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1 A bill to be entitled

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



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31 626.9917 and 626.9918, F.S., to conform to governmental
32 reorganization; clarifying application of adverse
33 licensure activities to life agents acting as viatical
34 settlement brokers; amending s. 626.9919, F.S., to
35 conform; amending s. 626.992, F.S.; deleting provisions
36 relating to viatical settlement sales agents, to conform;
37 amending s. 626.9921, F.S., to conform to governmental
38 reorganization; deleting provisions relating to viatical
39 settlement purchase agreement forms; amending s. 626.9922,
40 F.S., to conform to governmental reorganization; revising
41 office examination requirements; amending s. 626.9924,
42 F.S.; deleting certain insured status and information
43 tracking requirements; amending s. 626.99245, F.S.;
44 deleting conflict of regulation provisions relating to
45 out-of-state residents and application; amending s.
46 626.9925, F.S.; revising commission rulemaking
47 requirements; amending ss. 626.9926, 626.9927, and
48 626.99272, F.S., to conform; amending s. 626.99275, F.S.;
49 revising prohibited practices provisions, to conform;
50 revising penalty criteria; specifying nonapplication to
51 certain policy ownership transfers under court order;
52 amending s. 626.99277, F.S.; revising prohibited false
53 representation provisions, to conform; amending ss.
54 626.99278, 626.9928, and 626.99285, F.S., to conform;
55 amending s. 626.989, F.S.; clarifying a definition;
56 repealing s. 626.99235, F.S., relating to disclosures to
57 viatical settlement purchasers and misrepresentations;
58 repealing s. 626.99236, F.S., relating to further
59 disclosures to viatical settlement purchasers; repealing
60 s. 626.99295, F.S., relating to a licensure grace period



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61 for unlicensed viatical settlement providers or viatical
 62 settlement brokers; providing an effective date.

63

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

65

66 Section 1. Paragraph (w) is added to subsection (19) of
 67 section 517.021, Florida Statutes, and subsection (21) is added
 68 to said section, to read:

69 517.021 Definitions.--When used in this chapter, unless
 70 the context otherwise indicates, the following terms have the
 71 following respective meanings:

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

73 (w) A viatical settlement investment.

74 (21) "Viatical settlement investment" means an agreement
 75 for the purchase, sale, assignment, transfer, devise, or bequest
 76 of any portion of an interest in a viaticated policy as defined
 77 in chapter 626. This term includes, but is not limited to, a
 78 beneficial or other interest in a trust, the corpus of which
 79 includes viaticated policies, and an interest in any business
 80 organization or association, however organized, the assets of
 81 which include or are to include viaticated policies. The term
 82 does not include:

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

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

90 (c) The transfer of a viaticated policy from a licensed



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91 viatical settlement provider to a related provider trust or a
 92 financing entity, as those terms are defined in s. 626.9911.

93 Section 2. Section 517.072, Florida Statutes, is created
 94 to read:

95 517.072 Viatical settlement investments.--The exemption
 96 provided for by s. 517.051 does not apply to a viatical
 97 settlement investment as defined in s. 517.021. The offering of
 98 a viatical settlement investment is not an exempt transaction
 99 under s. 517.061, regardless of whether the offering otherwise
 100 complies with the conditions of that section.

101 Section 3. Section 626.9911, Florida Statutes, is amended
 102 to read:

103 626.9911 Definitions.--As used in this act, the term:

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

105 (a) Acts or omissions committed by any person who,
 106 knowingly or with intent to defraud, for the purpose of
 107 depriving another of property or for pecuniary gain, commits or
 108 permits its employees or its agents to engage in acts including:

109 1. Presenting, causing to be presented, or preparing with
 110 knowledge or belief that it will be presented to or by a
 111 viatical settlement provider, viatical settlement broker,
 112 special purpose entity, related provider trust, financing
 113 entity, insurer, insurance producer, or any other person, false
 114 material information, or concealing material information as part
 115 of, in support of, or concerning a fact material to one or more
 116 of the following:

117 a. An application for the issuance of a viatical
 118 settlement contract or insurance policy;

119 b. The underwriting of a viatical settlement contract or
 120 insurance policy;



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- 121 c. A claim for payment or benefit pursuant to a viatical
 122 settlement contract or insurance policy;
- 123 d. Premiums paid on an insurance policy;
- 124 e. Payments and changes in ownership or beneficiary made
 125 in accordance with the terms of a viatical settlement contract
 126 or insurance policy;
- 127 f. The reinstatement or conversion of an insurance policy;
- 128 g. The solicitation, offer, effectuation, or sale of a
 129 viatical settlement contract or insurance policy;
- 130 h. The issuance of written evidence of a viatical
 131 settlement contract or insurance; or
- 132 i. A financing transaction;
- 133 2. Employing any device, scheme, or artifice to defraud;
- 134 3. Obtaining money or property by means of an untrue
 135 statement of a material fact or by any omission to state a
 136 material fact necessary in order to clarify the statements made
 137 in light of the circumstances under which they were made; or
- 138 4. Engaging in any transaction, practice, or course of
 139 business which operates or would operate as a fraud or deceit
 140 upon a person.
- 141 (b) In the furtherance of a fraud or the prevention of
 142 detection of a fraud, the committing or permitting by any person
 143 of the person's employees or agents to:
- 144 1. Remove, conceal, alter, destroy, or sequester from the
 145 office the assets or records of a licensee or other person
 146 engaged in the business of viatical settlements;
- 147 2. Misrepresent or conceal the financial condition of a
 148 licensee, financing entity, insurer, or other person;
- 149 3. Transact the business of viatical settlements in
 150 violation of laws requiring a license, certificate of authority,



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151 or other legal authority for the transaction of the business of
 152 viatical settlements; or

153 4. File with the department, the office, or the chief
 154 insurance regulatory official of another jurisdiction a document
 155 containing false information or otherwise conceal information
 156 about a material fact from the department or office;

157 (c) Embezzlement, theft, misappropriation, or conversion
 158 of moneys, funds, premiums, credits, or other property of a
 159 viatical settlement provider, insurer, insured, viator,
 160 insurance policyowner, or any other person engaged in the
 161 business of viatical settlements or insurance;

162 (d) Recklessly entering into, brokering, or otherwise
 163 dealing in a viatical settlement contract, the subject of which
 164 is a life insurance policy that was obtained by presenting false
 165 information concerning any fact material to the policy or by
 166 concealing, for the purpose of misleading another, information
 167 concerning any fact material to the policy, where the viator or
 168 the viator's agent intended to defraud the policy's issuer.

169 "Recklessly" means engaging in the conduct in conscious and
 170 clearly unjustifiable disregard of a substantial likelihood of
 171 the existence of the relevant facts or risks, such disregard
 172 involving a gross deviation from acceptable standards of
 173 conduct; or

174 (e) Attempting or conspiring to commit or assisting,
 175 aiding, or abetting in the commission of the acts or omissions
 176 specified in this subsection. ~~"Department" means the Department~~
 177 ~~of Insurance.~~

178 (2) "Independent third-party trustee or escrow agent"
 179 means an attorney, certified public accountant, financial
 180 institution, or other person providing escrow services under the



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181 authority of a regulatory body. The term does not include any
 182 person associated, affiliated, or under common control with a
 183 viatical settlement provider or viatical settlement broker.

