

By the Committee on Banking and Insurance; and Senator Lee

311-2003A-00

1                                   A bill to be entitled  
2           An act relating to viatical settlements;  
3           amending s. 626.9911, F.S.; redefining the  
4           terms "viatical settlement contract," "viatical  
5           settlement provider," "viator," "related  
6           provider trust," and "viatical settlement  
7           purchaser"; defining the terms "viaticated  
8           policy," "related form," "special purpose  
9           entity," and "financing entity"; amending s.  
10          626.9912, F.S.; requiring additional  
11          information for license applications; amending  
12          s. 626.9921, F.S.; providing for additional  
13          forms; amending s. 626.9922, F.S.; revising  
14          recordkeeping time requirements; defining the  
15          term "home office"; providing that records be  
16          made available; creating s. 626.99236, F.S.;  
17          providing for disclosure to viatical settlement  
18          purchasers; providing for rescission of  
19          agreements; amending s. 626.9924, F.S.;  
20          providing for notice of viaticated policies;  
21          creating s. 626.99245, F.S.; providing for the  
22          regulation of interstate conflicts; amending s.  
23          626.9925, F.S.; providing additional rulemaking  
24          authority; amending s. 626.99275, F.S.;  
25          providing criminal penalties; creating s.  
26          626.99278, F.S.; requiring the adoption of an  
27          anti-fraud plan; creating s. 626.99285, F.S.;  
28          providing for the applicability of the  
29          Insurance Code; creating s. 626.99287, F.S.;  
30          providing for the contestability of viaticated  
31          policies; creating 626.99295, F.S.; providing

1           for a grace period for unlicensed viatical  
2           settlement providers; providing an effective  
3           date.

4  
5 Be It Enacted by the Legislature of the State of Florida:

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7           Section 1. Subsections (5), (6), (7), (8), and (10) of  
8 section 626.9911, Florida Statutes, are amended and  
9 subsections (12), (13), (14), and (15) are added to that  
10 section to read:

11           626.9911 Definitions.--As used in this act, the term:

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

1           (6) "Viatical settlement provider" means a person who,  
2 in this state, from this state, or with a resident of this  
3 state, effectuates a viatical settlement contract. The term  
4 does not include:

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

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

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

16           (d) A trust that meets the definition of a "related  
17 provider trust."

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

28           ~~(f) A viatical settlement provider who, from this~~  
29 ~~state, enters into a viatical settlement contract with a~~  
30 ~~viator who is resident of a state, other than Florida, which~~  
31 ~~has enacted statutes or promulgated regulations governing~~

1 ~~viatical settlement contracts. Such viatical settlement~~  
2 ~~contracts shall be governed in the effectuation of that~~  
3 ~~viatical settlement contract, under the statutes and~~  
4 ~~regulations governing viatical settlement contracts in the~~  
5 ~~viator's state of residence.~~

6 (e)~~(g)~~ A viator in this state.

7 (f)~~(h)~~ A viatical settlement purchaser.

8 (g) A financing entity.

9 (7) "Viator" means the owner of a life insurance  
10 policy or a certificateholder under a group policy ~~insuring~~  
11 ~~the life of an individual with a catastrophic or~~  
12 ~~life-threatening illness or condition~~ who enters or seeks to  
13 enter into a viatical settlement contract. This term does not  
14 include a viatical settlement purchaser or a viatical  
15 settlement provider or any person acquiring a policy or  
16 interest in a policy from a viatical settlement provider, nor  
17 does it include an independent third-party trustee or escrow  
18 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. This  
22 term does not include an independent third-party trustee or  
23 escrow agent or a trust that does not enter into agreements  
24 with a viator ~~viatical settlement purchaser~~. A related  
25 provider trust shall be subject to all provisions of this act  
26 that apply to the viatical settlement provider who established  
27 the related provider trust, except s. 626.9912, which shall  
28 not be applicable. A viatical settlement provider may  
29 establish no more than one related provider trust, and the  
30 sole trustee of such related provider trust shall be the  
31 viatical settlement provider licensed under s. 626.9912. The

