

By Senators Atwater and Campbell

25-804-03

See HB 487

1 A bill to be entitled
2 An act relating to viatical settlements;
3 conforming various provisions to certain
4 governmental reorganization; amending s.
5 517.021, F.S.; revising definitions; creating
6 s. 517.072, F.S.; providing for nonapplication
7 of an exemption to viatical settlement
8 investments; amending s. 626.9911, F.S.;
9 revising definitions; amending s. 626.9912,
10 F.S.; providing additional requirements
11 relating to licensure; amending s. 626.9913,
12 F.S.; revising provisions relating to viatical
13 settlement provider license continuation;
14 requiring annual statements to include audited
15 financial statements and other information;
16 prohibiting viatical settlement providers from
17 certain investing or lending activities;
18 requiring certain information relating to an
19 annual statement to be made available to the
20 Office of Insurance Regulation; deleting an
21 alternative deposit requirement; prohibiting
22 certain levies by judgment creditors or other
23 claimants; amending s. 626.9914, F.S.; revising
24 a criterion for adverse licensure actions;
25 revising terminology, to conform to
26 governmental reorganization; amending s.
27 626.9915, F.S., to conform to governmental
28 reorganization; amending s. 626.9916, F.S.;
29 requiring a life agent license to function as a
30 viatical settlement broker; providing for
31 application of certain life insurance policy

1 provisions to viatical settlement contracts;
2 authorizing transfer of viatical settlement
3 broker appointments to a life agent license;
4 terminating viatical settlement broker licenses
5 and prohibiting renewal; deleting provisions
6 relating to viatical settlement broker
7 licensure; amending ss. 626.9917 and 626.9918,
8 F.S., to conform to governmental
9 reorganization; clarifying application of
10 adverse licensure activities to life agents
11 acting as viatical settlement brokers; amending
12 s. 626.9919, F.S., to conform; amending s.
13 626.992, F.S.; deleting provisions relating to
14 viatical settlement sales agents, to conform;
15 amending s. 626.9921, F.S., to conform to
16 governmental reorganization; deleting
17 provisions relating to viatical settlement
18 purchase agreement forms; amending s. 626.9922,
19 F.S., to conform to governmental
20 reorganization; revising office examination
21 requirements; amending s. 626.9924, F.S.;
22 deleting certain insured status and information
23 tracking requirements; amending s. 626.99245,
24 F.S.; deleting conflict of regulation
25 provisions relating to out-of-state residents
26 and application; amending s. 626.9925, F.S.;
27 revising commission rulemaking requirements;
28 amending ss. 626.9926, 626.9927, and 626.99272,
29 F.S., to conform; amending s. 626.99275, F.S.;
30 revising prohibited practices provisions, to
31 conform; revising penalty criteria; specifying

1 nonapplication to certain policy ownership
2 transfers under court order; amending s.
3 626.99277, F.S.; revising prohibited false
4 representation provisions, to conform; amending
5 ss. 626.99278, 626.9928, and 626.99285, F.S.,
6 to conform; amending s. 626.989, F.S.;
7 clarifying a definition; repealing s.
8 626.99235, F.S., relating to disclosures to
9 viatical settlement purchasers and
10 misrepresentations; repealing s. 626.99236,
11 F.S., relating to further disclosures to
12 viatical settlement purchasers; repealing s.
13 626.99295, F.S., relating to a licensure grace
14 period for unlicensed viatical settlement
15 providers or viatical settlement brokers;
16 providing an effective date.

17

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

19

20 Section 1. Paragraph (w) is added to subsection (19)
21 of section 517.021, Florida Statutes, and subsection (21) is
22 added to that section, to read:

23 517.021 Definitions.--When used in this chapter,
24 unless the context otherwise indicates, the following terms
25 have the following respective meanings:

26 (19) "Security" includes any of the following:

27 (w) A viatical settlement investment.

28 (21) "Viatical settlement investment" means an
29 agreement for the purchase, sale, assignment, transfer,
30 devise, or bequest of any portion of an interest in a
31 viaticated policy as defined in chapter 626. This term

1 includes, but is not limited to, a beneficial or other
2 interest in a trust, the corpus of which includes viaticated
3 policies, and an interest in any business organization or
4 association, however organized, the assets of which include or
5 are to include viaticated policies. The term does not include:

6 (a) The transfer of an interest in a viaticated policy
7 from a natural person who transfers no more than one such
8 interest in 1 calendar year.

9 (b) The provision of stop-loss coverage to a viatical
10 settlement provider, financing entity, or related provider
11 trust, as those terms are defined in s. 626.9911, by an
12 authorized or eligible insurer.

13 (c) The transfer of a viaticated policy from a
14 licensed viatical settlement provider to a related provider
15 trust or a financing entity, as those terms are defined in s.
16 626.9911.

17 Section 2. Section 517.072, Florida Statutes, is
18 created to read:

19 517.072 Viatical settlement investments.--The
20 exemption provided for by s. 517.051 does not apply to a
21 viatical settlement investment as defined in s. 517.021. The
22 offering of a viatical settlement investment is not an exempt
23 transaction under s. 517.061, regardless of whether the
24 offering otherwise complies with the conditions of that
25 section.

26 Section 3. Section 626.9911, Florida Statutes, is
27 amended to read:

28 626.9911 Definitions.--As used in this act, the term:

29 (1) "Fraudulent viatical settlement act" includes:

30 (a) Acts or omissions committed by any person who,
31 knowingly or with intent to defraud, for the purpose of

1 depriving another of property or for pecuniary gain, commits
2 or permits its employees or its agents to engage in acts
3 including:
4 1. Presenting, causing to be presented, or preparing
5 with knowledge or belief that it will be presented to or by a
6 viatical settlement provider, viatical settlement broker,
7 special purpose entity, related provider trust, financing
8 entity, insurer, insurance producer, or any other person,
9 false material information, or concealing material information
10 as part of, in support of, or concerning a fact material to
11 one or more of the following:
12 a. An application for the issuance of a viatical
13 settlement contract or insurance policy;
14 b. The underwriting of a viatical settlement contract
15 or insurance policy;
16 c. A claim for payment or benefit pursuant to a
17 viatical settlement contract or insurance policy;
18 d. Premiums paid on an insurance policy;
19 e. Payments and changes in ownership or beneficiary
20 made in accordance with the terms of a viatical settlement
21 contract or insurance policy;
22 f. The reinstatement or conversion of an insurance
23 policy;
24 g. The solicitation, offer, effectuation, or sale of a
25 viatical settlement contract or insurance policy;
26 h. The issuance of written evidence of a viatical
27 settlement contract or insurance; or
28 i. A financing transaction;
29 2. Employing any device, scheme, or artifice to
30 defraud;
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1 3. Obtaining money or property by means of an untrue
2 statement of a material fact or by any omission to state a
3 material fact necessary in order to clarify the statements
4 made in light of the circumstances under which they were made;
5 or

6 4. Engaging in any transaction, practice, or course of
7 business which operates or would operate as a fraud or deceit
8 upon a person.