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

185 (4) "Viatical settlement broker" means a natural person
 186 who, in this state, from this state, or with a resident of this
 187 state ~~on behalf of a viator and for a fee, commission, or other~~
 188 ~~valuable consideration~~, offers or attempts to negotiate viatical
 189 settlement contracts between a viator ~~resident in this state~~ and
 190 one or more viatical settlement providers. Notwithstanding the
 191 manner in which the viatical settlement broker is compensated, a
 192 viatical settlement broker is deemed to represent only the
 193 viator and owes a fiduciary duty to the viator to act according
 194 to the viator's instructions and in the best interest of the
 195 viator. The term does not include an employer of a licensed
 196 viatical settlement provider when negotiating a viatical
 197 settlement contract solely on behalf of such provider, an
 198 attorney, licensed Certified Public Accountant, or investment
 199 adviser lawfully registered with the Department of Banking and
 200 Finance under chapter 517, who is retained to represent the
 201 viator and whose compensation is paid directly by or at the
 202 direction and on behalf of the viator.

203 (5) "Viatical settlement contract" means a written
 204 agreement entered into between a viatical settlement provider,
 205 or its related provider trust, and a viator. The viatical
 206 settlement contract includes an agreement to transfer ownership
 207 or change the beneficiary designation of a life insurance policy
 208 at a later date, regardless of the date that compensation is
 209 paid to the viator. The agreement must establish the terms under
 210 which the viatical settlement provider will pay compensation or



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211 anything of value, which compensation or value is less than the
 212 expected death benefit of the insurance policy or certificate,
 213 in return for the viator's assignment, transfer, sale, devise,
 214 or bequest of the death benefit or ownership of all or a portion
 215 of the insurance policy or certificate of insurance to the
 216 viatical settlement provider. A viatical settlement contract
 217 also includes a contract for a loan or other financial
 218 transaction secured primarily by an individual or group life
 219 insurance policy, other than a loan by a life insurance company
 220 pursuant to the terms of the life insurance contract, or a loan
 221 secured by the cash value of a policy.

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

226 (a) Any bank, savings bank, savings and loan association,
 227 credit union, or other licensed lending institution that takes
 228 an assignment of a life insurance policy as collateral for a
 229 loan;

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

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

237 (d) A trust that meets the definition of a "related
 238 provider trust."

239 (e) A viator in this state.

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



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

242 (7) "Viator" means the owner of a life insurance policy or
 243 a certificateholder under a group policy who enters or seeks to
 244 enter into a viatical settlement contract. This term does not
 245 include ~~a viatical settlement purchaser or~~ a viatical settlement
 246 provider or any person acquiring a policy or interest in a
 247 policy from a viatical settlement provider, nor does it include
 248 an independent third-party trustee or escrow agent.

249 (8) "Related provider trust" means a titling trust or
 250 other trust established by a licensed viatical settlement
 251 provider or financing entity for the sole purpose of holding the
 252 ownership or beneficial interest in purchased policies in
 253 connection with a financing transaction. The trust must have a
 254 written agreement with a licensed viatical settlement provider
 255 or financing entity under which the licensed viatical settlement
 256 provider or financing entity is responsible for insuring
 257 compliance with all statutory and regulatory requirements and
 258 under which the trust agrees to make all records and files
 259 relating to viatical settlement transactions available to the
 260 office ~~department~~ as if those records and files were maintained
 261 directly by the licensed viatical settlement provider. This term
 262 does not include an independent third-party trustee or escrow
 263 agent or a trust that does not enter into agreements with a
 264 viator. A related provider trust shall be subject to all
 265 provisions of this act that apply to the viatical settlement
 266 provider who established the related provider trust, except s.
 267 626.9912, which shall not be applicable. A viatical settlement
 268 provider may establish no more than one related provider trust,
 269 and the sole trustee of such related provider trust shall be the
 270 viatical settlement provider licensed under s. 626.9912. The



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271 name of the licensed viatical settlement provider shall be
272 included within the name of the related provider trust.

273 (9) "Business of viatical settlements" means an activity
274 involved in, but not limited to, the offering, solicitation of
275 and for, negotiation, procurement, effectuation, purchasing,
276 investing, financing, monitoring, tracking, underwriting,
277 selling, transferring, assigning, pledging, hypothecating, or
278 any other manner of dealing in viaticated policies. "Viatical
279 settlement purchase agreement" means a contract or agreement,
280 entered into by a viatical settlement purchaser, to which the
281 viator is not a party, to purchase a life insurance policy or an
282 interest in a life insurance policy, which is entered into for
283 the purpose of deriving an economic benefit. The term also
284 includes purchases made by viatical settlement purchasers from
285 any person other than the provider who effectuated the viatical
286 settlement contract.

287 (10) "Control," including the terms "controlling,"
288 "controlled by," and "under common control with," means the
289 possession, directly or indirectly, of the power to direct or
290 cause the direction of the management or policies of a person,
291 whether through the ownership of voting securities, by contract,
292 or otherwise. "Viatical settlement purchaser" means a person who
293 gives a sum of money as consideration for a life insurance
294 policy or an equitable or legal interest in the death benefits
295 of a life insurance policy that has been or will be the subject
296 of a viatical settlement contract, for the purpose of deriving
297 an economic benefit, including purchases made from any person
298 other than the provider who effectuated the viatical settlement
299 contract or an entity affiliated with the provider. The term
300 does not include a licensee under this part, an accredited



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301 ~~investor as defined in Rule 501, Regulation D of the Securities~~
 302 ~~Act Rules, or a qualified institutional buyer as defined by Rule~~
 303 ~~144(a) of the Federal Securities Act, a special purpose entity,~~
 304 ~~a financing entity, or a contingency insurer. The above~~
 305 ~~references to Rule 501, Regulation D and Rule 144(a) of the~~
 306 ~~Federal Securities Act are used strictly for defining purposes~~
 307 ~~and shall not be interpreted in any other manner. Any person who~~
 308 ~~claims to be an accredited investor shall sign an affidavit~~
 309 ~~stating that he or she is an accredited investor, the basis of~~
 310 ~~that claim, and that he or she understands that as an accredited~~
 311 ~~investor he or she will not be entitled to certain protections~~
 312 ~~of the Viatical Settlement Act. This affidavit must be kept with~~
 313 ~~other documents required to be maintained by this act.~~

314 ~~(11) "Viatical settlement sales agent" means a person~~
 315 ~~other than a licensed viatical settlement provider who arranges~~
 316 ~~the purchase through a viatical settlement purchase agreement of~~
 317 ~~a life insurance policy or an interest in a life insurance~~
 318 ~~policy.~~

319 ~~(11)~~(12) "Viaticated policy" means a life insurance
 320 policy, or a certificate under a group policy, which is the
 321 subject of a viatical settlement contract.

322 ~~(12)~~(13) "Related form" means any form, created by or on
 323 behalf of a licensee, which a viator ~~or viatical settlement~~
 324 ~~purchaser~~ is required to sign or initial. The forms include, but
 325 are not limited to, a power of attorney, a release of medical
 326 information form, a suitability questionnaire, a disclosure
 327 document, or any addendum, schedule, or amendment to a viatical
 328 settlement contract ~~or viatical settlement purchase agreement~~
 329 considered necessary by a provider to effectuate a viatical
 330 settlement transaction.



