recover under the policy. The amount paid to the policy owner or viator depends on the person'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 rather than the payment available under the accelerated benefits option.

In 1996, Florida established the framework for regulating the viatical industry under the Department of Insurance (chapter 96-336, L.O.F., creating part XI of chapter 626, F.S.). The major elements of regulation under the law are licensure of viatical settlement providers and brokers, prior approval of viatical settlement contract forms or related forms by the department, examination of providers' records by the department, mandatory disclosures to policy owners, and the right to rescind a contract within a specified time period. Violations are declared unfair insurance trade practices, and violators are subject to second-degree misdemeanor penalties.

Under the Viatical Settlement Act, various terms are used to characterize the parties involved in viatical settlement transactions: the "viator" is the policyholder or the owner of a life insurance policy, who has a catastrophic or life threatening illness, and sells his or her policy in exchange for a cash payment; the "viatical settlement provider" is the person who purchases the policy from a viator; the "viatical settlement broker" is the person who, on behalf of the viator and for a fee, initially brings together both the provider and viator in a viatical sales transaction; the "viatical sales agent" locates investors willing to accept the risk inherent in investing in the life insurance policy; the "viatical settlement contract" means a written agreement between the provider and a viator; and, the "viatical settlement purchase agreement" means 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.

Legislation enacted in 1998 authorized licensed viatical settlement providers to establish a related provider trust for the purpose of owning viatical settlement contracts (chapter 98-164, L.O.F.). The purpose of establishing such a trust was to shield the viatical investment from liabilities of the provider that were not related to viatical settlement contracts.

Legislation enacted in 1999 provided that Florida-based viatical companies would not be subject to Florida law when entering into agreements with purchasers or viators who reside in another state that regulates viatical settlements (chapter 99-212, L.O.F.). In a state where viatical settlements are not regulated, Florida law would apply to the agreements or contracts written in that state. The law prohibited misrepresentations and required disclosures, provided that a person who acts as a viatical sales agent must be licensed as a life agent, and provided that the Department of Insurance could issue cease-and-desist orders and examine the advertising and solicitation materials of any licensee or applicant for a license.

In recent years, the viatical business has grown steadily in Florida. According to the Department of Financial Services (DFS), there are eight viatical settlement providers licensed in the state that viaticated $548 million worth of life insurance policies in 1998. However, along with growth, there has been controversy. According to the department, a number of inquiries and complaints regarding viaticals concern the lack of regulation involving what are termed “senior or life settlement” agreements. These agreements involve the “viatication” or sale of life insurance policies for other insureds, usually senior citizens who no longer have a need for life insurance and who do not meet the definition of a viator under present law, because they do not have a catastrophic or life threatening illness.

<u>Statewide Grand Jury Report on Fraud in the Viatical Industry</u>

The Fifteenth Statewide Grand Jury was impaneled in August 1999 to investigate financial crimes in Florida, including fraud against the government and insurance fraud. The Grand Jury was drawn from persons around the state and focused on fraud in the viatical industry as part of their investigation. On February 4, 2000, the Grand Jury released its report, which stated that since August 1999, the Grand Jury has returned three indictments charging seven individuals and one corporation with 155 felony counts relating to criminal fraud in the viatication of life insurance policies belonging to the terminally ill. The face value of these policies is approximately $12.7 million.

The Grand Jury found that “perhaps hundreds of millions of dollars of life insurance policies have been fraudulently obtained with the assistance of corrupt agents, brokers and viatical settlement providers in the viatical industry.” Further, the Grand Jury emphasized that fraud is of such a nature and size that it continues to require further action by the Legislature, the viatical industry, and DFS. Finally, the Grand Jury asked the Legislature to consider several recommendations for statutory changes, and many of these proposals have been incorporated into this bill.

<u>Major Changes from Current Law</u>

The purposes of the legislation are:

1. To make the investment in a viatical a “security” retaining the entire existing consumer protections;
2. To eliminate the “viatical settlement broker” license requirement;
3. To reassign statutory authority to conform to the constitutional amendment that created the office of the Chief Financial Officer and to the 2002 act (chapter 2002-404, L.O.F.) that created DFS and the Financial Services Commission, both of which were effective January 7, 2003; and
4. To make various other miscellaneous changes regarding definition, audits, deposits, forms, and fraud plan requirements.