9 (b) In the furtherance of a fraud or the prevention of
10 detection of a fraud, the committing or permitting by any
11 person of the person's employees or agents to:

12 1. Remove, conceal, alter, destroy, or sequester from
13 the office the assets or records of a licensee or other person
14 engaged in the business of viatical settlements;

15 2. Misrepresent or conceal the financial condition of
16 a licensee, financing entity, insurer, or other person;

17 3. Transact the business of viatical settlements in
18 violation of laws requiring a license, certificate of
19 authority, or other legal authority for the transaction of the
20 business of viatical settlements; or

21 4. File with the department, the office, or the chief
22 insurance regulatory official of another jurisdiction a
23 document containing false information or otherwise conceal
24 information about a material fact from the department or
25 office.

26 (c) Embezzlement, theft, misappropriation, or
27 conversion of moneys, funds, premiums, credits, or other
28 property of a viatical settlement provider, insurer, insured,
29 viator, insurance policyowner, or any other person engaged in
30 the business of viatical settlements or insurance.

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1 (d) Recklessly entering into, brokering, or otherwise
2 dealing in a viatical settlement contract, the subject of
3 which is a life insurance policy that was obtained by
4 presenting false information concerning any fact material to
5 the policy or by concealing, for the purpose of misleading
6 another, information concerning any fact material to the
7 policy, where the viator or the viator's agent intended to
8 defraud the policy's issuer. "Recklessly" means engaging in
9 the conduct in conscious and clearly unjustifiable disregard
10 of a substantial likelihood of the existence of the relevant
11 facts or risks, such disregard involving a gross deviation
12 from acceptable standards of conduct.

13 (e) Attempting or conspiring to commit or assisting,
14 aiding, or abetting in the commission of the acts or omissions
15 specified in this subsection. ~~"Department" means the~~
16 ~~Department of Insurance.~~

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

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

25 (4) "Viatical settlement broker" means a natural
26 person who, in this state, from this state, or with a resident
27 of this state ~~on behalf of a viator and for a fee, commission,~~
28 ~~or other valuable consideration,~~ offers or attempts to
29 negotiate viatical settlement contracts between a viator
30 ~~resident in this state~~ and one or more viatical settlement
31 providers. Notwithstanding the manner in which the viatical

1 settlement broker is compensated, a viatical settlement broker
2 is deemed to represent only the viator and owes a fiduciary
3 duty to the viator to act according to the viator's
4 instructions and in the best interest of the viator. The term
5 does not include an employer of a licensed viatical settlement
6 provider when negotiating a viatical settlement contract
7 solely on behalf of such provider,an attorney, licensed
8 Certified Public Accountant, or investment adviser lawfully
9 registered with the Department of Banking and Finance under
10 chapter 517, who is retained to represent the viator and whose
11 compensation is paid directly by or at the direction and on
12 behalf of the viator.

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

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

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

11 (b) A life and health insurer that has lawfully issued
12 a life insurance policy that provides accelerated benefits to
13 terminally ill policyholders or certificateholders.†~~or~~

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

18 (d) A trust that meets the definition of a "related
19 provider trust."

20 (e) A viator in this state.

21 ~~(f) A viatical settlement purchaser.~~

22 (f)~~(g)~~ A financing entity.

23 (7) "Viator" means the owner of a life insurance
24 policy or a certificateholder under a group policy who enters
25 or seeks to enter into a viatical settlement contract. This
26 term does not include ~~a viatical settlement purchaser or a~~
27 viatical settlement provider or any person acquiring a policy
28 or interest in a policy from a viatical settlement provider,
29 nor does it include an independent third-party trustee or
30 escrow agent.

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

26 (9) "Business of viatical settlements" means an
27 activity involved in, but not limited to, the offering,
28 solicitation of and for, negotiation, procurement,
29 effectuation, purchasing, investing, financing, monitoring,
30 tracking, underwriting, selling, transferring, assigning,
31 pledging, hypothecating, or any other manner of dealing in

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

10 (10) "Control," including the terms "controlling,"
11 "controlled by," and "under common control with," means the
12 possession, directly or indirectly, of the power to direct or
13 cause the direction of the management or policies of a person,
14 whether through the ownership of voting securities, by
15 contract, or otherwise. ~~"Viatical settlement purchaser" means~~
16 ~~a person who gives a sum of money as consideration for a life~~
17 ~~insurance policy or an equitable or legal interest in the~~
18 ~~death benefits of a life insurance policy that has been or~~
19 ~~will be the subject of a viatical settlement contract, for the~~
20 ~~purpose of deriving an economic benefit, including purchases~~
21 ~~made from any person other than the provider who effectuated~~
22 ~~the viatical settlement contract or an entity affiliated with~~
23 ~~the provider. The term does not include a licensee under this~~
24 ~~part, an accredited investor as defined in Rule 501,~~
25 ~~Regulation D of the Securities Act Rules, or a qualified~~
26 ~~institutional buyer as defined by Rule 144(a) of the Federal~~
27 ~~Securities Act, a special purpose entity, a financing entity,~~
28 ~~or a contingency insurer. The above references to Rule 501,~~
29 ~~Regulation D and Rule 144(a) of the Federal Securities Act are~~
30 ~~used strictly for defining purposes and shall not be~~
31 ~~interpreted in any other manner. Any person who claims to be~~

1 ~~an accredited investor shall sign an affidavit stating that he~~
2 ~~or she is an accredited investor, the basis of that claim, and~~
3 ~~that he or she understands that as an accredited investor he~~
4 ~~or she will not be entitled to certain protections of the~~
5 ~~Viatical Settlement Act. This affidavit must be kept with~~
6 ~~other documents required to be maintained by this act.~~

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

12 (11)~~(12)~~ "Viaticated policy" means a life insurance
13 policy, or a certificate under a group policy, which is the
14 subject of a viatical settlement contract.

15 (12)~~(13)~~ "Related form" means any form, created by or
16 on behalf of a licensee, which a viator ~~or viatical settlement~~
17 ~~purchaser~~ is required to sign or initial. The forms include,
18 but are not limited to, a power of attorney, a release of
19 medical information form, a suitability questionnaire, a
20 disclosure document, or any addendum, schedule, or amendment
21 to a viatical settlement contract ~~or viatical settlement~~
22 ~~purchase agreement~~ considered necessary by a provider to
23 effectuate a viatical settlement transaction.

