

January 30, 1998

SENATE BILL No. 372

DIGEST OF SB0372 (Updated January 29, 1998 11:34 am - DI 97)

Citations Affected: IC 27-8-19.8; Noncode; IC 27-8-19.8-4 and IC 27-8-29.8-20 are repealed.

Synopsis: Renames "living benefits agreements" which are now referred to as "viatical settlements". Requires viatical settlement brokers, and persons who solicit, offer, or attempt to negotiate viatical settlement contracts with viators to be licensed life insurance agents. Requires disclosure of specified information to viator at time of application. Requires confidentiality of viator's identity except under certain circumstances.

Effective: July 1, 1998.

Worman

January 12, 1998, read first time and referred to Committee on Rules and Legislative Procedure.

January 22, 1998, amended, reported favorably; reassigned to Committee on Judiciary; Reassigned to Committee on Insurance and Interstate Cooperation.

January 29, 1998, reported favorably — Do Pass.

SB 372—LS 7209/DI 13



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January 30, 1998

Second Regular Session 110th General Assembly (1998)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1997 General Assembly.

SENATE BILL No. 372

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 27-8-19.8-1, AS ADDED BY P.L.116-1994,
2 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 1999]: Sec. 1. As used in this chapter, "applicant" refers
4 to an applicant for a **viatical settlement provider** license under this
5 chapter.
6 SECTION 2. IC 27-8-19.8-4.5 IS ADDED TO THE INDIANA
7 CODE AS A **NEW SECTION** TO READ AS FOLLOWS
8 [EFFECTIVE JANUARY 1, 1999]: **Sec. 4.5. As used in this chapter,**
9 **"viatical settlement broker" means a person that represents a**
10 **viator and for a fee, commission, or other valuable consideration,**
11 **solicits, offers, or attempts to negotiate viatical settlements between**
12 **a viator and one (1) or more viatical settlement providers. The**
13 **term does not include:**
14 (1) **an accountant;**
15 (2) **an attorney; or**
16 (3) **a financial planner;**
17 **retained to represent the viator and whose compensation is paid**

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1 **directly by or at the direction of the viator.**

2 SECTION 3. IC 27-8-19.8-5, AS ADDED BY P.L.116-1994,
3 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JANUARY 1, 1999]: Sec. 5. (a) As used in this chapter, "**living**
5 **benefits viatical settlement** provider" means a person that enters into
6 a **living benefits viatical settlement** contract with a **policyowner**
7 **viator**.

8 (b) The term does not include any of the following:

9 (1) A bank, savings bank, savings and loan association, credit
10 union, or other licensed lending institution that takes an
11 assignment of a life insurance policy as collateral for a loan.

12 (2) The issuer of a life insurance policy that makes a policy loan,
13 permits surrender of the policy, or pays other policy benefits,
14 including accelerated benefits, in accordance with the terms of the
15 policy.

16 SECTION 4. IC 27-8-19.8-6, AS ADDED BY P.L.116-1994,
17 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
18 JANUARY 1, 1999]: Sec. 6. As used in this chapter, "**living benefits**
19 **viatical settlement** contract" means a written agreement between a
20 **person viatical settlement provider** and a **policyowner viator** under
21 the terms of which the **person viatical settlement provider** gives
22 anything of value to the **policyowner viator**, which is less than the
23 expected death benefit of the insurance policy, in return for the
24 **policyowner's viator's** assignment, bequest, devise, sale, or transfer of
25 **all or a part of** the death benefit, **certificate**, or ownership of the
26 insurance policy to the **person viatical settlement provider**. **The term**
27 **does not include a loan by a life insurance company under the**
28 **terms of a life insurance policy, including a loan secured by the**
29 **cash value of a policy.**

30 SECTION 5. IC 27-8-19.8-7, AS ADDED BY P.L.116-1994,
31 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32 JANUARY 1, 1999]: Sec. 7. As used in this chapter, "person" means
33 an individual, an association, a corporation, **a limited liability**
34 **corporation**, an estate, a partnership, a trust, or any other business or
35 legal entity.

