

By the Committee on Banking and Insurance; and Senator Geller

311-1928-99

1                                   A bill to be entitled  
2           An act relating to the regulation of insurance  
3           and investments in insurance products industry;  
4           amending s. 626.9911, F.S.; defining viatical  
5           settlement purchaser, viatical settlement  
6           purchase agreement, and viatical settlement  
7           sales agent; redefining the terms "viatical  
8           settlement broker," "viatical settlement  
9           contract," "viatical settlement provider," and  
10          "viator"; creating s. 626.99181, F.S.; adding  
11          viatical settlement broker fees; amending s.  
12          626.9919, F.S.; requiring viatical settlement  
13          sales agents to give notice of change of  
14          address; amending s. 626.992, F.S.; requiring  
15          viatical settlement sales agents to be  
16          licensed; amending s. 626.9922, F.S.; revising  
17          requirements for examination; amending s.  
18          626.99235, F.S.; revising disclosure  
19          requirements for viatical settlement purchasers  
20          and creating additional disclosure  
21          requirements; amending s. 626.9924, F.S.;  
22          requiring notice to be given to insurers of  
23          viaticated policies; amending s. 626.9925;  
24          providing for rulemaking; amending s. 626.9926,  
25          F.S.; providing that viatical settlement  
26          purchase agreement rates are not regulated;  
27          amending s. 626.9927, F.S.; including viatical  
28          settlement purchase agreements; creating s.  
29          626.99272, F.S.; providing for cease-and-desist  
30          orders; creating s. 626.99275, F.S.;  
31          prohibiting certain practices; creating s.

1           626.99277, F.S.; prohibiting false  
2           representations; amending s. 626.9929, F.S.;  
3           establishing a grace period for viatical  
4           settlement sales agents transacting business in  
5           this state; creating part XII, ch. 626, F.S.;  
6           establishing regulation of persons issuing and  
7           brokering life settlement contracts; creating  
8           s. 626.994, F.S.; providing a short title;  
9           creating s. 626.9941, F.S.; providing for  
10          definitions; creating s. 626.9942, F.S.;  
11          providing for licensure of life settlement  
12          providers; creating s. 626.99421, F.S.;  
13          providing for annual reports, fees, and  
14          conditions of continued licensure; creating s.  
15          626.99422, F.S.; providing grounds for  
16          nonrenewal, suspension, revocation, and fines  
17          for life settlement providers; creating s.  
18          626.99423, F.S.; providing the term of a  
19          suspension of the license and provisions for  
20          reinstatement; creating s. 626.9943, F.S.;  
21          providing for licensure of life settlement  
22          brokers; creating s. 626.99431, F.S.; providing  
23          grounds for denial, suspension, revocation,  
24          nonrenewal, or administrative fines for life  
25          settlement brokers; creating s. 626.99432,  
26          F.S.; providing for effect of a suspension or  
27          revocation and procedures for reinstatement;  
28          creating s. 626.9944, F.S.; requiring life  
29          settlement sales agents to be licensed as life  
30          insurance agents; creating s. 626.9945, F.S.;  
31          requiring notice of change of address and other

1 information; creating s. 626.9946, F.S.;

2 requiring use of licensed persons for life

3 settlement transactions; creating s. 626.9947,

4 F.S.; providing for approval of contract forms

5 and related forms; creating s. 626.9948, F.S.;

6 requiring procedures for examination of

7 licensees; creating s. 626.9949, F.S.;

8 providing for required disclosures to owners;

9 creating s. 626.99495, F.S.; providing required

10 disclosures to life settlement purchasers;

11 creating s. 626.995, F.S.; requiring certain

12 provisions to be in a life settlement contract

13 and a right to rescission; creating s.

14 626.9952, F.S.; authorizing the adoption of

15 rules to implement provisions of this act;

16 creating s. 626.9954, F.S.; providing that rate

17 regulation is not authorized; creating s.

18 626.996, F.S.; prohibiting unfair trade

19 practices and providing a civil remedy and

20 authorizing injunctions and cease-and-desist

21 orders; creating s. 626.9965, F.S.; prohibiting

22 life settlement contracts during contestable

23 period or on policies obtained through false,

24 deceptive, or misleading applications; creating

25 s. 626.997, F.S.; prohibiting false

26 representations and deceptive words; creating

27 s. 626.9975, F.S.; adding life settlement

28 broker fees; creating s. 626.998, F.S.;

29 providing for a grace period for compliance;

30 providing an effective date.

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1 Be It Enacted by the Legislature of the State of Florida:

2

3 Section 1. Section 626.9911, Florida Statutes, 1998  
4 Supplement, is amended to read:

5 626.9911 Definitions.--As used in this act, the term:

6 (1) "Department" means the Department of Insurance.

7 (2) "Independent third-party trustee or escrow agent"  
8 means an attorney, certified public accountant, financial  
9 institution, or other person providing escrow services under  
10 the authority of a regulatory body. The term does not include  
11 any person associated, affiliated, or under common control  
12 with a viatical settlement provider or viatical settlement  
13 broker.

14 (3) "Person" has the meaning specified in s. 1.01.

15 (4) "Viatical settlement broker" means a person who,  
16 on behalf of a viator and for a fee, commission, or other  
17 valuable consideration, offers or attempts to negotiate  
18 viatical settlement contracts between a viator resident in  
19 this state and one or more viatical settlement providers.  
20 Notwithstanding the manner in which the viatical settlement  
21 broker is compensated, a viatical settlement broker is deemed  
22 to represent only the viator and owes a fiduciary duty to the  
23 viator to act according to the viator's instructions and in  
24 the best interest of the viator. The term does not include an  
25 attorney, licensed Certified Public Accountant, or investment  
26 adviser lawfully registered with the Department of Banking and  
27 Finance under chapter 517 ~~financial planner, or person acting~~  
28 ~~under a power of attorney from the viator,~~ who is retained to  
29 represent the viator and whose compensation is paid directly  
30 ~~solely by~~ or at the direction and on behalf of the viator

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1 ~~without regard to whether a viatical settlement contract is~~  
2 ~~effected.~~

3 (5) "Viatical settlement contract" means a written  
4 agreement ~~settlement~~ entered into between a viatical  
5 settlement provider, or its related provider trust, and a  
6 viator. The agreement must establish the terms under which  
7 the viatical settlement provider will pay compensation or  
8 anything of value, which compensation or value is less than  
9 the expected death benefit of the insurance policy or  
10 certificate, in return for the viator's assignment, transfer,  
11 sale, devise, or bequest of the death benefit or ownership of  
12 all or a portion of the insurance policy or certificate of  
13 insurance to the viatical settlement provider. A viatical  
14 settlement contract also includes a contract for a loan or  
15 other financial transaction secured primarily by an individual  
16 or group life insurance policy, other than a loan by a life  
17 insurance company pursuant to the terms of the life insurance  
18 contract, or a loan secured by the cash value of a policy.

19 (6) "Viatical settlement provider" means a person  
20 other than a viator who, in this state, or from this state, or  
21 with a resident of this state, effectuates ~~enters into~~ a  
22 viatical settlement contract ~~with a viator~~. The term does not  
23 include:

24 (a) Any bank, savings bank, savings and loan  
25 association, credit union, or other licensed lending  
26 institution that takes an assignment of a life insurance  
27 policy as collateral for a loan;

28 (b) A life and health insurer that has lawfully issued  
29 a life insurance policy that provides accelerated benefits to  
30 terminally ill policyholders or certificateholders; or

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1 (c) Any natural person who enters into no more than  
2 one viatical settlement contract with a viator in 1 calendar  
3 year, unless such natural person has previously been licensed  
4 under this act or is currently licensed under this act.

5 (d) A trust that meets the definition of a "related  
6 provider trust."

7 (7) "Viator" means the owner of a life insurance  
8 policy or a certificateholder under a group policy insuring  
9 the life of an individual with a natural person who has a  
10 catastrophic, ~~or~~ life-threatening, ~~or~~ chronic illness or  
11 condition and who enters or seeks to enter into a viatical  
12 settlement contract has the right to assign, transfer, sell,  
13 devise, or bequeath the benefits of his or her life insurance  
14 policy. This term does not include a viatical settlement  
15 purchaser or a viatical settlement provider or any person  
16 acquiring a policy or interest in a policy from a viatical  
17 settlement provider, nor does it include an independent  
18 third-party trustee or escrow agent.

