

By Senator Geller

29-639-00

1                                   A bill to be entitled  
2           An act relating to viatical settlements;  
3           amending s. 626.9911, F.S.; modifying  
4           definitions; amending s. 626.9912, F.S.;  
5           prescribing information to be included in an  
6           application for a viatical settlement provider  
7           license; modifying prerequisites for licensure;  
8           amending s. 626.9921, F.S.; providing for  
9           approval and disapproval by the Department of  
10          Insurance of viatical settlement purchase  
11          agreement forms and other forms necessary to  
12          effectuate a viatical settlement transaction;  
13          requiring approval by the department of the  
14          organizational documents of any trust to be  
15          used by a viatical settlement provider;  
16          amending s. 626.9922, F.S.; requiring licensees  
17          to maintain books and contracts relating to  
18          viatical settlement contracts or viatical  
19          settlement purchase agreements at their home  
20          office for a prescribed time; creating s.  
21          626.99236, F.S.; providing for certain  
22          disclosures to viatical settlement purchaser  
23          after purchase of the agreement; amending s.  
24          626.9924, F.S.; removing a requirement that a  
25          viator acknowledge the existence of a  
26          catastrophic or life-threatening illness;  
27          requiring a provider to notify an insurer of a  
28          policy that is to be transferred that the  
29          policy has or will become the subject of a  
30          viatical agreement; requiring notice to the  
31          insured if the owner of an insurance policy is

1 not the insured; creating s. 626.99245, F.S.;  
2 providing for the application of other states'  
3 laws under certain circumstances; amending s.  
4 626.9925, F.S.; authorizing the department to  
5 adopt rules; creating s. 626.99285, F.S.;  
6 expanding statutory authority of the department  
7 to regulate viatical settlements; providing an  
8 effective date.

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

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12 Section 1. Subsections (6), (7), (8), and (10) of  
13 section 626.9911, Florida Statutes, are amended and subsection  
14 (12) is added to that section to read:

15 626.9911 Definitions.--As used in this act, the term:

16 (6) "Viatical settlement provider" means a person who,  
17 in this state, from this state, or with a resident of this  
18 state, effectuates a viatical settlement contract. The term  
19 does not include:

20 (a) Any bank, savings bank, savings and loan  
21 association, credit union, or other licensed lending  
22 institution that takes an assignment of a life insurance  
23 policy as collateral for a loan;

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

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

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1           (d) A trust that meets the definition of a "related  
2 provider trust."

3           ~~(e) A viatical settlement provider, who from this  
4 state, enters into a viatical settlement purchase agreement  
5 with a purchaser who is resident of a state, other than  
6 Florida, which has enacted statutes or promulgated regulations  
7 governing viatical settlement purchase agreements. Such  
8 viatical settlement purchase agreements shall be governed in  
9 the effectuation of that viatical settlement purchase  
10 agreement, under the statutes and regulations governing  
11 viatical settlement purchase agreements in the purchaser's  
12 state of residence.~~

13           ~~(f) A viatical settlement provider who, from this  
14 state, enters into a viatical settlement contract with a  
15 viator who is resident of a state, other than Florida, which  
16 has enacted statutes or promulgated regulations governing  
17 viatical settlement contracts. Such viatical settlement  
18 contracts shall be governed in the effectuation of that  
19 viatical settlement contract, under the statutes and  
20 regulations governing viatical settlement contracts in the  
21 viator's state of residence.~~

22           (e)(g) A viator in this state.

23           (f)(h) A viatical settlement purchaser.

24           (7) "Viator" means the owner of a life insurance  
25 policy or a certificateholder under a group policy ~~insuring~~  
26 ~~the life of an individual with a catastrophic or~~  
27 ~~life-threatening illness or condition~~ who enters or seeks to  
28 enter into a viatical settlement contract. This term does not  
29 include a viatical settlement purchaser or a viatical  
30 settlement provider or any person acquiring a policy or  
31 interest in a policy from a viatical settlement provider, nor

1 does it include an independent third-party trustee or escrow  
2 agent.

3 (8) "Related provider trust" means a trust established  
4 by a viatical settlement provider for the sole purpose of  
5 entering into or owning viatical settlement contracts. This  
6 term does not include an independent third-party trustee or  
7 escrow agent or a trust that does not enter into agreements  
8 with a viator ~~viatical settlement purchaser~~. A related  
9 provider trust shall be subject to all provisions of this act  
10 that apply to the viatical settlement provider who established  
11 the related provider trust, except s. 626.9912, which shall  
12 not be applicable. A viatical settlement provider may  
13 establish no more than one related provider trust, and the  
14 sole trustee of such related provider trust shall be the  
15 viatical settlement provider licensed under s. 626.9912. The  
16 name of the licensed viatical settlement provider shall be  
17 included within the name of the related provider trust.