36 SECTION 6. IC 27-8-19.8-8, AS ADDED BY P.L.116-1994,
37 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JANUARY 1, 1999]: Sec. 8. As used in this chapter, "**policyowner**"
39 "**viator**" refers to the owner of a life insurance policy **or a certificate**
40 **holder under a group policy** that insures the life of an ill individual
41 **who enters or seeks to enter into a viatical settlement contract.**

42 SECTION 7. IC 27-8-19.8-8.5 IS ADDED TO THE INDIANA



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1 CODE AS A NEW SECTION TO READ AS FOLLOWS
 2 [EFFECTIVE JANUARY 1, 1999]: **Sec. 8.5. The following must be**
 3 **licensed as a life insurance agent under IC 27-1-15.5:**

4 (1) **A viatical settlement broker.**

5 (2) **A person who solicits, offers, or attempts to negotiate a**
 6 **viatical settlement contract with a viator.**

7 SECTION 8. IC 27-8-19.8-8.7 IS ADDED TO THE INDIANA
 8 CODE AS A NEW SECTION TO READ AS FOLLOWS
 9 [EFFECTIVE JANUARY 1, 1999]: **Sec. 8.7. A viatical settlement**
 10 **broker:**

11 (1) **represents only the viator; and**

12 (2) **owes a fiduciary duty to the viator to act according to the**
 13 **viator's instructions and in the best interest of the viator;**
 14 **regardless of the manner in which the viatical settlement broker is**
 15 **compensated.**

16 SECTION 9. IC 27-8-19.8-9, AS ADDED BY P.L.116-1994,
 17 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 18 JANUARY 1, 1999]: Sec. 9. After ~~December 31, 1994~~ **December 31,**
 19 **1998**, a person may not act as a **living benefits viatical settlement**
 20 **provider or enter into, or solicit a living benefits contract unless the**
 21 **person holds an unexpired license issued under this chapter.**

22 SECTION 10. IC 27-8-19.8-10, AS ADDED BY P.L.116-1994,
 23 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JANUARY 1, 1999]: Sec. 10. (a) An applicant must do the following
 25 to obtain a license as a **living benefits viatical settlement** provider:

26 (1) Apply for the license on forms prescribed by the department.

27 (2) Provide information required by the department.

28 (3) Pay the license fee.

29 (b) The application must include the name of each officer, member,
 30 or employee of the applicant who will be authorized by the applicant
 31 to act as a **living benefits viatical settlement** provider under the license
 32 if issued to the applicant.

33 (c) The department shall adopt rules under IC 4-22-2 to set the
 34 licensing fee required by this section.

35 SECTION 11. IC 27-8-19.8-11, AS ADDED BY P.L.116-1994,
 36 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 37 JANUARY 1, 1999]: Sec. 11. The department shall investigate an
 38 applicant and issue a license to the applicant if the department finds all
 39 of the following:

40 (1) The applicant is competent and trustworthy and intends to act
 41 in good faith as a **living benefits viatical settlement** provider.

42 (2) The applicant has a good business reputation.



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1 (3) The applicant has had the experience, training, or education
 2 to qualify the applicant as a **living benefits viatical settlement**
 3 **provider**.

4 (4) If the applicant is a corporation, **or limited liability**
 5 **corporation, it the corporation** is either:

6 (A) incorporated under Indiana law; or

7 (B) authorized to do business in Indiana.

8 SECTION 12. IC 27-8-19.8-14, AS ADDED BY P.L.116-1994,
 9 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JANUARY 1, 1999]: Sec. 14. A license issued under this chapter
 11 authorizes all officers, members, and employees of the license holder
 12 designated under section 10(b) of this chapter to act as **living benefits**
 13 **viatical settlement** providers under the license.

14 SECTION 13. IC 27-8-19.8-15, AS ADDED BY P.L.116-1994,
 15 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JANUARY 1, 1999]: Sec. 15. (a) A license issued or renewed under
 17 this chapter expires on July 1 after its issuance or renewal.

18 (b) A **licensee viatical settlement provider** may renew a license by:

19 (1) applying for renewal on forms prescribed by the department;
 20 and

21 (2) paying the renewal fee.

22 (c) The department shall adopt rules under IC 4-22-2 to do the
 23 following:

24 (1) Set the renewal fee required by this section.

25 (2) Set a date before July 1 and before which receipt of a license
 26 renewal application can be processed without a lapse in the
 27 license.