19 (8) "Related provider trust" means a trust established  
20 by a viatical settlement provider for the sole purpose of  
21 entering into or owning viatical settlement contracts or life  
22 settlement contracts. This term does not include a trust that  
23 does not enter into agreements with a life settlement  
24 purchaser, nor does it include an independent third-party  
25 trustee or escrow agent. A related provider trust shall be  
26 subject to all provisions of this act that apply to the  
27 viatical settlement provider who established the related  
28 provider trust, except s. 626.9912, which shall not be  
29 applicable. A viatical settlement provider may establish no  
30 more than one related provider trust, and the sole trustee of  
31 such related provider trust shall be the viatical settlement

1 provider licensed under s. 626.9912. The name of the licensed  
2 viatical settlement provider shall be included within the name  
3 of the related provider trust.

4 (9) "Viatical settlement purchase agreement" means a  
5 contract or agreement, entered into by a viatical settlement  
6 purchaser, to which the viator is not a party, to purchase a  
7 life insurance policy or an interest in a life insurance  
8 policy, which is entered into for the purpose of deriving an  
9 economic benefit.

10 (10) "Viatical settlement purchaser" means a person,  
11 other than a licensee under part XI or part XII of this  
12 chapter, an accredited investor as defined in Rule 501,  
13 Regulation D of the Securities Act Rules, or a qualified  
14 institutional buyer under Rule 144(a) of the 1933 Securities  
15 Act, who gives a sum of money as consideration for a life  
16 insurance policy or an interest in a life insurance policy  
17 which has been or will be the subject of a viatical settlement  
18 contract, for the purpose of deriving an economic benefit.

19 (11) "Viatical settlement sales agent" means a person  
20 other than a licensed viatical settlement provider who  
21 arranges the purchase through a viatical settlement purchase  
22 agreement of a life insurance policy or an interest in a life  
23 insurance policy.

24 Section 2. Section 626.99181, Florida Statutes, is  
25 created to read:

26 626.99181 Viatical settlement broker's  
27 compensation.--A viatical settlement broker shall disclose to  
28 a prospective viator the amount and method of calculating the  
29 broker's compensation and may not receive compensation from  
30 anyone other than that disclosed to the viator. The term

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1 "compensation" includes anything of value paid or given to a  
2 viatical settlement broker for the placement of a policy.

3 Section 3. Section 626.9919, Florida Statutes, is  
4 amended to read:

5 626.9919 Notice of change of address or name; viatical  
6 settlement provider licensees, and broker licensees, and  
7 viatical settlement sales agent licensees.--Each viatical  
8 settlement provider licensee, ~~and each~~ viatical settlement  
9 broker licensee, and viatical settlement sales agent licensees  
10 must provide the department at least 30 days' advance notice  
11 of any change in the licensee's name, residence address,  
12 principal business address, or mailing address.

13 Section 4. Section 626.992, Florida Statutes, is  
14 amended to read:

15 626.992 Use of viatical settlement licensed brokers,  
16 and providers, and viatical settlement sales agents  
17 required.--

18 (1) A licensed viatical settlement provider may not  
19 use any person to perform the functions of a viatical  
20 settlement broker as defined in this act unless such person  
21 holds a current, valid license as a viatical settlement  
22 broker. Salaried individuals employed by viatical settlement  
23 providers shall engage in viatical settlement broker  
24 activities only when accompanied by a viatical settlement  
25 broker who holds a current valid license issued under this  
26 act. A viatical settlement provider may not use any person to  
27 perform the functions of a viatical settlement sales agent  
28 unless the person holds a current, valid license as provided  
29 in subsection (4).

30 (2) A licensed viatical settlement broker may not use  
31 any person to perform the functions of a viatical settlement



1 provider as defined in this act unless such person holds a  
2 current, valid license as a viatical settlement provider. A  
3 viatical settlement provider may not use any person to perform  
4 the functions of a viatical settlement sales agent unless the  
5 person holds a current, valid license as provided in  
6 subsection (4).

7 (3) A viatical settlement sales agent may not use any  
8 person to perform the functions of a viatical settlement  
9 broker unless such person holds a current, valid license as a  
10 viatical settlement broker.

11 (4) A person may not perform the functions of a  
12 viatical settlement sales agent unless licensed as a life  
13 agent as defined in s. 626.051 and as provided in this  
14 chapter.

15 Section 5. Section 626.9922, Florida Statutes, is  
16 amended to read:

17 626.9922 Examination.--

18 (1) The department may examine the business and  
19 affairs of any licensee or applicant for a license. The  
20 department may order any licensee or applicant to produce any  
21 records, books, files, advertising and solicitation materials,  
22 or other information and may take statements under oath to  
23 determine whether the licensee or applicant is in violation of  
24 the law or is acting contrary to the public interest. The  
25 expenses incurred in conducting any examination or  
26 investigation must be paid by the licensee or applicant.  
27 Examinations and investigations must be conducted as provided  
28 in chapter 624, and licensees are subject to all applicable  
29 provisions of the insurance code.

30 (2) All accounts, records, documents, files, and other  
31 information relating to all transactions of viatical

1 settlement contracts or viatical settlement purchase  
2 agreements must be maintained by the licensee for a period of  
3 at least 3 years after the death of the insured viator and  
4 must be available to the department for inspection during  
5 reasonable business hours.

6 Section 6. Section 626.99235, Florida Statutes, 1998  
7 Settlement, is amended to read:

8 626.99235 Disclosures to viatical settlement  
9 purchasers ~~investors~~; misrepresentations.--

10 (1) No person shall misrepresent the nature of the  
11 return or the duration of time to obtain the return of any  
12 investment related to one or more viatical settlements sold by  
13 a viatical settlement provider or related provider trust.

14 (2) The viatical settlement provider and the viatical  
15 settlement sales agent, itself or through another person,  
16 shall provide in writing the following disclosures to any  
17 viatical settlement purchaser ~~investor~~ or purchaser ~~investor~~  
18 prospect:

19 (a) That the return represented as being available  
20 under the viatical settlement purchase agreement ~~investment~~ is  
21 directly tied to the projected life span or date of death of  
22 one or more viators.†

23 (b) If a return is represented, the disclosure shall  
24 indicate the projected life span or date of death of the  
25 viator or viators whose life or lives are tied to the return.

26 (c) If required by the terms of the viatical  
27 settlement purchase agreement ~~investment contract~~, that the  
28 viatical settlement purchaser ~~investor~~ may be responsible for  
29 the payment of insurance premiums on the life of the viator,  
30 ~~or~~ late or surrender fees, or other costs related to the life  
31

1 insurance policy on the life of the viator or viators which  
2 may reduce the return.

3 (d) The amount of any trust fees, commissions,  
4 deductions, or other expenses, if any, to be charged to the  
5 viatical settlement purchaser investor.

6 (e) The name and address of the person responsible for  
7 tracking the viator.

8 (f) That group policies may contain limitations or  
9 caps in the conversion rights, that additional premiums may  
10 have to be paid if the policy is converted, and that the party  
11 responsible for the payment of such additional premiums shall  
12 be identified.

13 (g) That the life expectancy and rate of return are  
14 only estimates and cannot be guaranteed.

15 (h) The basis for the assumption of life expectancy  
16 utilized in the solicitation or advertisement.

17 (i) The purchase of a viatical settlement contract  
18 should not be considered a liquid purchase, since it is  
19 impossible to predict the exact timing of its maturity and the  
20 funds may not be available until the death of the viator.

21 (j) The name and address of the person with the  
22 responsibility for paying the premium until the death of the  
23 insured.

24  
25 The written disclosure required under this subsection shall be  
26 conspicuously displayed in any viatical settlement purchase  
27 investment agreement, and in any solicitation material  
28 furnished to the viatical settlement purchaser investor by  
29 such viatical settlement provider, related provider trust, or  
30 person, and shall be in contrasting color and in not less than  
31 10-point type or no smaller than the largest type on the page

1 if larger than 10-point type. The department is authorized to  
2 adopt by rule the disclosure form to be used. The disclosures  
3 need not be furnished in an invitation to inquire, the  
4 objective of which is to create a desire to inquire further  
5 about entering into a viatical settlement purchase agreement.  
6 The invitation to inquire may not quote rates of return, may  
7 not include material attendant to the execution of any  
8 specific viatical settlement purchase agreement, and may not  
9 relate to any specific viator.

10 Section 7. Subsection (7) of section 626.9924, Florida  
11 Statutes, is created to read:

12 626.9924 Viatical settlement contracts; procedures;  
13 rescission.--

14 (7) Within 10 days after the expiration of the  
15 rescission period of the viatical settlement contract as set  
16 forth in this section, the viatical settlement provider must  
17 give notice to the insurer that the policy has become subject  
18 to a viatical settlement contract.

