

# 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.)

---

Prepared By: Banking and Insurance Committee

---

BILL: CS/SB 2412

SPONSOR: Banking and Insurance Committee and Senator Garcia

SUBJECT: Regulating Viatical Settlement Investments as Securities

DATE: April 6, 2005

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	Fav/CS
2.			JU	
3.				
4.				
5.				
6.				

---

## I. Summary:

Committee Substitute for Senate Bill 2412 provides that viatical settlement investments are *securities* for purposes of regulation under the Florida Securities and Investor Protection Act (Act).<sup>1</sup> The effect of declaring such investments to be securities is that these investments must be registered with either the Florida Office of Financial Regulation (OFR) or the federal Securities and Exchange Commission (SEC). In addition, persons offering such investments must register with the OFR and provide full and fair disclosures concerning viatical settlement investments to prospective investors.

In 1996, Florida established the framework for the regulation of the viatical settlement industry under Chapter 626, F.S.<sup>2</sup> In general, a viatical settlement transaction 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. Rather than retaining the policy, the provider usually sells all or a part of the policy to one or more investors (“viatical settlement purchasers”). In return for providing funds, these investors receive the death benefit, or a proportionate share thereof, upon the passing of the insured.

Representatives with the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR) state that they have received hundreds of complaints from viatical settlement investors, most of whom are elderly, who assert that they have invested substantial sums and lost millions in such investments. The average age of these elderly investors is 70 with losses totaling approximately \$498 million. These losses are due to misrepresentations as to the risk and return

---

<sup>1</sup> Chapter 517, F.S.

<sup>2</sup> The regulation is under Part X of chapter 626, F.S.; (Chapter 96-336, L.O.F.)

of viatical investments and the life expectancy of the insured; the lack of full and fair disclosures; and outright fraud which is committed by providers, agents, and brokers.<sup>3</sup>

The bill also makes the following changes:

- defines a viatical settlement investment as an agreement for the purchase, sale, assignment, transfer, devise, or bequest of any legal or equitable interest in a viaticated policy;
- clarifies that a viatical settlement investment does not include certain financing arrangements that involve large institutional investors or transfers of viaticated policies pursuant to court orders;
- provides that a viatical settlement investment is not an exempt security under certain provisions in the Act and that transactions in viaticated policies are not exempt transactions under certain provisions in the Act, unless the sale is to a qualified institutional buyer;
- defines a “qualified institutional buyer” to mean a designated institution which invests at least \$100 million of either its own funds or funds of others on a discretionary basis;
- grants rule authority to the Commission to:
  - establish requirements and standards for the filing, content, and circulation of a prospectus or other sales literature for several types of securities in order to determine whether such offering is fair, just, or equitable;
  - establish disclosures to purchasers of viatical settlement investments and recordkeeping requirements for sellers of such investments;
  - specify requirements for investment advisors deemed to have custody of client funds; and,
  - govern the conduct by and prohibited business practices for investment advisors, dealers, and their associated persons.
- Eliminates the requirement for a separate viatical settlement broker license because brokering may now be done by a licensed life insurance agent who is self appointed;
- Outlines grounds for the Department of Financial Services (DFS) to deny an application for or suspend or revoke a license for specified persons involved in viatical settlement contract transactions;
- Requires viatical settlement providers to file annual audited financial statements and detailed reports containing data supporting the accuracy of life expectancies for each viatical settlement contract with the DFS, and to maintain a deposit of \$100,000;

---

<sup>3</sup> The DFS representatives state that recently two principals of a viatical company were convicted by a Pensacola federal jury of two dozen charges ranging from money laundering to mail fraud; and that last May, federal and state regulators shut down and suspended the license of the nation’s largest viatical settlement company (located in Ft. Lauderdale) for securities violations, fraud, and misrepresentation.