24 (13)~~(14)~~ "Special purpose entity" means an entity
25 established by a licensed viatical settlement provider or by a
26 financing entity, which may be a corporation, partnership,
27 trust, limited liability company, or other similar entity
28 formed solely to provide, either directly or indirectly,
29 access to institutional capital markets to a viatical
30 settlement provider or financing entity. A special purpose
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1 entity shall not enter into a viatical settlement contract ~~or~~
2 ~~a viatical settlement purchase agreement.~~

3 (14)~~(15)~~ "Financing entity" means an underwriter,
4 placement agent, lender, purchaser of securities, or purchaser
5 of a policy or certificate from a viatical settlement
6 provider, credit enhancer, or any entity that has direct
7 ownership in a policy or certificate that is the subject of a
8 viatical settlement contract, but whose principal activity
9 related to the transaction is providing funds or credit
10 enhancement to effect the viatical settlement or the purchase
11 of one or more viatical policies and who has an agreement in
12 writing with one or more licensed viatical settlement
13 providers to finance the acquisition of viatical settlement
14 contracts. ~~The term does not include a nonaccredited investor,~~
15 ~~a viatical settlement purchaser, or other natural person.~~A
16 financing entity may not enter into a viatical settlement
17 contract.

18 Section 4. Section 626.9912, Florida Statutes, is
19 amended to read:

20 626.9912 Viatical settlement provider license
21 required; application for license.--

22 (1) A person may not perform the functions of a
23 viatical settlement provider as defined in this act or enter
24 into or solicit a viatical settlement contract without first
25 having obtained a license from the office ~~department~~.

26 (2) Application for a viatical settlement provider
27 license must be made to the office ~~department~~ by the applicant
28 on a form prescribed by the office ~~department~~, under oath and
29 signed by the applicant. The application must be accompanied
30 by a fee of \$500. If the applicant is a corporation, the
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1 application must be under oath and signed by the president and
2 the secretary of the corporation.

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

5 (a) The applicant's full name, age, residence address,
6 and business address, and all occupations engaged in by the
7 applicant during the 10 5 years preceding the date of the
8 application.

9 (b) A copy of the applicant's basic organizational
10 documents, if any, including the articles of incorporation,
11 articles of association, partnership agreement, trust
12 agreement, or other similar documents, together with all
13 amendments to such documents.

14 (c) Copies of all bylaws, rules, regulations, or
15 similar documents regulating the conduct of the applicant' s
16 internal affairs.

17 (d) A list showing the name, business and residence
18 addresses, and official position of each individual who is
19 responsible for conduct of the applicant's affairs, including,
20 but not limited to, any member of the applicant's board of
21 directors, board of trustees, executive committee, or other
22 governing board or committee and any other person or entity
23 owning or having the right to acquire 10 percent or more of
24 the voting securities of the applicant.

25 (e) With respect to each individual identified under
26 paragraph (d):

27 1. A sworn biographical statement on forms supplied by
28 the commission ~~department~~.

29 2. A set of fingerprints on forms prescribed by the
30 commission ~~department~~, certified by a law enforcement officer,
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1 and accompanied by the fingerprinting fee specified in s.
2 624.501.

3 3. Authority for release of information relating to
4 the investigation of the individual's background.

5 (f) All applications, viatical settlement contract
6 forms, ~~viatical settlement purchase agreement forms, escrow~~
7 forms, and other agreements related to the business of
8 viatical settlements, and all related forms proposed to be
9 used by the applicant.

10 (g) Such other information as the commission or office
11 ~~department~~ deems necessary to determine that the applicant and
12 the individuals identified under paragraph (d) are competent
13 and trustworthy and can lawfully and successfully act as a
14 viatical settlement provider.

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

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

30 (a) Has provided a detailed plan of operation
31 regarding its business of viatical settlements and the

1 procurement and disposition of viaticated policies, including
2 copies of any offering of securities.

3 (b) Is competent and trustworthy and intends to act in
4 good faith in the business authorized by the license applied
5 for.

6 (c) Has a good business reputation and has had
7 experience, training, or education that qualifies the
8 applicant to conduct the business authorized by the license
9 applied for.

10 (d) If the applicant is a corporation, is a
11 corporation incorporated under the laws of this state, or is a
12 foreign corporation authorized to transact business in this
13 state.

14 (e) Has designated the Chief Financial Officer
15 ~~Insurance Commissioner and Treasurer~~ as its agent for service
16 of process.

17 (f) Has made the deposit required by s. 626.9913(5)
18 ~~(3)~~.

19 (g) Has filed an anti-fraud plan that meets the
20 requirements of s. 626.99278.

21 Section 5. Section 626.9913, Florida Statutes, is
22 amended to read:

23 626.9913 Viatical settlement provider license
24 continuance; annual report; fees; deposit.--

25 (1) A viatical settlement provider license continues
26 in force until suspended or revoked.

27 (2) Annually, on or before March 1, the viatical
28 settlement provider licensee shall file a statement containing
29 information the office or commission ~~department~~ requires and
30 shall pay to the office ~~department~~ a license fee in the amount
31 of \$500. The annual statement shall include audited financial

1 statements prepared in accordance with generally accepted
2 accounting principles by an independent certified public
3 accountant as of the last day of the preceding calendar year
4 and such other reasonable data, financial statements, and
5 pertinent information, including, but not limited to, a
6 schedule showing the names and locations of all persons with
7 which the viatical settlement provider has engaged in the
8 business of viatical settlements during the reporting period
9 as the department may by rule require with respect to the
10 provider, its subsidiaries, or affiliates. A viatical
11 settlement provider shall include in all statements filed with
12 the office ~~department~~ all information requested by the office
13 or commission ~~department~~ regarding a related provider trust
14 established by the viatical settlement provider. The office or
15 commission ~~department~~ may require more frequent reporting.
16 Failure to timely file the annual statement or to timely pay
17 the license fee is grounds for immediate suspension of the
18 license.

19 (3) A viatical settlement provider shall not directly
20 or indirectly invest in or lend its funds upon the security of
21 any note or other evidence of indebtedness of any director,
22 officer, or controlling stockholder of the provider.

23 (4) The work papers, account analyses, description of
24 basic assumptions, and other information necessary for a full
25 understanding of the annual statement shall be made available
26 to the office upon request.

27 (5)~~(3)~~ A viatical settlement provider licensee must
28 deposit and maintain deposited in trust with the department
29 securities eligible for deposit under s. 625.52, having at all
30 times a value of not less than \$100,000. ~~As an alternative to~~
31 ~~meeting the \$100,000 deposit requirement, the provider may~~

1 ~~deposit and maintain deposited in trust with the department~~
2 ~~such securities in the amount of \$25,000 and post with the~~
3 ~~department a surety bond acceptable to the department in the~~
4 ~~amount of \$75,000.~~

5 (6) No judgment creditor or other claimant of a
6 viatical settlement provider shall have the right to levy upon
7 any of the assets or securities held in this state pursuant to
8 this section.

9 (7)~~(4)~~ There shall be no additional annual license fee
10 or deposit requirements under this act for a related provider
11 trust established by a viatical settlement provider.