19 Section 8. Section 626.9925, Florida Statutes, is  
20 amended to read:

21 626.9925 Rules.--The department may adopt rules to  
22 implement this act, including rules establishing standards for  
23 evaluating advertising by licensees and rules providing for  
24 the collection of data and recordkeeping requirements relating  
25 to executed viatical settlement contracts and viatical  
26 settlement purchase agreements.

27 Section 9. Section 626.9926, Florida Statutes, is  
28 amended to read:

29 626.9926 Rate regulation not authorized.--Nothing in  
30 this act shall be construed to authorize the department to  
31 directly or indirectly regulate the amount paid as

1 consideration for entry into a viatical settlement contract or  
2 viatical settlement purchase agreement.

3 Section 10. Subsection (1) of section 626.9927,  
4 Florida Statutes, is amended to read:

5 626.9927 Unfair trade practices; cease and desist;  
6 injunctions; civil remedy.--

7 (1) A violation of this act is an unfair trade  
8 practice under ss. 626.9521 and 626.9541 and is subject to the  
9 penalties provided in the insurance code. Part X of this  
10 chapter applies to a licensee under this act or a transaction  
11 subject to this act as if a viatical settlement contract and a  
12 viatical settlement purchase agreement were an insurance  
13 policy.

14 Section 11. Section 626.99272, Florida Statutes, is  
15 created to read:

16 626.99272 Cease-and-desist orders and fines.--

17 (1) The department may issue a cease-and-desist order  
18 upon a person that violates any provision of this part, any  
19 rule or order adopted by the department, or any written  
20 agreement entered into with the department.

21 (2) When the department finds that such an action  
22 presents an immediate danger to the public which requires an  
23 immediate final order, it may issue an emergency  
24 cease-and-desist order reciting with particularity the facts  
25 underlying such findings. The emergency cease-and-desist  
26 order is effective immediately upon service of a copy of the  
27 order on the respondent and remains effective for 90 days. If  
28 the department begins nonemergency cease-and-desist  
29 proceedings under subsection (1), the emergency  
30 cease-and-desist order remains effective, absent an order by  
31 an appellate court of competent jurisdiction pursuant to ss.

1 120.68, until the conclusion of proceedings under ss. 120.569  
2 and 120.57.

3 (3) The department may impose and collect an  
4 administrative fine not to exceed \$10,000 for each nonwillful  
5 violation and \$25,000 for each willful violation of any  
6 provision of this part.

7 Section 12. Section 626.99275, Florida Statutes, is  
8 created to read:

9 626.99275 Prohibited practices.--It is unlawful for  
10 any person:

11 (1) To knowingly enter into a viatical settlement  
12 contract the subject of which is a life insurance policy that  
13 was obtained by means of a false, deceptive, or misleading  
14 application for the life insurance policy.

15 (2) In the solicitation or sale of a viatical  
16 settlement purchase agreement:

17 (a) To employ any device, scheme, or artifice to  
18 defraud;

19 (b) To obtain money or property by means of an untrue  
20 statement of a material fact or by any omission to state a  
21 material fact necessary in order to make the statements made,  
22 in light of the circumstances under which they were made, not  
23 misleading; or

24 (c) To engage in any transaction, practice, or course  
25 of business which operates or would operate as a fraud or  
26 deceit upon a person.

27 Section 13. Section 626.99277, Florida Statutes, is  
28 created to read:

29 626.99277 False representations; deceptive words.--

30 (1) It is unlawful for a person in the advertisement,  
31 offer, or sale of a viatical settlement purchase agreement to

1 misrepresent that such an agreement has been guaranteed,  
2 sponsored, recommended, or approved by the state, or any  
3 agency or officer of the state or by the United States or any  
4 agency or officer of the United States.

5 (2) It is unlawful for a person in conjunction with  
6 the sale of a viatical settlement purchase agreement to  
7 directly or indirectly misrepresent that the person has been  
8 sponsored, recommended, or approved, or that his or her  
9 abilities or qualifications have in any respect been passed  
10 upon, by this state or any other state, or any agency or  
11 officer thereof, or by the United States or any agency or  
12 officer thereof.

13 (3) It is unlawful for a person in the offer or sale  
14 of a viatical settlement purchase agreement to obtain money or  
15 property by:

16 (a) A misrepresentation that the viatical settlement  
17 purchase agreement purchased, offered, or sold is guaranteed,  
18 sponsored, recommended, or approved by this state or any other  
19 state, or any agency or officer thereof, or by the United  
20 States or any agency or officer thereof.

21 (b) A misrepresentation that the person is sponsored,  
22 recommended, or approved, or that the person's abilities or  
23 qualifications have in any respect been passed upon, by this  
24 state or any other state, or any agency or officer thereof, or  
25 by the United States or any agency or officer thereof.

26 (4) Neither subsection (1) nor subsection (2) may be  
27 construed to prohibit a statement that the person is licensed  
28 or appointed under this part if such a statement is required  
29 by this part or rules adopted under this part, if the  
30 statement is true in fact and if the effect of the statement  
31 is not misrepresented.

1           (5) A person may not represent that a viatical  
2 settlement purchase agreement is guaranteed by any insurance  
3 guaranty fund.

4           (6) A person may not represent that the investment in  
5 a viatical settlement purchase agreement is "guaranteed," that  
6 the principal is "safe," or that the investment is free of  
7 risk.

8           Section 14. Section 626.9929, Florida Statutes, is  
9 amended to read:

10           626.9929 Grace period.--A viatical settlement sales  
11 agent provider or viatical settlement broker that was  
12 transacting business in this state on June 30, 1999 ~~1996~~, may  
13 continue to transact such business, in the absence of any  
14 orders by the department to the contrary, until the department  
15 approves or disapproves the sales agent's provider's or  
16 broker's application for licensure if the sales agent provider  
17 or broker files with the department no later than November 1,  
18 1999, an application for licensure ~~and all forms currently in~~  
19 ~~use no later than November 1, 1996,~~ and if the sales agent  
20 provider or broker complies with all other provisions of this  
21 act.

22           Section 15. Part XII of chapter 626, Florida Statutes,  
23 to be entitled "Life Settlement Contracts", consisting of ss.  
24 626.994, 626.9941, 626.9942, 626.99421, 626.99422, 626.99423,  
25 626.9943, 626.99431, 626.99432, 626.9944, 626.9945, 626.9946,  
26 626.9947, 626.9948, 626.9949, 626.99495, 626.995, 626.9952,  
27 626.9954, 626.996, 626.9965, 626.997, 626.9975, and 626.998,  
28 Florida Statutes, is created to read:

29           626.994 Short Title.--This act may be cited as the  
30 "Life Settlement Act."

31           626.9941 Definitions.--As used in this part, the term:



1           (1) "Department" means the Department of Insurance.

2           (2) "Independent third-party trustee or escrow agent"  
3 means an attorney, certified public accountant, financial  
4 institution, or other person providing escrow services under  
5 the authority of a regulatory body. The term does not include  
6 any person associated, affiliated, or under common control  
7 with a viatical settlement provider or viatical settlement  
8 broker.

9           (3) "Life policy" means a life insurance policy or  
10 certificate that has been acquired by a life settlement  
11 provider pursuant to a life settlement contract.

12           (4) "Life settlement broker" means a person who, on  
13 behalf of an owner and for a fee, commission, or other  
14 valuable consideration, offers or attempts to negotiate life  
15 settlement contracts between an owner and one or more life  
16 settlement providers. Notwithstanding the manner in which the  
17 life settlement broker is compensated, a life settlement  
18 broker is considered to represent only the owner and owes a  
19 fiduciary duty to the owner to act according to the owner's  
20 instructions and in the best interest of the owner. The term  
21 does not include an attorney, licensed Certified Public  
22 Accountant, or investment adviser lawfully registered with the  
23 Department of Banking and Finance under chapter 517, who is  
24 retained to represent the viator and whose compensation is  
25 paid directly by or at the direction and on behalf of the  
26 viator.

