

**The Florida Senate**  
**PROFESSIONAL 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 2198

INTRODUCER: Banking and Insurance Committee and Senator Gaetz

SUBJECT: Insurer Financial Statements

DATE: April 9, 2007

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Emrich	Deffenbaugh	BI	Fav/CS
2.				
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**I. Summary:**

Committee Substitute for Senate Bill 2198 allows insurance administrators and viatical settlement providers to file specified financial statements with the Office of Insurance Regulation (OIR) on a fiscal year, as opposed to a calendar year, basis. Specifically, the bill allows an authorized insurance administrator with an established fiscal year of July 1 through June 30, whose sole stockholder is a health care provider association which is not an affiliate of an insurer, to submit the preceding fiscal years audited financial statement to OIR on or before December 31. Currently, the law requires that audited financial statements be filed on or before June 1 for the preceding calendar year ending December 31<sup>st</sup>.

The bill allows a viatical settlement provider to file its annual audited financial statement with the OIR covering a 12-month period ending on a day falling during the last 6 months of the preceding calendar year. Currently, such providers must file annual financial statements on the last day (December 31<sup>st</sup>) of the preceding calendar year.

This bill amends the following sections of the Florida Statutes: 626.89 and 626.9913.

**II. Present Situation:**

**Insurance Administrators**

An “administrator,”<sup>1</sup> more commonly referred to as a third party administrator or TPA, must be licensed by the Office of Insurance Regulation (OIR). Insurance administrators provide various

<sup>1</sup> As provided in s. 626.88(1), F.S., “[A]n “administrator” is any person who directly or indirectly solicits or effects coverage of, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with

administrative services for life and health insurers, health maintenance organizations (HMOs), self-insurance programs, and other types of insurers. Some of the services provided by administrators include soliciting and making effective insurance coverage, collecting premiums, and adjusting and settling claims.

Administrators are placed under various regulatory requirements under ss. 626.88-626.894, F.S. For example, an administrator must make its books and records available to the OIR for examination, audit, and inspection and must maintain its business records for five years.<sup>2</sup> The law requires that an insurance administrator must file its annual financial statement with the OIR on or before March 1, which shall be for the preceding calendar year.<sup>3</sup> Each administrator must also file an audited financial statement performed by an independent certified public accountant with the OIR on or before June 1, for the preceding calendar year ending December 31. The law specifies what must be filed with the statements so that the OIR can analyze these submissions to assess the financial solvency of these entities.

### **Viatical Settlement Providers**

In general, a viatical settlement transaction is an agreement under which the owner of a life insurance policy ("viator")<sup>4</sup> sells the policy to another person ("viatical settlement provider")<sup>5</sup> in exchange for an up-front payment, which is generally less than the expected death benefit under the policy.<sup>6</sup> Rather than retaining the policy, the provider usually sells all or a part of the policy to one or more investors. In return for providing funds, these investors receive the death benefit, or a proportionate share thereof, upon the passing of the insured.

Under s. 626.9913, F.S., a viatical settlement provider licensee must file annually, on or before March 1, a statement containing specified financial and other information to the OIR and pay a license fee of \$500. After December 31, 2007, the annual statement shall include an audited financial statement on the last day of the preceding calendar year. If the audited financial statement is not complete, the licensee must submit an unaudited financial statement for the preceding calendar year and an officer of the licensee must submit an affidavit stating that the audit has not been completed. In this case, the licensee has until June 1 to submit the audited financial statement.

Additionally, the annual statement must include a report of all life expectancy providers<sup>7</sup> who have provided life expectancies to the provider for use in connection with a viatical settlement contract or investment. Further, information regarding a related provider trust<sup>8</sup> established by the

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authorized commercial self-insurance funds or with insured or self-insured programs which provide life or health insurance coverage . . . or any person who, through a health care risk contract as defined in s. 641.234 with an insurer or health maintenance organization, provides billing and collection services to health insurers and health maintenance organizations on behalf of health care providers, . . .”

<sup>2</sup>Section 626.884, F.S.

<sup>3</sup> Section 626.89, F.S.

<sup>4</sup> A viator means the owner of a life insurance policy who enters into a viatical settlement contract.

<sup>5</sup> A viatical settlement provider licensee is a person who is licensed to effectuate a viatical settlement contract.

<sup>6</sup> The regulation of viatical settlements is under Part X of chapter 626, F.S.

<sup>7</sup> A life expectancy provider is a person who determines life expectancies or mortality ratings used to determine life expectancies.

<sup>8</sup> A related provider trust is a titling trust established by a licensed viatical settlement provider for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financial transaction.

viatical settlement provider must be submitted. Failure to timely file the annual statement or the audited financial statement is grounds for immediate license suspension.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 626.89, F.S., pertaining to annual financial statements. The bill allows an authorized insurance administrator with an established fiscal year of July 1 through June 30, whose sole stockholder is an association representing health care providers which is not an affiliate of an insurer to submit the preceding fiscal year's audited financial statement to OIR on or before December 31. Currently, the law requires that audited financial statements be filed on or before June 1 for the preceding calendar year ending December 31<sup>st</sup>.

**Section 2.** Amends s. 626.9913, F.S., relating to viatical settlement providers. The bill allows viatical settlement providers to file their annual audited financial statement covering a 12-month period ending on a day falling during the last 6 months of the preceding calendar year. Currently, viatical settlement providers must file annual statements on the last day (December 31<sup>st</sup>) of the preceding calendar year.

**Section 3.** Provides that the act shall take effect July 1, 2007.

Officials with OIR contend that the filing of the annual statements on a fiscal year, as opposed to a calendar year, creates inconsistencies among licensees and makes it difficult for the OIR to do comparative financial analyses of licensees since such entities would be reporting data for varying time periods. It also makes it difficult for the OIR to assess the solvency of certain entities. For example, if an administrator makes a filing based on a fiscal year which is different from its affiliated insurer, there is the possibility of manipulation of financial statements and the shifting of funds between the two entities which would be difficult for the OIR to detect.

Proponents of the bill state that it is costly to submit reports to OIR on a calendar year end basis when they operate on a fiscal year basis different from a calendar year.

### 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:**

Viatical settlement providers and insurance administrators who maintain their business records on a fiscal year basis will realize cost savings by not having to convert records to a calendar year for submission of reports to the OIR as specified under the bill.

**C. Government Sector Impact:**

The OIR states that the bill does not have a fiscal impact to the office.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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