28 (d) A **licensee viatical settlement provider** that submits an
 29 application for renewal after the date set under subsection (c)(2):

30 (1) is not entitled to have the license renewed before July 1; and

31 (2) may not act as a **living benefits viatical settlement** provider
 32 until the department issues the license renewal, if the department
 33 is unable to process the renewal before July 1.

34 SECTION 14. IC 27-8-19.8-16, AS ADDED BY P.L.116-1994,
 35 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JANUARY 1, 1999]: Sec. 16. The department may at any time require
 37 a **licensee viatical settlement provider** or an applicant for a license to
 38 disclose fully the identity of all of the **licensee's viatical settlement**
 39 **provider's** or applicant's officers, employees, partners, and
 40 stockholders.

41 SECTION 15. IC 27-8-19.8-17, AS ADDED BY P.L.116-1994,
 42 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



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1 JANUARY 1, 1999]: Sec. 17. (a) A **licensee viatical settlement**
 2 **provider** shall file with the department an annual report containing
 3 information prescribed in rules adopted by the department under
 4 IC 4-22-2.

5 (b) The rules adopted by the department under subsection (a) shall
 6 set the date by which annual reports must be submitted.

7 (c) **A viatical settlement provider shall maintain records of each**
 8 **viatical settlement at least five (5) years after the death of the ill**
 9 **individual.**

10 SECTION 16. IC 27-8-19.8-18, AS ADDED BY P.L.116-1994,
 11 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JANUARY 1, 1999]: Sec. 18. (a) When the department reasonably
 13 considers it necessary for the protection of the public, the department
 14 may examine the business and other affairs of a **licensee viatical**
 15 **settlement provider** or an applicant.

16 (b) The department may order a **licensee viatical settlement**
 17 **provider** or an applicant to produce records, books, files, or other
 18 information reasonably necessary to ascertain whether the **licensee**
 19 **viatical settlement provider** or the applicant has violated or is
 20 violating the law or otherwise has acted or is acting contrary to the
 21 public interest.

22 (c) The **licensee viatical settlement provider** or applicant shall pay
 23 the expenses of an examination conducted under this section.

24 SECTION 17. IC 27-8-19.8-19, AS ADDED BY P.L.116-1994,
 25 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JANUARY 1, 1999]: Sec. 19. After a hearing under IC 4-21.5, the
 27 department may suspend, revoke, or refuse to renew a **licensee's**
 28 **viatical settlement provider's license, or impose a civil penalty, or**
 29 **both, if the department finds any of the following:**

30 (1) There was a misrepresentation in the application for the
 31 license.

32 (2) The **licensee viatical settlement provider** is untrustworthy or
 33 incompetent to act as a **living benefits viatical settlement**
 34 **provider.**

35 (3) The **licensee viatical settlement provider** demonstrates a
 36 pattern of unreasonable payments to **policyowners viators.**

37 (4) The **licensee viatical settlement provider** has been convicted
 38 of, **or pleaded guilty or nolo contendere to,** an offense the
 39 definition of which includes fraudulent acts as an element of the
 40 offense **regardless of whether a judgement has been entered**
 41 **by the court.**

42 (5) **The viatical settlement provider no longer meets the**



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1 requirements for initial licensure.

2 **(6) The viatical settlement provider has failed to honor the**
 3 **contractual obligations of a viatical settlement contract.**

4 **(7) The licensee viatical settlement provider** has violated this
 5 chapter.

6 SECTION 18. IC 27-8-19.8-21, AS ADDED BY P.L.116-1994,
 7 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JANUARY 1, 1999]: Sec. 21. (a) A ~~living benefits~~ **viatical settlement**
 9 contract must establish the terms under which the ~~living benefits~~
 10 **viatical settlement** provider will pay value, in return for the
 11 ~~policyowner's viator's~~ assignment, bequest, devise, sale, or transfer of
 12 the death benefit, **certificate**, or ownership of the insurance policy to
 13 the ~~living benefits~~ **viatical settlement** provider.

14 (b) A ~~living benefits~~ **viatical settlement** contract must provide for
 15 the unconditional rescission of the contract by the ~~policyowner~~ **viator**
 16 for thirty (30) days after execution of the contract.