27           (5) "Life settlement contract" means a written  
28 agreement entered into between a life settlement provider and  
29 an owner. The agreement must establish the terms under which  
30 the life settlement provider will pay compensation or anything  
31 of value, which compensation or value is less than the

1 expected death benefit of the insurance policy or certificate,  
2 in return for the owner's assignment, transfer, sale, devise,  
3 or bequest of the death benefit or ownership of all or a  
4 portion of the insurance policy or certificate of insurance to  
5 the life settlement provider. A life settlement contract also  
6 includes a contract for a loan or other financial transaction  
7 secured primarily by an individual or a group life insurance  
8 policy, other than a loan by a life insurance company pursuant  
9 to the terms of the life insurance contract or a loan secured  
10 by the cash value of a policy.

11 (6) "Life settlement provider" means a person, other  
12 than an owner, who, in this state, from this state, or with a  
13 resident of this state, effectuates a life settlement  
14 contract. The term does not include:

15 (a) Any bank, savings bank, savings and loan  
16 association, credit union, or other licensed lending  
17 institution that takes an assignment of a life insurance  
18 policy as collateral for a loan;

19 (b) A life and health insurer that has lawfully issued  
20 a life insurance policy that provides accelerated benefits to  
21 terminally ill policyholders or certificateholders; or

22 (c) Any natural person who enters into no more than  
23 one life settlement contract with an owner in one calendar  
24 year, unless the natural person has previously been licensed  
25 under this act or is currently licensed under this act.

26 (d) A trust that meets the definition of the term  
27 "related provider trust."

28 (7) "Life settlement purchase agreement" means a  
29 contract or agreement, entered into by a life settlement  
30 purchaser and a life settlement provider, to which the owner  
31 is not a party, to purchase a life insurance policy or an

1 interest in a life insurance policy, which is entered into for  
2 the purpose of deriving an economic benefit.

3 (8) "Life settlement purchaser" means a person, other  
4 than a licensee under part XI or part XII of this chapter, an  
5 accredited investor as defined in Rule 501, Regulation D of  
6 the Securities Act Rules, or a qualified institutional buyer  
7 under Rule 144(a) of the 1933 Securities Act, who gives a sum  
8 of money as consideration for a life insurance policy or an  
9 interest in a life insurance policy which has been or will be  
10 the subject of a life settlement agreement, for the purpose of  
11 deriving an economic benefit.

12 (9) "Life settlement sales agent" means a person or  
13 entity other than a licensed life settlement provider which  
14 arranges the purchase through a life settlement purchase  
15 agreement of a life insurance policy or an interest in a life  
16 insurance policy.

17 (10) "Owner" means the individual or entity who is the  
18 original owner or subsequent assignee or transferee, who has  
19 or had a bona fide insurable interest in a life insurance  
20 policy insuring the life of a person who does not have a  
21 catastrophic or life-threatening or chronic illness or  
22 condition, who has the right to assign, transfer, sell,  
23 devise, or bequeath the benefits of the life insurance policy,  
24 and who enters or seeks to enter into a life settlement  
25 contract. The term does not include a life settlement  
26 purchaser, a life settlement provider, or any person acquiring  
27 a policy or interest in a policy from a life settlement  
28 provider, nor does it include an independent third-party  
29 trustee or escrow agent.

30 (11) "Person" has the meaning specified in s. 1.01.  
31

1           (12) "Related provider trust" means a trust  
2 established by a life settlement provider for the sole purpose  
3 of entering into or owning viatical or life settlement  
4 contracts. This term does not include a trust that does not  
5 enter into agreements with a life settlement purchaser, nor  
6 does it include an independent third-party trustee or escrow  
7 agent. A related provider trust is subject to all provisions  
8 of this part which apply to the life settlement provider who  
9 established the related provider trust except s. 626.9942,  
10 which is inapplicable. A life settlement provider may  
11 establish no more than one related provider trust, and the  
12 sole trustee of the related provider trust must be the life  
13 settlement provider licensed under s. 626.9942. The name of  
14 the licensed life settlement provider must be included within  
15 the name of the related provider trust.

16           626.9942 Life settlement provider license required;  
17 application for license.--

18           (1) After July 1, 1999, a person may not perform the  
19 functions of a life settlement provider as defined in this  
20 part nor enter into or solicit a life settlement contract  
21 without first having obtained a license from the department  
22 either as a viatical settlement provider as provided for in  
23 part XI of this chapter or as a life settlement provider under  
24 this section.

25           (2) Application for a life settlement provider license  
26 must be made to the department by the applicant, under oath,  
27 on a form prescribed by the department and signed by the  
28 applicant. The application must be accompanied by a fee of  
29 \$500. If the applicant is a corporation, the application must  
30 be under oath and signed by the president and the secretary of  
31 the corporation.

1           (3) In the application, the applicant must provide all  
2 of the following:

3           (a) The applicant's full name, age, residence address,  
4 and business address and all occupations engaged in by the  
5 applicant during the 5 years preceding the date of the  
6 application.

7           (b) A copy of the applicant's basic organizational  
8 documents, if any, including the articles of incorporation,  
9 articles of association, partnership agreement, trust  
10 agreement, or other similar documents, together with all  
11 amendments to such documents.

12           (c) Copies of all bylaws, rules, regulations, or  
13 similar documents regulating the conduct of the applicant's  
14 internal affairs.

15           (d) A list showing the name, business and residence  
16 addresses, and official position of each individual who is  
17 responsible for conduct of the applicant's affairs, including,  
18 but not limited to, any member of the applicant's board of  
19 directors, board of trustees, executive committee, or other  
20 governing board or committee and any other person or entity  
21 owning or having the right to acquire 10 percent or more of  
22 the voting securities of the applicant.

23           (e) With respect to each individual identified under  
24 paragraph (d):

25           1. A sworn biographical statement on forms supplied by  
26 the department.

27           2. A set of fingerprints on forms prescribed by the  
28 department, certified by a law enforcement officer, and  
29 accompanied by the fingerprinting fee specified in s. 624.501.

30           3. Authority for release of information relating to  
31 the investigation of the individual's background.

1           (f) All applications, life settlement contract forms,  
2 and other related forms proposed to be used by the applicant.

3           (g) Such other information as the department considers  
4 necessary to determine that the applicant and the individuals  
5 identified under paragraph (d) are competent and trustworthy  
6 and can lawfully and successfully act as a life settlement  
7 provider.

8           (4) The department may not issue a license to an  
9 entity other than a natural person if it is not satisfied that  
10 all officers, directors, employees, stockholders, and partners  
11 who exercise or have the ability to exercise effective control  
12 of the entity or who have the ability to influence the  
13 transaction of business by the entity meet the standards of  
14 this part and have not violated any provision of this part or  
15 rules of the department related to the business of life  
16 settlement contracts.

17           (5) Upon the filing of a sworn application and the  
18 payment of the license fee, the department shall investigate  
19 each applicant and may issue the applicant a license if the  
20 department finds that the applicant:

21           (a) Has provided a detailed plan of operation.

22           (b) Is competent and trustworthy and intends to act in  
23 good faith in the business authorized by the license applied  
24 for; however, for purposes of this act, including this  
25 paragraph, a person may not be considered incompetent and  
26 untrustworthy solely for any felony committed more than 5  
27 years before licensure if the person has had his or her civil  
28 rights restored by the Governor and Cabinet with respect to  
29 the felony.

30           (c) Has a good business reputation and has had  
31 experience, training, or education that qualifies the

1 applicant to conduct the business authorized by the license  
2 applied for.

3 (d) If the applicant is a corporation, is a  
4 corporation incorporated under the laws of this state, or is a  
5 foreign corporation authorized to transact business in this  
6 state.

7 (e) Has designated the Insurance Commissioner and  
8 Treasurer as its agent for service of process.

9 (f) Has made the deposit required by s. 626.99421(3).  
10 626.99421 Life settlement provider license  
11 continuance; annual report; fees; deposit.--

12 (1) A life settlement provider license continues in  
13 force until suspended or revoked.

14 (2) Annually, on or before March 1, the life  
15 settlement provider licensee shall file a statement containing  
16 information the department requires and shall pay to the  
17 department a license fee in the amount of \$500. A life  
18 settlement provider shall include in all statements filed with  
19 the department all information requested by the department  
20 regarding a related provider trust established by the life  
21 settlement provider. The department may require more frequent  
22 reporting. Failure to timely file the annual statement or to  
23 timely pay the license fee is grounds for immediate suspension  
24 of the license.

25 (3) A life settlement provider licensee must deposit  
26 and maintain deposited in trust with the department securities  
27 eligible for deposit under s. 625.52, having at all times a  
28 value of not less than \$100,000. As an alternative to meeting  
29 the \$100,000 deposit requirement, the provider may deposit and  
30 maintain deposited in trust with the department such  
31 securities in the amount of \$25,000 and post with the

1 department a surety bond acceptable to the department in the  
2 amount of \$75,000.

