

1 A bill to be entitled
2 An act relating to viatical settlements; amending s.
3 517.021, F.S.; revising and providing definitions;
4 creating s. 517.072, F.S.; specifying nonapplication of
5 certain exemptions to viatical settlement investments;
6 specifying the offering of a viatical settlement
7 investment as not an exempt transaction under certain
8 provisions of law; amending s. 517.081, F.S.; authorizing
9 the Financial Services Commission to adopt additional
10 rules relating to securities registration; authorizing the
11 commission to adopt rules establishing requirements and
12 standards for disclosures and records relating to viatical
13 settlement investments; creating s. 517.1215, F.S.;
14 requiring the commission to adopt rules specifying
15 requirements for certain investment advisors; requiring
16 the commission to establish by rule rules of conduct and
17 prohibited business practices for investment advisers and
18 associated persons; providing requirements; creating s.
19 517.1217, F.S.; authorizing the commission to establish by
20 rule rules of conduct and prohibited business practices
21 for dealers and associated persons; providing
22 requirements; amending s. 624.501, F.S.; including agents
23 making an appointment under certain life insurance agent
24 fee provisions; amending ss. 626.015, 626.112, 626.207,
25 and 626.331, F.S., to conform; amending s. 626.611, F.S.;
26 providing an additional ground for compulsory refusal,
27 suspension, or revocation of certain licenses or
28 appointments for transactions relating to viatical

29 settlement contracts; amending s. 626.777, F.S., to
 30 conform; amending s. 626.7845, F.S.; prohibiting certain
 31 activities by a person relating to viatical settlement
 32 contracts unless as a licensed life agent; amending s.
 33 626.9911, F.S.; revising definitions; amending s.
 34 626.9912, F.S., to conform; amending s. 626.9913, F.S.;
 35 specifying additional requirements for annual statements
 36 by viatical settlement provider licensees; providing an
 37 alternative bond provision for certain viatical settlement
 38 providers for a certain time period; prohibiting certain
 39 persons from levying upon certain assets or securities
 40 under certain circumstances; requiring annual statements
 41 to contain certain information; amending s. 626.9914,
 42 F.S.; including the authority to deny a license among the
 43 adverse actions the Office of Insurance Regulation may
 44 take against a viatical settlement provider for certain
 45 actions; amending s. 626.9916, F.S.; revising licensure
 46 requirements for viatical settlement brokers; providing
 47 for self-appointment; providing for transfers of
 48 appointments; providing for termination of licenses;
 49 specifying a fiduciary duty of viatical settlement
 50 brokers; prohibiting dividing or sharing compensation
 51 received by a life agent for certain activities under
 52 certain circumstances; amending ss. 626.9919, 626.992, and
 53 626.9921, F.S., to conform; amending s. 626.9922, F.S.;
 54 specifying office jurisdiction over certain viatical
 55 settlement purchase agreements; authorizing the office to
 56 refer certain cases to the United States Securities and

57 Exchange Commission for administrative action under
 58 certain circumstances; providing application to life
 59 expectancy providers; amending ss. 626.99245, 626.9925,
 60 626.9926, and 626.9927, F.S., to conform; amending s.
 61 626.99275, F.S.; revising a prohibited practice to apply
 62 to issuing life expectancies under certain circumstances;
 63 providing a criminal penalty; amending s. 626.99278, F.S.;
 64 requiring an anti-fraud plan to include a life expectancy
 65 accuracy review process; amending ss. 626.9928 and
 66 626.99285, F.S., to conform; amending s. 626.99295, F.S.;
 67 revising application of a grace period for certain
 68 viatical settlement purchase agreements; repealing s.
 69 626.9917, F.S., relating to denial, suspension,
 70 revocation, or nonrenewal of viatical settlement broker
 71 licenses; repealing s. 626.9918, F.S., relating to effect
 72 of suspension or revocation of viatical settlement broker
 73 licenses; repealing s. 626.99235, F.S., relating to
 74 disclosures to viatical settlement purchasers; repealing
 75 s. 626.99236, F.S., relating to further disclosures to
 76 viatical settlement purchasers; repealing s. 626.99277,
 77 F.S., relating to false representations; providing an
 78 effective date.