17 **(c) A viatical settlement contract is rescinded if the ill individual**
 18 **dies during the rescission period, subject to repayment of all**
 19 **proceeds to the viatical settlement provider.**

20 SECTION 19. IC 27-8-19.8-22, AS ADDED BY P.L.116-1994,
 21 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JANUARY 1, 1999]: Sec. 22. (a) A ~~living benefits~~ **provider person**
 23 may not use a ~~living benefits~~ **viatical settlement** contract form **or a**
 24 **disclosure form** in Indiana unless the contract form **or disclosure**
 25 **form** has been filed with and approved by the department.

26 (b) A ~~living benefits~~ **viatical settlement** contract form **or**
 27 **disclosure form** filed with the department is considered approved if
 28 the department has not disapproved the form within sixty (60) days
 29 after the filing.

30 (c) The department shall disapprove a ~~living benefits~~ **viatical**
 31 **settlement** contract form **or disclosure form** if the department finds
 32 that the contract form, **disclosure form**, or the provisions of the
 33 contract are:

34 (1) misleading or unfair to the ~~policyowner~~ **viator**;

35 **(2) not in compliance with this chapter;** or

36 ~~(2)~~ **(3)** otherwise contrary to the public interest.

37 SECTION 20. IC 27-8-19.8-23, AS ADDED BY P.L.116-1994,
 38 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JANUARY 1, 1999]: Sec. 23. A ~~living benefits~~ **viatical settlement**
 40 provider **or viatical settlement broker** shall disclose the following
 41 information to the ~~policyowner~~ **viator** not later than the date ~~the living~~
 42 **benefits contract is entered into: of application:**



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- 1 (1) Possible alternatives to **living benefits viatical settlement**
 2 contracts, including accelerated benefits offered by the issuer of
 3 the life insurance policy.
 4 (2) Tax consequences that may result from entering into a **living**
 5 **benefits viatical settlement** contract.
 6 (3) ~~Consequences of Possible~~ interruption of assistance provided
 7 by medical or public assistance programs **as a consequence of**
 8 **entering into a viatical settlement contract.**
 9 (4) The ~~policyowner's~~ **viator's** right to rescind a **living benefits**
 10 **viatical settlement** contract as provided in section 21 of this
 11 chapter.
 12 (5) **The amount of any fees paid by a viatical settlement**
 13 **provider to a viatical settlement broker.**
 14 (6) **A statement that proceeds of the viatical settlement could**
 15 **be subject to claims of creditors.**
 16 (7) **A statement that entering into a viatical settlement**
 17 **contract may cause other rights or benefits under the policy,**
 18 **including conversion rights, waiver of premium benefits,**
 19 **family riders, or coverage of a life other than an ill individual,**
 20 **to be forfeited by the viator.**
 21 (8) **The procedure for contacts with the ill individual under**
 22 **section 24.9 of this chapter.**
- 23 SECTION 21. IC 27-8-19.8-24, AS ADDED BY P.L.116-1994,
 24 SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JANUARY 1, 1999]: Sec. 24. A **living benefits viatical settlement**
 26 provider shall obtain the following before entering into a **living benefits**
 27 **viatical settlement** contract: ~~with a policyowner who is an ill~~
 28 ~~individual~~
- 29 (1) **If the viator is the ill individual, A** a written statement from
 30 a licensed attending physician that the **ill individual** is of sound
 31 mind and under no constraint or undue influence.
 32 (2) A document signed by the ~~individual~~ **viator** and witnessed by
 33 two (2) disinterested witnesses in which the ~~individual~~ **viator**
 34 does the following:
 35 (A) Consents to the **living benefits viatical settlement**
 36 contract.
 37 (B) Acknowledges the catastrophic or life threatening illness.
 38 (C) Represents that the ~~individual~~ **viator** has a full and
 39 complete understanding of the **living benefits viatical**
 40 **settlement** contract.
 41 (D) Represents that the ~~individual~~ **viator** has a full and
 42 complete understanding of the benefits of the life insurance