3 (4) There shall be no additional annual license fee or  
4 deposit requirements under this act for a related provider  
5 trust established by a life settlement provider.

6 626.99422 Suspension, revocation, or nonrenewal of  
7 life settlement provider license; grounds; administrative  
8 fine.--

9 (1) The department shall suspend, revoke, or refuse to  
10 renew the license of any life settlement provider if the  
11 department finds that the licensee:

12 (a) Has made a misrepresentation in the application  
13 for the license;

14 (b) Has engaged in fraudulent or dishonest practices,  
15 or otherwise has been shown to be untrustworthy or incompetent  
16 to act as a life settlement provider;

17 (c) Demonstrates a pattern of unreasonable payments to  
18 viators or owners;

19 (d) Has been found guilty of, or has pleaded guilty or  
20 nolo contendere to, any felony, or a misdemeanor involving  
21 fraud or moral turpitude, regardless of whether a judgment of  
22 conviction has been entered by the court;

23 (e) Has issued life settlement contracts or viatical  
24 settlement contracts that have not been approved pursuant to  
25 this part or part XI;

26 (f) Has failed to honor contractual obligations  
27 related to the business of life settlement contracts;

28 (g) Deals in bad faith with viators, purchasers, or  
29 owners;

30 (h) Has violated any provision of the insurance code  
31 or this part;



1           (i) Employs any person who materially influences the  
2 licensee's conduct and who fails to meet the requirements of  
3 this part; or

4           (j) No longer meets the requirements for initial  
5 licensure.

6           (2) The department may, in lieu of or in addition to  
7 any suspension or revocation, assess an administrative fine  
8 not to exceed \$2,500 for each nonwillful violation or \$10,000  
9 for each willful violation by a life settlement provider  
10 licensee. The department may also place a life settlement  
11 provider licensee on probation for a period not to exceed 2  
12 years.

13           (3) If an employee of a life settlement provider  
14 violates any provision of this part, the department may take  
15 disciplinary action against the employee as if the employee  
16 were licensed under this part, including suspending or  
17 otherwise prohibiting the employee from performing the  
18 functions of a life settlement provider or life settlement  
19 broker as defined in this part.

20           (4) If a life settlement provider establishes a  
21 related provider trust as permitted by this part, the life  
22 settlement provider is liable and responsible for the  
23 performance of all obligations of the related provider trust  
24 under all life settlement contracts entered into by the  
25 related provider trust and for the compliance of the related  
26 provider trust with all provisions of this part. Any violation  
27 of this part by the related provider trust is considered to be  
28 a violation of this part by the life settlement provider as  
29 well as by the related provider trust. If the related provider  
30 trust violates any provisions of this part, the department may  
31 exercise all remedies set forth in this part for such

1 violations against the life settlement provider, as well as  
2 against the related provider trust.

3 626.99423 Effect of suspension or revocation of life  
4 settlement provider license; duration of suspension;  
5 reinstatement.--

6 (1) When its license is suspended or revoked, the  
7 provider must proceed, immediately following the effective  
8 date of the suspension or revocation, to conclude the affairs  
9 it is transacting under its license. The life settlement  
10 provider may not solicit, negotiate, advertise, or effectuate  
11 new contracts. The department retains jurisdiction over the  
12 life settlement provider until all contracts have been  
13 fulfilled or canceled or have expired.

14 (2) The suspension of the license of a life settlement  
15 provider licensee may be for a period, not to exceed 2 years,  
16 which is determined by the department. The department may  
17 shorten, rescind, or modify the suspension.

18 (3) During the period of suspension, the licensee  
19 shall file its annual statement and pay license fees as if the  
20 license had continued in full force.

21 (4) If, upon expiration of the suspension order, the  
22 license has not otherwise been terminated, the department must  
23 reinstate the license only upon written request by the  
24 suspended licensee unless the department finds that the  
25 grounds giving rise to the suspension have not been removed or  
26 that the licensee is otherwise not in compliance with this  
27 part. The department must give the licensee notice of its  
28 findings no later than 90 days after receipt of the request or  
29 upon expiration of the suspension order, whichever occurs  
30 later. If a license is not reinstated in accordance with the  
31 procedures set forth in this subsection, it expires at the end

1 of the suspension or on the date it otherwise would have  
2 expired, whichever is sooner.

3 626.9943 Life settlement broker license required;  
4 application for license.--

5 (1) After July 1, 1999, a person other than a life  
6 agent licensed under this chapter may not perform the  
7 functions of a life settlement broker as defined in this part  
8 without first having obtained a license from the department as  
9 a viatical settlement broker under part XI of this chapter or  
10 as a life settlement broker under this section.

11 (2) Application for a life settlement broker license  
12 must be made to the department by the applicant on a form  
13 prescribed by the department, under oath, and signed by the  
14 applicant. The application must be accompanied by a \$50  
15 filing fee. If the applicant is a corporation, the  
16 application must be under oath and signed by the president and  
17 the secretary of the corporation.

18 (3) In the application, the applicant must provide all  
19 of the following:

20 (a) The applicant's full name, age, residence address,  
21 and business address, and all occupations engaged in by the  
22 applicant during the 5 years preceding the date of the  
23 application; if the applicant is not a natural person, the  
24 applicant must provide the information required by this  
25 paragraph with respect to all officers, directors, or  
26 partners.

27 (b) A copy of the applicant's basic organizational  
28 documents, if any, including the articles of incorporation,  
29 articles of association, partnership agreement, trust  
30 agreement, or other similar documents, together with all  
31 amendments to such documents.

1           (c) If the applicant is not a natural person, a list  
2 showing the name, business and residence addresses, and  
3 official position of each individual who is responsible for  
4 conduct of the applicant's affairs, including, but not limited  
5 to, any member of the applicant's board of directors, board of  
6 trustees, executive committee, or other governing board or  
7 committee and any other person or entity owning or having the  
8 right to acquire 10 percent or more of the voting securities  
9 of the applicant.

10           (d) With respect to an individual applicant and with  
11 respect to each individual identified under paragraph (c):

12           1. A sworn biographical statement on forms supplied by  
13 the department.

14           2. A set of fingerprints on forms prescribed by the  
15 department, certified by a law enforcement officer, and  
16 accompanied by the fingerprinting fee specified in s. 624.501.

17           3. Authority, if required by the department, for  
18 release of information relating to the investigation of the  
19 individual's background.

20           (e) Such other information as the department considers  
21 necessary to determine that the individual applicant and the  
22 individuals identified under paragraph (c) are competent and  
23 trustworthy and can lawfully and successfully act as a life  
24 settlement broker.

25           (4) Any natural person who is employed by or otherwise  
26 represents a life settlement broker licensee, which broker  
27 licensee is not a natural person, must also be licensed as a  
28 life settlement broker if the employee or other representative  
29 performs the functions of a life settlement broker as defined  
30 in this part.

31

1           (5) The department may not issue a license to an  
2 applicant if it is not satisfied that the applicant, if a  
3 natural person, or all officers, directors, employees,  
4 stockholders, and partners who exercise or have the ability to  
5 exercise effective control of the applicant or who have the  
6 ability to influence the transaction of business by the  
7 applicant, if the applicant is not a natural person, meet the  
8 standards of this part and have not violated any provision of  
9 this part or rules of the department related to the business  
10 of life settlement contracts.

11           (6) The department may specify the form of the license  
12 and may require photographing of the applicant as part of the  
13 application process.

14           (7) Upon the filing of a sworn application and the  
15 payment of the license fee and all other applicable fees under  
16 this part, the department shall investigate each applicant and  
17 may issue the applicant a license if the department finds that  
18 the applicant:

19           (a) Is competent and trustworthy and intends to act in  
20 good faith in the business authorized by the license applied  
21 for.

22           (b) Has a good business reputation and has had  
23 experience, training, or education that qualifies the  
24 applicant to conduct the business authorized by the license  
25 applied for.

26           (c) Except with respect to applicants for nonresident  
27 licenses, is a bona fide resident of this state and actually  
28 resides in this state at least 180 days a year. If an  
29 applicant holds a similar license or an insurance agent's or  
30 broker's license in another state at the time of applying for  
31 a license under this section, the applicant may be found to

1 meet the residency requirement of this paragraph only after he  
2 or she furnishes a letter of clearance satisfactory to the  
3 department or other proof that the applicant's resident  
4 licenses have been canceled or changed to nonresident status  
5 and that the applicant is in good standing with the licensing  
6 authority.