- Mandates criminal penalties for persons, in issuing a life expectancy, to issue such an expectancy that is not based upon generally accepted medical or actuarial practices; to receive compensation which is contingent upon providing a designated life expectancy, or knowingly understate or overstate a life expectancy with the intent to defraud;
- Clarifies that the Office of Insurance Regulation (OIR) regulates viatical settlement purchase agreements prior to the effective date of the bill (July 1, 2005) and specifies that the OIR may deny a license for a viatical settlement provider;
- Specifies requirements for a viatical settlement provider to maintain his or her license and the process by which such providers handle in-process viatical settlement purchase agreements prior to the effective date of the bill (July 1, 2005);
- Repeals s. 626.99245(4), F.S., which provides that the offer, sale and purchase of viatical settlement contracts, and the regulation of viatical settlement providers shall be within the exclusive jurisdiction of the Office of Insurance Regulation; and,
- Eliminates definitions, deletes obsolete references, and makes changes in Part X of chapter 626, F.S. (Viatical Settlement law) to conform to the security requirements of the Act.

This bill substantially amends the following sections of the Florida Statutes: 517.021, 517.081, 624.501, 626.015, 626.112, 626.207, 626.331, 626.611, 626.777, 626.7845, 626.9911, 626.9913, 626.9914, 626.9916, 626.9919, 626.992, 626.9921, 626.9922, 626.99245, 626.9925, 626.9926, 626.9927, 626.99275, 626.99278, 626.9928, 626.99285, and 626.99295.

The bill creates the following sections of the Florida Statutes: 517.072, 517.1215 and 517.1217.

The bill repeals the following section of the Florida Statutes: 626.9917, 626.9918, 626.99235, 626.99236, and 626.99277.

## II. Present Situation:

### **Viatical Settlement Transactions**

A viatical<sup>4</sup> settlement transaction is a written agreement under which the owner of a life insurance policy, the “viator,”<sup>5</sup> sells the policy to another person or company, the “viatical settlement provider,” for less than the expected death benefit under the policy.<sup>6</sup> The amount paid

<sup>4</sup> The word viatical is derived from the Latin word, viaticum, which described the payment or provisions given to travelers or soldiers embarking on a long journey.

<sup>5</sup> Generally the viator/policyholder is also the individual whose life is insured by the policy, although the holder of the policy may be a spouse or business partner of the insured, or the group insurance plan itself. Note: The type of life insurance policy sold by the viator may vary, i.e., whole life, term, universal, or a group certificate.

<sup>6</sup> The terms utilized under the Viatical Settlement Act, Part X, Ch. 626, F.S., mean the following:

Viator: the owner of a life insurance policy who enters into a viatical settlement agreement by selling the policy ownership and beneficiary rights in exchange for a cash payment.

for the policy is usually based upon the projected life expectancy of the insured and other criteria.<sup>7</sup> There is usually a third party involved in the transaction, the “viatical settlement broker,” who for a fee, negotiates the viatical settlement arrangements. The viatical settlement provider then assumes responsibility for the premium payments and upon the death of the insured, receives the full amount of the death benefit from the policy. However, rather than retaining the policy, the provider usually sells all or a part of the policy to one or more investors, the “viatical settlement purchasers,” or may group together a number of policies and resell them in fractions to many purchasers. In return for providing funds, purchasers receive the death benefit, or a proportionate share thereof, upon the passing of the insured. This benefit is designed to be more than the original investment, creating a “return on investment.”

Viatical settlements emerged about 25 years ago as a way for policyholders with terminal illnesses and short life expectancies to sell or “viaticate” their life insurance policies to third parties, usually private, individual investors, and obtain ready cash for medical expenses and other needs. The market for viatical settlements expanded in the 1980s and 1990s, when companies bought policies from AIDS patients who were seeking to sell the death benefits of their life insurance policy at a discount for cash in order to pay their medical bills. At that time, AIDS patients were dying at an alarming rate and investors, who purchased these death benefits, experienced enormous returns on their investments. The viatical industry has grown rapidly across the country, brokering between \$2 billion and \$3 billion of viaticated policies in 2002.

However, in early 1992, the first life-prolonging drugs for AIDS patients were introduced and these drugs significantly extended their life expectancies. According to representatives with the Florida Office of Insurance Regulation (OIR), as life insurance policies of terminally ill individuals became more difficult to obtain, unscrupulous individuals began to devise ways to cheat policyholders out of the proceeds of their life insurance policies and viators would either be too sick or lack the financial ability to contest or litigate the theft of their policies. Consequently in 1996, Florida began regulating viatical settlement transactions through the

**Viatical settlement provider:** the entity which purchases the policy ownership and beneficiary rights from the viator. The provider may subsequently sell the investment opportunity in the death benefit of a viaticated policy to a single investor or multiple investors. Providers must be licensed by the Office of Insurance Regulation (OIR).