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

3 (10) "Viatical settlement purchaser" means a person,  
4 other than a licensee under this part, an accredited investor  
5 as defined in Rule 501, Regulation D of the Securities Act  
6 Rules, or a qualified institutional buyer as defined by Rule  
7 144(a) of the Federal Securities Act, or a special purpose  
8 ~~entity which is created solely to act as a financing source~~  
9 ~~for the viatical settlement provider,~~ who gives a sum of money  
10 as consideration for a life insurance policy or an interest in  
11 the death benefits of a life insurance policy which has been  
12 or will be the subject of a viatical settlement contract, for  
13 the purpose of deriving an economic benefit. The above  
14 references to Rule 501, Regulation D and Rule 144(a) of the  
15 Federal Securities Act are used strictly for defining purposes  
16 and shall not be interpreted in any other manner. Any person  
17 who claims to be an accredited investor shall sign an  
18 affidavit stating that he or she is an accredited investor,  
19 the basis of that claim, and that he or she understands that  
20 as an accredited investor he or she will not be entitled to  
21 certain protections of the Viatical Act. This affidavit must  
22 be kept with other documents required to be maintained by this  
23 act.

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 (12) "Viaticated policy" means a life insurance  
30 policy, or a certificate under a group policy, which is the  
31 subject of a viatical settlement contract.

1           (13) "Related form" means any form, created by or on  
2 behalf of a licensee, which a viator or viatical settlement  
3 purchaser is required to sign or initial. The forms include,  
4 but are not limited to, a power of attorney, a release of  
5 medical information form, a suitability questionnaire, a  
6 disclosure document, or any addendum, schedule, or amendment  
7 to a viatical settlement contract or viatical settlement  
8 purchase agreement considered necessary by a provider to  
9 effectuate a viatical settlement transaction.

10           (14) "Special purpose entity" means an entity  
11 established by a licensed viatical settlement provider, which  
12 may be a corporation, partnership, trust, or other similar  
13 entity formed solely to act as a vehicle to permit a lender to  
14 the provider to access institutional capital markets for the  
15 provider. A special purpose entity shall not enter into a  
16 viatical settlement contract or a viatical settlement purchase  
17 agreement.

18           (15) "Financing entity" means an underwriter,  
19 placement agent, lender, purchaser of securities, or purchaser  
20 of a policy or certificate from a viatical settlement  
21 provider, credit enhancer, or any person that may be a party  
22 to a viatical settlement contract and that has direct  
23 ownership in a policy or certificate that is the subject of a  
24 viatical settlement contract, but whose sole activity related  
25 to the transaction is providing funds to effect the viatical  
26 settlement and who has an agreement in writing with a licensed  
27 viatical settlement provider to act as a participant in a  
28 financing transaction. The term does not include a  
29 nonaccredited investor or other natural person.

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

4           626.9912 Viatical settlement provider license  
5 required; application for license.--

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

10           (3) In the application, the applicant must provide all  
11 of the following:

12           (f) All applications, viatical settlement contract  
13 forms, viatical settlement purchase agreement forms, escrow  
14 forms ~~rating manuals~~, and other related forms proposed to be  
15 used by the applicant.

16           (4) The department may not issue a license to an  
17 entity other than a natural person if it is not satisfied that  
18 all officers, directors, employees, stockholders, ~~and~~  
19 partners, and any other persons who exercise or have the  
20 ability to exercise effective control of the entity or who  
21 have the ability to influence the transaction of business by  
22 the entity meet the standards of this act and have not  
23 violated any provision of this act or rules of the department  
24 related to the business of viatical settlement contracts or  
25 viatical settlement purchase agreements.

26           (5) Upon the filing of a sworn application and the  
27 payment of the license fee, the department shall investigate  
28 each applicant and may issue the applicant a license if the  
29 department finds that the applicant:

30           (b) Is competent and trustworthy and intends to act in  
31 good faith in the business authorized by the license applied

1 ~~for; however, for purposes of this act, including this~~  
2 ~~paragraph, a person shall not be deemed to be incompetent and~~  
3 ~~untrustworthy solely for any felony committed more than 5~~  
4 ~~years before licensure if the person has had his or her civil~~  
5 ~~rights restored by the Governor and Cabinet with respect to~~  
6 ~~such felony.~~

7 Section 3. Section 626.9921, Florida Statutes, is  
8 amended to read:

9 626.9921 Filing of forms; required procedures;  
10 approval.--

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

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

28 (3) If a viatical settlement provider elects to use a  
29 related provider trust in accordance with this act, the  
30 viatical settlement provider shall file notice of its  
31 intention to use a related provider trust with the department,



1 including a copy of the trust agreement of the related  
2 provider trust. The organizational documents of the trust must  
3 be submitted to and approved by the department before the  
4 transacting of business by the trust.