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331 (13)~~(14)~~ "Special purpose entity" means an entity
332 established by a licensed viatical settlement provider or by a
333 financing entity, which may be a corporation, partnership,
334 trust, limited liability company, or other similar entity formed
335 solely to provide, either directly or indirectly, access to
336 institutional capital markets to a viatical settlement provider
337 or financing entity. A special purpose entity shall not enter
338 into a viatical settlement contract ~~or a viatical settlement~~
339 ~~purchase agreement.~~

340 (14)~~(15)~~ "Financing entity" means an underwriter,
341 placement agent, lender, purchaser of securities, or purchaser
342 of a policy or certificate from a viatical settlement provider,
343 credit enhancer, or any entity that has direct ownership in a
344 policy or certificate that is the subject of a viatical
345 settlement contract, but whose principal activity related to the
346 transaction is providing funds or credit enhancement to effect
347 the viatical settlement or the purchase of one or more viatical
348 policies and who has an agreement in writing with one or more
349 licensed viatical settlement providers to finance the
350 acquisition of viatical settlement contracts. ~~The term does not~~
351 ~~include a nonaccredited investor, a viatical settlement~~
352 ~~purchaser, or other natural person.~~ A financing entity may not
353 enter into a viatical settlement contract.

354 Section 4. Section 626.9912, Florida Statutes, is amended
355 to read:

356 626.9912 Viatical settlement provider license required;
357 application for license.--

358 (1) A person may not perform the functions of a viatical
359 settlement provider as defined in this act or enter into or



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360 solicit a viatical settlement contract without first having
 361 obtained a license from the office ~~department~~.

362 (2) Application for a viatical settlement provider license
 363 must be made to the office ~~department~~ by the applicant on a form
 364 prescribed by the office ~~department~~, under oath and signed by
 365 the applicant. The application must be accompanied by a fee of
 366 \$500. If the applicant is a corporation, the application must be
 367 under oath and signed by the president and the secretary of the
 368 corporation.

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

371 (a) The applicant's full name, age, residence address, and
 372 business address, and all occupations engaged in by the
 373 applicant during the 10 ~~5~~ years preceding the date of the
 374 application.

375 (b) A copy of the applicant's basic organizational
 376 documents, if any, including the articles of incorporation,
 377 articles of association, partnership agreement, trust agreement,
 378 or other similar documents, together with all amendments to such
 379 documents.

380 (c) Copies of all bylaws, rules, regulations, or similar
 381 documents regulating the conduct of the applicant's internal
 382 affairs.

383 (d) A list showing the name, business and residence
 384 addresses, and official position of each individual who is
 385 responsible for conduct of the applicant's affairs, including,
 386 but not limited to, any member of the applicant's board of
 387 directors, board of trustees, executive committee, or other
 388 governing board or committee and any other person or entity



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389 owning or having the right to acquire 10 percent or more of the
 390 voting securities of the applicant.

391 (e) With respect to each individual identified under
 392 paragraph (d):

393 1. A sworn biographical statement on forms supplied by the
 394 commission ~~department~~.

395 2. A set of fingerprints on forms prescribed by the
 396 commission ~~department~~, certified by a law enforcement officer,
 397 and accompanied by the fingerprinting fee specified in s.
 398 624.501.

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

401 (f) All applications, viatical settlement contract forms,
 402 ~~viatical settlement purchase agreement forms~~, escrow forms, and
 403 other agreements related to the business of viatical
 404 settlements, and all related forms proposed to be used by the
 405 applicant.

406 (g) Such other information as the commission or office
 407 ~~department~~ deems necessary to determine that the applicant and
 408 the individuals identified under paragraph (d) are competent and
 409 trustworthy and can lawfully and successfully act as a viatical
 410 settlement provider.

411 (4) The office ~~department~~ may not issue a license to an
 412 entity other than a natural person if it is not satisfied that
 413 all officers, directors, employees, stockholders, partners, and
 414 any other persons who exercise or have the ability to exercise
 415 effective control of the entity or who have the ability to
 416 influence the transaction of business by the entity meet the
 417 standards of this act and have not violated any provision of
 418 this act or rules of the office ~~department~~ related to the



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419 business of viatical settlements ~~settlement contracts or~~
 420 ~~viatical settlement purchase agreements.~~

421 (5) Upon the filing of a sworn application and the payment
 422 of the license fee, the office ~~department~~ shall investigate each
 423 applicant and may issue the applicant a license if the office
 424 ~~department~~ finds that the applicant:

425 (a) Has provided a detailed plan of operation regarding
 426 its business of viatical settlements and the procurement and
 427 disposition of viaticated policies, including copies of any
 428 offering of securities.

429 (b) Is competent and trustworthy and intends to act in
 430 good faith in the business authorized by the license applied
 431 for.

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

435 (d) If the applicant is a corporation, is a corporation
 436 incorporated under the laws of this state, or is a foreign
 437 corporation authorized to transact business in this state.

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

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

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

443 Section 5. Section 626.9913, Florida Statutes, is amended
 444 to read:

445 626.9913 Viatical settlement provider license continuance;
 446 annual report; fees; deposit.--

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



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449 (2) Annually, on or before March 1, the viatical
450 settlement provider licensee shall file a statement containing
451 information the office or commission ~~department~~ requires and
452 shall pay to the office ~~department~~ a license fee in the amount
453 of \$500. The annual statement shall include audited financial
454 statements prepared in accordance with generally accepted
455 accounting principles by an independent certified public
456 accountant as of the last day of the preceding calendar year and
457 such other reasonable data, financial statements, and pertinent
458 information, including, but not limited to, a schedule showing
459 the names and locations of all persons with which the viatical
460 settlement provider has engaged in the business of viatical
461 settlements during the reporting period as the department may by
462 rule require with respect to the provider, its subsidiaries, or
463 affiliates. A viatical settlement provider shall include in all
464 statements filed with the office ~~department~~ all information
465 requested by the office or commission ~~department~~ regarding a
466 related provider trust established by the viatical settlement
467 provider. The office or commission ~~department~~ may require more
468 frequent reporting. Failure to timely file the annual statement
469 or to timely pay the license fee is grounds for immediate
470 suspension of the license.

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

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



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479 (5)~~(3)~~ A viatical settlement provider licensee must
 480 deposit and maintain deposited in trust with the department
 481 securities eligible for deposit under s. 625.52, having at all
 482 times a value of not less than \$100,000. ~~As an alternative to~~
 483 ~~meeting the \$100,000 deposit requirement, the provider may~~
 484 ~~deposit and maintain deposited in trust with the department such~~
 485 ~~securities in the amount of \$25,000 and post with the department~~
 486 ~~a surety bond acceptable to the department in the amount of~~
 487 ~~\$75,000.~~

488 (6) No judgment creditor or other claimant of a viatical
 489 settlement provider shall have the right to levy upon any of the
 490 assets or securities held in this state pursuant to this

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

494 Section 6. Section 626.9914, Florida Statutes, is amended
 495 to read:

496 626.9914 Suspension, revocation, or nonrenewal of viatical
 497 settlement provider license; grounds; administrative fine.--

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

501 (a) Has made a misrepresentation in the application for
 502 the license;

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

506 (c) Demonstrates a pattern of unreasonable payments to
 507 viators;



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

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

514 (f) Has failed to honor contractual obligations related to
 515 the business of viatical settlements ~~settlement contracts~~;

516 (g) Deals in bad faith with viators;

517 (h) Has violated any provision of the insurance code of
 518 any state, any federal or state securities laws, or similar laws
 519 or rules of any regulatory or self-regulatory body or of this
 520 act;

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

524 (j) No longer meets the requirements for initial
 525 licensure.

