

1
2 An act relating to financial settlements;
3 amending s. 626.9911, F.S.; revising
4 definitions; amending s. 626.9921, F.S.;
5 providing for approval of forms; amending s.
6 626.99235, F.S.; providing for applicability;
7 amending s. 626.99236, F.S.; requiring certain
8 purchases to be handled by an independent
9 third-party trustee; amending s. 626.9924,
10 F.S.; revising procedures for tracking the
11 insured; amending s. 626.99245, F.S.;
12 clarifying the application of licensing
13 requirements to viatical settlement providers;
14 specifying the purpose of the act; providing
15 definitions; providing requirements for the
16 direct or indirect transfer of
17 structured-settlement-payment rights; requiring
18 that any such transfer be approved by a court;
19 requiring that the court make certain findings
20 with respect to the transfer; authorizing an
21 interested party to file an objection to a
22 proposed transfer; providing requirements for
23 an order approving a transfer; requiring that
24 an obligor make certain disclosures to a
25 claimant in negotiating a settlement of claims;
26 requiring a transferee to provide certain
27 notice with respect to a proposed transfer of
28 structured-settlement-payment rights; providing
29 for penalties to be imposed for certain
30 violations of the act; authorizing an
31

1 interested party to bring an action for
2 injunctive relief; providing an effective date.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Subsections (8), (9), (10), (14), and (15)
7 of section 626.9911, Florida Statutes, are amended to read:
8 626.9911 Definitions.--As used in this act, the term:
9 (8) "Related provider trust" means a titling trust or
10 other trust established by a licensed viatical settlement
11 provider or financing entity for the sole purpose of holding
12 the ownership or beneficial interest in purchased policies in
13 connection with a financing transaction ~~entering into or~~
14 ~~owning viatical settlement contracts.~~ The trust must have a
15 written agreement with a licensed viatical settlement provider
16 or financing entity under which the licensed viatical
17 settlement provider or financing entity is responsible for
18 insuring compliance with all statutory and regulatory
19 requirements and under which the trust agrees to make all
20 records and files relating to viatical settlement transactions
21 available to the department as if those records and files were
22 maintained directly by the licensed viatical settlement
23 provider.This term does not include an independent
24 third-party trustee or escrow agent or a trust that does not
25 enter into agreements with a viator. A related provider trust
26 shall be subject to all provisions of this act that apply to
27 the viatical settlement provider who established the related
28 provider trust, except s. 626.9912, which shall not be
29 applicable. A viatical settlement provider may establish no
30 more than one related provider trust, and the sole trustee of
31 such related provider trust shall be the viatical settlement

1 provider licensed under s. 626.9912. The name of the licensed
2 viatical settlement provider shall be included within the name
3 of the related provider trust.

4 (9) "Viatical settlement purchase agreement" means a
5 contract or agreement, entered into by a viatical settlement
6 purchaser, to which the viator is not a party, to purchase a
7 life insurance policy or an interest in a life insurance
8 policy, which is entered into for the purpose of deriving an
9 economic benefit. The term also includes purchases made by
10 viatical settlement purchasers from any person other than the
11 provider who effectuated the viatical settlement contract.

12 (10) "Viatical settlement purchaser" means a person
13 who gives a sum of money as consideration for a life insurance
14 policy or an equitable or legal interest in the death benefits
15 of a life insurance policy that has been or will be the
16 subject of a viatical settlement contract, for the purpose of
17 deriving an economic benefit, including purchases made from
18 any person other than the provider who effectuated the
19 viatical settlement contract or an entity affiliated with the
20 provider. The term does not include, ~~other than~~ a licensee
21 under this part, an accredited investor as defined in Rule
22 501, Regulation D of the Securities Act Rules, or a qualified
23 institutional buyer as defined by Rule 144(a) of the Federal
24 Securities Act, or a special purpose entity, a financing
25 entity, or a contingency insurer ~~who gives a sum of money as~~
26 ~~consideration for a life insurance policy or an equitable or~~
27 ~~legal interest in the death benefits of a life insurance~~
28 ~~policy which has been or will be the subject of a viatical~~
29 ~~settlement contract, for the purpose of deriving an economic~~
30 ~~benefit.~~ The above references to Rule 501, Regulation D and
31 Rule 144(a) of the Federal Securities Act are used strictly

1 for defining purposes and shall not be interpreted in any
2 other manner. Any person who claims to be an accredited
3 investor shall sign an affidavit stating that he or she is an
4 accredited investor, the basis of that claim, and that he or
5 she understands that as an accredited investor he or she will
6 not be entitled to certain protections of the Viatical Act.
7 This affidavit must be kept with other documents required to
8 be maintained by this act.