5 (4) The department may adopt, by rule, standardized  
6 forms to be used by licensees, at the licensee's option in  
7 place of separately approved forms.

8 Section 4. Subsection (2) of section 626.9922, Florida  
9 Statutes, is amended and subsections (3), (4), and (5) are  
10 added to that section to read:

11 626.9922 Examination.--

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

24 (2) All accounts, books and records, documents, files,  
25 contracts, and other information relating to all transactions  
26 of viatical settlement contracts or viatical settlement  
27 purchase agreements must be maintained by the licensee for a  
28 period of at least 3 years after the death of the insured and  
29 must be available to the department for inspection during  
30 reasonable business hours.

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1           (3) All such records or accurate copies of such  
2 records must be maintained at the licensee's home office. As  
3 used in this section, the term "home office" means the  
4 principal place of business and any other single storage  
5 facility, the street address of which shall be disclosed to  
6 the department within 20 days after its initial use, or within  
7 20 days of the effective date of this subsection.

8           (4) The originals of records required to be maintained  
9 under this section must be made available to the department  
10 for examination at the department's request.

11           Section 5. Section 626.99236, Florida Statutes, is  
12 created to read:

13           626.99236 Further disclosures to viatical settlement  
14 purchasers.--

15           (1) No later than 5 days prior to the assignment,  
16 transfer, sale, devise, or bequest of the death benefit or  
17 ownership of all or a portion of the insurance policy or  
18 certificate of insurance to the purchaser, the viatical  
19 settlement provider, itself or through another person, shall  
20 provide in writing the following disclosures to any viatical  
21 settlement purchaser:

22           (a) All the life expectancy certifications obtained by  
23 the provider.

24           (b) The name and address of the insurance company, the  
25 policy number, and the date of original issue of the  
26 viaticated policy.

27           (c) The experience and qualifications of the person  
28 issuing the life expectancy certification, and that person's  
29 relationship to the viatical settlement provider, the viatical  
30 settlement broker, the viatical settlement sales agent, and  
31 the viator.

1           (d) The name and address of any person providing  
2 escrow services, and that person's relationship to the  
3 viatical settlement provider, the viatical settlement broker,  
4 the viatical settlement sales agent, and the viator.

5           (e) The type of life insurance policy offered or sold,  
6 including a statement as to whether the policy is whole life,  
7 term life, universal life, or a group policy certificate; a  
8 statement as to whether the policy is in lapse status or has  
9 lapsed in the last two years; and a statement as to whether  
10 the purchaser is entitled to benefits contained in the policy  
11 other than the death benefit of the policy.

12           (f) The procedure to be used by the provider to  
13 provide the status of the health condition of the insured to a  
14 purchaser.

15           (2) The viatical settlement purchase agreement is  
16 voidable by the purchaser at anytime within three days after  
17 the disclosures mandated by this section are received by the  
18 purchaser.

19           (3) At the time the disclosures in subsection (1) are  
20 made, the viatical settlement purchaser shall be advised to  
21 seek independent financial advice from a person not  
22 compensated by the viatical settlement provider or the  
23 viatical settlement sales agent. The viatical settlement  
24 purchaser shall sign an affidavit that he or she has received  
25 the disclosures and understands their importance.

26           Section 6. Subsection (1) of section 626.9924, Florida  
27 Statutes, is amended, and subsections (7) and (8) are added to  
28 that section to read:

29           626.9924 Viatical settlement contracts; procedures;  
30 rescission.--

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1           (1) A viatical settlement provider entering into a  
2 viatical settlement contract with any viator must first obtain  
3 a witnessed document in which the viator consents to the  
4 viatical settlement contract, ~~acknowledges the catastrophic or~~  
5 ~~life-threatening illness,~~ represents that he or she has a full  
6 and complete understanding of the viatical settlement contract  
7 and the benefits of the life insurance policy, releases his or  
8 her medical records, and acknowledges that he or she has  
9 entered into the viatical settlement contract freely and  
10 voluntarily.