79
 80 Be It Enacted by the Legislature of the State of Florida:

81
 82 Section 1. Subsections (19) and (21) of section 517.021,
 83 Florida Statutes, are renumbered as subsections (20) and (22),
 84 respectively, present subsection (20) is renumbered as

85 subsection (21) and amended, and subsections (19) and (23) are
 86 added to said section, to read:

87 517.021 Definitions.--When used in this chapter, unless
 88 the context otherwise indicates, the following terms have the
 89 following respective meanings:

90 (19) "Qualified institutional buyer" means any qualified
 91 institutional buyer, as defined in United States Securities and
 92 Exchange Commission Rule 144A, 17 C.F.R. 230.144A(a), under the
 93 Securities Act of 1933, as amended, or any foreign buyer that
 94 satisfies the minimum financial requirements set forth in such
 95 rule.

96 ~~(21)~~~~(20)~~ "Security" includes any of the following:

- 97 (a) A note.
- 98 (b) A stock.
- 99 (c) A treasury stock.
- 100 (d) A bond.
- 101 (e) A debenture.
- 102 (f) An evidence of indebtedness.
- 103 (g) A certificate of deposit.
- 104 (h) A certificate of deposit for a security.
- 105 (i) A certificate of interest or participation.
- 106 (j) A whiskey warehouse receipt or other commodity
 107 warehouse receipt.
- 108 (k) A certificate of interest in a profit-sharing
 109 agreement or the right to participate therein.
- 110 (l) A certificate of interest in an oil, gas, petroleum,
 111 mineral, or mining title or lease or the right to participate
 112 therein.

- 113 (m) A collateral trust certificate.
- 114 (n) A reorganization certificate.
- 115 (o) A preorganization subscription.
- 116 (p) Any transferable share.
- 117 (q) An investment contract.
- 118 (r) A beneficial interest in title to property, profits,
- 119 or earnings.
- 120 (s) An interest in or under a profit-sharing or
- 121 participation agreement or scheme.
- 122 (t) Any option contract which entitles the holder to
- 123 purchase or sell a given amount of the underlying security at a
- 124 fixed price within a specified period of time.
- 125 (u) Any other instrument commonly known as a security,
- 126 including an interim or temporary bond, debenture, note, or
- 127 certificate.
- 128 (v) Any receipt for a security, or for subscription to a
- 129 security, or any right to subscribe to or purchase any security.
- 130 (w) A viatical settlement investment.
- 131 (23) "Viatical settlement investment" means an agreement
- 132 for the purchase, sale, assignment, transfer, devise, or bequest
- 133 of all or any portion of a legal or equitable interest in a
- 134 viaticated policy as defined in chapter 626. The term does not
- 135 include:
- 136 (a) The transfer or assignment of an interest in a
- 137 previously viaticated policy from a natural person who transfers
- 138 or assigns no more than one such interest in 1 calendar year.
- 139 (b) The provision of stop-loss coverage to a viatical
- 140 settlement provider, financing entity, or related provider

141 trust, as those terms are defined in s. 626.9911, by an
 142 authorized or eligible insurer.

143 (c) The transfer or assignment of a viaticated policy from
 144 a licensed viatical settlement provider to another licensed
 145 viatical settlement provider, a related provider trust, or a
 146 financing entity, as those terms are defined in s. 626.9911, or
 147 to a contingency insurer provided that such transfer or
 148 assignment is not the direct or indirect promotion of any scheme
 149 or enterprise with the intent of violating or evading any
 150 provision of this chapter.

151 (d) The transfer or assignment of a viaticated policy to a
 152 bank, trust company, savings institution, insurance company,
 153 dealer, investment company as defined in the Investment Company
 154 Act of 1940, pension or profit-sharing trust, or qualified
 155 institutional buyer as defined in United States Securities and
 156 Exchange Commission Rule 144A, 17 C.F.R. 230.144A(a), provided
 157 such transfer or assignment is not for the direct or indirect
 158 promotion of any scheme or enterprise with the intent of
 159 violating or evading any provision of this chapter.