7 (d) If a corporation, is incorporated under the laws  
8 of this state or is a foreign corporation authorized to  
9 transact business in this state.

10 (e) Has designated the Insurance Commissioner and  
11 Treasurer as its agent for service of process.

12 (8) An applicant for a nonresident life settlement  
13 broker license must, in addition to designating the Insurance  
14 Commissioner and Treasurer as its agent for service of process  
15 as required by this section, also furnish the department with  
16 the name and address of a resident of this state upon whom  
17 notices or orders of the department or process affecting the  
18 applicant or licensee may be served. After issuance of the  
19 license, the licensee must also notify the department of  
20 change of the person to receive such notices, orders, or  
21 process, and such a change is ineffective until acknowledged  
22 by the department.

23 (9) Beginning July 1, 1999, the department may, by  
24 rule, specify experience, educational, or other training  
25 standards required for licensure under this section.

26 (10) Except as otherwise provided in this section,  
27 life settlement brokers must be licensed, appointed, renewed,  
28 continued, reinstated, and terminated in the manner specified  
29 in this chapter for insurance representatives generally;  
30 however, life settlement brokers are not subject to continuing  
31 education requirements.

1           626.99431 Denial, suspension, revocation, or  
2 nonrenewal of life settlement broker license; grounds;  
3 administrative fine.--

4           (1) The department shall deny an application for,  
5 suspend, revoke, or refuse to renew the license of any life  
6 settlement broker if the department finds that the licensee:

7           (a) Has made a misrepresentation in the application  
8 for the license;

9           (b) Has engaged in fraudulent or dishonest practices,  
10 or otherwise has been shown to be untrustworthy or incompetent  
11 to act as a life settlement broker;

12           (c) Has been found guilty of, or has pleaded guilty or  
13 nolo contendere to, any felony, or a misdemeanor involving  
14 fraud or moral turpitude, regardless of whether a judgment of  
15 conviction has been entered by the court;

16           (d) Deals in bad faith with viators, purchasers, or  
17 owners;

18           (e) Has violated any provision of the insurance code  
19 or of this part;

20           (f) Employs any person who materially influences the  
21 licensee's conduct and who fails to meet the requirements of  
22 this part;

23           (g) No longer meets the requirements for initial  
24 licensure; or

25           (h) Has received a fee, commission, or other valuable  
26 consideration for his or her services involving unlicensed  
27 providers with respect to life settlements.

28           (2) The department may, in lieu of or in addition to  
29 any suspension or revocation, assess an administrative fine  
30 not to exceed \$2,500 for each nonwillful violation or \$10,000  
31 for each willful violation by a life settlement broker

1 licensee. The department may also place a life settlement  
2 broker licensee on probation for a period not to exceed 2  
3 years.

4 626.99432 Effect of suspension or revocation of life  
5 settlement broker license; duration of suspension;  
6 reinstatement.--

7 (1) When its license is suspended or revoked, the  
8 broker must proceed, immediately following the effective date  
9 of the suspension or revocation, to conclude the affairs it is  
10 transacting under its license. The broker may not perform any  
11 of the functions of a life settlement broker as defined in  
12 this part. The department retains jurisdiction over the  
13 broker until all contracts have been fulfilled or canceled or  
14 have expired.

15 (2) The suspension of the license of a life settlement  
16 broker licensee may be for a period, not to exceed 2 years,  
17 which is determined by the department. The department may  
18 shorten, rescind, or modify the suspension.

19 (3) During the period of suspension, the licensee  
20 shall pay license fees, as required by the department, as if  
21 the license had continued in full force.

22 (4) If, upon expiration of the suspension order, the  
23 license has not otherwise been terminated, the department must  
24 reinstate the license only upon written request by the  
25 suspended licensee unless the department finds that the  
26 grounds giving rise to the suspension have not been removed or  
27 that the licensee is otherwise not in compliance with the  
28 requirements of this part. The department shall give the  
29 licensee notice of its findings no later than 90 days after  
30 receipt of the request or upon expiration of the suspension  
31 order, whichever occurs later. If a license is not reinstated



1 pursuant to the procedures set forth in this subsection, it  
2 expires at the end of the suspension or on the date it  
3 otherwise would have expired, whichever is sooner.

4 626.9944 Life settlement sales agent; license  
5 required.--A person may not perform the functions of a life  
6 settlement sales agent unless licensed as a life insurance  
7 agent as defined in s. 626.051 and as provided in chapter 626.

8 626.9945 Notice of change of address or name; life  
9 settlement provider licensees, life settlement broker  
10 licensees, and life settlement sales agent licensees.--Each  
11 life settlement provider licensee, life settlement broker  
12 licensee, and life settlement sales agent licensee must  
13 provide the department at least 30 days' advance notice of any  
14 change in the licensee's name, residence address, principal  
15 business address, or mailing address.

16 626.9946 Use of life settlement brokers, life  
17 settlement providers, and life settlement sales agents  
18 required.--

19 (1) A life settlement provider may not use any person  
20 to perform the functions of a life settlement broker unless  
21 the person holds a current, valid license as a life settlement  
22 broker or viatical settlement broker. Salaried individuals  
23 employed by life settlement providers shall engage in life  
24 settlement broker activities only when accompanied by a life  
25 settlement broker who holds a current valid license.

26 (2) A life settlement provider may not use any person  
27 to perform the functions of a life settlement sales agent  
28 unless the person is licensed as set forth in subsection (4).

29 (3) A life settlement broker may not use any person to  
30 perform the functions of a life settlement provider unless the  
31 person holds a current, valid license as a life settlement

1 provider or a viatical settlement provider. A licensed life  
2 settlement broker may not use any person to perform the  
3 functions of a life settlement sales agent unless the person  
4 holds a current, valid license as provided in s. 626.9944.

5 (4) A life settlement sales agent may not use any  
6 person to perform the functions of a life settlement broker  
7 unless the person holds a current, valid license as a life  
8 settlement broker or a viatical settlement broker.

9 626.9947 Filing of forms; required procedure;  
10 approval.--

11 (1) A life settlement contract form or related form  
12 may be used in this state only after the life settlement  
13 provider or related provider trust has filed the form with the  
14 department and only after the form has been approved by the  
15 department.

16 (2) The contract form or related form must be filed  
17 with the department at least 60 days before its use. A  
18 contract form or related form is considered approved on the  
19 60th day after its date of filing unless it has been  
20 previously disapproved by the department. The department must  
21 disapprove a life settlement contract form or related form  
22 that is unreasonable, contrary to the public interest,  
23 discriminatory, or misleading or unfair to the owner or  
24 insured.

25 (3) If a life settlement provider elects to use a  
26 related provider trust in accordance with this part, the life  
27 settlement provider shall file notice of its intention to use  
28 a related provider trust with the department, including a copy  
29 of the trust agreement of the related provider trust.

30 626.9948 Examination.--  
31

1           (1) The department may examine the business and  
2 affairs of any licensee or applicant for a license. The  
3 department may order any licensee or applicant to produce any  
4 records, books, files, advertising and solicitation materials,  
5 or other information and may take statements under oath to  
6 determine whether the licensee or applicant is in violation of  
7 the law or is acting contrary to the public interest. The  
8 expenses incurred in conducting any examination or  
9 investigation must be paid by the licensee or applicant.  
10 Examinations and investigations must be conducted as provided  
11 in chapter 624, and licensees are subject to all applicable  
12 provisions of the Insurance Code.

13           (2) All accounts, records, documents, files, and other  
14 information relating to all transactions of life settlement  
15 contracts or life settlement purchase agreements must be  
16 maintained by the licensee for a period of at least 3 years  
17 after the death of the insured and must be available to the  
18 department for inspection during reasonable business hours.

19           626.9949 Life settlement contracts; required  
20 disclosures to owners.--The life settlement broker, or the  
21 life settlement provider in transactions in which no broker is  
22 used, must inform the owner by the date of application for a  
23 life settlement contract:

24           (1) That there are possible alternatives to life  
25 settlement contracts for persons who do not have a  
26 catastrophic or life-threatening illness, including, but not  
27 limited to, borrowing against the cash value of the life  
28 policy or surrendering the policy. Information on these  
29 alternatives should be obtained directly from the insurer that  
30 issued the policy.

31

1           (2) That proceeds of the life settlement could be  
2 taxable, and assistance should be sought from a personal tax  
3 adviser.