11           (7) At any time during the contestable period, within  
12 20 days after a viator executes documents necessary to  
13 transfer rights under an insurance policy or within 20 days of  
14 any agreement, option, promise, or any other form of  
15 understanding, express or implied, to viaticate the policy,  
16 the provider must give notice to the insurer of the policy  
17 that the policy has or will become a viaticated policy. The  
18 notice must be accompanied by the documents required by s.  
19 626.99287(5)(a) in their entirety.

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

25           Section 7. Section 626.99245, Florida Statutes, is  
26 created to read:

27           626.99245 Conflict of regulation of viaticals.--

28           (1) A viatical settlement provider who from this state  
29 enters into a viatical settlement purchase agreement with a  
30 purchaser who is resident of another state that has enacted  
31 statutes or adopted regulations governing viatical settlement

1 purchase agreements, shall be governed in the effectuation of  
2 that viatical settlement purchase agreement by the statutes  
3 and regulations of the purchaser's state of residence. If the  
4 state in which the purchaser is a resident has not enacted  
5 statutes or regulations governing viatical settlement purchase  
6 agreements, the provider shall give the purchaser notice that  
7 neither Florida nor his or her state regulates the transaction  
8 upon which he or she is entering. For transactions in these  
9 states, however, the viatical settlement provider is to  
10 maintain all records required as if the transactions were  
11 executed in Florida. However, the forms used in those states  
12 need not be approved by the department.

13 (2) A viatical settlement provider who from this state  
14 enters into a viatical settlement contract with a viator who  
15 is resident of another state that has enacted statutes or  
16 adopted regulations governing viatical settlement contracts  
17 shall be governed in the effectuation of that viatical  
18 settlement contract by the statutes and regulations of the  
19 viator's state of residence. If the state in which the viator  
20 is a resident has not enacted statutes or regulations  
21 governing viatical settlement agreements, the provider shall  
22 give the viator notice that neither Florida nor his or her  
23 state regulates the transaction upon which he or she is  
24 entering. For transactions in those states, however, the  
25 viatical settlement provider is to maintain all records  
26 required as if the transactions were executed in Florida. The  
27 forms used in those states need not be approved by the  
28 department.

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

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 life  
6 expectancies; 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 626.99275, Florida Statutes, is  
11 amended to read:

12           626.99275 Prohibited practices; penalties.--

13           (1) It is unlawful for any person:

14           (a)~~(1)~~ To knowingly enter into, broker, or otherwise  
15 deal in a viatical settlement contract the subject of which is  
16 a life insurance policy, knowing that the policy was obtained  
17 by presenting materially false information concerning any fact  
18 material to the policy or by concealing, for the purpose of  
19 misleading another, information concerning any fact material  
20 to the policy, where the viator or the viator's agent intended  
21 to defraud the policy's issuer ~~that was obtained by means of a~~  
22 ~~false, deceptive, or misleading application for the life~~  
23 ~~insurance policy.~~

24           (b)~~(2)~~ In the solicitation or sale of a viatical  
25 settlement purchase agreement:

26           1.~~(a)~~ To employ any device, scheme, or artifice to  
27 defraud;

28           2.~~(b)~~ To obtain money or property by means of an  
29 untrue statement of a material fact or by any omission to  
30 state a material fact necessary in order to make the  
31

1 statements made, in light of the circumstances under which  
2 they were made, not misleading; or

3 ~~3.(c)~~ To engage in any transaction, practice, or  
4 course of business which operates or would operate as a fraud  
5 or deceit upon a person.

6 (c) To knowingly engage in any transaction, practice,  
7 or course of business intending thereby to avoid the notice  
8 requirements of s. 626.9924(7).

9 (2) A person who violates any provision of this  
10 section commits:

11 (a) A felony of the third degree, punishable as  
12 provided in s. 775.082, s. 774.083, or s. 775.084, if the  
13 insurance policy involved is valued at any amount less than  
14 \$20,000.

15 (b) A felony of the second degree, punishable as  
16 provided in s. 775.082, s. 774.083, or s. 775.084, if the  
17 insurance policy involved is valued at \$20,000 or more, but  
18 less than \$100,000.

19 (c) A felony of the first degree, punishable as  
20 provided in s. 775.082, s. 774.083, or s. 775.084, if the  
21 insurance policy involved is valued at \$100,000 or more.