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

19 (15) "Financing entity" means an underwriter,
20 placement agent, lender, purchaser of securities, or purchaser
21 of a policy or certificate from a viatical settlement
22 provider, credit enhancer, or any entity ~~person that may be a~~
23 ~~party to a viatical settlement contract and that~~ has direct
24 ownership in a policy or certificate that is the subject of a
25 viatical settlement contract, but whose principal ~~sole~~
26 activity related to the transaction is providing funds or
27 credit enhancement to effect the viatical settlement or the
28 purchase of one or more viatical policies and who has an
29 agreement in writing with one or more licensed viatical
30 settlement providers to finance the acquisition of viatical
31 settlement contracts ~~a licensed viatical settlement provider~~

1 ~~to act as a participant in a financing transaction.~~ The term
2 does not include a nonaccredited investor, a viatical
3 settlement purchaser, or other natural person. A financing
4 entity may not enter into a viatical settlement contract.

5 Section 2. Subsection (1) of section 626.9921, Florida
6 Statutes, is amended to read:

7 626.9921 Filing of forms; required procedures;
8 approval.--

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

15 Section 3. Subsection (3) is added to section
16 626.99235, Florida Statutes, to read:

17 626.99235 Disclosures to viatical settlement
18 purchasers; misrepresentations.--

19 (3) The requirements of this section also apply to
20 purchases made from any person other than the provider who
21 effectuated the viatical settlement contract which are the
22 subject of a viatical settlement purchase agreement.

23 Section 4. Section 626.99236, Florida Statutes, is
24 amended to read:

25 626.99236 Further disclosures to viatical settlement
26 purchasers.--

27 (1) No later than 5 days prior to the assignment,
28 transfer, sale, devise, or bequest of the death benefit or
29 ownership of all or a portion of the insurance policy or
30 certificate of insurance to the purchaser, the viatical
31 settlement provider and the viatical settlement sales agent,

1 themselves ~~itself~~ or through another person, shall provide in
2 writing the following disclosures to any viatical settlement
3 purchaser:

4 (a) All the life expectancy certifications obtained by
5 the provider.

6 (b) The name and address of the insurance company, the
7 policy number, and the date of original issue of the
8 viaticated policy.

9 (c) The experience and qualifications of the person
10 issuing the life expectancy certification, and that person's
11 relationship to the viatical settlement provider, the viatical
12 settlement broker, the viatical settlement sales agent, and
13 the viator.

14 (d) The name and address of any person providing
15 escrow services, and that person's relationship to the
16 viatical settlement provider, the viatical settlement broker,
17 the viatical settlement sales agent, and the viator.

18 (e) The type of life insurance policy offered or sold,
19 including a statement as to whether the policy is whole life,
20 term life, universal life, or a group policy certificate; a
21 statement as to whether the policy is in lapse status or has
22 lapsed in the last 2 years; and a statement as to whether the
23 purchaser is entitled to benefits contained in the policy
24 other than the death benefit of the policy.

25 (f) The procedure to be used by the provider to
26 provide the status of the health condition of the insured to a
27 purchaser.

28 (2) The viatical settlement purchase agreement is
29 voidable by the purchaser at any time within 3 days after the
30 disclosures mandated by this section are received by the
31 purchaser.

1 (3) At the time the disclosures in subsection (1) are
2 made, the viatical settlement purchaser shall be advised to
3 seek independent financial advice from a person not
4 compensated by the viatical settlement provider or viatical
5 settlement broker or the viatical settlement sales agent. The
6 viatical settlement purchaser shall sign an affidavit that he
7 or she has received the disclosures and understands their
8 importance.