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

1           (11) "Viatical settlement sales agent" means a person  
2 other than a licensed viatical settlement provider who  
3 arranges the purchase through a viatical settlement purchase  
4 agreement of a life insurance policy or an interest in a life  
5 insurance policy.

6           (12) "Viated policy" means a life insurance policy, or  
7 a certificate under a group policy, which is the subject of a  
8 viatical settlement contract.

9           Section 2. Subsection (1), paragraph (f) of subsection  
10 (3), subsection (4), and paragraph (b) of subsection (5) of  
11 section 626.9912, Florida Statutes, are amended to read:

12           626.9912 Viatical settlement provider license  
13 required; application for license.--

14           (1) ~~After July 1, 1996,~~A person may not perform the  
15 functions of a viatical settlement provider as defined in this  
16 act or enter into or solicit a viatical settlement contract  
17 without first having obtained a license from the department.

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

20           (f) All applications, viatical settlement contract  
21 forms, viatical settlement purchase agreement forms ~~rating~~  
22 ~~manuals~~, and other related forms proposed to be used by the  
23 applicant.

24           (4) The department may not issue a license to an  
25 entity other than a natural person if it is not satisfied that  
26 all officers, directors, employees, stockholders, ~~and~~  
27 partners, and any other persons who exercise or have the  
28 ability to exercise effective control of the entity or who  
29 have the ability to influence the transaction of business by  
30 the entity meet the standards of this act and have not  
31 violated any provision of this act or rules of the department

1 related to the business of viatical settlement contracts or  
2 viatical settlement purchase agreements.

3 (5) Upon the filing of a sworn application and the  
4 payment of the license fee, the department shall investigate  
5 each applicant and may issue the applicant a license if the  
6 department finds that the applicant:

7 (b) Is competent and trustworthy and intends to act in  
8 good faith in the business authorized by the license applied  
9 for; ~~however, for purposes of this act, including this~~  
10 ~~paragraph, a person shall not be deemed to be incompetent and~~  
11 ~~untrustworthy solely for any felony committed more than 5~~  
12 ~~years before licensure if the person has had his or her civil~~  
13 ~~rights restored by the Governor and Cabinet with respect to~~  
14 ~~such felony.~~

15 Section 3. Section 626.9921, Florida Statutes, is  
16 amended to read:

17 626.9921 Filing of forms; required procedures;  
18 approval.--

19 (1) A viatical settlement contract form, a viatical  
20 settlement purchase agreement, or any related form that is  
21 necessary to effectuate a viatical settlement transaction may  
22 be used in this state only after the viatical settlement  
23 provider or any related provider trust has filed the form with  
24 the department and only after the form has been approved by  
25 the department.

26 (2) The contract form or related form must be filed  
27 with the department at least 60 days before its use. A  
28 contract form or related form is considered approved on the  
29 60th day after its date of filing unless it has been  
30 previously disapproved by the department. The department must  
31 disapprove a viatical settlement contract form, viatical

1 settlement purchase agreement, or related form that is  
2 unreasonable, contrary to the public interest, discriminatory,  
3 or misleading or unfair to the viator or the purchaser.

4 (3) If a viatical settlement provider elects to use a  
5 related provider trust in accordance with this act, the  
6 viatical settlement provider shall file notice of its  
7 intention to use a related provider trust with the department,  
8 including a copy of the trust agreement of the related  
9 provider trust. The organizational documents of the trust must  
10 be submitted to and approved by the department prior to the  
11 transacting of business by the trust.

12 Section 4. Subsection (2) of section 626.9922, Florida  
13 Statutes, is amended to read:

14 626.9922 Examination.--

15 (2) All accounts, books and records, documents, files,  
16 contracts, and other information relating to all transactions  
17 of viatical settlement contracts or viatical settlement  
18 purchase agreements must be maintained by the licensee for a  
19 period of at least 3 years after the death of the insured and  
20 must be available to the department for inspection during  
21 reasonable business hours. All such records must be maintained  
22 at the licensee's home office.

23 Section 5. Section 626.99236, Florida Statutes, is  
24 created to read:

25 626.99236 Disclosures to viatical settlement  
26 purchasers after the purchase.--The viatical settlement  
27 provider, itself or through another person, shall provide in  
28 writing the following disclosures to any investor within 45  
29 days after the effectuation of the viatical settlement  
30 purchase agreement:

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1           (1) The life expectancy used by the provider in  
2 determining the price paid to the viator.

3           (2) The name and address of the insurance company, the  
4 policy number, and the date of issue of the viated policy.