**Viatical settlement broker:** the entity who, on behalf of a viator and for a fee, negotiates an agreement between a viator and a viatical settlement provider. The broker has a fiduciary duty to act according to the viator’s best interests, and collects a fee from the provider after the contract is executed. Brokers must be licensed by the Department of Financial Services (DFS), however, individuals licensed as life agents may perform the duties of brokers without obtaining a separate brokers license.

**Viatical settlement sales agent:** an individual who solicits viatical settlement purchasers to invest their money in viatical settlements and must be licensed by the DFS.

**Viatical settlement purchaser:** an individual who invests money to purchase an interest in a life insurance policy as part of a viatical settlement purchase agreement.

**Related provider trust:** means a titling trust or other trust established by a licensed viatical settlement provider or financing entity for the purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction.

**Escrow agent or independent viatical trustee:** the entity that holds the documents and money until ownership rights of the policy have been transferred from the viator to the viatical settlement provider. Agents or trustees are not licensed by the state.

**Viatical settlement contract:** the written agreement between the viator and the viatical settlement provider.

**Viatical settlement purchase agreement:** the written agreement entered into by a viatical settlement purchaser (investor), to which the viator is not a party.

<sup>7</sup> The purchase price for each policy must be calculated depending upon the type, size, and cash value of the policy involved, the amount and nature of any loans against the policy, the amount of outlay needed to maintain the coverage, and the rating and financial condition of the insurer.

Department of Insurance (DOI) in an effort to protect the individual whose life is insured.<sup>8</sup> As the number of viatical settlement transactions declined during the mid-1990's, transactions involving a healthy owner of a life insurance policy increased. Known as "life or senior settlements,"<sup>9</sup> these transactions do not take the policyowners' immediate mortality into consideration, but involve the sale of unwanted or unneeded life insurance policies to third parties for a fraction of the face amount.<sup>10</sup> In response to this changing market, Florida expanded viatical settlement regulation to apply to life settlement agreements in 2000.<sup>11</sup>

### **Regulation of Viatical Settlement Transactions**

Two agencies are responsible for regulating viatical settlement transactions in Florida: the OIR and the DFS. The OIR regulates the seven licensed viatical settlement providers in Florida.<sup>12</sup> Of the seven providers, five of the companies (Coventry, Life Equity, Peachtree Life Settlements, Living Benefits, and Stone Street) represent themselves as being institutionally funded which means that they have entered into an agreement with a financing company to purchase and hold viaticated policies until such policies have matured. Coventry is the largest of the five, with a 47 percent market share in Florida. Two viatical settlement providers (Life Settlements International and Lifeline) market policies to individual investors. The OIR screens prospective provider applicants prior to licensure; approves provider contract and other related forms; reviews provider plans of operation; investigates complaints; takes administrative action against providers when sufficient cause is present; and conducts market conduct examinations of providers to assure required compliance with the Viatical Settlement Act.

The DFS licenses viatical settlement brokers<sup>13</sup> and life agents<sup>14</sup> (who carry out similar responsibilities as brokers under the viatical settlement law). That agency screens prospective licensees, conducts investigations, and carries out market conduct examinations to assure compliance with the law.

---

<sup>8</sup> Ch. 96-336, L.O.F.

<sup>9</sup> Many life settlement companies purchase policies from individuals who are over the age of 65, have experienced a decline in health, and have remaining life expectancies of between six and twelve years (although in some cases life expectancies outside this range are considered). *The Benefits of a Secondary Market for Life Insurance Policies*, Neil A. Doherty and Hal J. Singer, (2002).

<sup>10</sup> These policies are not lapsed or matured, but are sold to third parties (investors) who hold the contracts until the insured's death. *The Brewing Storm: Securities Regulation and Lifetime Settlements*, Ron Rowland, *Journal of Financial Services Professionals*, May, 2003.

<sup>11</sup> Ch. 2000-344, F.S. Florida changed the definition of a viator by removing the "diagnosed with a chronic or terminal illness" qualification to cover anyone willing to sell the death benefits of his or her life insurance policy for less than the death value.