160 (e) The transfer or assignment of a viaticated policy by a
 161 conservator of a viatical settlement provider appointed by a
 162 court of competent jurisdiction who transfers or assigns
 163 ownership of viaticated policies pursuant to that court's order.

164 Section 2. Section 517.072, Florida Statutes, is created
 165 to read:

166 517.072 Viatical settlement investments.--The exemptions
 167 provided for by ss. 517.051(6), (8), and (10) do not apply to a
 168 viatical settlement investment. The offering of a viatical

169 settlement investment is not an exempt transaction under s.
 170 517.061(2), (3), (8), (11), and (18), regardless of whether the
 171 offering otherwise complies with the conditions of that section,
 172 unless such offering is to a qualified institutional buyer.

173 Section 3. Subsection (7) of section 517.081, Florida
 174 Statutes, is amended, and subsection (8) is added to said
 175 section, to read:

176 517.081 Registration procedure.--

177 (7) If upon examination of any application the office
 178 shall find that the sale of the security referred to therein
 179 would not be fraudulent and would not work or tend to work a
 180 fraud upon the purchaser, that the terms of the sale of such
 181 securities would be fair, just, and equitable, and that the
 182 enterprise or business of the issuer is not based upon unsound
 183 business principles, it shall record the registration of such
 184 security in the register of securities; and thereupon such
 185 security so registered may be sold by any registered dealer,
 186 subject, however, to the further order of the office. In order
 187 to determine if an offering is fair, just, and equitable, the
 188 commission may by rule establish requirements and standards for
 189 the filing, content, and circulation of any preliminary, final,
 190 or amended prospectus and other sales literature and may by rule
 191 establish merit qualification criteria relating to the issuance
 192 of equity securities, debt securities, insurance company
 193 securities, real estate investment trusts, and other traditional
 194 and nontraditional investments, including, but not limited to,
 195 oil and gas investments. The criteria may include such elements
 196 as the promoter's equity investment ratio, the financial

197 condition of the issuer, the voting rights of shareholders, the
 198 grant of options or warrants to underwriters and others, loans
 199 and other affiliated transaction, the use or refund of proceeds
 200 of the offering, and such other relevant criteria as the office
 201 in its judgment may deem necessary to such determination.

202 (8) The commission may by rule establish requirements and
 203 standards for:

204 (a) Disclosures to purchasers of viatical settlement
 205 investments.

206 (b) Recordkeeping requirements for sellers of viatical
 207 settlement investments.

208 Section 4. Section 517.1215, Florida Statutes, is created
 209 to read:

210 517.1215 Requirements, rules of conduct, and prohibited
 211 business practices for investment advisors and their associated
 212 persons.--

213 (1) The commission shall specify by rule requirements for
 214 investment advisors deemed to have custody of client funds which
 215 concern the following:

216 (a) Notification of custody of, maintenance of, and
 217 safeguards for client funds.

218 (b) Communications with clients and independent
 219 representatives.

220 (c) Requirements for investment advisers who have custody
 221 of pooled investments.

222 (d) Exceptions to the custody requirements.

223

224 In adopting the rules, the commission shall consider the rules
 225 and regulations of the federal regulatory authority and the
 226 North American Securities Administrators Association.

227 (2) The commission shall by rule establish rules of
 228 conduct and prohibited business practices for investment
 229 advisers and their associated persons. In adopting the rules,
 230 the commission shall consider general industry standards as
 231 expressed in the rules and regulations of the various federal
 232 and self-regulatory agencies and regulatory associations,
 233 including, but not limited to, the United States Securities and
 234 Exchange Commission, the National Association of Securities
 235 Dealers, and the North American Securities Administrators
 236 Association.