22 Section 10. Section 626.99278, Florida Statutes, is  
23 created to read:

24 626.99278 Viatical provider anti-fraud plan.--Every  
25 licensed viatical settlement provider must adopt an anti-fraud  
26 plan and file it with the Division of Insurance Fraud of the  
27 department on or before December 1, 2000. Each viatical  
28 settlement provider's anti-fraud plan shall include:

29 (1) A description of the procedures for detecting and  
30 investigating possible fraudulent acts and procedures for  
31

1 resolving material inconsistencies between medical records and  
2 insurance applications;

3 (2) A description of the viatical settlement  
4 provider's procedures for the mandatory reporting of possible  
5 fraudulent insurance acts to the Division of Insurance Fraud  
6 of the department;

7 (3) A description of the viatical settlement  
8 provider's plan for anti-fraud education and training of its  
9 underwriters or other personnel; and

10 (4) A written description or chart outlining the  
11 organizational arrangement of the viatical settlement  
12 provider's anti-fraud personnel who are responsible for the  
13 investigation and reporting of possible fraudulent insurance  
14 acts, and investigating unresolved material inconsistencies  
15 between medical records and insurance applications.

16 Section 11. Section 626.99285, Florida Statutes, is  
17 created to read:

18 626.99285 Applicability of Insurance Code.--In  
19 addition to other applicable provisions cited in the Insurance  
20 Code, the department has the authority granted under ss.  
21 624.310, 626.901, and 626.989 to regulate viatical settlement  
22 providers, viatical settlement brokers, viatical settlement  
23 sales agents, viatical settlement contracts, viatical  
24 settlement purchase agreements, and viatical settlement  
25 transactions.

26 Section 12. Section 626.99287, Florida Statutes, is  
27 created to read:

28 626.99287 Contestability of viaticated  
29 policies.--Except as hereinafter provided, if a viatical  
30 settlement contract is entered into within the 2-year period  
31 commencing with the date of issuance of the insurance policy



1 or certificate to be acquired, the viatical settlement  
2 contract is void and unenforceable by either party.

3 Notwithstanding this limitation, such a viatical settlement  
4 contract is not void and unenforceable if:

5 (1) The policy was issued upon the owner's exercise of  
6 conversion rights arising out of a group or term policy;

7 (2) The owner of the policy is a charitable  
8 organization exempt from taxation under 26 U.S.C. s.  
9 501(c)(3);

10 (3) The owner of the policy is not a natural person;

11 (4) The viatical settlement contract was entered into  
12 before July 1, 2000;

13 (5) The viator certifies by producing independent  
14 evidence to the viatical settlement provider that one or more  
15 of the following conditions have been met within the 2-year  
16 period;

17 (a)1. The viator or insured is diagnosed with an  
18 illness or condition that is either;

19 a. Catastrophic or life threatening; or

20 b. Requires a course of treatment for a period of at  
21 least 3 years of long-term care or home-health care; and

22 2. The condition could not be disclosed at the time  
23 the life insurance contract was entered into.

24 (b) The viator's spouse dies;

25 (c) The viator divorces his or her spouse;

26 (d) The viator retires from full-time employment;

27 (e) The viator becomes physically or mentally disabled  
28 and a physician determines that the disability prevents the  
29 viator from maintaining full-time employment;

30

31

1           (f) The owner of the policy was that the insured's  
2 employer at the time the policy or certificate was issued and  
3 the employment relationship terminated;

4           (g) A final order, judgment, or decree is entered by a  
5 court of competent jurisdiction, on the application of a  
6 creditor of the viator, adjudicating the viator bankrupt or  
7 insolvent, or approving a petition seeking reorganization of  
8 the viator or appointing a receiver, trustee, or liquidator to  
9 all or a substantial part of the viator's assets; or

10           (h) The viator experiences a significant decrease in  
11 income which is unexpected by the viator and which impairs his  
12 or her reasonable ability to pay the policy premium.

13  
14 If the viatical settlement provider submits to the insurer a  
15 copy of the viator's or owner's certification described above  
16 then the provider submits a request to the insurer to effect  
17 the transfer of the policy or certificate to the viatical  
18 settlement provider, the viatical settlement agreement shall  
19 not be void or unenforceable by operation of this section. The  
20 insurer shall timely respond to such request. Nothing in this  
21 section shall prohibit an insurer from exercising its right  
22 during the contestability period to contest the validity of  
23 any policy on grounds of fraud.