<sup>12</sup>(1) Coventry First, LLC – Fort Washington, PA – date licensed 4/26/01; (2) Life Settlements International, LLC – Boca Raton, FL – date licensed 6/9/00; (3) Life Equity, LLC – Hudson, Ohio - date licensed 12/21/01; (4) Life Settlements Corporation d/b/a Peachtree Life Settlements – Norcross, GA – date licensed 6/14/01; (5) Living Benefits Financial Services – Minnetonka, MN – date licensed 5/6/02; (6) Stone Street Financial, Inc. – Bethesda, MD – date licensed 4/26/01; and, (7) Wm. Page & Associates d/b/a/ The Lifeline Program – Ft. Lauderdale, FL – date licensed 3/31/97. Source: OIR.

<sup>13</sup> There are 181 individuals licensed as viatical settlement brokers in Florida as of 2004.

<sup>14</sup> There are 101,466 licensed resident life agents in Florida who are licensed under s. 626.015, F.S., as of 2004.

### **Complaints from Viatical Settlement Investors**

In 2004, the Banking and Insurance Committee issued an interim report on the viatical industry and found that it constituted a billion dollar business in Florida.<sup>15</sup> The report found that from 1997 through 2002, licensed viatical settlement providers in Florida had purchased a total of 15,540 insurance policies from viators having a face value of over \$3 billion for which viators were paid approximately \$951 million.

The report noted that both the DFS and the OIR had received hundreds of viatical settlement complaints since the inception of the Act, with the vast majority coming from viatical settlement purchasers (investors). These complaints resulted in the opening of many investigative cases by the agencies which typically involved misrepresentations to investors (including misrepresentations as to the life expectancy of the insured), lack of full and fair disclosures, and fraud committed by providers, agents and brokers. Confusion as to the life expectancy of the insured was of major concern to investors because the state does not license the individual providing estimates of life expectancies. Furthermore, the person providing these estimates is not required to be a licensed medical professional or to have experience in diagnosing diseases or estimating life expectancies.

The report found that the complainants were primarily elderly investors whose average age was 70 years old, with the average amount invested by each investor being \$44,733. Many of these elderly investors had lost millions of dollars (the total estimated by the OIR is \$498 million) to fraudulent viatical settlement providers as shown in Table 1, below. Officials noted that officers with three of the five companies listed in Table 1 (Future First Financial Group, American Benefit Services and Financial Federated Title & Trust, and Justus Viatical Group) had been or were currently being criminally prosecuted. These officials underscored that they have been working closely with the Federal Viatical Task Force involving the FBI and U.S. Postal Inspection Service, as well as having ongoing partnerships with the Securities and Exchange Commission and other state law enforcement agencies involved in viatical investigations.<sup>16</sup>

The report recommended that viatical settlement investments should be treated as securities and registered pursuant to the Florida Securities and Investor Protection Act and that all persons that offer such investments should be licensed and subject to securities regulations.

Although officials with the DFS and OIR claim they have had some success in taking administrative action against viatical settlement providers, brokers, and agents who have defrauded these elderly investors,<sup>17</sup> their success has been limited because the current law does not protect consumers who invest in viatical settlement investments. Such investments are not scrutinized and disclosures are not provided as is the case with securities registered under the

---

<sup>15</sup> Interim Report 2004-111, *The Viatical Settlement Industry: Does the Current Law Adequately Protect Florida's Consumers?* The report recommended that viatical settlement invest

<sup>16</sup> Testimony of Florida Chief Financial Officer Tom Gallagher, before the U.S. House of Rep., Committee on Financial Services, Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises (May 15, 2003).

<sup>17</sup> For example, just this past month, two principals of Lifetime Capital Inc. were convicted by a Pensacola federal jury of two dozen charges ranging from money laundering to mail fraud. More than \$21 million in investor funds were misappropriated. Additionally, last May, federal and state regulators shut down and suspended the license of the nation's largest viatical settlement company, Mutual Benefits Corporation, for securities violations, fraud and misrepresentation. At the same time, the company was charged criminally with racketeering and 15 counts of investor fraud.

Florida securities law. Regulating viatical settlement investments as securities would provide consumers with full and fair disclosure of all material terms and conditions of viatical transactions so that these consumers could make a realistic appraisal of the merits of the security and exercise informed judgment in determining whether or not to purchase such a product.