9 (4) A viatical settlement purchase transaction, which
10 involves a purchase from any person other than the provider
11 who effectuated the viatical settlement contract that is the
12 subject of a viatical settlement purchase agreement, may be
13 completed only through the use of an independent third-party
14 trustee or escrow agent. All funds to be paid by the purchaser
15 must be deposited by the purchaser with the independent
16 third-party trustee or escrow agent. The independent
17 third-party trustee or escrow agent shall not release the
18 deposited funds to the seller until after the 3-day voidable
19 period established by subsection (2) has expired.

20 (5) The requirements of subsections (1), (2), and (3)
21 also apply to purchases made from any person other than the
22 provider who effectuated the viatical settlement contract that
23 are the subject of a viatical settlement purchase agreement.

24 Section 5. Subsection (10) is added to section
25 626.9924, Florida Statutes, to read:

26 626.9924 Viatical settlement contracts; procedures;
27 rescission.--

28 (10) The viatical settlement provider who effectuated
29 the viatical settlement contract with the viator (the "initial
30 provider") is responsible for tracking the insured, including
31 but not limited to, keeping track of the insured's whereabouts

1 and health status, submission of death claims or assisting the
2 beneficiary in the submission of death claims, and the status
3 of the payment of premiums until the death of the insured.
4 This responsibility may be contracted out to a third party;
5 however, the ultimate responsibility remains with the initial
6 provider. This responsibility continues with the initial
7 provider, notwithstanding any transfers of the viaticated
8 policy in the secondary market. This subsection applies only
9 to those viaticated policies that are or are to become the
10 subject of viatical settlement purchase agreements.

11 Section 6. Subsection (3) is added to section
12 626.99245, Florida Statutes, to read:

13 626.99245 Conflict of regulation of viaticals.--

14 (3) This section does not affect the requirement of
15 ss. 626.9911(6) and 626.9912(1) that a viatical settlement
16 provider doing business from this state must obtain a viatical
17 settlement license from the department. As used in this
18 subsection, the term "doing business from this state" includes
19 effectuating viatical settlement contracts and effectuating
20 viatical settlement purchase agreements from offices in this
21 state, regardless of the state of residence of the viator or
22 the viatical settlement purchaser.

23 Section 7. Transfers of structured-settlement-payment
24 rights.--

25 (1) PURPOSE.--The purpose of this section is to
26 protect recipients of structured settlements who are involved
27 in the process of transferring structured-settlement-payment
28 rights.

29 (2) DEFINITIONS.--As used in this section, the term:
30
31

1 (a) "Annuity issuer" means an insurer that has issued
2 an annuity contract to be used to fund periodic payments under
3 a structured settlement.

4 (b) "Applicable law" means any of the following, as
5 applicable in interpreting the terms of a structured
6 settlement:

7 1. The laws of the United States;

8 2. The laws of this state, including principles of
9 equity applied in the courts of this state; and

10 3. The laws of any other jurisdiction:

11 a. That is the domicile of the payee or any other
12 interested party;

13 b. Under whose laws a structured-settlement agreement
14 was approved by a court; or

15 c. In whose courts a settled claim was pending when
16 the parties entered into a structured-settlement agreement.

17 (c) "Applicable federal rate" means the most recently
18 published applicable rate for determining the present value of
19 an annuity, as issued by the United States Internal Revenue
20 Service pursuant to section 7520 of the United States Internal
21 Revenue Code, as amended.

22 (d) "Assignee" means any party that acquires
23 structured-settlement-payment rights directly or indirectly
24 from a transferee of such rights.

25 (e) "Dependents" means a payee's spouse and minor
26 children and all other family members and other persons for
27 whom the payee is legally obligated to provide support,
28 including spousal maintenance.