12 Section 6. Section 626.9914, Florida Statutes, is
13 amended to read:

14 626.9914 Suspension, revocation, or nonrenewal of
15 viatical settlement provider license; grounds; administrative
16 fine.--

17 (1) The office ~~department~~ shall suspend, revoke, deny,
18 or refuse to renew the license of any viatical settlement
19 provider if the office ~~department~~ finds that the licensee:

20 (a) Has made a misrepresentation in the application
21 for the license;

22 (b) Has engaged in fraudulent or dishonest practices,
23 or otherwise has been shown to be untrustworthy or incompetent
24 to act as a viatical settlement provider;

25 (c) Demonstrates a pattern of unreasonable payments to
26 viators;

27 (d) Has been found guilty of, or has pleaded guilty or
28 nolo contendere to, any felony, or a misdemeanor involving
29 fraud or moral turpitude, regardless of whether a judgment of
30 conviction has been entered by the court;

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1 (e) Has issued viatical settlement contracts that have
2 not been approved pursuant to this act;

3 (f) Has failed to honor contractual obligations
4 related to the business of viatical settlements ~~settlement~~
5 ~~contracts~~;

6 (g) Deals in bad faith with viators;

7 (h) Has violated any provision of the insurance code
8 of any state, any federal or state securities laws, or similar
9 laws or rules of any regulatory or self-regulatory body or of
10 this act;

11 (i) Employs or contracts with any person who
12 materially influences the licensee's conduct and who fails to
13 meet the requirements of this act; or

14 (j) No longer meets the requirements for initial
15 licensure.

16 (2) The office ~~department~~ may, in lieu of or in
17 addition to any suspension or revocation, assess an
18 administrative fine not to exceed \$2,500 for each nonwillful
19 violation or \$10,000 for each willful violation by a viatical
20 settlement provider licensee. The office ~~department~~ may also
21 place a viatical settlement provider licensee on probation for
22 a period not to exceed 2 years.

23 (3) If an employee of a viatical settlement provider
24 violates any provision of this act, the office ~~department~~ may
25 take disciplinary action against such employee as if the
26 employee were licensed under this act, including suspending or
27 otherwise prohibiting the employee from performing the
28 functions of a viatical settlement provider or viatical
29 settlement broker as defined in this act.

30 (4) If a viatical settlement provider establishes a
31 related provider trust as permitted by this act, the viatical

1 settlement provider shall be liable and responsible for the
2 performance of all obligations of the related provider trust
3 under all viatical settlement contracts entered into by the
4 related provider trust, and for the compliance of the related
5 provider trust with all provisions of this act. Any violation
6 of this act by the related provider trust shall be deemed a
7 violation of this act by the viatical settlement provider as
8 well as the related provider trust. If the related provider
9 trust violates any provisions of this act, the office
10 ~~department~~ may exercise all remedies set forth in this act for
11 such violations against the viatical settlement provider, as
12 well as the related provider trust.

13 Section 7. Section 626.9915, Florida Statutes, is
14 amended to read:

15 626.9915 Effect of suspension or revocation of
16 viatical settlement provider license; duration of suspension;
17 reinstatement.--

18 (1) When its license is suspended or revoked, the
19 provider must proceed, immediately following the effective
20 date of the suspension or revocation, to conclude the affairs
21 it is transacting under its license. The provider may not
22 solicit, negotiate, advertise, or effectuate new contracts.
23 The office ~~department~~ retains jurisdiction over the provider
24 until all contracts have been fulfilled or canceled or have
25 expired. A provider whose license is suspended or revoked may
26 continue to maintain and service viaticated policies subject
27 to the approval of the office ~~department~~.

28 (2) The suspension of the license of a viatical
29 settlement provider licensee may be for such period, not to
30 exceed 2 years, as determined by the office ~~department~~. The
31

1 ~~office department~~ may shorten, rescind, or modify the
2 suspension.

3 (3) During the period of suspension, the licensee
4 shall file its annual statement and pay license fees as if the
5 license had continued in full force.

6 (4) If, upon expiration of the suspension order, the
7 license has not otherwise been terminated, the office
8 ~~department~~ must reinstate the license only upon written
9 request by the suspended licensee unless the office department
10 finds that the grounds giving rise to the suspension have not
11 been removed or that the licensee is otherwise not in
12 compliance with the requirements of this act. The office
13 ~~department~~ shall give the licensee notice of its findings no
14 later than 90 days after receipt of the request or upon
15 expiration of the suspension order, whichever occurs later. If
16 a license is not reinstated pursuant to the procedures set
17 forth in this subsection, it expires at the end of the
18 suspension or on the date it otherwise would have expired,
19 whichever is sooner.

20 Section 8. Section 626.9916, Florida Statutes, is
21 amended to read:

22 626.9916 Viatical settlement broker license required;
23 application for license.--

24 (1) After October 1, 2003 ~~July 1, 1996~~, a person
25 ~~other than a life agent licensed under this chapter,~~ may not
26 perform the functions of a viatical settlement broker as
27 defined in this act without first having obtained a life agent
28 license from the department.

29 (2) Except as otherwise provided in this section,
30 parts I and III of this chapter apply as if a viatical
31 settlement contract were an insurance policy. In order to

1 perform the functions of a viatical settlement broker, the
2 licensed life agent must appoint himself or herself with the
3 office as such.~~Application for a viatical settlement broker~~
4 ~~license must be made to the department by the applicant on a~~
5 ~~form prescribed by the department, under oath, and signed by~~
6 ~~the applicant. The application must be accompanied by a \$50~~
7 ~~filing fee. If the applicant is a corporation, the application~~
8 ~~must be under oath and signed by the president and the~~
9 ~~secretary of the corporation.~~

10 (3) Each natural person who on July 1, 2003, held a
11 viatical settlement broker's license and appointment may, upon
12 obtaining a life agent license on or before October 1, 2003,
13 transfer an existing broker appointment to such license. In
14 ~~the application, the applicant must provide all of the~~
15 ~~following:~~

16 (a) ~~The applicant's full name, age, residence address,~~
17 ~~and business address, and all occupations engaged in by the~~
18 ~~applicant during the 5 years preceding the date of the~~
19 ~~application; if the applicant is not a natural person, the~~
20 ~~applicant must provide the information required by this~~
21 ~~paragraph with respect to all officers, directors, or~~
22 ~~partners.~~

23 (b) ~~A copy of the applicant's basic organizational~~
24 ~~documents, if any, including the articles of incorporation,~~
25 ~~articles of association, partnership agreement, trust~~
26 ~~agreement, or other similar documents, together with all~~
27 ~~amendments to such documents.~~

28 (c) ~~If the applicant is not a natural person, a list~~
29 ~~showing the name, business and residence addresses, and~~
30 ~~official position of each individual who is responsible for~~
31 ~~conduct of the applicant's affairs, including, but not~~

1 ~~limited to, any member of the applicant's board of directors,~~
2 ~~board of trustees, executive committee, or other governing~~
3 ~~board or committee and any other person or entity owning or~~
4 ~~having the right to acquire 10 percent or more of the voting~~
5 ~~securities of the applicant.~~