Agency representatives believe that the Viatical Settlement Act does not curtail criminal or civil fraud committed by providers, brokers or agents, or curb abuses as illustrated by the millions of dollars investors have lost as noted in the table below.

<b><u>Estimated Provider Losses to Investors</u></b>	
<b><u>Company Name/Location</u></b>	<b><u>Estimated Losses To Investors</u></b>
<b>1. Future First Fin. Group/ Ponte Vedra, Fl.</b>	<b>\$ 203 million</b>
<b>2. American Benefits Ser. Lake Worth, Fl. (and Finl. Fed. Title &amp; Trust)</b>	<b>117 million</b>
<b>3. Accelerated Benefits/ Orlando, Fl.</b>	<b>114 million</b>
<b>4. Resource Funding/ Atlanta, Ga.</b>	<b>61 million</b>
<b>5. Justus Viat. Grp./ Juno Beach, Fl.</b>	<b>3 million</b>
<b><u>Total:</u></b>	<b>\$ 498 million</b>

### **Regulating Viatical Settlement Investments as Securities**

The Office of Financial Institutions and Securities Regulation (OFR) regulates security transactions under the Florida Securities and Investor Protection Act (Act).<sup>18</sup> The Act requires a security to be registered<sup>19</sup> and a broker dealer and sales agent to be registered with the OFR.<sup>20</sup> Applicants who register a security in Florida must file detailed financial and other information (a prospectus) to the OFR which includes the names and addresses of directors, officers, and partners of the issuer; the location of the issuer's principal business office; the general character of the business to be transacted by the issuer; a capitalization statement of the issuer; a balance sheet; a detailed statement of the plan upon which the issuer proposes to transact business; cash resources; and other detailed financial information.<sup>21</sup> All statements, exhibits and documents pertaining to registering a security must be made under oath.<sup>22</sup>

<sup>18</sup> Chapter 517, F.S.

<sup>19</sup> A security may be registered with either the Florida OFR or the federal Securities and Exchange Commission (SEC) under s. 517.07, F.S. The OFR must be notified that the security has been registered with the SEC under s. 517.082, F.S.

<sup>20</sup> Section 517.12, F.S.

<sup>21</sup> Section 517.081, F.S.

<sup>22</sup> Section 517.081(4), F.S. A \$1,000 filing fee is also required.

No securities that are required to be registered with the OFR shall be sold unless prior to each sale the purchaser is furnished with a prospectus meeting the requirements under the Act.<sup>23</sup> Representatives with the OFR claim that this requirement provides a potential investor with full and fair disclosures concerning the security. Also, the law requires that prior to recommending a security, a licensed company and agent would be required to determine that the investment is suitable for the prospective purchaser, taking into consideration the purchaser's financial status, tax status, investment objectives, and investment experience.<sup>24</sup> This would serve to protect senior citizens from investing the majority of their savings in an investment with a large inherent risk, according to these officials.

The Act provides for suspension, revocation or denial of the registration of a security and similar sanctions against dealers, investment advisers and associated persons.<sup>25</sup>

Last session, legislation was enacted which amended s. 626.99245(4), F.S., which provided that that the offer, sale and purchase of viatical settlement contracts, and the regulation of viatical settlement providers, shall be within the exclusive jurisdiction of the Office of Insurance Regulation. The effect of this legislation was to preclude any investigations of viatical settlement investments as securities by the OFR.<sup>26</sup>

### **Regulating Viatical Settlement Transactions in Other States**

According to the National Association of Insurance Commissioners, 46 states regulate investments in viatical or life settlements as securities. Such regulation is either specifically codified in statute, by executive decree, or by court ruling. The regulation by each state varies greatly, with some states exempting investments in single viaticated policies or viatical investments involving institutional investors.<sup>27</sup> The four states which do not regulate such investments as securities are Florida, Connecticut, Nevada, and Wyoming.

---

<sup>23</sup> Section 517.07(2), F.S. See Chapter 69 W-700.005 to 69 W-700.015, F.A.C.

<sup>24</sup> Section 517.161(1)(h), F.S.

<sup>25</sup> Section 517.161, F.S.