4           (3) That life settlement proceeds could be subject to  
5 the claims of creditors.

6           (4) That receipt of life settlement proceeds could  
7 adversely affect the recipient's eligibility for Medicaid or  
8 other government benefits or entitlements, and advice should  
9 be obtained from the appropriate agencies.

10           (5) That all life settlement contracts entered into in  
11 this state must contain an unconditional rescission provision  
12 that allows the owner to rescind the contract within 15 days  
13 after the owner receives the life settlement proceeds,  
14 conditioned on the return of the proceeds.

15           (6) The name, business address, and telephone number  
16 of the independent third-party escrow agent and the fact that  
17 the owner may inspect or receive copies of the relevant escrow  
18 or trust agreements or documents.

19           626.99495 Disclosures to life settlement purchasers;  
20 misrepresentations.--

21           (1) A person may not misrepresent or fail to clearly  
22 and affirmatively disclose the nature of the return or the  
23 duration of time to obtain the return of any investment  
24 related to one or more life settlements sold by a life  
25 settlement provider or related provider trust.

26           (2) The life settlement provider and the life  
27 settlement sales agent, themselves or through another person  
28 or persons, shall provide in writing the following disclosures  
29 to any life settlement purchaser or purchaser prospect:

30           (a) The return available under the life settlement  
31 purchase agreement is directly tied to the expected life span

1 of one or more persons insured under the policy and other  
2 factors, including, but not limited to, future premiums,  
3 policy loans, cash value, or interest rates;

4 (b) That the expected life span is a projection, not  
5 based solely upon the age of the person insured under the  
6 policy.

7 (c) That the life expectancy and rate of return are  
8 only estimates, and cannot be guaranteed.

9 (d) The basis for the life expectancy used in the  
10 solicitation or advertisement.

11 (e) If required by the terms of the life settlement  
12 purchase agreement, that the life settlement purchaser may be  
13 responsible for the payment of future insurance premiums on  
14 the policy, late or surrender fees, or other costs related to  
15 the life insurance policy which may reduce the return, and any  
16 such obligations must be clearly set forth in this written  
17 disclosure.

18 (f) The amount of any trust fees, commissions,  
19 deductions, or other expenses, if any, to be charged to the  
20 life settlement purchaser.

21 (g) That group policies may contain limitations or  
22 caps in the conversion rights, that additional premiums may  
23 have to be paid if the policy is converted, and that the party  
24 responsible for the payment of such additional premiums shall  
25 be identified.

26 (h) The name and address of the person responsible for  
27 tracking the person insured under the policy.

28 (i) The purchase of a life settlement should not be  
29 considered a liquid purchase, since it is impossible to  
30 predict the exact timing of its maturity and the funds may not  
31

1 be available until the death of the person insured under the  
2 policy.

3 (j) The name and address of the person responsible for  
4 paying the premium until the death of the person insured under  
5 the policy. The written disclosure required under this  
6 subsection must be conspicuously displayed in any life  
7 settlement purchase agreement, and in any solicitation  
8 material furnished to the life settlement purchaser by the  
9 provider, trust or person, and must be in contrasting color  
10 and in not less than 10-point type. The department may by rule  
11 adopt the disclosure form to be used. The disclosures need not  
12 be furnished in an invitation to inquire, the objective of  
13 which is to create a desire to inquire further about entering  
14 into a life settlement purchase agreement. Such an invitation  
15 to inquire may not quote rates of return, may not exaggerate  
16 the benefits of the purchase, may not include material  
17 attendant to the execution of any specific life settlement  
18 purchase agreement, and may not relate to any specific owner.

19 626.995 Life settlement contract; procedure;  
20 rescission.--

21 (1) A life settlement provider entering into a life  
22 settlement contract with any owner must first obtain a  
23 witnessed document in which the owner consents to the life  
24 settlement contract, acknowledges that no catastrophic or  
25 life-threatening illness exists, represents that he or she has  
26 a full and complete understanding of the life settlement  
27 contract and the benefits of the life insurance policy,  
28 releases his or her medical records, and acknowledges that he  
29 or she has entered into the life settlement contract freely  
30 and voluntarily.

31

1           (2) All life settlement contracts subject to this part  
2 must contain an unconditional rescission provision that allows  
3 the owner to rescind the contract within 15 days after the  
4 owner receives the life settlement proceeds, conditioned on  
5 the return of the proceeds.

6           (3) A life settlement transaction may be completed  
7 only through the use of an independent third-party trustee or  
8 escrow agent. Immediately upon receipt by the independent  
9 third-party trustee or escrow agent of documents from the  
10 owner to effect the transfer of the insurance policy, the life  
11 settlement provider must pay the proceeds of the settlement to  
12 an escrow or trust account managed by the independent  
13 third-party trustee or escrow agent in a financial institution  
14 licensed under the laws of this state or a federally chartered  
15 financial institution that is a member of the Federal Reserve  
16 System, pending acknowledgement of the transfer by the issuer  
17 of the policy. An advance or partial payment of the proceeds  
18 due under a life settlement contract may not be used to effect  
19 transfer of the subject policy, and any such advance or  
20 partial payment is made at the sole discretion and risk of the  
21 life settlement provider.

22           (4) Upon receipt of all life settlement contract  
23 proceeds, the independent third-party trustee or escrow agent  
24 must release to the life settlement provider all documents  
25 necessary to complete the transfer of the insurance policy or  
26 certificate of insurance so that the transfer, assignment,  
27 sale, bequest, or devise may be effected.

28           (5) The independent third-party trustee or escrow  
29 agent must transfer all proceeds of the life settlement  
30 contract to the owner within 3 business days after receiving  
31 from the issuer of the subject policy acknowledgment of the

1 transfer, assignment, bequest, sale, or devise. Failure to  
2 transfer proceeds as required by this subsection renders the  
3 life settlement contract and the transfer, assignment,  
4 bequest, sale, or devise voidable.

5 (6) Within 10 days after the expiration of the  
6 rescission period of the life settlement contract as set forth  
7 in this section, the provider must give notice to the insurer  
8 that the policy has become subject to a life settlement  
9 contract.

10 626.9952 Rules.--The department may adopt rules to  
11 implement this part, including rules establishing standards  
12 for evaluating advertising by licensees and rules providing  
13 for the collection of data and recordkeeping requirements  
14 relating to executed life settlement contracts and life  
15 settlement purchase agreements.

16 626.9954 Rate regulation not authorized.--This part  
17 does not authorize the department to directly or indirectly  
18 regulate the amount paid as consideration for entry into a  
19 life settlement contract or life settlement purchase  
20 agreement.

21 626.996 Unfair trade practices; cease and desist;  
22 injunction; civil remedy; fines.--

23 (1) A violation of this part is an unfair trade  
24 practice under ss. 626.9521 and 626.9541 and is subject to the  
25 penalties provided in the insurance code. Part X of this  
26 chapter applies to a licensee under this part or a transaction  
27 subject to this part as if a life settlement contract and a  
28 life settlement purchase agreement were insurance policies.

29 (2) The department may issue a cease-and-desist order  
30 upon a person that violates any provision of this part, any  
31



1 rule or order adopted by the department, or any written  
2 agreement entered into with the department.

3 (3) When the department finds that such action  
4 presents an immediate danger to the public which requires an  
5 immediate final order, it may issue an emergency  
6 cease-and-desist order reciting with particularity the facts  
7 underlying such findings. The emergency cease-and-desist order  
8 is effective immediately upon service of a copy of the order  
9 on the respondent, and remains effective for 90 days, absent  
10 an order by an appellate court of competent jurisdiction under  
11 s. 120.68. If the department begins nonemergency  
12 cease-and-desist proceedings under subsection (2), the  
13 emergency cease-and-desist order remains effective until  
14 conclusions of proceedings under ss. 120.569 and 120.57.

15 (4) In addition to the penalties and other enforcement  
16 provisions of this part, if any person violates this part or  
17 any rule implementing this part, the department may seek an  
18 injunction in the circuit court of the county where the person  
19 resides or has a principal place of business and may apply for  
20 temporary and permanent orders that the department determines  
21 necessary to restrain the person from committing the  
22 violation.

23 (5) The department may impose and collect an  
24 administrative fine not to exceed \$10,000 for each nonwillful  
25 violation and \$25,000 for each willful violation of any  
26 provision of this part.

