

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"; revising definitions of the terms
8 "viatical settlement broker," "viatical
9 settlement contract," "viatical settlement
10 provider," "related provider trust," and
11 "viator"; creating s. 626.99181, F.S.;
12 requiring disclosure of certain information
13 regarding viatical settlement broker fees;
14 amending s. 626.9919, F.S.; requiring viatical
15 settlement sales agents to give notice of
16 change of certain information; amending s.
17 626.992, F.S.; requiring viatical settlement
18 sales agents to be licensed by the Department
19 of Insurance; amending s. 626.9922, F.S.;
20 revising requirements for examination; amending
21 s. 626.99235, F.S.; revising requirements for
22 disclosure to viatical settlement purchasers
23 and providing for disclosure forms to be
24 adopted by the department; amending s.
25 626.9925; revising rulemaking authority of the
26 department; amending s. 626.9926, F.S.;
27 providing that viatical settlement purchase
28 agreement rates are not regulated; amending s.
29 626.9927, F.S.; including viatical settlement
30 purchase agreements; creating s. 626.99272,
31 F.S.; providing for cease and desist orders;

1 providing for administrative fines; creating s.
2 626.99275, F.S.; prohibiting certain practices;
3 creating s. 626.99277, F.S.; prohibiting false
4 representations; amending s. 626.9929, F.S.;
5 establishing a grace period for viatical
6 settlement sales agents transacting business in
7 this state; amending s. 626.993, F.S.;
8 providing an exemption for nonresident viators
9 with dependent children; providing for future
10 repeal of s. 626.993, F.S.; providing an
11 effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 626.9911, Florida Statutes, 1998
16 Supplement, is amended to read:

17 626.9911 Definitions.--As used in this act, the term:

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

19 (2) "Independent third-party trustee or escrow agent"
20 means an attorney, certified public accountant, financial
21 institution, or other person providing escrow services under
22 the authority of a regulatory body. The term does not include
23 any person associated, affiliated, or under common control
24 with a viatical settlement provider or viatical settlement
25 broker.

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

27 (4) "Viatical settlement broker" means a person who,
28 on behalf of a viator and for a fee, commission, or other
29 valuable consideration, offers or attempts to negotiate
30 viatical settlement contracts between a viator resident in
31 this state and one or more viatical settlement providers.

1 Notwithstanding the manner in which the viatical settlement
2 broker is compensated, a viatical settlement broker is deemed
3 to represent only the viator and owes a fiduciary duty to the
4 viator to act according to the viator's instructions and in
5 the best interest of the viator. The term does not include an
6 attorney, licensed Certified Public Accountant, or investment
7 adviser lawfully registered with the Department of Banking and
8 Finance under chapter 517 financial planner, or person acting
9 under a power of attorney from the viator, who is retained to
10 represent the viator and whose compensation is paid directly
11 solely by or at the direction and on behalf of the viator
12 without regard to whether a viatical settlement contract is
13 effected.

14 (5) "Viatical settlement contract" means a written
15 agreement ~~settlement~~ entered into between a viatical
16 settlement provider, or its related provider trust, and a
17 viator. The agreement must establish the terms under which
18 the viatical settlement provider will pay compensation or
19 anything of value, which compensation or value is less than
20 the expected death benefit of the insurance policy or
21 certificate, in return for the viator's assignment, transfer,
22 sale, devise, or bequest of the death benefit or ownership of
23 all or a portion of the insurance policy or certificate of
24 insurance to the viatical settlement provider. A viatical
25 settlement contract also includes a contract for a loan or
26 other financial transaction secured primarily by an individual
27 or group life insurance policy, other than a loan by a life
28 insurance company pursuant to the terms of the life insurance
29 contract, or a loan secured by the cash value of a policy.

30 (6) "Viatical settlement provider" means a person
31 who, in this state, ~~or~~ from this state, or with a resident of

1 this state, effectuates ~~enters into~~ a viatical settlement
2 contract ~~with a viator~~. The term does not include:

3 (a) Any bank, savings bank, savings and loan
4 association, credit union, or other licensed lending
5 institution that takes an assignment of a life insurance
6 policy as collateral for a loan;

7 (b) A life and health insurer that has lawfully issued
8 a life insurance policy that provides accelerated benefits to
9 terminally ill policyholders or certificate holders; or

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

14 (d) A trust that meets the definition of a "related
15 provider trust."

16 (e) A viatical settlement provider, who from this
17 state, enters into a viatical settlement purchase agreement
18 with a purchaser who is resident of a state, other than
19 Florida, which has enacted statutes or promulgated regulations
20 governing viatical settlement purchase agreements. Such
21 viatical settlement purchase agreements shall be governed in
22 the effectuation of that viatical settlement purchase
23 agreement, under the statutes and regulations governing
24 viatical settlement purchase agreements in the purchaser's
25 state of residence.

26 (f) A viatical settlement provider who, from this
27 state, enters into a viatical settlement contract with a
28 viator who is resident of a state, other than Florida, which
29 has enacted statutes or promulgated regulations governing
30 viatical settlement contracts. Such viatical settlement
31 contracts shall be governed in the effectuation of that

1 viatical settlement contract, under the statutes and
2 regulations governing viatical settlement contracts in the
3 viator's state of residence.