526 (2) The office ~~department~~ may, in lieu of or in addition
 527 to any suspension or revocation, assess an administrative fine
 528 not to exceed \$2,500 for each nonwillful violation or \$10,000
 529 for each willful violation by a viatical settlement provider
 530 licensee. The office ~~department~~ may also place a viatical
 531 settlement provider licensee on probation for a period not to
 532 exceed 2 years.

533 (3) If an employee of a viatical settlement provider
 534 violates any provision of this act, the office ~~department~~ may
 535 take disciplinary action against such employee as if the
 536 employee were licensed under this act, including suspending or
 537 otherwise prohibiting the employee from performing the functions



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538 of a viatical settlement provider or viatical settlement broker
 539 as defined in this act.

540 (4) If a viatical settlement provider establishes a
 541 related provider trust as permitted by this act, the viatical
 542 settlement provider shall be liable and responsible for the
 543 performance of all obligations of the related provider trust
 544 under all viatical settlement contracts entered into by the
 545 related provider trust, and for the compliance of the related
 546 provider trust with all provisions of this act. Any violation of
 547 this act by the related provider trust shall be deemed a
 548 violation of this act by the viatical settlement provider as
 549 well as the related provider trust. If the related provider
 550 trust violates any provisions of this act, the office ~~department~~
 551 may exercise all remedies set forth in this act for such
 552 violations against the viatical settlement provider, as well as
 553 the related provider trust.

554 Section 7. Section 626.9915, Florida Statutes, is amended
 555 to read:

556 626.9915 Effect of suspension or revocation of viatical
 557 settlement provider license; duration of suspension;
 558 reinstatement.--

559 (1) When its license is suspended or revoked, the provider
 560 must proceed, immediately following the effective date of the
 561 suspension or revocation, to conclude the affairs it is
 562 transacting under its license. The provider may not solicit,
 563 negotiate, advertise, or effectuate new contracts. The office
 564 ~~department~~ retains jurisdiction over the provider until all
 565 contracts have been fulfilled or canceled or have expired. A
 566 provider whose license is suspended or revoked may continue to



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567 maintain and service viaticated policies subject to the approval
 568 of the office ~~department~~.

569 (2) The suspension of the license of a viatical settlement
 570 provider licensee may be for such period, not to exceed 2 years,
 571 as determined by the office ~~department~~. The office ~~department~~
 572 may shorten, rescind, or modify the suspension.

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

576 (4) If, upon expiration of the suspension order, the
 577 license has not otherwise been terminated, the office ~~department~~
 578 must reinstate the license only upon written request by the
 579 suspended licensee unless the office ~~department~~ finds that the
 580 grounds giving rise to the suspension have not been removed or
 581 that the licensee is otherwise not in compliance with the
 582 requirements of this act. The office ~~department~~ shall give the
 583 licensee notice of its findings no later than 90 days after
 584 receipt of the request or upon expiration of the suspension
 585 order, whichever occurs later. If a license is not reinstated
 586 pursuant to the procedures set forth in this subsection, it
 587 expires at the end of the suspension or on the date it otherwise
 588 would have expired, whichever is sooner.

589 Section 8. Section 626.9916, Florida Statutes, is amended
 590 to read:

591 626.9916 Viatical settlement broker license required;
 592 application for license.--

593 (1) After October 1, 2003 ~~July 1, 1996~~, a person, ~~other~~
 594 ~~than a life agent licensed under this chapter~~, may not perform
 595 the functions of a viatical settlement broker as defined in this



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596 act without first having obtained a life agent license from the
 597 department.

598 (2) Except as otherwise provided in this section, parts I
 599 and III of this chapter apply as if a viatical settlement
 600 contract were an insurance policy. In order to perform the
 601 functions of a viatical settlement broker, the licensed life
 602 agent must appoint himself or herself with the office as such.
 603 ~~Application for a viatical settlement broker license must be~~
 604 ~~made to the department by the applicant on a form prescribed by~~
 605 ~~the department, under oath, and signed by the applicant. The~~
 606 ~~application must be accompanied by a \$50 filing fee. If the~~
 607 ~~applicant is a corporation, the application must be under oath~~
 608 ~~and signed by the president and the secretary of the~~
 609 ~~corporation.~~

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

615 (a) ~~The applicant's full name, age, residence address, and~~
 616 ~~business address, and all occupations engaged in by the~~
 617 ~~applicant during the 5 years preceding the date of the~~
 618 ~~application; if the applicant is not a natural person, the~~
 619 ~~applicant must provide the information required by this~~
 620 ~~paragraph with respect to all officers, directors, or partners.~~

621 (b) ~~A copy of the applicant's basic organizational~~
 622 ~~documents, if any, including the articles of incorporation,~~
 623 ~~articles of association, partnership agreement, trust agreement,~~
 624 ~~or other similar documents, together with all amendments to such~~
 625 ~~documents.~~



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626 ~~(c) If the applicant is not a natural person, a list~~
627 ~~showing the name, business and residence addresses, and official~~
628 ~~position of each individual who is responsible for conduct of~~
629 ~~the applicant's affairs, including, but not limited to, any~~
630 ~~member of the applicant's board of directors, board of trustees,~~
631 ~~executive committee, or other governing board or committee and~~
632 ~~any other person or entity owning or having the right to acquire~~
633 ~~10 percent or more of the voting securities of the applicant.~~

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

636 ~~1. A sworn biographical statement on forms supplied by the~~
637 ~~department.~~

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

641 ~~3. Authority, if required by the department, for release~~
642 ~~of information relating to the investigation of the individual's~~
643 ~~background.~~

644 ~~(e) Such other information as the department deems~~
645 ~~necessary to determine that the individual applicant and the~~
646 ~~individuals identified under paragraph (c) are competent and~~
647 ~~trustworthy and can lawfully and successfully act as a viatical~~
648 ~~settlement provider.~~

649 ~~(4) All viatical settlement broker licenses shall~~
650 ~~terminate on October 1, 2003, and shall not be subject to~~
651 ~~renewal. Any natural person who is employed by or otherwise~~
652 ~~represents a viatical settlement broker licensee, which broker~~
653 ~~licensee is not a natural person, must also be licensed as a~~
654 ~~viatical settlement broker if such employee or other~~



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655 ~~representative performs the functions of a viatical settlement~~
 656 ~~broker as defined in this act.~~

657 ~~(5) The department may not issue a license to an applicant~~
 658 ~~if it is not satisfied that the applicant, if a natural person,~~
 659 ~~or all officers, directors, employees, stockholders, and~~
 660 ~~partners who exercise or have the ability to exercise effective~~
 661 ~~control of the applicant or who have the ability to influence~~
 662 ~~the transaction of business by the applicant, if the applicant~~
 663 ~~is not a natural person, meet the standards of this act and have~~
 664 ~~not violated any provision of this act or rules of the~~
 665 ~~department related to the business of viatical settlement~~
 666 ~~contracts.~~

667 ~~(6) The department may specify the form of the license and~~
 668 ~~may require photographing of the applicant as part of the~~
 669 ~~application process.~~

670 ~~(7) Upon the filing of a sworn application and the payment~~
 671 ~~of the license fee and all other applicable fees under this act,~~
 672 ~~the department shall investigate each applicant and may issue~~
 673 ~~the applicant a license if the department finds that the~~
 674 ~~applicant:~~

