

By Representative Gay

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; amending s. 626.99275, F.S.;
6 revising certain prohibited practices;
7 providing penalties; creating s. 626.99285,
8 F.S.; expanding statutory authority of the
9 department to regulate viatical settlements;
10 providing an effective date.

11
12 Be It Enacted by the Legislature of the State of Florida:

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

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

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

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

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

29 (c) Any natural person who enters into no more than
30 one viatical settlement contract with a viator in 1 calendar
31

1 year, unless such natural person has previously been licensed
2 under this act or is currently licensed under this act.

3 (d) A trust that meets the definition of a "related
4 provider trust."

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

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

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

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

26 (7) "Viator" means the owner of a life insurance
27 policy or a certificateholder under a group policy ~~insuring~~
28 ~~the life of an individual with a catastrophic or~~
29 ~~life-threatening illness or condition~~ who enters or seeks to
30 enter into a viatical settlement contract. This term does not
31 include a viatical settlement purchaser or a viatical

1 settlement provider or any person acquiring a policy or
2 interest in a policy from a viatical settlement provider, nor
3 does it include an independent third-party trustee or escrow
4 agent.

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

20 (10) "Viatical settlement purchaser" means a person,
21 other than a licensee under this part, ~~an accredited investor~~
22 ~~as defined in Rule 501, Regulation D of the Securities Act~~
23 ~~Rules, or a qualified institutional buyer as defined by Rule~~
24 ~~144(a) of the Federal Securities Act, or a special purpose~~
25 ~~entity which is created solely to act as a financing source~~
26 ~~for the viatical settlement provider,~~ who gives a sum of money
27 as consideration for a life insurance policy or an interest in
28 the death benefits of a life insurance policy which has been
29 or will be the subject of a viatical settlement contract, for
30 the purpose of deriving an economic benefit. ~~The above~~
31 ~~references to Rule 501, Regulation D and Rule 144(a) of the~~

1 ~~Federal Securities Act are used strictly for defining purposes~~
2 ~~and shall not be interpreted in any other manner.~~

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

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

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

14 626.9912 Viatical settlement provider license
15 required; application for license.--

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

20 (3) In the application, the applicant must provide all
21 of the following:

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

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

1 the entity meet the standards of this act and have not
2 violated any provision of this act or rules of the department
3 related to the business of viatical settlement contracts or
4 viatical settlement purchase agreements.

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

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

17 Section 3. Section 626.9921, Florida Statutes, is
18 amended to read:

19 626.9921 Filing of forms; required procedures;
20 approval.--

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

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

1 previously disapproved by the department. The department must
2 disapprove a viatical settlement contract form, viatical
3 settlement purchase agreement, or related form that is
4 unreasonable, contrary to the public interest, discriminatory,
5 or misleading or unfair to the viator or the purchaser.

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

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

16 626.9922 Examination.--

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

25 Section 5. Section 626.99236, Florida Statutes, is
26 created to read:

27 626.99236 Disclosures to viatical settlement
28 purchasers after the purchase.--The viatical settlement
29 provider, itself or through another person, shall provide in
30 writing the following disclosures to any investor within 45
31

1 days after the effectuation of the viatical settlement
2 purchase agreement:

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

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

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

9 (4) The name and address of any person providing
10 escrow services.

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

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

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

22 626.9924 Viatical settlement contracts; procedures;
23 rescission.--

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

1 entered into the viatical settlement contract freely and
2 voluntarily.

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

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

12 Section 7. Section 626.99245, Florida Statutes, is
13 created to read:

14 626.99245 Conflict of regulation of viaticals.--

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

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

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

1 Section 8. Section 626.9925, Florida Statutes, is
2 amended to read:

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

12 Section 9. Section 626.99275, Florida Statutes, is
13 amended to read:

14 626.99275 Prohibited practices.--

15 (1) It is unlawful for any person:

16 ~~(a)(1)~~ To knowingly enter into, broker, or otherwise
17 deal in, a viatical settlement contract the subject of which
18 is a life insurance policy that the broker or dealer knows to
19 have been ~~was~~ obtained in violation of s. 626.989(1) by means
20 of a false, deceptive, or misleading application for the life
21 insurance policy.

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

24 1.(a) To employ any device, scheme, or artifice to
25 defraud;

26 2.(b) To obtain money or property by means of an
27 untrue statement of a material fact or by any omission to
28 state a material fact necessary in order to make the
29 statements made, in light of the circumstances under which
30 they were made, not misleading; or

31

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

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

7 (2) A person who violates any provision of this
8 section commits:

9 (a) A felony of the third degree, punishable as
10 provided in s. 775.082, s. 775.083, or s. 775.084, if the
11 insurance policy involved is valued at any amount less than
12 \$20,000.

13 (b) A felony of the second degree, punishable as
14 provided in s. 775.082, s. 775.083, or s. 775.084, if the
15 insurance policy involved is valued at \$20,000 or more, but
16 less than \$100,000.

17 Section 10. Section 626.99285, Florida Statutes, is
18 created to read:

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

27 Section 11. This act shall take effect July 1, 2000.
28
29
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

HOUSE 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. Revises certain prohibited practices. Provides penalties. Expands the department's authority to regulate.