27 (6) Any person damaged by the acts of a person in  
28 violation of this part may bring a civil action against the  
29 person committing the violation in the circuit court of the  
30 county in which the alleged violator resides or has a  
31 principal place of business or in the county wherein the

1 alleged violation occurred. Upon an adverse adjudication, the  
2 defendant is liable for damages, together with court costs.  
3 The prevailing party is entitled to recover reasonable  
4 attorney's fees incurred by the plaintiff. When so awarded,  
5 court costs and attorney's fees must be included in the  
6 judgment or decree rendered in the case. If it appears to the  
7 court that the suit brought by the plaintiff was frivolous or  
8 brought for purposes of harassment, the plaintiff is liable  
9 for court costs and reasonable attorney's fees incurred by the  
10 defendant.

11 626.9965 Prohibited practices.--It is unlawful for any  
12 person:

13 (1) To knowingly enter into a life settlement  
14 contract, the subject of which is a life insurance policy that  
15 was obtained by means of a false, deceptive, or misleading  
16 application for the life insurance policy.

17 (2) In the solicitation or sale of a life settlement  
18 purchase agreement:

19 (a) To employ any device, scheme, or artifice to  
20 defraud;

21 (b) To obtain money or property by means of an untrue  
22 statement of a material fact or any omission to state a  
23 material fact necessary in order to make the statements made,  
24 in light of the circumstances under which they were made, not  
25 misleading;

26 (c) To engage in any transaction, practice, or course  
27 of business which operates or would operate as a fraud or  
28 deceit upon a person.

29 626.997 False representations; deceptive words.--

30 (1) It is unlawful for a person in the advertisement,  
31 offer, or sale of a life settlement purchase agreement to

1 misrepresent that the agreement has been guaranteed,  
2 sponsored, recommended, or approved by this or any other  
3 state, or any agency or officer thereof, or by the United  
4 States or any agency or officer thereof.

5 (2) It is unlawful for a person in conjunction with  
6 the sale of a life settlement purchase agreement to directly  
7 or indirectly misrepresent that the person has been sponsored,  
8 recommended, or approved, or that his or her abilities or  
9 qualifications have in any respect been passed upon, by this  
10 or any other state, or any agency or officer thereof, or by  
11 the United States or any agency or officer thereof.

12 (3) It is unlawful for a person in the offer or sale  
13 of any life settlement purchase agreement to obtain money or  
14 property by:

15 (a) A misrepresentation that the life settlement  
16 purchase agreement purchased, offered, or sold is guaranteed,  
17 sponsored, recommended, or approved by this or any other  
18 state, or any agency or officer thereof, or by the United  
19 States or any agency or officer thereof.

20 (b) A misrepresentation that the person is sponsored,  
21 recommended, or approved, or that the person's abilities or  
22 qualifications have in any respect been passed upon, by this  
23 or any other state, or any agency or officer thereof, or by  
24 the United States or any agency or officer thereof.

25 (4) Neither subsection (1) or subsection (2) may be  
26 construed to prohibit a statement that the person is licensed  
27 or appointed under this part if such a statement is required  
28 by this part or rules adopted thereunder, if the statement is  
29 true in fact, and if the effect of the statement is not  
30 misrepresented.

31

1           (5) A person may not represent that a life settlement  
2 purchase agreement is guaranteed by any insurance guaranty  
3 fund.

4           (6) A person may not represent that the investment in  
5 a life settlement purchase agreement is "guaranteed," that the  
6 principal is "safe," or that the investment is free of risk.

7           626.9975 Life settlement broker's compensation.--A  
8 life settlement broker shall disclose to a prospective owner  
9 the amount and method of calculating the broker's compensation  
10 and may not receive compensation from anyone other than that  
11 disclosed to the owner. The term "compensation" includes  
12 anything of value paid or given to a life settlement broker  
13 for the placement of a policy.

14           626.998 Grace period.--A life settlement provider,  
15 life settlement broker, or life settlement sales agent that  
16 was transacting business in this state on June 30, 1998, may  
17 continue to transact such business until the department  
18 approves or disapproves the provider's, broker's, or sales  
19 agent's application for licensure, if the provider, broker, or  
20 sales agent files with the department an application for  
21 licensure and all forms currently in use no later than  
22 November 1, 1999, and if the provider, broker, or sales agent  
23 complies with all other provisions of this part.

24           Section 16. This act shall take effect upon becoming a  
25 law.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2 COMMITTEE SUBSTITUTE FOR  
3 Senate Bill 1242

- 4 1. Revises and clarifies definitions of such terms as  
5 "viator," "viatical settlement broker," "viatical  
6 settlement contract," "viatical settlement provider,"  
7 and "related provider trust." Adds definitions for  
8 "viatical settlement purchase agreement," and "viatical  
9 settlement sales agent." Deletes the definitions for  
10 "insurance investment contract," "insurance investment  
11 broker," and "settlement insured."  
12 2. Provides that a viatical settlement broker must disclose  
13 to a prospective viator the amount and method of  
14 calculating the broker's compensation and may not  
15 receive compensation from anyone other than that  
16 disclosed to the viator. The term "compensation"  
17 includes anything of value paid or given to a viatical  
18 settlement broker for the placement of a policy. Deletes  
19 the provision that required viatical settlement broker's  
20 fees be based on a percentage of the value paid by a  
21 settlement provider to a viator under a viatical  
22 settlement contract.  
23 3. Provides for 30 days advance notice to the Department of  
24 Insurance of a change in name or address of viatical  
25 settlement sales agent licensees. Also, requires such  
26 viatical settlement sales agents to be licensed as life  
27 insurance agents by the department.  
28 4. Provides that viatical settlement purchase agreements  
29 must be maintained for 3 years after the death of the  
30 insured and be available to the department for  
31 inspection.  
32 5. Strengthens disclosure and advertising requirements  
relating to viatical settlement sales agents and  
viatical settlement purchasers. Requires such sales  
agents to make numerous disclosures to viatical  
settlement purchasers including the name and address of  
the person responsible for tracking the viator, that  
group policies may contain limitations or caps in the  
conversion rights, and that the purchase of a viatical  
settlement contract should not be considered a liquid  
purchase. Provides that the department is authorized to  
adopt by rule the disclosure form to be used. Also,  
within 10 days after the expiration of the rescission  
period of a viatical settlement contract, the provider  
must give notice to the insurer that the policy has  
become subject to a viatical settlement contract.  
6. Authorizes the department to promulgate rules  
establishing record keeping requirements for viatical  
settlement purchase agreements.  
7. Prohibits rate regulation by the department as to the  
consideration paid or given in connection with a  
viatical settlement purchase agreement. Includes such  
agreements as subject to the unfair trade practices law.

- 1 8. Authorizes the department, under its cease and desist  
2 authority, to impose an administrative fine of \$10,000  
3 for each nonwillful violation and \$25,000 for each  
4 willful violation of any provision of this part.  
5 Provides that it is a prohibited practice for any person  
6 to enter into a viatical settlement contract the subject  
7 of which is a life insurance policy that was obtained by  
8 means of a false or misleading application for the life  
9 insurance policy and to engage in specified prohibited  
10 activities relating to the sale of viatical settlement  
11 purchase agreements. Also, provides that it is unlawful  
12 for a person in the advertisement, offer, or sale of a  
13 viatical settlement purchase agreement to misrepresent  
14 such agreement as being guaranteed, recommended or  
15 approved by the state or an agency of the United States.  
16 Provides a grace period for viatical settlement sales  
17 agents that are transacting business on June 30, 1999,  
18 to continue to transact such business, in the absence of  
19 any orders to the contrary, until the department  
20 approves or disapproves the sales agent's application  
21 for licensure if the agent files with the department no  
22 later than November 1, 1999.
- 23 9. Creates a new Part XII of Chapter 626, F.S., to be  
24 entitled the "Life Settlement Act" which regulates life  
25 settlement contracts in a manner similar to the current  
26 law (Part XI) which regulates viatical settlement  
27 contracts. Life settlement contract provisions deal with  
28 owners of life insurance policies who do not have a  
29 life-threatening or chronic illness (as compared to  
30 persons regulated under the viatical law). This section  
31 regulates the evolving industry whereby persons sell or  
transfer their life insurance policy by entering into a  
life settlement contract. This section provides for the  
following: definitions; licensing of life settlement  
providers, brokers and sales agents; annual report;  
fees; deposits; grounds for suspension and revocation  
and the effects of same; prohibitions relating to  
unlicensed persons; form requirements; authorizes rule  
making by the department; subjects life settlements to  
unfair trade practices law; allows for fines; and  
prohibits certain business practices.