29 (f) "Discount and finance charge" means the sum of all
30 charges that are payable directly or indirectly from assigned
31 structured-settlement payments and imposed directly or

- 1 indirectly by the transferee and that are incident to a
2 transfer of structured-settlement-payment rights, including:
3 1. Interest charges, discounts, or other compensation
4 for the time value of money;
5 2. All application, origination, processing,
6 underwriting, closing, filing, and notary fees and all similar
7 charges, however denominated; and
8 3. All charges for commissions or brokerage,
9 regardless of the identity of the party to whom such charges
10 are paid or payable.
11
12 The term does not include any fee or other obligation incurred
13 by a payee in obtaining independent professional advice
14 concerning a transfer of structured-settlement-payment rights.
15 (g) "Discounted present value" means, with respect to
16 a proposed transfer of structured-settlement-payment rights,
17 the fair present value of future payments, as determined by
18 discounting the payments to the present using the most
19 recently published applicable federal rate as the discount
20 rate.
21 (h) "Independent professional advice" means advice of
22 an attorney, certified public accountant, actuary, or other
23 licensed professional adviser:
24 1. Who is engaged by a payee to render advice
25 concerning the legal, tax, and financial implications of a
26 transfer of structured-settlement-payment rights;
27 2. Who is not in any manner affiliated with or
28 compensated by the transferee of the transfer; and
29 3. Whose compensation for providing the advice is not
30 affected by whether a transfer occurs or does not occur.
31 (i) "Interested parties" means:

- 1 1. The payee;
2 2. Any beneficiary irrevocably designated under the
3 annuity contract to receive payments following the payee's
4 death or, if such designated beneficiary is a minor, the
5 designated beneficiary's parent or guardian;
6 3. The annuity issuer;
7 4. The structured-settlement obligor; or
8 5. Any other party who has continuing rights or
9 obligations under the structured settlement.
10 (j) "Payee" means an individual who is receiving
11 tax-free damage payments under a structured settlement and
12 proposes to make a transfer of payment rights under the
13 structured settlement.
14 (k) "Qualified-assignment agreement" means an
15 agreement providing for a qualified assignment, as authorized
16 by Title 26, section 130 of the United States Internal Revenue
17 Code, as amended.
18 (l) "Settled claim" means the original tort claim
19 resolved by a structured settlement.
20 (m) "Structured settlement" means an arrangement for
21 periodic payment of damages for personal injuries established
22 by settlement or judgment in resolution of a tort claim.
23 (n) "Structured-settlement agreement" means the
24 agreement, judgment, stipulation, or release embodying the
25 terms of a structured settlement, including the rights of the
26 payee to receive periodic payments.
27 (o) "Structured-settlement obligor" means the party
28 who is obligated to make continuing periodic payments to the
29 payee under a structured-settlement agreement or a
30 qualified-assignment agreement.
31

1 (p) "Structured-settlement-payment rights" means
2 rights to receive periodic payments, including lump-sum
3 payments under a structured settlement, whether from the
4 structured-settlement obligor or the annuity issuer, if:

5 1. The payee or any other interested party is
6 domiciled in this state;

7 2. The structured settlement agreement was approved by
8 a court of this state; or

9 3. The settled claim was pending before the courts of
10 this state when the parties entered into the
11 structured-settlement agreement.

12 (q) "Terms of the structured settlement" means the
13 terms of the structured-settlement agreement; the annuity
14 contract; a qualified-assignment agreement; or an order or
15 approval of a court or other government authority authorizing
16 or approving the structured settlement.

17 (r) "Transfer" means a sale, assignment, pledge,
18 hypothecation, or other form of alienation or encumbrance made
19 by a payee for consideration.

20 (s) "Transfer agreement" means the agreement providing
21 for transfer of structured-settlement-payment rights from a
22 payee to a transferee.

23 (t) "Transferee" means a person who is receiving or
24 who will receive structured-settlement-payment rights
25 resulting from a transfer.