4 (g) A viator in this state.

5 (h) A viatical settlement purchaser.

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

18 (8) "Related provider trust" means a trust established
19 by a viatical settlement provider for the sole purpose of
20 entering into or owning viatical settlement contracts. This
21 term does not include an independent third-party trustee or
22 escrow agent or a trust that does not enter into agreements
23 with a viatical settlement purchaser. A related provider
24 trust shall be subject to all provisions of this act that
25 apply to the viatical settlement provider who established the
26 related provider trust, except s. 626.9912, which shall not be
27 applicable. A viatical settlement provider may establish no
28 more than one related provider trust, and the sole trustee of
29 such related provider trust shall be the viatical settlement
30 provider licensed under s. 626.9912. The name of the licensed
31

1 viatical settlement provider shall be included within the name
2 of the related provider trust.

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

9 (10) "Viatical settlement purchaser" means a person,
10 other than a licensee under this part, an accredited investor
11 as defined in Rule 501, Regulation D of the Securities Act
12 Rules, or a qualified institutional buyer as defined by Rule
13 144(a) of the Federal Securities Act, or a special purpose
14 entity which is created solely to act as a financing source
15 for the viatical settlement provider, who gives a sum of money
16 as consideration for a life insurance policy or an interest in
17 the death benefits of a life insurance policy which has been
18 or will be the subject of a viatical settlement contract, for
19 the purpose of deriving an economic benefit. The above
20 reference to Rule 501, Regulation D and Rule 144(a) of the
21 Federal Securities Act are used strictly for defining purposes
22 and shall not be interpreted in any other manner.

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

28 Section 2. Section 626.99181, Florida Statutes, is
29 created to read:

30 626.99181 Viatical settlement broker's
31 compensation.--A viatical settlement broker shall disclose to

1 a prospective viator the amount and method of calculating the
2 broker's compensation. The term "compensation" includes
3 anything of value paid or given to a viatical settlement
4 broker for the placement of a policy.

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

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

15 Section 4. Section 626.992, Florida Statutes, is
16 amended to read:

17 626.992 Use of viatical settlement licensed brokers,
18 ~~and providers,~~ and viatical settlement sales agents
19 required.--

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

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

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

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

13 Section 5. Section 626.9922, Florida Statutes, is
14 amended to read:

15 626.9922 Examination.--

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

28 (2) All accounts, records, documents, files, and other
29 information relating to all transactions of viatical
30 settlement contracts or viatical settlement purchase
31 agreements must be maintained by the licensee for a period of

1 at least 3 years after the death of the insured ~~viator~~ and
2 must be available to the department for inspection during
3 reasonable business hours.

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

6 626.99235 Disclosures to viatical settlement
7 purchasers ~~investors~~; misrepresentations.--

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

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

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

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

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

1 insured or insureds ~~viator or viators~~ which may reduce the
2 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 insured.

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) That the purchase of a viatical settlement
16 contract should not be considered a liquid purchase, since it
17 is impossible to predict the exact timing of its maturity and
18 the funds may not be available until the death of the insured.

19 (i) The name and address of the person with the
20 responsibility for paying the premium until the death of the
21 insured.

22
23 The written disclosure required under this subsection shall be
24 conspicuously displayed in any viatical settlement purchase
25 ~~investment~~ agreement, and in any solicitation material
26 furnished to the viatical settlement purchaser ~~investor~~ by
27 such viatical settlement provider, related provider trust, or
28 person, and shall be in contrasting color and in not less than
29 10-point type or no smaller than the largest type on the page
30 if larger than 10-point type. The department is authorized to
31 adopt by rule the disclosure form to be used. The disclosures

1 need not be furnished in an invitation to inquire, the
2 objective of which is to create a desire to inquire further
3 about entering into a viatical settlement purchase agreement.
4 The invitation to inquire may not quote rates of return, may
5 not include material attendant to the execution of any
6 specific viatical settlement purchase agreement, and may not
7 relate to any specific viator.

8 Section 7. Section 626.9925, Florida Statutes, is
9 amended to read:

10 626.9925 Rules.--The department may adopt rules to
11 implement this act, including rules establishing standards for
12 evaluating advertising by licensees and rules providing for
13 the collection of data and recordkeeping requirements relating
14 to executed viatical settlement contracts and viatical
15 settlement purchase agreements.

16 Section 8. Section 626.9926, Florida Statutes, is
17 amended to read:

18 626.9926 Rate regulation not authorized.--Nothing in
19 this act shall be construed to authorize the department to
20 directly or indirectly regulate the amount paid as
21 consideration for entry into a viatical settlement contract or
22 viatical settlement purchase agreement.

