

By Representative Gay

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; providing an effective date.

8

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

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11 Section 1. Section 626.9911, Florida Statutes, 1998
12 Supplement, is amended to read:

13 626.9911 Definitions.--As used in this act, the term:

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

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

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

23 (4) "Viatical settlement broker" means a person who,
24 on behalf of a viator and for a fee, commission, or other
25 valuable consideration, offers or attempts to negotiate
26 viatical settlement contracts between a viator resident in
27 this state and one or more viatical settlement providers.
28 Notwithstanding the manner in which the viatical settlement
29 broker is compensated, a viatical settlement broker is deemed
30 to represent only the viator and owes a fiduciary duty to the
31 viator to act according to the viator's instructions and in

1 the best interest of the viator. The term does not include an
2 attorney, licensed Certified Public Accountant, or investment
3 adviser lawfully registered with the Department of Banking and
4 Finance under chapter 517 ~~financial planner, or person acting~~
5 ~~under a power of attorney from the viator,~~ who is retained to
6 represent the viator and whose compensation is paid directly
7 solely by or at the direction and on behalf of the viator
8 ~~without regard to whether a viatical settlement contract is~~
9 ~~effected.~~

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

26 (6) "Viatical settlement provider" means a person
27 other than a viator who, in this state, ~~or~~ from this state, or
28 with a resident of this state, effectuates ~~enters into~~ a
29 viatical settlement contract ~~with a viator~~. The term does not
30 include:
31

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

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

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

12 (d) A trust that meets the definition of a "related
13 provider trust."

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

26 (8) "Related provider trust" means a trust established
27 by a viatical settlement provider for the sole purpose of
28 entering into or owning viatical settlement contracts. This
29 term does not include an independent third-party trustee or
30 escrow agent. A related provider trust shall be subject to
31 all provisions of this act that apply to the viatical

1 settlement provider who established the related provider
2 trust, except s. 626.9912, which shall not be applicable. A
3 viatical settlement provider may establish no more than one
4 related provider trust, and the sole trustee of such related
5 provider trust shall be the viatical settlement provider
6 licensed under s. 626.9912. The name of the licensed viatical
7 settlement provider shall be included within the name of the
8 related provider trust.

9 (9) "Viatical settlement purchase agreement" means a
10 contract or agreement, entered into by a viatical settlement
11 purchaser, to which the viator is not a party, to purchase a
12 life insurance policy or an interest in a life insurance
13 policy, which is entered into for the purpose of deriving an
14 economic benefit.

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

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

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

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1 626.99181 Viatical settlement broker's
2 compensation.--A viatical settlement broker shall disclose to
3 a prospective viator the amount and method of calculating the
4 broker's compensation. The term "compensation" includes
5 anything of value paid or given to a viatical settlement
6 broker for the placement of a policy.

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

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

17 Section 4. Section 626.992, Florida Statutes, is
18 amended to read:

19 626.992 Use of viatical settlement licensed brokers,
20 and providers, and viatical settlement sales agents
21 required.--

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

1 unless the person holds a current, valid license as provided
2 in subsection (4).

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

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, themselves ~~itself~~ or through another
16 person, shall provide in writing the following disclosures to
17 any viatical settlement purchaser ~~investor~~ or purchaser
18 ~~investor~~ 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 insureds.~~viators~~

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

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

1 costs related to the life insurance policy on the life of the
2 insured or insureds ~~viator or viators~~ which may reduce the
3 return.

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

7 (e) The name and address of the person responsible for
8 tracking the insured.

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

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

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

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

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

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

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

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

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

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

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

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

28 (1) A violation of this act is an unfair trade
29 practice under ss. 626.9521 and 626.9541 and is subject to the
30 penalties provided in the insurance code. Part IX ~~✕~~ of this
31 chapter applies to a licensee under this act or a transaction

1 subject to this act as if a viatical settlement contract and a
2 viatical settlement purchase agreement were an insurance
3 policy.

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

6 626.99272 Cease and desist orders and fines.--

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

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

23 (3) 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 Section 11. Section 626.99275, Florida Statutes, is
28 created to read:

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

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

5 (2) In the solicitation or sale of a viatical
6 settlement purchase agreement:

7 (a) To employ any device, scheme, or artifice to
8 defraud;

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

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

17 Section 12. Section 626.99277, Florida Statutes, is
18 created to read:

19 626.99277 False representations; deceptive words.--

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

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

1 officer thereof, or by the United States or any agency or
2 officer thereof.

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

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

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

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

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

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

29 Section 13. Section 626.9929, Florida Statutes, is
30 amended to read:

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