675 ~~(a) Is competent and trustworthy and intends to act in~~
 676 ~~good faith in the business authorized by the license applied~~
 677 ~~for.~~

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

681 ~~(c) Except with respect to applicants for nonresident~~
 682 ~~licenses, is a bona fide resident of this state and actually~~
 683 ~~resides in this state at least 180 days a year. If an applicant~~
 684 ~~holds a similar license or an insurance agent's or broker's~~



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685 ~~license in another state at the time of applying for a license~~
686 ~~under this section, the applicant may be found to meet the~~
687 ~~residency requirement of this paragraph only after he or she~~
688 ~~furnishes a letter of clearance satisfactory to the department~~
689 ~~or other proof that the applicant's resident licenses have been~~
690 ~~eanceled or changed to nonresident status and that the applicant~~
691 ~~is in good standing with the licensing authority.~~

692 ~~(d) Is a corporation, a corporation incorporated under the~~
693 ~~laws of this state, or a foreign corporation authorized to~~
694 ~~transact business in this state.~~

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

697 ~~(8) An applicant for a nonresident viatical settlement~~
698 ~~broker license must, in addition to designating the Insurance~~
699 ~~Commissioner and Treasurer as agent for service of process as~~
700 ~~required by this section, also furnish the department with the~~
701 ~~name and address of a resident of this state upon whom notices~~
702 ~~or orders of the department or process affecting the applicant~~
703 ~~or licensee may be served. After issuance of the license, the~~
704 ~~licensee must also notify the department of change of the person~~
705 ~~to receive such notices, orders, or process; such change is not~~
706 ~~effective until acknowledged by the department.~~

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

710 ~~(10) Except as otherwise provided in this section,~~
711 ~~viatical settlement brokers shall be licensed, appointed,~~
712 ~~renewed, continued, reinstated, and terminated in the manner~~
713 ~~specified in this chapter for insurance representatives~~



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714 ~~generally; however, viatical settlement brokers are not subject~~
 715 ~~to continuing education requirements.~~

716 Section 9. Section 626.9917, Florida Statutes, is amended
 717 to read:

718 626.9917 ~~Denial,~~ Suspension, revocation, or nonrenewal of
 719 viatical settlement broker's life agent ~~broker~~ license; grounds;
 720 administrative fine.--

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

725 (a) Has made a misrepresentation in the application for
 726 the license or application form;

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

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

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

735 (e) Has violated any provision of the insurance code or of
 736 this act;

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

740 (g) No longer meets the requirements for initial
 741 licensure; or



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

745 (2) The office ~~department~~ may, in lieu of or in addition
 746 to any suspension or revocation, assess an administrative fine
 747 not to exceed \$2,500 for each nonwillful violation or \$10,000
 748 for each willful violation by a viatical settlement broker
 749 licensee. The office ~~department~~ may also place a viatical
 750 settlement broker licensee on probation for a period not to
 751 exceed 2 years.

752 Section 10. Section 626.9918, Florida Statutes, is amended
 753 to read:

754 626.9918 Effect of suspension or revocation of viatical
 755 settlement broker's life agent ~~broker~~ license; duration of
 756 suspension; reinstatement.--

757 (1) When the ~~its~~ license of a viatical settlement broker
 758 is suspended or revoked, the broker must proceed, immediately
 759 following the effective date of the suspension or revocation, to
 760 conclude the affairs the broker ~~it~~ is transacting under the ~~its~~
 761 license. The broker may not perform any of the functions of a
 762 viatical settlement broker as defined in this act. The
 763 department retains jurisdiction over the broker ~~provider~~ until
 764 all contracts have been fulfilled or canceled or have expired.

765 (2) The suspension of the life agent license of a viatical
 766 settlement broker ~~licensee~~ may be for such period, not to exceed
 767 2 years, as determined by the department. The department may
 768 shorten, rescind, or modify the suspension.

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



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772 (4) If, upon expiration of the suspension order, the
 773 license has not otherwise been terminated, the department must
 774 reinstate the license only upon written request by the suspended
 775 licensee unless the department finds that the grounds giving
 776 rise to the suspension have not been removed or that the
 777 licensee is otherwise not in compliance with the requirements of
 778 this act. The department shall give the licensee notice of its
 779 findings no later than 90 days after receipt of the request or
 780 upon expiration of the suspension order, whichever occurs later.
 781 If a license is not reinstated pursuant to the procedures set
 782 forth in this subsection, it expires at the end of the
 783 suspension or on the date it otherwise would have expired,
 784 whichever is sooner.

785 Section 11. Section 626.9919, Florida Statutes, is amended
 786 to read:

787 626.9919 Notice of change of licensee address or
 788 name.--Each viatical settlement provider licensee, ~~viatical~~
 789 ~~settlement broker licensee, and viatical settlement sales agent~~
 790 ~~licensee~~ must provide the office department at least 30 days'
 791 advance notice of any change in the licensee's name, residence
 792 address, principal business address, or mailing address.

793 Section 12. Section 626.992, Florida Statutes, is amended
 794 to read:

795 626.992 Use of licensed viatical settlement ~~licensed~~
 796 ~~brokers and,~~ providers, ~~and sales agents~~ required.--

797 (1) A licensed viatical settlement provider may not use
 798 any person to perform the functions of a viatical settlement
 799 broker as defined in this act unless such person holds a
 800 current, valid license as a life agent ~~viatical settlement~~
 801 ~~broker~~. Salaried individuals employed by viatical settlement



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802 providers may not ~~shall~~ engage in viatical settlement broker
 803 activities unless he or she ~~only when accompanied by a viatical~~
 804 ~~settlement broker who~~ holds a current valid life agent license
 805 ~~issued under this act. A viatical settlement provider may not~~
 806 ~~use any person to perform the functions of a viatical settlement~~
 807 ~~sales agent unless the person holds a current, valid license as~~
 808 ~~provided in subsection (4).~~

809 (2) A ~~licensed~~ viatical settlement broker may not use any
 810 person to perform the functions of a viatical settlement
 811 provider as defined in this act unless such person holds a
 812 current, valid license as a viatical settlement provider.

813 ~~(3) A viatical settlement sales agent may not use any~~
 814 ~~person to perform the functions of a viatical settlement broker~~
 815 ~~unless such person holds a current, valid license as a viatical~~
 816 ~~settlement broker.~~

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

820 Section 13. Section 626.9921, Florida Statutes, is amended
 821 to read:

822 626.9921 Filing of forms; required procedures; approval.--

823 (1) A viatical settlement contract form, ~~viatical~~
 824 ~~settlement purchase agreement form,~~ escrow form, or related form
 825 may be used in this state only after the form has been filed
 826 with the office ~~department~~ and only after the form has been
 827 approved by the office ~~department~~.

828 (2) The viatical settlement contract form, ~~viatical~~
 829 ~~settlement purchase agreement form,~~ escrow form, or related form
 830 must be filed with the office ~~department~~ at least 60 days before
 831 its use. The form is considered approved on the 60th day after



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832 its date of filing unless it has been previously disapproved by
 833 the office ~~department~~. The office ~~department~~ must disapprove a
 834 viatical settlement contract form, ~~viatical settlement purchase~~
 835 ~~agreement form~~, escrow form, or related form that is
 836 unreasonable, contrary to the public interest, discriminatory,
 837 or misleading or unfair to the viator or violates any provision
 838 of this part or if the application of the submitting party for
 839 licensure as a provider or a related provider trust has not been
 840 approved by the office ~~the purchaser~~.