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1 policy.
 2 (E) Releases the individual's medical records. IC 16-39 applies
 3 to the release of the individual's medical records under this
 4 clause.
 5 (F) (E) Acknowledges that the individual viator has entered
 6 into the living benefits viatical settlement contract freely and
 7 voluntarily.
 8 **(3) A document in which the ill individual consents to the**
 9 **release of the ill individual's medical records. IC 16-39 applies**
 10 **to the release of the ill individual's medical records under this**
 11 **section.**
 12 SECTION 22. IC 27-8-19.8-24.2 IS ADDED TO THE INDIANA
 13 CODE AS A NEW SECTION TO READ AS FOLLOWS
 14 [EFFECTIVE JANUARY 1, 1999]: **Sec. 24.2. (a) Immediately upon**
 15 **a viatical settlement provider's receipt of a signed viatical**
 16 **settlement contract, the viatical settlement provider shall pay the**
 17 **proceeds of the viatical settlement to a trust or escrow account in**
 18 **a state or federally chartered financial institution whose deposits**
 19 **are insured by the Federal Deposit Insurance Corporation. The**
 20 **account shall be managed by a trustee or escrow agent independent**
 21 **of the parties to the contract.**
 22 (b) Within two (2) business days after the viatical settlement
 23 provider's receipt of the insurer's or group administrator's
 24 acknowledgment that ownership of the policy or interest in the
 25 certificate has been transferred and the beneficiary has been
 26 designated according to the viatical settlement contract, the trustee
 27 or escrow agent shall transfer the proceeds to the viator.
 28 SECTION 23. IC 27-8-19.8-24.5 IS ADDED TO THE INDIANA
 29 CODE AS A NEW SECTION TO READ AS FOLLOWS
 30 [EFFECTIVE JANUARY 1, 1999]: **Sec. 24.5. Any fee paid by a**
 31 **viatical settlement provider or a viator to a viatical settlement**
 32 **broker for services provided to the viator must be computed as a**
 33 **percentage of the value paid in return for the viator's assignment,**
 34 **bequest, devise, sale, or transfer of the death benefit, certificate, or**
 35 **ownership of the insurance policy to the viatical settlement**
 36 **provider.**
 37 SECTION 24. IC 27-8-19.8-24.7 IS ADDED TO THE INDIANA
 38 CODE AS A NEW SECTION TO READ AS FOLLOWS
 39 [EFFECTIVE JANUARY 1, 1999]: **Sec. 24.7. Except as otherwise**
 40 **provided by law, a person with actual knowledge of a viator's**
 41 **identity may not disclose that identity to another person unless the**
 42 **disclosure is:**



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- (1) necessary to effect a viatical settlement contract and the viator has provided written consent to the disclosure; or
- (2) provided in response to an investigation by the commissioner or other governmental officer or agency.

SECTION 25. IC 27-8-19.8-24.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: **Sec. 24.9. The viatical settlement provider or viatical settlement broker may contact the ill individual for the purpose of determining the health status of the ill individual not more than:**

- (1) one (1) time every three (3) months for an ill individual with a life expectancy of more than one (1) year; or
- (2) one (1) time every month for an ill individual with a life expectancy of not more than one (1) year.

SECTION 26. IC 27-8-19.8-25, AS ADDED BY P.L.116-1994, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999]: **Sec. 25. The department shall adopt rules under IC 4-22-2 to establish standards for evaluating the reasonableness of payments under living benefits viatical settlement contracts, including regulation of discount rates used to determine the amount paid in exchange for an assignment, a bequest, a devise, a sale, or a transfer of a benefit under a life insurance policy.**

SECTION 27. [EFFECTIVE JANUARY 1, 1999] (a) **Notwithstanding IC 27-8-19.8-9, as amended by this act, a person who holds a valid license under IC 27-8-19.8-11 (before its amendment by this act) on December 31, 1998, is considered to have a valid license under IC 27-8-19.8-9, as amended by this act, and does not need to reapply or renew the license until the date the license is due for renewal.**

(b) **This SECTION expires January 1, 2000.**

SECTION 28. THE FOLLOWING ARE REPEALED [EFFECTIVE JANUARY 1, 1999]: IC 27-8-19.8-4; IC 27-8-19.8-20.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill 372, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Judiciary.

(Reference is to Senate Bill 372 as introduced.)

GARTON, Chairperson

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SENATE MOTION

Mr. President: I move that Senate Bill 372, currently assigned to the Committee on Judiciary, be reassigned to the Committee on Insurance and Interstate Cooperation.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Insurance and Interstate Cooperation, to which was referred Senate Bill 372, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 372 as printed January 23, 1998.)

WORMAN, Chairperson

Committee Vote: Yeas 5, Nays 1.

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