237 Section 5. Section 517.1217, Florida Statutes, is created
 238 to read:

239 517.1217 Rules of conduct and prohibited business
 240 practices for dealers and their associated persons.--The
 241 commission by rule may establish rules of conduct and prohibited
 242 business practices for dealers and their associated persons. In
 243 adopting the rules, the commission shall consider general
 244 industry standards as expressed in the rules and regulations of
 245 the various federal and self-regulatory agencies and regulatory
 246 associations, including, but not limited to, the United States
 247 Securities and Exchange Commission, the National Association of
 248 Securities Dealers, and the North American Securities
 249 Administrators Association.

250 Section 6. Paragraph (a) of subsection (7) of section
 251 624.501, Florida Statutes, is amended to read:

252 624.501 Filing, license, appointment, and miscellaneous
 253 fees.--The department, commission, or office, as appropriate,
 254 shall collect in advance, and persons so served shall pay to it
 255 in advance, fees, licenses, and miscellaneous charges as
 256 follows:

257 (7) Life insurance agents.

258 (a) Agent's original appointment and biennial renewal or
 259 continuation thereof, each insurer or agent making an
 260 appointment:

261	Appointment.....	\$42.00
262	State tax.....	12.00
263	County tax.....	6.00
264	Total.....	\$60.00

265 Section 7. Subsection (10) of section 626.015, Florida
 266 Statutes, is amended to read:

267 626.015 Definitions.--As used in this part:

268 (10) "Life agent" means an individual representing an
 269 insurer as to life insurance and annuity contracts, or acting as
 270 a viatical settlement broker as defined in s. 626.9911,
 271 including agents appointed to transact life insurance, fixed-
 272 dollar annuity contracts, or variable contracts by the same
 273 insurer.

274 Section 8. Paragraph (b) of subsection (1) of section
 275 626.112, Florida Statutes, is amended to read:

276 626.112 License and appointment required; agents, customer
 277 representatives, adjusters, insurance agencies, service
 278 representatives, managing general agents.--

279 (1)

280 (b) Except as provided in subsection (6) or in applicable
 281 department rules, and in addition to other conduct described in
 282 this chapter with respect to particular types of agents, a
 283 license as an insurance agent, service representative, customer
 284 representative, or limited customer representative is required
 285 in order to engage in the solicitation of insurance. For
 286 purposes of this requirement, as applicable to any of the
 287 license types described in this section, the solicitation of
 288 insurance is the attempt to persuade any person to purchase an
 289 insurance product by:

290 1. Describing the benefits or terms of insurance coverage,
 291 including premiums or rates of return;

292 2. Distributing an invitation to contract to prospective
 293 purchasers;

294 3. Making general or specific recommendations as to
 295 insurance products;

296 4. Completing orders or applications for insurance
 297 products; ~~or~~

298 5. Comparing insurance products, advising as to insurance
 299 matters, or interpreting policies or coverages; or

300 6. Offering or attempting to negotiate on behalf of
 301 another person a viatical settlement contract as defined in s.
 302 626.9911.

303
 304 However, an employee leasing company licensed pursuant to
 305 chapter 468 which is seeking to enter into a contract with an
 306 employer that identifies products and services offered to
 307 employees may deliver proposals for the purchase of employee

308 leasing services to prospective clients of the employee leasing
309 company setting forth the terms and conditions of doing
310 business; classify employees as permitted by s. 468.529; collect
311 information from prospective clients and other sources as
312 necessary to perform due diligence on the prospective client and
313 to prepare a proposal for services; provide and receive
314 enrollment forms, plans, and other documents; and discuss or
315 explain in general terms the conditions, limitations, options,
316 or exclusions of insurance benefit plans available to the client
317 or employees of the employee leasing company were the client to
318 contract with the employee leasing company. Any advertising
319 materials or other documents describing specific insurance
320 coverages must identify and be from a licensed insurer or its
321 licensed agent or a licensed and appointed agent employed by the
322 employee leasing company. The employee leasing company may not
323 advise or inform the prospective business client or individual
324 employees of specific coverage provisions, exclusions, or
325 limitations of particular plans. As to clients for which the
326 employee leasing company is providing services pursuant to s.
327 468.525(4), the employee leasing company may engage in
328 activities permitted by ss. 626.7315, 626.7845, and 626.8305,
329 subject to the restrictions specified in those sections. If a
330 prospective client requests more specific information concerning
331 the insurance provided by the employee leasing company, the
332 employee leasing company must refer the prospective business
333 client to the insurer or its licensed agent or to a licensed and
334 appointed agent employed by the employee leasing company.