24           Section 13. Section 626.99295, Florida Statutes, is  
25 created to read:

26           626.99295 Grace period.--An unlicensed viatical  
27 settlement provider that was legally transacting business in  
28 this state on June 30, 2000, may continue to transact such  
29 business, in the absence of any orders by the department to  
30 the contrary, until the department approves or disapproves the  
31 viatical settlement provider's application for licensure if

1 the viatical settlement provider files with the department an  
2 application for licensure no later than August 1, 2000, and if  
3 the viatical settlement provider complies with all other  
4 provisions of this act. Any form for which department approval  
5 is required under this part must be filed by August 1, 2000,  
6 and may continue to be used until disapproved by the  
7 department.

8           Section 14. This act shall take effect July 1, 2000.

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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                   COMMITTEE SUBSTITUTE FOR  
3                   Senate Bill 1956

4 Expands the meaning of the term "viatical settlement contract"  
5 to include an agreement to transfer ownership or change the  
6 beneficiary of a life insurance policy at a later date,  
7 regardless of the date compensation is paid to the viator.

8 Provides that a "financing entity" is not included within the  
9 term "viatical settlement provider." Corrects an error in the  
10 law by inserting the term "viator."

11 Expands the definition of "viator" to include "life settlement  
12 contracts" by deleting the provision that the viator must be  
13 an individual with a catastrophic or life threatening illness  
14 or condition.

15 Provides that accredited investors sign an affidavit stating  
16 they are investors, the basis for claiming such status, and  
17 that they understand they are not entitled to certain  
18 (disclosure) protections under the viatical settlement act.

19 Creates the following definitions:

20 "Viaticated policy" is a life insurance policy or certificate  
21 under a group policy which is the subject of a viatical  
22 settlement contract.

23 "Related form" is any form, created by or on behalf of a  
24 licensee, which a viator or purchaser is required to sign or  
25 initial.

26 "Special purpose entity" is established by a viatical  
27 settlement provider, which may be a corporation, formed solely  
28 to act as a vehicle to permit a lender to the provider to  
29 access institutional capital markets for the provider.

30 "Financing entity" is an underwriter, agent or lender whose  
31 sole activity is to provide funds to effect the viatical  
settlement.

Removes an obsolete effective date and requires that viatical  
settlement purchase agreement and escrow forms be approved by  
the department. Deletes the requirement that providers submit  
rating manuals and authorizes the department to adopt  
standardized forms by rule. Expands department licensure  
review to other persons who exercise control of certain  
entities.

Deletes a provision that allowed persons applying for viatical  
settlement provider licenses to not be considered incompetent  
and untrustworthy under certain circumstances.

Defines a licensee's "home office" to mean principal place of  
business and provides for records to be made available to the  
department. Deletes penalty for failure to maintain and make  
certain records available to the department.

Requires viatical settlement provider to timely furnish in

1 writing enumerated disclosures to a viatical settlement  
2 purchaser (investor). Authorizes a rescission period. Provides  
3 the purchaser must sign an affidavit acknowledging receipt and  
4 understanding of disclosures. Removes the provision revealing  
5 the author of the viator's "Mortality Profile Report."  
6 Removes the requirement the viator unconditionally waive any  
7 statutory or constitutional right to privacy as to medical  
8 reports.  
9 Revises the time frame for providers to notify insurers as to  
10 the viatication of the life insurance policy. Provides for  
11 certain documents to be given with the notice.  
12 Provides notice and other requirements as to the conflict of  
13 regulation of viaticals by different states.  
14 Clarifies prohibited practice provisions and removes the term  
15 Viatical Settlement Insurance Fraud.  
16 Authorizes the department to promulgate rules for disclosures,  
17 reporting of life expectancies, definition of terms and record  
18 keeping requirements. Provides for the department to regulate  
19 parties to viatical settlement transactions as to  
20 administrative remedies, unauthorized insurers, and criminal  
21 investigations.  
22 Requires viatical settlement providers to file viatical  
23 anti-fraud plans with the Fraud Division.  
24 Narrows the applicability for the contestability of viaticated  
25 policies and provides exceptions thereto.  
26 Provides for a grace period for unlicensed viatical settlement  
27 providers to become licensed by the department.  
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