841 (3) If a viatical settlement provider elects to use a
 842 related provider trust in accordance with this act, the viatical
 843 settlement provider shall file notice of its intention to use a
 844 related provider trust with the office ~~department~~, including a
 845 copy of the trust agreement of the related provider trust. The
 846 organizational documents of the trust must be submitted to and
 847 approved by the office ~~department~~ before the transacting of
 848 business by the trust.

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

852 Section 14. Section 626.9922, Florida Statutes, is amended
 853 to read:

854 626.9922 Examination.--

855 (1) The office ~~department~~ may examine the business and
 856 affairs of any licensee or applicant for a license. The office
 857 ~~department~~ may order any licensee or applicant to produce any
 858 records, books, files, financial records, advertising and
 859 solicitation materials, or other information relating to the
 860 business of viatical settlements regardless of jurisdiction or
 861 location and may take statements under oath to determine whether



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862 the licensee or applicant is in violation of the law or is
 863 acting contrary to the public interest. The expenses incurred in
 864 conducting any examination or investigation must be paid by the
 865 licensee or applicant. Examinations and investigations must be
 866 conducted as provided in chapter 624, and licensees are subject
 867 to all applicable provisions of the insurance code.

868 (2) All accounts, books and records, documents, files,
 869 contracts, and other information relating to the business of
 870 viatical settlements and all transactions of viatical settlement
 871 contracts regardless of location or jurisdiction ~~or viatical~~
 872 ~~settlement purchase agreements~~ must be maintained by the
 873 licensee for a period of at least 3 years after the death of the
 874 insured and must be available to the office ~~department~~ for
 875 inspection during reasonable business hours.

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

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

886 Section 15. Section 626.9924, Florida Statutes, is amended
 887 to read:

888 626.9924 Viatical settlement contracts; procedures;
 889 rescission.--

890 (1) A viatical settlement provider entering into a
 891 viatical settlement contract with any viator must first obtain a



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892 witnessed document in which the viator consents to the viatical
893 settlement contract, represents that he or she has a full and
894 complete understanding of the viatical settlement contract and
895 the benefits of the life insurance policy, releases his or her
896 medical records, and acknowledges that he or she has entered
897 into the viatical settlement contract freely and voluntarily.

898 (2) All viatical settlement contracts subject to this act
899 must contain an unconditional rescission provision which allows
900 the viator to rescind the contract within 15 days after the
901 viator receives the viatical settlement proceeds, conditioned on
902 the return of such proceeds.

903 (3) A viatical settlement transaction may be completed
904 only through the use of an independent third-party trustee or
905 escrow agent. Immediately upon receipt by the independent third-
906 party trustee or escrow agent of documents from the viator to
907 effect the transfer of the insurance policy, the viatical
908 settlement provider must pay the proceeds of the settlement to
909 an escrow or trust account managed by the independent third-
910 party trustee or escrow agent in a financial institution
911 licensed under Florida law or a federally chartered financial
912 institution that is a member of the Federal Reserve System,
913 pending acknowledgment of the transfer by the issuer of the
914 policy. An advance or partial payment of the proceeds due under
915 a viatical settlement contract may not be used to effect
916 transfer of the subject policy; any such advance or partial
917 payment is made at the sole discretion and risk of the viatical
918 settlement provider.

919 (4) Upon receipt of all viatical settlement contract
920 proceeds, the independent third-party trustee or escrow agent
921 must release to the viatical settlement provider all documents



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922 necessary to complete the transfer of the insurance policy or
 923 certificate of insurance so that the transfer, assignment, sale,
 924 bequest, or devise may be effected.

925 (5) The independent third-party trustee or escrow agent
 926 must transfer all proceeds of the viatical settlement contract
 927 within 3 business days after receiving from the issuer of the
 928 subject policy acknowledgment of the transfer, assignment,
 929 bequest, sale, or devise. Failure to transfer proceeds as
 930 required by this subsection renders the viatical settlement
 931 contract and the transfer, assignment, bequest, sale, or devise
 932 voidable.

933 (6) A viatical settlement provider may not negotiate or
 934 enter into a viatical settlement contract with a viator if the
 935 subject policy contains an accelerated benefits provision
 936 allowing benefits to be paid for a period in advance of the
 937 expected death which is equal to or exceeds the time period
 938 available under the viatical settlement contract, and at an
 939 amount which is equal to or exceeds the amount available under
 940 the viatical settlement contract, unless the issuer of the
 941 policy, in writing, denies, declines, or refuses to provide such
 942 accelerated benefits. If the insurer does not respond to a
 943 request to effectuate an accelerated benefits provision sent by
 944 certified mail within 30 days after receiving the request, the
 945 insurer shall be deemed to have denied, declined, or refused to
 946 provide such accelerated benefits.

947 (7) At any time during the contestable period, within 20
 948 days after a viator executes documents necessary to transfer
 949 rights under an insurance policy or within 20 days of any
 950 agreement, option, promise, or any other form of understanding,
 951 express or implied, to viaticate the policy, the provider must



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952 give notice to the insurer of the policy that the policy has or
953 will become a viaticated policy. The notice must be accompanied
954 by the documents required by s. 626.99287(5)(a) in their
955 entirety.

956 (8) If the owner of the insurance policy is not the
957 insured, the provider shall notify the insured that the policy
958 has become the subject of a viatical settlement contract within
959 20 days after the transfer of rights under the contract.

960 (9) If the provider transfers ownership or changes the
961 beneficiary of the insurance policy, the provider must
962 communicate the initial change in ownership or beneficiary to
963 the insured within 20 days after the change.

964 ~~(10) The viatical settlement provider who effectuated the~~
965 ~~viatical settlement contract with the viator (the "initial~~
966 ~~provider") is responsible for tracking the insured, including,~~
967 ~~but not limited to, keeping track of the insured's whereabouts~~
968 ~~and health status, submission of death claims or assisting the~~
969 ~~beneficiary in the submission of death claims, and the status of~~
970 ~~the payment of premiums until the death of the insured. This~~
971 ~~responsibility may be contracted out to a third party; however,~~
972 ~~the ultimate responsibility remains with the initial provider.~~
973 ~~This responsibility continues with the initial provider,~~
974 ~~notwithstanding any transfers of the viaticated policy in the~~
975 ~~secondary market. This subsection applies only to those~~
976 ~~viaticated policies that are or are to become the subject of~~
977 ~~viatical settlement purchase agreements.~~

978 Section 16. Section 626.99245, Florida Statutes, is
979 amended to read:

980 626.99245 Conflict of regulation of viaticals.--



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981 ~~(1) A viatical settlement provider who from this state~~
 982 ~~enters into a viatical settlement purchase agreement with a~~
 983 ~~purchaser who is a resident of another state that has enacted~~
 984 ~~statutes or adopted regulations governing viatical settlement~~
 985 ~~purchase agreements, shall be governed in the effectuation of~~
 986 ~~that viatical settlement purchase agreement by the statutes and~~
 987 ~~regulations of the purchaser's state of residence. If the state~~
 988 ~~in which the purchaser is a resident has not enacted statutes or~~
 989 ~~regulations governing viatical settlement purchase agreements,~~
 990 ~~the provider shall give the purchaser notice that neither~~
 991 ~~Florida nor his or her state regulates the transaction upon~~
 992 ~~which he or she is entering. For transactions in these states,~~
 993 ~~however, the viatical settlement provider is to maintain all~~
 994 ~~records required as if the transactions were executed in~~
 995 ~~Florida. However, the forms used in those states need not be~~
 996 ~~approved by the department.~~