6 ~~(d) With respect to an individual applicant and with~~
7 ~~respect to each individual identified under paragraph (c):~~

8 ~~1. A sworn biographical statement on forms supplied by~~
9 ~~the department.~~

10 ~~2. A set of fingerprints on forms prescribed by the~~
11 ~~department, certified by a law enforcement officer, and~~
12 ~~accompanied by the fingerprinting fee specified in s. 624.501.~~

13 ~~3. Authority, if required by the department, for~~
14 ~~release of information relating to the investigation of the~~
15 ~~individual's background.~~

16 ~~(e) Such other information as the department deems~~
17 ~~necessary to determine that the individual applicant and the~~
18 ~~individuals identified under paragraph (c) are competent and~~
19 ~~trustworthy and can lawfully and successfully act as a~~
20 ~~viatical settlement provider.~~

21 ~~(4) All viatical settlement broker licenses shall~~
22 ~~terminate on October 1, 2003, and shall not be subject to~~
23 ~~renewal.Any natural person who is employed by or otherwise~~
24 ~~represents a viatical settlement broker licensee, which broker~~
25 ~~licensee is not a natural person, must also be licensed as a~~
26 ~~viatical settlement broker if such employee or other~~
27 ~~representative performs the functions of a viatical settlement~~
28 ~~broker as defined in this act.~~

29 ~~(5) The department may not issue a license to an~~
30 ~~applicant if it is not satisfied that the applicant, if a~~
31 ~~natural person, or all officers, directors, employees,~~

1 ~~stockholders, and partners who exercise or have the ability to~~
2 ~~exercise effective control of the applicant or who have the~~
3 ~~ability to influence the transaction of business by the~~
4 ~~applicant, if the applicant is not a natural person, meet the~~
5 ~~standards of this act and have not violated any provision of~~
6 ~~this act or rules of the department related to the business of~~
7 ~~viatical settlement contracts.~~

8 ~~(6) The department may specify the form of the license~~
9 ~~and may require photographing of the applicant as part of the~~
10 ~~application process.~~

11 ~~(7) Upon the filing of a sworn application and the~~
12 ~~payment of the license fee and all other applicable fees under~~
13 ~~this act, the department shall investigate each applicant and~~
14 ~~may issue the applicant a license if the department finds that~~
15 ~~the applicant:~~

16 ~~(a) Is competent and trustworthy and intends to act in~~
17 ~~good faith in the business authorized by the license applied~~
18 ~~for.~~

19 ~~(b) Has a good business reputation and has had~~
20 ~~experience, training, or education that qualifies the~~
21 ~~applicant to conduct the business authorized by the license~~
22 ~~applied for.~~

23 ~~(c) Except with respect to applicants for nonresident~~
24 ~~licenses, is a bona fide resident of this state and actually~~
25 ~~resides in this state at least 180 days a year. If an~~
26 ~~applicant holds a similar license or an insurance agent's or~~
27 ~~broker's license in another state at the time of applying for~~
28 ~~a license under this section, the applicant may be found to~~
29 ~~meet the residency requirement of this paragraph only after he~~
30 ~~or she furnishes a letter of clearance satisfactory to the~~
31 ~~department or other proof that the applicant's resident~~

1 ~~licenses have been canceled or changed to nonresident status~~
2 ~~and that the applicant is in good standing with the licensing~~
3 ~~authority.~~

4 ~~(d) Is a corporation, a corporation incorporated under~~
5 ~~the laws of this state, or a foreign corporation authorized to~~
6 ~~transact business in this state.~~

7 ~~(e) Has designated the Insurance Commissioner and~~
8 ~~Treasurer as its agent for service of process.~~

9 ~~(8) An applicant for a nonresident viatical settlement~~
10 ~~broker license must, in addition to designating the Insurance~~
11 ~~Commissioner and Treasurer as agent for service of process as~~
12 ~~required by this section, also furnish the department with the~~
13 ~~name and address of a resident of this state upon whom notices~~
14 ~~or orders of the department or process affecting the applicant~~
15 ~~or licensee may be served. After issuance of the license, the~~
16 ~~licensee must also notify the department of change of the~~
17 ~~person to receive such notices, orders, or process; such~~
18 ~~change is not effective until acknowledged by the department.~~

19 ~~(9) Beginning July 1, 1997, the department may, by~~
20 ~~rule, specify experience, educational, or other training~~
21 ~~standards required for licensure under this section.~~

22 ~~(10) Except as otherwise provided in this section,~~
23 ~~viatical settlement brokers shall be licensed, appointed,~~
24 ~~renewed, continued, reinstated, and terminated in the manner~~
25 ~~specified in this chapter for insurance representatives~~
26 ~~generally; however, viatical settlement brokers are not~~
27 ~~subject to continuing education requirements.~~

28 Section 9. Section 626.9917, Florida Statutes, is
29 amended to read:

30
31

1 626.9917 ~~Denial~~, Suspension, revocation, or nonrenewal
2 of viatical settlement broker's life agent broker license;
3 grounds; administrative fine.--

4 (1) The office department shall ~~deny an application~~
5 ~~for~~, suspend, revoke, or refuse to renew the license of any
6 life agent acting as a viatical settlement broker if the
7 office department finds that the licensee:

8 (a) Has made a misrepresentation in the application
9 for the license or application form;

10 (b) Has engaged in fraudulent or dishonest practices,
11 or otherwise has been shown to be untrustworthy or incompetent
12 to act as a viatical settlement broker;

13 (c) Has been found guilty of, or has pleaded guilty or
14 nolo contendere to, any felony, or a misdemeanor involving
15 fraud or moral turpitude, regardless of whether a judgment of
16 conviction has been entered by the court;

17 (d) Deals in bad faith with viators or providers;

18 (e) Has violated any provision of the insurance code
19 or of this act;

20 (f) Employs or contracts with any person who
21 materially influences the licensee's conduct and who fails to
22 meet the requirements of this act;

23 (g) No longer meets the requirements for initial
24 licensure; or

25 (h) Has received a fee, commission, or other valuable
26 consideration for his or her services involving unlicensed
27 providers or life agents with respect to viatical settlements.

28 (2) The office department may, in lieu of or in
29 addition to any suspension or revocation, assess an
30 administrative fine not to exceed \$2,500 for each nonwillful
31 violation or \$10,000 for each willful violation by a viatical

1 settlement broker licensee. The office ~~department~~ may also
2 place a viatical settlement broker licensee on probation for a
3 period not to exceed 2 years.