26 (3) CONDITIONS TO TRANSFERS OF
27 STRUCTURED-SETTLEMENT-PAYMENT RIGHTS AND STRUCTURED-SETTLEMENT
28 AGREEMENTS.--

29 (a) A direct or indirect transfer of
30 structured-settlement-payment rights is not effective and a
31 structured-settlement obligor or annuity issuer is not

1 required to make a payment directly or indirectly to a
2 transferee of structured-settlement-payment rights unless the
3 transfer is authorized in advance in a final order by a court
4 of competent jurisdiction which is based on the written
5 express findings by the court that:

6 1. The transfer complies with this section and does
7 not contravene other applicable law;

8 2. At least 10 days before the date on which the payee
9 first incurred an obligation with respect to the transfer, the
10 transferee provided to the payee a disclosure statement in
11 bold type, no smaller than 14 points in size, which specifies:

12 a. The amounts and due dates of the
13 structured-settlement payments to be transferred;

14 b. The aggregate amount of the payments;

15 c. The discounted present value of the payments,
16 together with the discount rate used in determining the
17 discounted present value;

18 d. The gross amount payable to the payee in exchange
19 for the payments;

20 e. An itemized listing of all brokers' commissions,
21 service charges, application fees, processing fees, closing
22 costs, filing fees, referral fees, administrative fees, legal
23 fees, and notary fees and other commissions, fees, costs,
24 expenses, and charges payable by the payee or deductible from
25 the gross amount otherwise payable to the payee;

26 f. The net amount payable to the payee after deducting
27 all commissions, fees, costs, expenses, and charges described
28 in sub-subparagraph e.;

29 g. The quotient, expressed as a percentage, obtained
30 by dividing the net payment amount by the discounted present
31 value of the payments, which must be disclosed in the

1 following statement: "The net amount that you will receive
2 from us in exchange for your future structured-settlement
3 payments represent ___ percent of the estimated current value
4 of the payments based upon the discounted value using the
5 applicable federal rate";

6 h. The effective annual interest rate, which must be
7 disclosed in the following statement: "Based on the net amount
8 that you will receive from us and the amounts and timing of
9 the structured-settlement payments that you are turning over
10 to us, you will, in effect, be paying interest to us at a rate
11 of ___ percent per year"; and

12 i. The amount of any penalty and the aggregate amount
13 of any liquidated damages, including penalties, payable by the
14 payee in the event of a breach of the transfer agreement by
15 the payee;

16 3. The payee has established that the transfer is in
17 the best interests of the payee, taking into account the
18 welfare and support of the payee's dependents;

19 4. The payee has received, or waived his or her right
20 to receive, independent professional advice regarding the
21 legal, tax, and financial implications of the transfer;

22 5. The transferee has given written notice of the
23 transferee's name, address, and taxpayer identification number
24 to the annuity issuer and the structured-settlement obligor
25 and has filed a copy of the notice with the court;

26 6. The transfer agreement provides that if the payee
27 is domiciled in this state, any disputes between the parties
28 will be governed in accordance with the laws of this state and
29 that the domicile state of the payee is the proper venue to
30 bring any cause of action arising out of a breach of the
31 agreement; and

1 7. The court has determined that the net amount
2 payable to the payee is fair, just, and reasonable under the
3 circumstances then existing.

4 (b) If a proposed transfer would contravene the terms
5 of the structured settlement, upon the filing of a written
6 objection by any interested party and after considering the
7 objection and any response to it, the court may grant, deny,
8 or impose conditions upon the proposed transfer which the
9 court deems just and proper given the facts and circumstances
10 and in accordance with established principles of law. Any
11 order approving a transfer must require that the transferee
12 indemnify the annuity issuer and the structured-settlement
13 obligor for any liability, including reasonable costs and
14 attorney's fees, which arises from compliance by the issuer or
15 obligor with the order of the court.

16 (c) Any provision in a transfer agreement which gives
17 a transferee power to confess judgment against a payee is
18 unenforceable to the extent that the amount of the judgment
19 would exceed the amount paid by the transferee to the payee,
20 less any payments received from the structured-settlement
21 obligor or payee.