997 (2) A viatical settlement provider or viatical settlement
 998 broker who from this state enters into or negotiates a viatical
 999 settlement contract with a viator who is a resident of another
 1000 state that has enacted statutes or adopted regulations governing
 1001 viatical settlement contracts shall be governed in the
 1002 effectuation of that viatical settlement contract by the
 1003 statutes and regulations of the viator's state of residence. If
 1004 the state in which the viator is a resident has not enacted
 1005 statutes or regulations governing viatical settlement
 1006 agreements, the provider shall give the viator notice that
 1007 neither Florida nor his or her state regulates the transaction
 1008 upon which he or she is entering. For transactions in those
 1009 states, however, the viatical settlement provider or broker is
 1010 to maintain all records required as if the transactions were



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1011 executed in Florida. The forms used in those states need not be
 1012 approved by the office ~~department~~.

1013 ~~(3) This section does not affect the requirement of ss.~~
 1014 ~~626.9911(6) and 626.9912(1) that a viatical settlement provider~~
 1015 ~~doing business from this state must obtain a viatical settlement~~
 1016 ~~license from the department. As used in this subsection, the~~
 1017 ~~term "doing business from this state" includes effectuating~~
 1018 ~~viatical settlement contracts and effectuating viatical~~
 1019 ~~settlement purchase agreements from offices in this state,~~
 1020 ~~regardless of the state of residence of the viator or the~~
 1021 ~~viatical settlement purchaser.~~

1022 Section 17. Section 626.9925, Florida Statutes, is amended
 1023 to read:

1024 626.9925 Rules.—The commission ~~department~~ may adopt rules
 1025 to administer this act, including rules establishing standards
 1026 for evaluating advertising by licensees; rules providing for the
 1027 collection of data, including electronic filing by licensees,
 1028 for disclosures to viators ~~or purchasers~~, and for the reporting
 1029 of life expectancies; and rules defining terms used in this act,
 1030 rules setting forth requirements for an anti-fraud plan, and
 1031 rules prescribing recordkeeping requirements relating to the
 1032 business of viatical settlements ~~executed viatical settlement~~
 1033 ~~contracts and viatical settlement purchase agreements.~~

1034 Section 18. Section 626.9926, Florida Statutes, is amended
 1035 to read:

1036 626.9926 Rate regulation not authorized.--Nothing in this
 1037 act shall be construed to authorize the office or commission
 1038 ~~department~~ to directly or indirectly regulate the amount paid as
 1039 consideration for entry into a viatical settlement contract ~~or~~
 1040 ~~viatical settlement purchase agreement.~~



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1041 Section 19. Section 626.9927, Florida Statutes, is amended
 1042 to read:

1043 626.9927 Unfair trade practices; cease and desist;
 1044 injunctions; civil remedy.--

1045 (1) A violation of this act is an unfair trade practice
 1046 under ss. 626.9521 and 626.9541 and is subject to the penalties
 1047 provided in the insurance code. Part IX ~~✕~~ of this chapter,
 1048 entitled Unfair Insurance Trade Practices, applies to a licensee
 1049 under this act or a transaction subject to this act as if a
 1050 viatical settlement contract ~~and a viatical settlement purchase~~
 1051 ~~agreement~~ were an insurance policy.

1052 (2) In addition to the penalties and other enforcement
 1053 provisions of this act, if any person violates this act or any
 1054 rule implementing this act, the office ~~department~~ may seek an
 1055 injunction in the circuit court of the county where the person
 1056 resides or has a principal place of business and may apply for
 1057 temporary and permanent orders that the office ~~department~~
 1058 determines necessary to restrain the person from committing the
 1059 violation.

1060 (3) Any person damaged by the acts of a person in
 1061 violation of this act may bring a civil action against the
 1062 person committing the violation in the circuit court of the
 1063 county in which the alleged violator resides or has a principal
 1064 place of business or in the county wherein the alleged violation
 1065 occurred. Upon an adverse adjudication, the defendant is liable
 1066 for damages, together with court costs and reasonable attorney's
 1067 fees incurred by the plaintiff. When so awarded, court costs and
 1068 attorney's fees must be included in the judgment or decree
 1069 rendered in the case. If it appears to the court that the suit
 1070 brought by the plaintiff is frivolous or brought for purposes of



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1071 harassment, the plaintiff is liable for court costs and
 1072 reasonable attorney's fees incurred by the defendant.

1073 Section 20. Section 626.99272, Florida Statutes, is
 1074 amended to read:

1075 626.99272 Cease and desist orders and fines.--

1076 (1) The office ~~department~~ may issue a cease and desist
 1077 order upon a person that violates any provision of this part,
 1078 any rule or order adopted by the office ~~department~~, or any
 1079 written agreement entered into with the office ~~department~~.

1080 (2) When the office ~~department~~ finds that such an action
 1081 presents an immediate danger to the public which requires an
 1082 immediate final order, it may issue an emergency cease and
 1083 desist order reciting with particularity the facts underlying
 1084 such findings. The emergency cease and desist order is effective
 1085 immediately upon service of a copy of the order on the
 1086 respondent and remains effective for 90 days. If the office
 1087 ~~department~~ begins nonemergency cease and desist proceedings
 1088 under subsection (1), the emergency cease and desist order
 1089 remains effective, absent an order by an appellate court of
 1090 competent jurisdiction pursuant to s. 120.68, until the
 1091 conclusion of proceedings under ss. 120.569 and 120.57.

1092 (3) The office ~~department~~ may impose and collect an
 1093 administrative fine not to exceed \$10,000 for each nonwillful
 1094 violation and \$25,000 for each willful violation of any
 1095 provision of this part.

1096 Section 21. Section 626.99275, Florida Statutes, is
 1097 amended to read:

1098 626.99275 Prohibited practices; penalties.--

1099 (1) It is unlawful for any person:



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1100 (a) To commit a fraudulent viatical settlement act as
 1101 defined in s. 626.9911 ~~knowingly enter into, broker, or~~
 1102 ~~otherwise deal in a viatical settlement contract the subject of~~
 1103 ~~which is a life insurance policy, knowing that the policy was~~
 1104 ~~obtained by presenting materially false information concerning~~
 1105 ~~any fact material to the policy or by concealing, for the~~
 1106 ~~purpose of misleading another, information concerning any fact~~
 1107 ~~material to the policy, where the viator or the viator's agent~~
 1108 ~~intended to defraud the policy's issuer.~~

1109 ~~(b) In the solicitation or sale of a viatical settlement~~
 1110 ~~purchase agreement:~~

1111 ~~1. To employ any device, scheme, or artifice to defraud;~~

1112 ~~2. To obtain money or property by means of an untrue~~
 1113 ~~statement of a material fact or by any omission to state a~~
 1114 ~~material fact necessary in order to make the statements made, in~~
 1115 ~~light of the circumstances under which they were made, not~~
 1116 ~~misleading; or~~

1117 ~~3. To engage in any transaction, practice, or course of~~
 1118 ~~business which operates or would operate as a fraud or deceit~~
 1119 ~~upon a person.~~

1120 (b)(e) To knowingly engage in any transaction, practice,
 1121 or course of business intending thereby to avoid the notice
 1122 requirements of s. 626.9924(7).