5           (3) The name, address, experience, and qualifications  
6 of the person issuing the life expectancy certification.

7           (4) The name and address of any person providing  
8 escrow services.

9           (5) The type of life insurance policy offered or sold,  
10 including whole life, term life, and universal life, or a  
11 group policy certificate and the current status or condition  
12 of such policy, together with any additional benefits  
13 contained within the policy.

14           (6) The frequency with which the provider will provide  
15 the status of the health condition of the insured to a  
16 purchaser.

17           Section 6. Subsection (1) of section 626.9924, Florida  
18 Statutes, is amended and new subsections (7) and (8) are added  
19 to that section to read:

20           626.9924 Viatical settlement contracts; procedures;  
21 rescission.--

22           (1) A viatical settlement provider entering into a  
23 viatical settlement contract with any viator must first obtain  
24 a witnessed document in which the viator consents to the  
25 viatical settlement contract, ~~acknowledges the catastrophic or~~  
26 ~~life-threatening illness,~~ represents that he or she has a full  
27 and complete understanding of the viatical settlement contract  
28 and the benefits of the life insurance policy, releases his or  
29 her medical records, and acknowledges that he or she has  
30 entered into the viatical settlement contract freely and  
31 voluntarily.



1           (7) Within 20 days after a viator executes documents  
2 necessary to transfer rights under an insurance policy, the  
3 provider must give notice to the insurer of the policy that  
4 the policy has or will become a viated policy.

5           (8) If the owner of the insurance policy is not the  
6 insured, the provider shall notify the insured that the policy  
7 has become the subject of a viatical settlement contract  
8 within 20 days after the transfer of rights under the  
9 contract.

10           Section 7. Section 626.99245, Florida Statutes, is  
11 created to read:

12           626.99245 Conflict of regulation of viaticals.--

13           (1) A viatical settlement provider who, from this  
14 state, enters into a viatical settlement purchase agreement  
15 with a purchaser who is resident of a state other than  
16 Florida, which state has enacted statutes or adopted  
17 regulations governing viatical settlement purchase agreements,  
18 shall be governed in the effectuation of that viatical  
19 settlement purchase agreement by the statutes and regulations  
20 of the purchaser's state of residence.

21           (2) A viatical settlement provider who, from this  
22 state, enters into a viatical settlement contract with a  
23 viator who is resident of a state other than Florida, which  
24 state has enacted statutes or adopted regulations governing  
25 viatical settlement contracts, shall be governed in the  
26 effectuation of such viatical settlement contract by the  
27 statutes and regulations of the viator's state of residence.

28           (3) The burden of proof for any exception claimed  
29 under this section rests with the licensee.

30           Section 8. Section 626.9925, Florida Statutes, is  
31 amended to read:

1           626.9925 Rules.--The department may adopt rules to  
2 administer ~~implement~~ this act, including rules establishing  
3 standards for evaluating advertising by licensees; ~~and~~ rules  
4 providing for the collection of data, for disclosures to  
5 viators or purchasers, and for the reporting of medical  
6 evaluations; and rules defining terms used in this act and  
7 prescribing recordkeeping requirements relating to executed  
8 viatical settlement contracts and viatical settlement purchase  
9 agreements.

10           Section 9. Section 626.99285, Florida Statutes, is  
11 created to read:

12           626.99285 Applicability of Florida Insurance Code.--In  
13 addition to other applicable provisions cited in this chapter,  
14 the department has the authority granted under ss. 624.310,  
15 626.901 and 626.989 to regulate viatical settlement providers,  
16 viatical settlement brokers, viatical settlement sales agents,  
17 viatical settlement contracts, viatical settlement purchase  
18 agreements, and viatical settlement transactions.

19           Section 10. This act shall take effect July 1, 2000.  
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SENATE SUMMARY

Amends various provisions relating to the Viatical Settlement Act. Modifies definitions applicable to the act. Requires an applicant for a viatical settlement provider license to include specified information in the application form for the viatical settlement purchase agreement. Modifies conditions under which the Department of Insurance may approve or disapprove an application. Requires departmental approval of the organizational documents of any trust to be used by a viatical settlement provider. Requires licensees to maintain books and contracts relating to viatical settlement contracts or viatical settlement purchase agreements at their home office for a prescribed time. Requires certain disclosures to be given to purchasers of a viatical settlement agreement after the purchase. Deletes the requirement that a viator acknowledge the existence of a catastrophic or life-threatening illness. Requires a provider to notify an insurer of a policy that is to be transferred that the policy has or will become a viatical policy. Requires notice to the insured if the owner of an insurance policy is not the insured. Provides for the application of other states' laws under certain circumstances. Authorizes the department to adopt rules. Expands the department's authority to regulate.