22 (d) In negotiating a structured settlement of claims
23 brought by or on behalf of a claimant who is domiciled in this
24 state, the structured-settlement obligor must disclose in
25 writing to the claimant or the claimant's legal representative
26 all of the following information that is not otherwise
27 specified in the structured-settlement agreement:

28 1. The amounts and due dates of the periodic payments
29 to be made under the structured-settlement agreement. In the
30 case of payments that will be subject to periodic percentage
31 increases, the amounts of future payments may be disclosed by

1 identifying the base payment amount, the amount and timing of
2 scheduled increases, and the manner in which increases will be
3 compounded;

4 2. The amount of the premium payable to the annuity
5 issuer;

6 3. The discounted present value of all periodic
7 payments that are not life-contingent, together with the
8 discount rate used in determining the discounted present
9 value;

10 4. The nature and amount of any costs that may be
11 deducted from any of the periodic payments;

12 5. Where applicable, that any transfer of the periodic
13 payments is prohibited by the terms of the structured
14 settlement and may otherwise be prohibited or restricted under
15 applicable law; and

16 6. That any transfer of the periodic payments by the
17 claimant may subject the claimant to serious adverse tax
18 consequences.

19 (4) JURISDICTION; PROCEDURE FOR APPROVAL OF
20 TRANSFERS.--At least 20 days before the scheduled hearing on
21 an application for authorizing a transfer of
22 structured-settlement-payment rights under this section, the
23 transferee must file with the court and all interested parties
24 a notice of the proposed transfer and the application for its
25 authorization. The notice must include:

26 (a) A copy of the transferee's application to the
27 court;

28 (b) A copy of the transfer agreement;

29 (c) A copy of the disclosure statement required under
30 subsection (3);

31

1 (d) Notification that an interested party may support,
2 oppose, or otherwise respond to the transferee's application,
3 in person or by counsel, by submitting written comments to the
4 court or by participating in the hearing; and

5 (e) Notification of the time and place of the hearing
6 and notification of the manner in which and the time by which
7 any written response to the application must be filed in order
8 to be considered by the court. A written response to an
9 application must be filed within 15 days after service of the
10 transferee's notice.

11 (5) WAIVER PROHIBITED; NO PENALTIES INCURRED.--

12 (a) The provisions of this section may not be waived.

13 (b) If a transfer of structured-settlement-payment
14 rights fails to satisfy the conditions of subsection (3), the
15 payee who proposed the transfer does not incur any penalty,
16 forfeit any application fee or other payment, or otherwise
17 incur any liability to the proposed transferee.

18 (6) NONCOMPLIANCE.--

19 (a) If a transferee violates the requirements for
20 stipulating the discount and finance charge provided for in
21 subsection (3), neither the transferee nor any assignee may
22 collect from the transferred payments, or from the payee, any
23 amount in excess of the net advance amount, and the payee may
24 recover from the transferee or any assignee:

25 1. A refund of any excess amounts previously received
26 by the transferee or any assignee;

27 2. A penalty in an amount determined by the court, but
28 not in excess of three times the aggregate amount of the
29 discount and finance charge; and

30 3. Reasonable costs and attorney's fees.

31

1 (b) If the transferee violates the disclosure
2 requirements in subsection (3), the transferee and any
3 assignee are liable to the payee for:

4 1. A penalty in an amount determined by the court, but
5 not in excess of three times the amount of the discount and
6 finance charge; and

7 2. Reasonable costs and attorney's fees.

8 (c) A transferee or assignee is not liable for any
9 penalty in any action brought under this section if the
10 transferee or assignee establishes by a preponderance of
11 evidence that the violation was not intentional and resulted
12 from a bona fide error, notwithstanding the transferee's
13 maintenance of procedures reasonably designed to avoid such
14 errors.

15 (d) Notwithstanding any other law, an action may not
16 be brought under this section more than 1 year after the due
17 date of:

18 1. The last transferred structured-settlement payment,
19 in the case of a violation of the requirements for stipulating
20 the discount and finance charge provided for in subsection
21 (3).

22 2. The first transferred structured-settlement
23 payment, in the case of a violation of the disclosure
24 requirements of subsection (3).

25 (e) When any interested party has reason to believe
26 that any transferee has violated this section, any interested
27 party may bring a civil action for injunctive relief,
28 penalties, and any other relief that is appropriate to secure
29 compliance with this section.

30 Section 8. This act shall take effect October 1, 2001.

31