1. *Make the Investment in a Viatical a "Security" Retaining Existing Consumer Protections*

DFS has had several complaints from investors in viaticals. These complaints range from viators not dying within the purported life expectancy to viatical policies that were fraudulently obtained by the insured. By eliminating this license, DFS will be able to license brokers similar to life agents, as individuals only. This will permit the department to reduce the cost of being a broker to licensees and will reduce costs to the department by eliminating the duplicative viatical broker license and by allowing streamlining of the licensing process.

Making the viaticated policy a "security" will make the consumer protections in chapter 517, F.S., apply to this business. In addition, because the investment in a viatical will be a security, sellers will need to be licensed in accordance with chapter 517. Consequently, there is no further need for regulation of the "viatical settlement sales agent" or for the law in chapter 626, F.S., on "viatical settlement purchase agreements." These references have been removed from the Viatical Act.

Requirements for disclosures to viatical settlement purchasers (investors) have been removed. Disclosures will be determined as per chapter 517, F.S.

2. *Eliminate "Viatical Settlement Broker" License Requirement;*

Under current law, an individual who is a life agent can perform the activities of a viatical settlement broker without having a separate viatical settlement broker license. Under present law, regulation of brokers is done by the Division of Insurance Agents and Agency Services. By eliminating this license, DFS will be able to license brokers similar to life agents, as individuals only. This will allow the department to reduce the cost of being a broker to licensees and will reduce costs to the department by eliminating the duplicative viatical broker license and by allowing the streamlining of the licensing process. It will also ensure that viatical settlement brokers will have life insurance knowledge, since that will be required for them to have life agent licenses. Although the separate license will be eliminated, the department will retain jurisdiction over brokers and their activities.

3. *Conform to the Department of Financial services and the Financial Services Commission*

With the reassignment of statutory authority to conform to the constitutional amendment that created the office of the Chief Financial Officer and the 2002 act (chapter 2002-404, L.O.F.) that created DFS and the Financial Services Commission, both of which were effective January 7, 2003, there will be four different entities involved in the regulation of this business:

- The Office of Insurance Regulation, which will regulate the providers;
- The Commission, which is responsible for rules;
- DFS, which will regulate the brokers; and
- The Office of Financial Institutions and Securities Regulation ,which will be in charge of registering the offering itself, as well as in licensing the persons who sell the viaticated policies to investors.

4. *Other Miscellaneous Changes*

In addition to making an investment in a viatical a security, eliminating the viatical settlement broker license requirement, and making conforming changes to DFS and the Financial Services Commission, the bill provides other miscellaneous changes that would:

- Replace the earlier definition of "viatical settlement provider" with the definition subsequently adopted by the National Association of Insurance Commissioners (NAIC);
- Add the NAIC definition of "business of viatical settlements" to clarify the extent of the department's jurisdiction;

- Add the NAIC definition of “fraudulent viatical settlement act” to clarify what is unlawful in this business (this impacts penalties and the duty to report fraud to the Division of Insurance Fraud);
- Require the financial statements that providers need to file be audited (this gives the Office of Insurance Regulation a level of comfort with the filings);
- Require the entire $100,000 deposit for providers be in cash, instead of $25,000 cash and the balance a bond (this is better protection for the consumers);
- Eliminate the requirement of forms if the provider applicant is not licensed (a non-licensed provider has no need for forms);
- Require viatical settlement provider applicants to file the fraud plan with their application for licensure; and
- Make certain other insurance sections applicable to viaticals.

C. SECTION DIRECTORY:

Section 1. Adds paragraph (19)(w) and subsection (21) to s. 517.021, F.S., to add the term Viatical Settlement Investment.

Section 2. Creates s. 517.072, F.S., to provide that the offering of a viatical settlement investment is not an exempt transaction under s. 517.051, F.S., regardless of whether the offering otherwise complies with the condition of that section.

Section 3. Amends s. 626.9911, F.S., to provide for the “Fraudulent Viatical Settlement Act.”