4 Section 10. Section 626.9918, Florida Statutes, is
5 amended to read:

6 626.9918 Effect of suspension or revocation of
7 viatical settlement broker's life agent ~~broker~~ license;
8 duration of suspension; reinstatement.--

9 (1) When the ~~its~~ license of a viatical settlement
10 broker is suspended or revoked, the broker must proceed,
11 immediately following the effective date of the suspension or
12 revocation, to conclude the affairs the broker ~~it~~ is
13 transacting under the ~~its~~ license. The broker may not perform
14 any of the functions of a viatical settlement broker as
15 defined in this act. The department retains jurisdiction over
16 the broker ~~provider~~ until all contracts have been fulfilled or
17 canceled or have expired.

18 (2) The suspension of the life agent license of a
19 viatical settlement broker ~~licensee~~ may be for such period,
20 not to exceed 2 years, as determined by the department. The
21 department may shorten, rescind, or modify the suspension.

22 (3) During the period of suspension, the licensee
23 shall pay license fees, as required by the department, as if
24 the license had continued in full force.

25 (4) If, upon expiration of the suspension order, the
26 license has not otherwise been terminated, the department must
27 reinstate the license only upon written request by the
28 suspended licensee unless the department finds that the
29 grounds giving rise to the suspension have not been removed or
30 that the licensee is otherwise not in compliance with the
31 requirements of this act. The department shall give the

1 licensee notice of its findings no later than 90 days after
2 receipt of the request or upon expiration of the suspension
3 order, whichever occurs later. If a license is not reinstated
4 pursuant to the procedures set forth in this subsection, it
5 expires at the end of the suspension or on the date it
6 otherwise would have expired, whichever is sooner.

7 Section 11. Section 626.9919, Florida Statutes, is
8 amended to read:

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

16 Section 12. Section 626.992, Florida Statutes, is
17 amended to read:

18 626.992 Use of licensed viatical settlement ~~licensed~~
19 ~~brokers and, providers, and sales agents~~ required.--

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

31

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

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

7 ~~(3) A viatical settlement sales agent may not use any~~
8 ~~person to perform the functions of a viatical settlement~~
9 ~~broker unless such person holds a current, valid license as a~~
10 ~~viatical settlement broker.~~

11 ~~(4) A person may not perform the functions of a~~
12 ~~viatical settlement sales agent unless licensed as a life~~
13 ~~agent as defined in s. 626.015 and as provided in this~~
14 ~~chapter.~~

15 Section 13. 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, ~~viatical~~
20 ~~settlement purchase agreement form, escrow form, or related~~
21 form may be used in this state only after the form has been
22 filed with the office department and only after the form has
23 been approved by the office department.

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

1 form that is unreasonable, contrary to the public interest,
2 discriminatory, or misleading or unfair to the viator or
3 violates any provision of this part or if the application of
4 the submitting party for licensure as a provider or a related
5 provider trust has not been approved by the office ~~the~~
6 purchaser.

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

15 (4) The commission ~~department~~ may adopt, by rule,
16 standardized forms to be used by licensees, at the licensee's
17 option in place of separately approved forms.

18 Section 14. Section 626.9922, Florida Statutes, is
19 amended to read:

20 626.9922 Examination.--

21 (1) The office ~~department~~ may examine the business and
22 affairs of any licensee or applicant for a license. The
23 office ~~department~~ may order any licensee or applicant to
24 produce any records, books, files, financial records,
25 advertising and solicitation materials, or other information
26 relating to the business of viatical settlements regardless of
27 jurisdiction or location and may take statements under oath to
28 determine whether the licensee or applicant is in violation of
29 the law or is acting contrary to the public interest. The
30 expenses incurred in conducting any examination or
31 investigation must be paid by the licensee or applicant.

1 Examinations and investigations must be conducted as provided
2 in chapter 624, and licensees are subject to all applicable
3 provisions of the insurance code.

4 (2) All accounts, books and records, documents, files,
5 contracts, and other information relating to the business of
6 viatical settlements and all transactions of viatical
7 settlement contracts regardless of location or jurisdiction ~~or~~
8 ~~viatical settlement purchase agreements~~ must be maintained by
9 the licensee for a period of at least 3 years after the death
10 of the insured and must be available to the office ~~department~~
11 for inspection during reasonable business hours.

12 (3) All such records or accurate copies of such
13 records must be maintained at the licensee's home office. As
14 used in this section, the term "home office" means the
15 principal place of business and any other single storage
16 facility, the street address of which shall be disclosed to
17 the office ~~department~~ within 20 days after its initial use, or
18 within 3 ~~20~~ days after ~~of~~ the effective date of this
19 subsection.

20 (4) The originals of records required to be maintained
21 under this section must be made available to the office
22 ~~department~~ for examination at the office's ~~department's~~
23 request.

24 Section 15. Section 626.9924, Florida Statutes, is
25 amended to read:

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

28 (1) A viatical settlement provider entering into a
29 viatical settlement contract with any viator must first obtain
30 a witnessed document in which the viator consents to the
31 viatical settlement contract, represents that he or she has a

1 full and complete understanding of the viatical settlement
2 contract and the benefits of the life insurance policy,
3 releases his or her medical records, and acknowledges that he
4 or she has entered into the viatical settlement contract
5 freely and voluntarily.

6 (2) All viatical settlement contracts subject to this
7 act must contain an unconditional rescission provision which
8 allows the viator to rescind the contract within 15 days after
9 the viator receives the viatical settlement proceeds,
10 conditioned on the return of such proceeds.

11 (3) A viatical settlement transaction may be completed
12 only through the use of an independent third-party trustee or
13 escrow agent. Immediately upon receipt by the independent
14 third-party trustee or escrow agent of documents from the
15 viator to effect the transfer of the insurance policy, the
16 viatical settlement provider must pay the proceeds of the
17 settlement to an escrow or trust account managed by the
18 independent third-party trustee or escrow agent in a financial
19 institution licensed under Florida law or a federally
20 chartered financial institution that is a member of the
21 Federal Reserve System, pending acknowledgment of the transfer
22 by the issuer of the policy. An advance or partial payment of
23 the proceeds due under a viatical settlement contract may not
24 be used to effect transfer of the subject policy; any such
25 advance or partial payment is made at the sole discretion and
26 risk of the viatical settlement provider.

27 (4) Upon receipt of all viatical settlement contract
28 proceeds, the independent third-party trustee or escrow agent
29 must release to the viatical settlement provider all documents
30 necessary to complete the transfer of the insurance policy or
31

1 certificate of insurance so that the transfer, assignment,
2 sale, bequest, or devise may be effected.

3 (5) The independent third-party trustee or escrow
4 agent must transfer all proceeds of the viatical settlement
5 contract within 3 business days after receiving from the
6 issuer of the subject policy acknowledgment of the transfer,
7 assignment, bequest, sale, or devise. Failure to transfer
8 proceeds as required by this subsection renders the viatical
9 settlement contract and the transfer, assignment, bequest,
10 sale, or devise voidable.