23 Section 9. Subsection (1) of section 626.9927, Florida
24 Statutes, is amended to read:

25 626.9927 Unfair trade practices; cease and desist;
26 injunctions; civil remedy.--

27 (1) A violation of this act is an unfair trade
28 practice under ss. 626.9521 and 626.9541 and is subject to the
29 penalties provided in the insurance code. Part X of this
30 chapter applies to a licensee under this act or a transaction
31 subject to this act as if a viatical settlement contract and a

1 viatical settlement purchase agreement were an insurance
2 policy.

3 Section 10. Section 626.99272, Florida Statutes, is
4 created to read:

5 626.99272 Cease and desist orders and fines.--

6 (1) The department may issue a cease and desist order
7 upon a person that violates any provision of this part, any
8 rule or order adopted by the department, or any written
9 agreement entered into with the department.

10 (2) When the department finds that such an action
11 presents an immediate danger to the public which requires an
12 immediate final order, it may issue an emergency cease and
13 desist order reciting with particularity the facts underlying
14 such findings. The emergency cease and desist order is
15 effective immediately upon service of a copy of the order on
16 the respondent and remains effective for 90 days. If the
17 department begins nonemergency cease and desist proceedings
18 under subsection (1), the emergency cease and desist order
19 remains effective, absent an order by an appellate court of
20 competent jurisdiction pursuant to ss. 120.68, until the
21 conclusion of proceedings under ss. 120.569 and 120.57.

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

26 Section 11. Section 626.99275, Florida Statutes, is
27 created to read:

28 626.99275 Prohibited practices.--It is unlawful for
29 any person:

30 (1) To knowingly enter into a viatical settlement
31 contract the subject of which is a life insurance policy that

1 was obtained by means of a false, deceptive, or misleading
2 application for the life insurance policy.

3 (2) In the solicitation or sale of a viatical
4 settlement purchase agreement:

5 (a) To employ any device, scheme, or artifice to
6 defraud;

7 (b) To obtain money or property by means of an untrue
8 statement of a material fact or by any omission to state a
9 material fact necessary in order to make the statements made,
10 in light of the circumstances under which they were made, not
11 misleading; or

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

15 Section 12. Section 626.99277, Florida Statutes, is
16 created to read:

17 626.99277 False representations; deceptive words.--

18 (1) It is unlawful for a person in the advertisement,
19 offer, or sale of a viatical settlement purchase agreement to
20 misrepresent that such an agreement has been guaranteed,
21 sponsored, recommended, or approved by the state, or any
22 agency or officer of the state or by the United States or any
23 agency or officer of the United States.

24 (2) It is unlawful for a person in conjunction with
25 the sale of a viatical settlement purchase agreement to
26 directly or indirectly misrepresent that the person has been
27 sponsored, recommended, or approved, or that his or her
28 abilities or qualifications have in any respect been passed
29 upon, by this state or any other state, or any agency or
30 officer thereof, or by the United States or any agency or
31 officer thereof.

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

4 (a) A misrepresentation that the viatical settlement
5 purchase agreement purchased, offered, or sold is guaranteed,
6 sponsored, recommended, or approved by this state or any other
7 state, or any agency or officer thereof, or by the United
8 States or any agency or officer thereof.

9 (b) A misrepresentation that the person is sponsored,
10 recommended, or approved, or that the person's abilities or
11 qualifications have in any respect been passed upon, by this
12 state or any other state, or any agency or officer thereof, or
13 by the United States or any agency or officer thereof.

14 (4) Neither subsection (1) nor subsection (2) may be
15 construed to prohibit a statement that the person is licensed
16 or appointed under this part if such a statement is required
17 by this part or rules adopted under this part, if the
18 statement is true in fact, and if the effect of the statement
19 is not misrepresented.

20 (5) A person may not represent that a viatical
21 settlement purchase agreement is guaranteed by any insurance
22 guaranty fund.

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

27 Section 13. Section 626.9929, Florida Statutes, is
28 amended to read:

29 626.9929 Grace period.--A viatical settlement sales
30 agent provider or viatical settlement broker that was
31 transacting business in this state on June 30, 1999 ~~1996~~, may

1 continue to transact such business, in the absence of any
2 orders by the department to the contrary, until the department
3 approves or disapproves the sales agent's ~~provider's or~~
4 ~~broker's~~ application for licensure if the sales agent ~~provider~~
5 ~~or broker~~ files with the department no later than November 1,
6 1999, an application for licensure ~~and all forms currently in~~
7 ~~use no later than November 1, 1996,~~ and if the sales agent
8 ~~provider or broker~~ complies with all other provisions of this
9 act.

10 Section 14. Section 626.993, Florida Statutes, is
11 amended to read:

12 626.993 Viators with dependent children.--

13 (1) Before a viatical settlement provider may enter
14 into a viatical settlement with a viator, the viatical
15 settlement provider must ascertain if the viator has any
16 dependent children. If the viator has any dependent children,
17 the viator may not viaticate more than 50 percent of the face
18 value of the policy.

19 (2) A contract entered into with a viator who is a
20 resident of a state other than Florida which has not enacted
21 statutes or promulgated regulations governing viatical
22 settlement contracts is not subject to this section.

23 Section 15. Section 626.993, Florida Statutes, as
24 amended by this act, is repealed June 1, 2000.

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