Section 4. Amends s. 626.9912, F.S., to reassign statutory authority currently assigned to the Department of Insurance and the Insurance Commissioner and Treasurer to the Office of Insurance Regulation, the Financial Services Commission, and the Chief Financial Officer, to conform to the constitutional amendment that created the Office of the Chief Financial Officer and to the 2002 act (ch. 2002-404, L.O.F.) that created DFS and the Financial Services Commission, both of which were effective January 7, 2003.

The bill also reduces the number of previous employment year’s information from 10 years to 5 years regarding required viatical settlement provider license applications and expands the requirement for the detailed plan of operation.

Section 5. Amends s. 626.9913, F.S., to reassign statutory authority currently assigned to the Department of Insurance to either the Office of Insurance Regulation, the Financial Services Commission, or both to conform to the constitutional amendment that created the Office of the Chief Financial officer and to the 2002 act (chapter 2002-404, L.O.F.) that created DFS and the Financial Services Commission, both of which were effective January 7, 2003.

The bill also removes language to allow a $25,000 deposit with the department and a $75,000 surety bond as an alternate to meeting the $100,000 deposit with the department.

Section 6. Amends s. 626.9914, F.S., to reassign statutory authority currently assigned to the Department of Insurance to the Office of Insurance Regulation, to conform to the constitutional amendment that created the Office of the Chief Financial Officer and to the 2002 act (chapter 2002-404, L.O.F.) that created DFS and the Financial Services Commission, both of which were effective January 7, 2003.

The bill also makes minor edits to viatical settlement contracts and expands the provisions for violations of the insurance code to also include state and federal securities laws or similar rules of any regulatory or self-regulatory body.

Section 7. Amends s. 626.9915, F.S., to reassign statutory authority currently assigned to the Department of Insurance to the Office of Insurance Regulation, to conform to the constitutional amendment that created the Office of the Chief Financial Officer and to the 2002 act (chapter 2002-404, L.O.F.) that created DFS and the Financial Services Commission, both of which were effective January 7, 2003.

Section 8. Amends s. 626.9916, F.S., to require a life agent license to function as a viatical settlement broker, to provide for application of certain life insurance policy provisions to viatical settlement contracts, to authorize transfer of viatical settlement broker appointments to a life agent license, to terminate viatical settlement broker licenses and prohibiting renewal, and to delete provisions relating to viatical settlement broker licensure.

Section 9. Amends s. 626.9917, F.S., to remove reference to denial of a viatical settlement broker license.

The bill also reassigns statutory authority currently assigned to the Department of Insurance to the Office of Insurance Regulation, to conform to the constitutional amendment that created the Office of the Chief Financial Officer and to the 2002 act (chapter 2002-404, L.O.F.) that created DFS and the Financial Services Commission, both of which were effective January 7, 2003.

Section 10. Amends s. 626.9918, F.S., to change viatical settlement broker license to viatical settlement broker's life agent license and license to life agent license when referring to suspension or revocation of viatical settlement broker's life agent licenses.

Section 11. Amends s. 626.9919, F.S., to remove references to viatical settlement broker licensee and viatical settlement sales agent license.

The bill also reassigns statutory authority currently assigned to the Department of Insurance to the Office of Insurance Regulation, to conform to the constitutional amendment that created the Office of the Chief Financial Officer and to the 2002 act (chapter 2002-404, L.O.F.) that created DFS and the Financial Services Commission, both of which were effective January 7, 2003.

Section 12. Amends s. 626.992, F.S., to make the section conform to the elimination of a separate viatical settlement broker license.

Section 13. Amends s. 626.9921, F.S., to remove references to viatical settlement purchase agreement forms.

The bill also reassigns statutory authority currently assigned to the Department of Insurance to the Office of Insurance Regulation or the Financial Services Commission, to conform to the constitutional amendment that created the Office of the Chief Financial Officer and to the 2002 act (chapter 2002-404, L.O.F.) that created DFS and the Financial Services Commission, both of which were effective January 7, 2003.

Section 14. Amends s. 626.9922, F.S., to add references to the business of viatical settlement agreements, regardless of jurisdiction or the location regarding examinations.

The bill reduces the days required that records must be maintained in the home office from 20 day to 3 days after the effective date of the bill.

The bill also reassigns statutory authority currently assigned to the Department of Insurance to the Office of Insurance Regulation, to conform to the constitutional amendment that created the Office of the Chief Financial Officer and to the 2002 act (chapter 2002-404, L.O.F.) that created DFS and the Financial Services Commission, both of which were effective January 7, 2003

Section 15. Amends s. 626.9924, F.S., to delete certain insured status and information tracking requirements.