11 (6) A viatical settlement provider may not negotiate
12 or enter into a viatical settlement contract with a viator if
13 the subject policy contains an accelerated benefits provision
14 allowing benefits to be paid for a period in advance of the
15 expected death which is equal to or exceeds the time period
16 available under the viatical settlement contract, and at an
17 amount which is equal to or exceeds the amount available under
18 the viatical settlement contract, unless the issuer of the
19 policy, in writing, denies, declines, or refuses to provide
20 such accelerated benefits. If the insurer does not respond to
21 a request to effectuate an accelerated benefits provision sent
22 by certified mail within 30 days after receiving the request,
23 the insurer shall be deemed to have denied, declined, or
24 refused to provide such accelerated benefits.

25 (7) At any time during the contestable period, within
26 20 days after a viator executes documents necessary to
27 transfer rights under an insurance policy or within 20 days of
28 any agreement, option, promise, or any other form of
29 understanding, express or implied, to viaticate the policy,
30 the provider must give notice to the insurer of the policy
31 that the policy has or will become a viaticated policy. The

1 notice must be accompanied by the documents required by s.
2 626.99287(5)(a) in their entirety.

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

8 (9) If the provider transfers ownership or changes the
9 beneficiary of the insurance policy, the provider must
10 communicate the initial change in ownership or beneficiary to
11 the insured within 20 days after the change.

12 ~~(10) The viatical settlement provider who effectuated~~
13 ~~the viatical settlement contract with the viator (the "initial~~
14 ~~provider") is responsible for tracking the insured, including,~~
15 ~~but not limited to, keeping track of the insured's whereabouts~~
16 ~~and health status, submission of death claims or assisting the~~
17 ~~beneficiary in the submission of death claims, and the status~~
18 ~~of the payment of premiums until the death of the insured.~~
19 ~~This responsibility may be contracted out to a third party;~~
20 ~~however, the ultimate responsibility remains with the initial~~
21 ~~provider. This responsibility continues with the initial~~
22 ~~provider, notwithstanding any transfers of the viaticated~~
23 ~~policy in the secondary market. This subsection applies only~~
24 ~~to those viaticated policies that are or are to become the~~
25 ~~subject of viatical settlement purchase agreements.~~

26 Section 16. Section 626.99245, Florida Statutes, is
27 amended to read:

28 626.99245 Conflict of regulation of viaticals.--

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

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

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

31

1 ~~(3) This section does not affect the requirement of~~
2 ~~ss. 626.9911(6) and 626.9912(1) that a viatical settlement~~
3 ~~provider doing business from this state must obtain a viatical~~
4 ~~settlement license from the department. As used in this~~
5 ~~subsection, the term "doing business from this state" includes~~
6 ~~effectuating viatical settlement contracts and effectuating~~
7 ~~viatical settlement purchase agreements from offices in this~~
8 ~~state, regardless of the state of residence of the viator or~~
9 ~~the viatical settlement purchaser.~~

10 Section 17. Section 626.9925, Florida Statutes, is
11 amended to read:

12 626.9925 Rules.--The commission ~~department~~ may adopt
13 rules to administer this act, including rules establishing
14 standards for evaluating advertising by licensees; rules
15 providing for the collection of data, including electronic
16 filing by licensees, for disclosures to viators ~~or purchasers~~,
17 and for the reporting of life expectancies; and rules defining
18 terms used in this act, rules setting forth requirements for
19 an anti-fraud plan, and rules prescribing recordkeeping
20 requirements relating to the business of viatical settlements
21 ~~executed viatical settlement contracts and viatical settlement~~
22 ~~purchase agreements.~~

23 Section 18. Section 626.9926, Florida Statutes, is
24 amended to read:

25 626.9926 Rate regulation not authorized.--Nothing in
26 this act shall be construed to authorize the office or
27 commission ~~department~~ to directly or indirectly regulate the
28 amount paid as consideration for entry into a viatical
29 settlement contract ~~or viatical settlement purchase agreement.~~

30 Section 19. Section 626.9927, Florida Statutes, is
31 amended to read:

1 626.9927 Unfair trade practices; cease and desist;
2 injunctions; civil remedy.--

3 (1) A violation of this act is an unfair trade
4 practice under ss. 626.9521 and 626.9541 and is subject to the
5 penalties provided in the insurance code. Part IX * of this
6 chapter, entitled Unfair Insurance Trade Practices, applies to
7 a licensee under this act or a transaction subject to this act
8 as if a viatical settlement contract ~~and a viatical settlement~~
9 ~~purchase agreement~~ were an insurance policy.

10 (2) In addition to the penalties and other enforcement
11 provisions of this act, if any person violates this act or any
12 rule implementing this act, the office ~~department~~ may seek an
13 injunction in the circuit court of the county where the person
14 resides or has a principal place of business and may apply for
15 temporary and permanent orders that the office ~~department~~
16 determines necessary to restrain the person from committing
17 the violation.

18 (3) Any person damaged by the acts of a person in
19 violation of this act may bring a civil action against the
20 person committing the violation in the circuit court of the
21 county in which the alleged violator resides or has a
22 principal place of business or in the county wherein the
23 alleged violation occurred. Upon an adverse adjudication, the
24 defendant is liable for damages, together with court costs and
25 reasonable attorney's fees incurred by the plaintiff. When so
26 awarded, court costs and attorney's fees must be included in
27 the judgment or decree rendered in the case. If it appears to
28 the court that the suit brought by the plaintiff is frivolous
29 or brought for purposes of harassment, the plaintiff is liable
30 for court costs and reasonable attorney's fees incurred by the
31 defendant.

1 Section 20. Section 626.99272, Florida Statutes, is
2 amended to read:

3 626.99272 Cease and desist orders and fines.--

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

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

21 (3) The office ~~department~~ may impose and collect an
22 administrative fine not to exceed \$10,000 for each nonwillful
23 violation and \$25,000 for each willful violation of any
24 provision of this part.

25 Section 21. Section 626.99275, Florida Statutes, is
26 amended to read:

27 626.99275 Prohibited practices; penalties.--

28 (1) It is unlawful for any person:

29 (a) To commit a fraudulent viatical settlement act as
30 defined in s. 626.9911 ~~knowingly enter into, broker, or~~
31 ~~otherwise deal in a viatical settlement contract the subject~~

1 ~~of which is a life insurance policy, knowing that the policy~~
2 ~~was obtained by presenting materially false information~~
3 ~~concerning any fact material to the policy or by concealing,~~
4 ~~for the purpose of misleading another, information concerning~~
5 ~~any fact material to the policy, where the viator or the~~
6 ~~viator's agent intended to defraud the policy's issuer.~~

7 ~~(b) In the solicitation or sale of a viatical~~
8 ~~settlement purchase agreement:~~

9 ~~1. To employ any device, scheme, or artifice to~~
10 ~~defraud;~~

11 ~~2. To obtain money or property by means of an untrue~~
12 ~~statement of a material fact or by any omission to state a~~
13 ~~material fact necessary in order to make the statements made,~~
14 ~~in light of the circumstances under which they were made, not~~
15 ~~misleading; or~~

16 ~~3. To engage in any transaction, practice, or course~~
17 ~~of business which operates or would operate as a fraud or~~
18 ~~deceit upon a person.~~

19 ~~(b)(c)~~ To knowingly engage in any transaction,
20 practice, or course of business intending thereby to avoid the
21 notice requirements of s. 626.9924(7).