<sup>26</sup> Prior to this legislation, the OFR had conducted investigations pursuant to investor viatical complaints to determine whether such an investment met the criteria of a "security" under ch. 517, F.S. Representatives with the OFR argue that a viatical settlement transaction is a hybrid transaction that implicates both insurance law and securities law. The "insurance law component" of the transaction arises when the viatical settlement provider transacts with the viator. The "securities component" of the transaction arises when a viatical settlement provider solicits investors to raise money to fund the pay-out to the insured. Investors are induced to invest with the promise that they will receive a death benefit, or fraction thereof, in an amount that will exceed their original investment. This type of arrangement constitutes an "investment contract," which is a type of security.

The OFR has successfully litigated two cases involving viatical investments wherein the courts have held that such investments are securities under the Act. In *Kligfeld v. OFR*, 876 So.2d 36 (Fourth DCA 2004) and in *Denton v. OFR*, 869 So.2d 569 (Fifth DCA 2004), both courts held that a viatical investment offered by American Benefits Services constituted an investment contract under the *Howey* test and therefore constituted a security. Florida has adopted the U. S. Supreme Court's test in *SEC v. W.J. Howey*, 328 U.S. 293 (1946), which contains the standards which are used to determine whether a viatical investment is an investment contract, and therefore a security. The criteria are: 1) investment of money; 2) in a common enterprise; 3) with an expectation of profits to be earned through the efforts of others. If a viatical investment meets these elements, Florida law requires the registering of such investments as nonexempt securities, the registration of the individual selling the investments with the OFR, and full and fair disclosure of all material terms and conditions of the transaction. For example, the sale of an interest in a pool of viaticated insurance policies would constitute the sale of a security, and compliance with the securities law would be required, according to OFR staff.

<sup>27</sup> Viatical and Life Settlement Assn. of America.



### III. Effect of Proposed Changes:

**Section 1.** Amends s. 517.021, F.S., pertaining to definitions, to include the term “qualified institutional buyer” which is defined by U.S. Securities and Exchange Commission (SEC) Rule 144A<sup>28</sup> (17 C.F.R. 230.144A(a)) under the Securities Act of 1933, as amended, or any foreign buyer that satisfies the minimum financial requirements of such rule.

The bill includes the term “*viatical settlement investment*” within the definition of a security which is regulated under the Florida Securities and Investor Protection Act (Act). A “viatical settlement investment” means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of any legal or equitable interest in a viaticated policy. However, the term does not include:

- the transfer of an interest in a previously viaticated policy from a natural person who transfers no more than one such interest in a calendar year;
- the provision of stop-loss coverage to a viatical settlement provider, financing entity, or related provider trust, by an authorized or eligible insurer;
- the transfer or assignment of a viaticated policy from a licensed viatical settlement provider to another such provider, a related provider trust, or a financing entity, or a contingency insurer, if such transfer or assignment is not for the direct or indirect promotion of a scheme or enterprise with the intent to violate or evade the securities Act;
- the transfer or assignment of a viaticated policy to a bank, trust company, savings institution, insurance company, dealer, or investment company, as defined by the Investment Company Act of 1940, a pension or profit-sharing trust, or qualified institutional buyer, if the transfer or assignment is not for the direct or indirect promotion of a scheme or enterprise with the intent to violate the Act; or,
- the transfer or assignment of a viaticated policy by a court-appointed conservator of a viatical settlement provider who transfers or assigns ownership of viaticated policies pursuant to the court's order.

**Section 2.** Creates s. 517.072, F.S., to provide that a “viatical settlement investment” is not an exempt security under section 517.051.<sup>29</sup> Also, the offering of a viatical settlement investment is not an exempt transaction under s. 517.061, F.S.,<sup>30</sup> unless the offering is to a qualified institutional buyer. This provision is to prevent those who sell viaticated policies to individual investors from structuring the sale to avoid registration under the Act.

**Section 3.** Amends s. 517.081, F.S., pertaining to registration procedures. The bill grants rule authority to the Financial Services Commission (Commission) to establish requirements and

---

<sup>28</sup> The rule defines a qualified institutional buyer to mean a designated institution which invests at least \$100 million of either its own funds, or funds of others, on a discretionary basis.