1123 (2) A person who violates any provision of this section
 1124 commits:

1125 (a) A felony of the third degree, punishable as provided
 1126 in s. 775.082, s. 775.083, or s. 775.084, if the aggregate face
 1127 amount of the insurance policies ~~policy~~ involved are ~~is~~ valued
 1128 at any amount less than \$20,000.



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1129 (b) A felony of the second degree, punishable as provided
 1130 in s. 775.082, s. 775.083, or s. 775.084, if the aggregate face
 1131 amount of the insurance policies ~~policy~~ involved are ~~is~~ valued
 1132 at \$20,000 or more, but less than \$100,000.

1133 (c) A felony of the first degree, punishable as provided
 1134 in s. 775.082, s. 775.083, or s. 775.084, if the aggregate face
 1135 amount of the insurance policies ~~policy~~ involved are ~~is~~ valued
 1136 at \$100,000 or more.

1137 (3) The provisions of this section do not apply to a
 1138 conservator of a viatical settlement provider appointed by a
 1139 court of competent jurisdiction who transfers ownership of
 1140 viaticated policies pursuant to that court's order.

1141 Section 22. Section 626.99277, Florida Statutes, is
 1142 amended to read:

1143 626.99277 False representations; deceptive words.--

1144 ~~(1) It is unlawful for a person in the advertisement,~~
 1145 ~~offer, or sale of a viatical settlement purchase agreement to~~
 1146 ~~misrepresent that such an agreement has been guaranteed,~~
 1147 ~~sponsored, recommended, or approved by the state, or any agency~~
 1148 ~~or officer of the state or by the United States or any agency or~~
 1149 ~~officer of the United States.~~

1150 (1)(2) It is unlawful for a person in conjunction with the
 1151 business of viatical settlements ~~sale of a viatical settlement~~
 1152 ~~purchase agreement~~ to directly or indirectly misrepresent that
 1153 the person has been sponsored, recommended, or approved, or that
 1154 his or her abilities or qualifications have in any respect been
 1155 passed upon, by this state or any other state, or any agency or
 1156 officer thereof, or by the United States or any agency or
 1157 officer thereof.



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1158 (2)~~(3)~~ It is unlawful for a person engaged in the business
 1159 of viatical settlements ~~in the offer or sale of a viatical~~
 1160 ~~settlement purchase agreement~~ to obtain money or property by:

1161 ~~(a) A misrepresentation that the viatical settlement~~
 1162 ~~purchase agreement purchased, offered, or sold is guaranteed,~~
 1163 ~~sponsored, recommended, or approved by this state or any other~~
 1164 ~~state, or any agency or officer thereof, or by the United States~~
 1165 ~~or any agency or officer thereof.~~

1166 ~~(b)~~ a misrepresentation that the person is sponsored,
 1167 recommended, or approved, or that the person's abilities or
 1168 qualifications have in any respect been passed upon, by this
 1169 state or any other state, or any agency or officer thereof, or
 1170 by the United States or any agency or officer thereof.

1171 (3)~~(4)~~ Neither subsection (1) nor subsection (2) may be
 1172 construed to prohibit a statement that the person is licensed or
 1173 appointed under this part if such a statement is required by
 1174 this part or rules adopted under this part, if the statement is
 1175 true in fact, and if the effect of the statement is not
 1176 misrepresented.

1177 ~~(5) A person may not represent that a viatical settlement~~
 1178 ~~purchase agreement is guaranteed by any insurance guaranty fund.~~

1179 ~~(6) A person may not represent that the investment in a~~
 1180 ~~viatical settlement purchase agreement is "guaranteed," that the~~
 1181 ~~principal is "safe," or that the investment is free of risk.~~

1182 Section 23. Section 626.99278, Florida Statutes, is
 1183 amended to read:

1184 626.99278 Viatical provider anti-fraud plan.—Every
 1185 applicant or licensed viatical settlement provider ~~and viatical~~
 1186 ~~settlement broker~~ must adopt an anti-fraud plan and file it with
 1187 the Division of Insurance Fraud of the department upon



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1188 application ~~on or before December 1, 2000~~. Each anti-fraud plan
 1189 shall include:

1190 (1) A description of the procedures for detecting and
 1191 investigating possible fraudulent acts and procedures for
 1192 resolving material inconsistencies between medical records and
 1193 insurance applications;

1194 (2) A description of the procedures for the mandatory
 1195 reporting of possible fraudulent insurance acts to the Division
 1196 of Insurance Fraud of the department;

1197 (3) A description of the plan for anti-fraud education and
 1198 training of its underwriters or other personnel; and

1199 (4) A written description or chart outlining the
 1200 organizational arrangement of the anti-fraud personnel who are
 1201 responsible for the investigation and reporting of possible
 1202 fraudulent insurance acts, and investigating unresolved material
 1203 inconsistencies between medical records and insurance
 1204 applications.

1205 Section 24. Section 626.9928, Florida Statutes, is amended
 1206 to read:

1207 626.9928 Acquisitions.--Acquisition of interest in a
 1208 viatical settlement provider ~~or viatical settlement broker~~ is
 1209 subject to s. 628.4615.

1210 Section 25. Section 626.99285, Florida Statutes, is
 1211 amended to read:

1212 626.99285 Applicability of insurance code.--In addition to
 1213 other applicable provisions cited in the insurance code, the
 1214 office and commission have ~~department has~~ the authority granted
 1215 under ss. 624.310, 626.611, 626.621, 626.901, 626.902, and
 1216 626.989 to regulate the business of viatical settlements
 1217 ~~settlement providers, viatical settlement brokers, viatical~~



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1218 ~~settlement sales agents, viatical settlement contracts, viatical~~
 1219 ~~settlement purchase agreements, and viatical settlement~~
 1220 ~~transactions.~~

1221 Section 26. Subsection (1) of section 626.989, Florida
 1222 Statutes, is amended to read:

1223 626.989 Investigation by department or Division of
 1224 Insurance Fraud; compliance; immunity; confidential information;
 1225 reports to division; division investigator's power of arrest.--

1226 (1) For the purposes of this section, a person commits a
 1227 "fraudulent insurance act" if the person knowingly and with
 1228 intent to defraud presents, causes to be presented, or prepares
 1229 with knowledge or belief that it will be presented, to or by an
 1230 insurer, self-insurer, self-insurance fund, servicing
 1231 corporation, purported insurer, broker, or any agent thereof,
 1232 any written statement as part of, or in support of, an
 1233 application for the issuance of, or the rating of, any insurance
 1234 policy, or a claim for payment or other benefit pursuant to any
 1235 insurance policy, which the person knows to contain materially
 1236 false information concerning any fact material thereto or if the
 1237 person conceals, for the purpose of misleading another,
 1238 information concerning any fact material thereto. The term also
 1239 includes any act that would constitute a fraudulent viatical
 1240 settlement act pursuant to s. 626.9911(1). For the purposes of
 1241 this section, the term "insurer" also includes any health
 1242 maintenance organization and the term "insurance policy" also
 1243 includes a health maintenance organization subscriber contract.

1244 Section 27. Sections 626.99235, 626.99236, and 626.99295,
 1245 Florida Statutes, are repealed.

1246 Section 28. This act shall take effect upon becoming a
 1247 law.