22 (2) A person who violates any provision of this
23 section commits:

24 (a) A felony of the third degree, punishable as
25 provided in s. 775.082, s. 775.083, or s. 775.084, if the
26 aggregate face amount of the insurance policies ~~policy~~
27 involved ~~are is~~ valued at any amount less than \$20,000.

28 (b) A felony of the second degree, punishable as
29 provided in s. 775.082, s. 775.083, or s. 775.084, if the
30 aggregate face amount of the insurance policies ~~policy~~
31

1 involved are ~~is~~ valued at \$20,000 or more, but less than
2 \$100,000.

3 (c) A felony of the first degree, punishable as
4 provided in s. 775.082, s. 775.083, or s. 775.084, if the
5 aggregate face amount of the insurance policies ~~policy~~
6 involved are ~~is~~ valued at \$100,000 or more.

7 (3) The provisions of this section do not apply to a
8 conservator of a viatical settlement provider appointed by a
9 court of competent jurisdiction who transfers ownership of
10 viaticated policies pursuant to that court's order.

11 Section 22. Section 626.99277, Florida Statutes, is
12 amended to read:

13 626.99277 False representations; deceptive words.--

14 ~~(1) It is unlawful for a person in the advertisement,~~
15 ~~offer, or sale of a viatical settlement purchase agreement to~~
16 ~~misrepresent that such an agreement has been guaranteed,~~
17 ~~sponsored, recommended, or approved by the state, or any~~
18 ~~agency or officer of the state or by the United States or any~~
19 ~~agency or officer of the United States.~~

20 (1)(2) It is unlawful for a person in conjunction with
21 the business of viatical settlements ~~sale of a viatical~~
22 ~~settlement purchase agreement~~ to directly or indirectly
23 misrepresent that the person has been sponsored, recommended,
24 or approved, or that his or her abilities or qualifications
25 have in any respect been passed upon, by this state or any
26 other state, or any agency or officer thereof, or by the
27 United States or any agency or officer thereof.

28 (2)(3) It is unlawful for a person engaged in the
29 business of viatical settlements ~~in the offer or sale of a~~
30 ~~viatical settlement purchase agreement~~ to obtain money or
31 property by+

1 ~~(a) A misrepresentation that the viatical settlement~~
2 ~~purchase agreement purchased, offered, or sold is guaranteed,~~
3 ~~sponsored, recommended, or approved by this state or any other~~
4 ~~state, or any agency or officer thereof, or by the United~~
5 ~~States or any agency or officer thereof.~~

6 ~~(b) a misrepresentation that the person is sponsored,~~
7 ~~recommended, or approved, or that the person's abilities or~~
8 ~~qualifications have in any respect been passed upon, by this~~
9 ~~state or any other state, or any agency or officer thereof, or~~
10 ~~by the United States or any agency or officer thereof.~~

11 (3)~~(4)~~ Neither subsection (1) nor subsection (2) may
12 be construed to prohibit a statement that the person is
13 licensed or appointed under this part if such a statement is
14 required by this part or rules adopted under this part, if the
15 statement is true in fact, and if the effect of the statement
16 is not misrepresented.

17 ~~(5) A person may not represent that a viatical~~
18 ~~settlement purchase agreement is guaranteed by any insurance~~
19 ~~guaranty fund.~~

20 ~~(6) A person may not represent that the investment in~~
21 ~~a viatical settlement purchase agreement is "guaranteed," that~~
22 ~~the principal is "safe," or that the investment is free of~~
23 ~~risk.~~

24 Section 23. Section 626.99278, Florida Statutes, is
25 amended to read:

26 626.99278 Viatical provider anti-fraud plan.--Every
27 applicant or licensed viatical settlement provider ~~and~~
28 ~~viatical settlement broker~~ must adopt an anti-fraud plan and
29 file it with the Division of Insurance Fraud of the department
30 upon application ~~on or before December 1, 2000~~. Each
31 anti-fraud plan shall include:

1 (1) A description of the procedures for detecting and
2 investigating possible fraudulent acts and procedures for
3 resolving material inconsistencies between medical records and
4 insurance applications;

5 (2) A description of the procedures for the mandatory
6 reporting of possible fraudulent insurance acts to the
7 Division of Insurance Fraud of the department;

8 (3) A description of the plan for anti-fraud education
9 and training of its underwriters or other personnel; and

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

16 Section 24. Section 626.9928, Florida Statutes, is
17 amended to read:

18 626.9928 Acquisitions.--Acquisition of interest in a
19 viatical settlement provider ~~or viatical settlement broker~~ is
20 subject to s. 628.4615.

21 Section 25. Section 626.99285, Florida Statutes, is
22 amended to read:

23 626.99285 Applicability of insurance code.--In
24 addition to other applicable provisions cited in the insurance
25 code, the office and commission have ~~department has~~ the
26 authority granted under ss. 624.310, 626.611, 626.621,
27 626.901, 626.902,and 626.989 to regulate the business of
28 viatical settlements ~~settlement providers, viatical settlement~~
29 ~~brokers, viatical settlement sales agents, viatical settlement~~
30 ~~contracts, viatical settlement purchase agreements, and~~
31 ~~viatical settlement transactions.~~

1 Section 26. Subsection (1) of section 626.989, Florida
2 Statutes, is amended to read:

3 626.989 Investigation by department or Division of
4 Insurance Fraud; compliance; immunity; confidential
5 information; reports to division; division investigator's
6 power of arrest.--

7 (1) For the purposes of this section, a person commits
8 a "fraudulent insurance act" if the person knowingly and with
9 intent to defraud presents, causes to be presented, or
10 prepares with knowledge or belief that it will be presented,
11 to or by an insurer, self-insurer, self-insurance fund,
12 servicing corporation, purported insurer, broker, or any agent
13 thereof, any written statement as part of, or in support of,
14 an application for the issuance of, or the rating of, any
15 insurance policy, or a claim for payment or other benefit
16 pursuant to any insurance policy, which the person knows to
17 contain materially false information concerning any fact
18 material thereto or if the person conceals, for the purpose of
19 misleading another, information concerning any fact material
20 thereto. The term also includes any act that would constitute
21 a fraudulent viatical settlement act pursuant to s.
22 626.9911(1).For the purposes of this section, the term
23 "insurer" also includes any health maintenance organization
24 and the term "insurance policy" also includes a health
25 maintenance organization subscriber contract.

26 Section 27. Sections 626.99235, 626.99236, and
27 626.99295, Florida Statutes, are repealed.

28 Section 28. This act shall take effect upon becoming a
29 law.

30
31