<sup>29</sup> Specifically, s. 517.051, F.S., (6), (8), and (10)

<sup>30</sup> Specifically, s. 517.061, F.S., (2), (3), (8), (11), and (18), F.S.

standards for the filing, content, and circulation of a prospectus or other sales literature for several types of securities in order to determine whether such offering is fair, just, or equitable. These securities include equity securities, insurance company securities, real estate investment trusts (REITs), and other traditional investments. The bill also grants the Commission rule authority relating to disclosures to purchasers of viatical settlement investments and recordkeeping requirements for sellers of such investments.

**Section 4.** Creates s. 517.1215, F.S., which grants rule authority to the Commission to specify requirements for investment advisors deemed to have custody of client funds relating to: a) notification of custody, maintenance of and safeguards of client funds; b) communications with clients and independent representatives; c) requirements for investment advisors who have custody of pooled investments; and, d) exceptions to custody requirements. The legislation also authorizes rule making authority to the Commission to regulate the conduct by and prohibited business practices for investment advisors and their associated persons. It requires the Commission to consider general industry standards as to federal and self-regulatory agencies and regulatory associations, including the SEC, the National Association of Securities Dealers, and the North American Securities Administrators Association.

**Section 5.** Creates s. 517.1217, F.S., which grants rule authority to the Commission for rules relating to prohibited practices for dealers and their associated persons. It requires the Commission to consider general industry standards as to federal and self-regulatory agencies and regulatory associations, including the SEC, the National Association of Securities Dealers, and the North American Securities Administrators Association.

**Section 6.** Amends s. 624.501, F.S., provides that life insurance agents may self appoint and pay specified fees to DFS.

**Section 7.** Amends s. 626.015, F.S., the definition of a life insurance agent to include an individual who acts as a viatical settlement broker.

**Section 8.** Amends s. 626.112, F.S., with respect to insurance agents, service representatives and other licensees. It provides that such licensees may offer or attempt to negotiate on behalf of another person a viatical settlement contract.

**Section 9.** Amends s. 626.207, F.S., to conform cross-references.

**Section 10.** Amends s. 626.331, F.S., to require a licensed life insurance agent to self appoint as a viatical settlement broker.

**Section 11.** Amends s. 626.611, F.S., to provide grounds for the refusal, suspension or revocation of specified agents' licenses. The bill lists such grounds in transactions related to viatical settlement contracts which include the commission of fraudulent or dishonest acts, dealing in bad faith with viators, and receiving certain fees that involve unlicensed viatical settlement providers or others.

**Section 12.** Amends s. 626.777, F.S., relating to life insurance agents, to include the performance of the functions of a viatical settlement broker.

**Section 13.** Amends s. 626.7845, F.S., to specify that no person, except a licensed life insurance agent, may in Florida offer or negotiate on behalf of another person a viatical settlement contract.

**Section 14.** Amends s. 626.9911, F.S., relating to definitions, to define “life expectancy” to mean an opinion as to how long a person is to live and “life expectancy provider,” to mean a person that provides a provider or broker with a life expectancy. The bill eliminates viatical settlement purchaser under the Viatical law and the terms viatical settlement purchase agreement, sales agent and purchaser.

**Section 15.** Amends s. 626.9912, F.S., to eliminate references to a viatical settlement purchase agreement.

**Section 16.** Amends s. 626.9913, F.S., requiring a viatical settlement provider to provide audited financial statements by an independent certified public accountant to the DFS; to maintain a deposit of \$100,000; and to prohibit creditor claims on such deposits. The bill requires an annual report to be submitted to DFS by providers containing specified information supporting the accuracy of the providers’ life expectancy estimates for each viatical settlement contract. Such information includes, but is not limited to, data about the viator, the insurance policy, the disease diagnosis code, and other relevant information.

**Section 17.** Amends s. 626.9914, F.S., to clarify the authority of OIR to deny a license for a viatical settlement provider.

**Section 18.** Amends s. 626.9916, F.S., to eliminate the separate viatical settlement broker license and to provide that brokers obtain a life agent license. Under existing law, a viatical settlement broker must either have a life agent license or the separate broker license. The bill clarifies that, except as provided within the section, all provisions of Part I and III of Chapter 626, F.S., (regulations pertaining to life insurance agents and insurance representatives) apply to all such persons and their conduct.