Section 16. Amends s. 626.99245, F.S., to delete conflict of regulation provisions relating to out-of-state residents and applications.

Section 17. Amends s. 626.9925, F.S., to revise rulemaking requirements by removing references to purchasers and replacing executed viatical settlement contracts and viatical settlement purchase agreements with the term the business of viatical settlements.

The bill also reassigns statutory authority currently assigned to the Department of Insurance to the Financial Services Commission, to conform to the constitutional amendment that created the Office of the Chief Financial Officer and to the 2002 act (chapter 2002-404, L.O.F.) that created DFS and the Financial Services Commission, both of which were effective January 7, 2003

Section 18. Amends s. 626.9926, F.S., to reassign statutory authority currently assigned to the Department of Insurance to the Office of Insurance Regulation or the Financial Services Commission, to conform to the constitutional amendment that created the Office of the Chief Financial Officer and to the 2002 act (chapter 2002-404, L.O.F.) that created DFS and the Financial Services Commission, both of which were effective January 7, 2003

The bill also removes references to viatical settlement purchase agreements regarding rate regulation not authorized.

Section 19. Amends s. 626.9927, F.S., to reassign the Department of Insurance to the Office of Insurance Regulation, to conform to the constitutional amendment that created the Office of the Chief Financial Officer and to the 2002 act (chapter 2002-404, L.O.F.) that created DFS and the Financial Services Commission, both of which were effective January 7, 2003

The bill also removes references to viatical settlement purchase agreements regarding unfair trade practices.

Section 20. Amends s. 626.99272, F.S., to reassign the Department of Insurance to the Office of Insurance Regulation, to conform to the constitutional amendment that created the office of the Chief Financial officer and to the 2002 act (chapter 2002-404, L.O.F.) that created DFS and the Financial Services Commission, both of which were effective January 7, 2003

Section 21. Amends s. 626.99275, F.S., to revise prohibited practices provisions, and penalty criteria. The bill also specifies non-application to certain ownership transfers under court order.

The bill also reassign statutory authority currently assigned to the Department of Insurance to the Office of Insurance Regulation or the Financial Services Commission, to conform to the constitutional amendment that created the Office of the Chief Financial Officer and to the 2002 act (chapter 2002-404, L.O.F.) that created DFS and the Financial Services Commission, both of which were effective January 7, 2003

Section 22. Amends s. 626.99277, F.S., to revise prohibited false representation provisions.

The bill also removes references to the sales of a viatical settlement agree and replaces it with the business of viatical settlements.

Section 23. Amends s. 626.99278, F.S., to remove references to viatical settlement brokers and requires an anti-fraud plan upon application.

Section 24. Amends s. 626.9928, F.S., to remove reference to viatical settlement broker.

Section 25. Amends s. 626.99285, F.S., to authorize the Office of Insurance Regulation and the Financial Services Commission, under ss. 626.611, 626.621, 626.902, to regulate the business of viatical settlements.

Section 26. Amends s. 626.989, F.S., to include a fraudulent viatical settlement as a fraudulent insurance act.

Section 27. Repeals sections ss. 626.99235, 626.99236, 626.99295, F.S.

Section 28. Provides an effective date upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   By eliminating the "viatical settlement broker" license, DFS will be able to license brokers as individuals only (this is similar to the way life agents are licensed). This will allow the department to reduce the cost of being a broker to licensees and will reduce costs to the department by eliminating the duplicative viatical broker license and by allowing the streamlining of the licensing process.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill adds the NAIC definition of "fraudulent viatical settlement act" to clarify what is unlawful in this business. This impacts penalties and the duty to report fraud to the Division of Insurance Fraud.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable.

2. Other:

Not Applicable.

B. RULE-MAKING AUTHORITY:

The bill reassigns existing rulemaking authority to the Financial Services Commission, to conform to the constitutional amendment that created the office of the Chief Financial Officer and to the 2002 act (chapter 2002-404, L.O.F.) that created DFS and the Financial Services Commission, both of which were effective January 7, 2003.

The bill does not provide for any new rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.