The bill requires a life agent to be self-appointed to conduct viatical business and terminates all existing viatical settlement broker licenses effective October 1, 2005. The bill restates that such persons owe a fiduciary duty to the viators they represent and prohibits a viatical broker from commission sharing with anyone who does not have a life agent license.

**Section 19.** Amends s. 626.9919, F.S., to remove references to a viatical settlement broker and sales agent license.

**Section 20.** Amends s. 626.992, F.S., which makes this section conform to the elimination of a separate viatical settlement broker license and eliminates references to viatical settlement sales agents due to the changes under the securities Act.

**Section 21.** Amends s. 626.9921, to delete obsolete references to forms relating to viatical settlements.

**Section 22.** Amends s. 626.9922, F.S., to specify that OIR has regulatory authority over all viatical settlement purchase agreements entered before the effective date of this bill, July 1, 2005. The effect of this provision is that after the effective date, investments in viaticals will be treated as “securities” under the Act. According to OIR officials, there are tens of thousands of viatical settlement purchase agreements that have not matured, that is, the viator has not died. The bill clarifies that these pre-existing viatical settlement purchase agreements are regulated by the OIR.

The bill also requires OIR to make a referral to the Office of Financial Regulation (OFR) or the SEC if an examination of a provider indicates the provider lacks the finances to perform its obligations under these pre-existing viatical settlement purchase agreements, such as paying premiums and tracking the insureds. Further, the bill clarifies that OIR can examine the books and records of life expectancy providers, who are required to maintain records for 3 years after the death of the insured.

**Section 23.** Amends s. 626.99245, F.S., to repeal s. 626.99245(4), F.S., which provides that the offer, sale and purchase of viatical settlement contracts, and the regulation of viatical settlement providers shall be within the exclusive jurisdiction of the Office of Insurance Regulation.

**Section 24.** Amends s. 626.9925, F.S., relating to rules of the Financial Service Commission to delete references to viatical settlement purchasers and purchase agreements to conform to other changes made by the bill.

**Section 25.** Amends s. 626.9926, F.S., to delete an obsolete reference to a viatical settlement purchase agreement.

**Section 26.** Amends s. 626.9927, F.S., to delete an obsolete reference to viatical settlement purchase agreements and to otherwise conform with the bill.

**Section 27.** Amends s. 626.99275, F.S., to delete an obsolete reference to viatical settlement purchase agreements and add criminal violations related to false life expectancies.

**Section 28.** Amends s. 626.99278, F.S., to eliminate the requirement that viatical settlement brokers file anti-fraud plans with the Division of Insurance Fraud and to add a requirement that the anti-fraud plans (filed by providers) address false life expectancy matters.

**Section 29.** Amends s. 626.9928, F.S., to delete a reference that a viatical settlement broker is subject to the acquisition of stock (or other interests) law under s. 628.4615, F.S.

**Section 30.** Amends s. 626.99285, F.S., to delete references to viatical settlement sales agents and purchase agreements.

**Section 31.** Amends s. 626.99295, F.S., to specify a “grace period” detailing the process by which providers are to handle in-process viatical settlement purchase agreements which will not be completed by July 1, 2005, the date the bill becomes effective.

**Section 32.** Repeals ss. 626.9917, 626.9918, 626.99235, 626.99236, and 626.99277, F.S., to conform to other changes made by the bill.

**Section 33.** Provides that the bill will take effect July 1, 2005.

**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:

Representatives with the DFS and the OIR state that defining a viaticated settlement investment as a security would greatly benefit potential investors because of the disclosure and other protections afforded under Chapter 517, F.S. (Florida Securities and Investor Protection Act (Act)). These disclosures would ensure that investors are provided with all relevant facts, including the risk of the investment, before making a viatical investment.

Persons offering viatical settlement investments would be required to be registered and licensed under the Act with the OFR. Viatical settlement investments would be required to be registered with either the OFR or the SEC.

Viatical settlement brokers would have to be licensed as life insurance agents under the provisions of the bill.

C. Government Sector Impact:

According to representatives with the DFS and the OIR, both agencies will be able to administer the provisions of this legislation within their existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

---

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

---

## **VIII. Summary of Amendments:**

None.

---

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

---