335 Section 9. Section 626.207, Florida Statutes, is amended
 336 to read:

337 626.207 Department rulemaking authority; waiting periods
 338 for applicants; penalties against licensees.--

339 (1) The department shall adopt rules establishing specific
 340 waiting periods for applicants to become eligible for licensure
 341 following denial, suspension, or revocation pursuant to s.
 342 626.611, s. 626.621, s. 626.8437, s. 626.844, s. 626.935, ~~s.~~
 343 ~~626.9917~~, s. 634.181, s. 634.191, s. 634.320, s. 634.321, s.
 344 634.422, s. 634.423, s. 642.041, or s. 642.043. The purpose of
 345 the waiting periods is to provide sufficient time to demonstrate
 346 reformation of character and rehabilitation. The waiting periods
 347 shall vary based on the type of conduct and the length of time
 348 since the conduct occurred and shall also be based on the
 349 probability that the propensity to commit illegal conduct has
 350 been overcome. The waiting periods may be adjusted based on
 351 aggravating and mitigating factors established by rule and
 352 consistent with this purpose.

353 (2) The department shall adopt rules establishing specific
 354 penalties against licensees for violations of s. 626.611, s.
 355 626.621, s. 626.8437, s. 626.844, s. 626.935, ~~s. 626.9917~~, s.
 356 634.181, s. 634.191, s. 634.320, s. 634.321, s. 634.422, s.
 357 634.423, s. 642.041, or s. 642.043. The purpose of the
 358 revocation or suspension is to provide a sufficient penalty to
 359 deter future violations of the Florida Insurance Code. The
 360 imposition of a revocation or the length of suspension shall be
 361 based on the type of conduct and the probability that the
 362 propensity to commit further illegal conduct has been overcome

363 at the time of eligibility for relicensure. The revocation or
 364 the length of suspension may be adjusted based on aggravating or
 365 mitigating factors, established by rule and consistent with this
 366 purpose.

367 Section 10. Subsection (2) of section 626.331, Florida
 368 Statutes, is amended to read:

369 626.331 Number of appointments permitted or required.--

370 (2) An agent shall be required to have a separate
 371 appointment as to each insurer by whom he or she is appointed as
 372 an agent. An agent must appoint himself or herself before
 373 performing the functions of a viatical settlement broker.

374 Section 11. Subsection (17) is added to section 626.611,
 375 Florida Statutes, to read:

376 626.611 Grounds for compulsory refusal, suspension, or
 377 revocation of agent's, title agency's, adjuster's, customer
 378 representative's, service representative's, or managing general
 379 agent's license or appointment.--The department shall deny an
 380 application for, suspend, revoke, or refuse to renew or continue
 381 the license or appointment of any applicant, agent, title
 382 agency, adjuster, customer representative, service
 383 representative, or managing general agent, and it shall suspend
 384 or revoke the eligibility to hold a license or appointment of
 385 any such person, if it finds that as to the applicant, licensee,
 386 or appointee any one or more of the following applicable grounds
 387 exist:

388 (17) In transactions related to viatical settlement
 389 contracts as defined in s. 626.9911:

390 (a) Commission of a fraudulent or dishonest act.

391 (b) No longer meeting the requirements for initial
 392 licensure.

393 (c) Having received a fee, commission, or other valuable
 394 consideration for his or her services with respect to viatical
 395 settlements that involved unlicensed viatical settlement
 396 providers or persons who offered or attempted to negotiate on
 397 behalf of another person a viatical settlement contract as
 398 defined in s. 626.9911 and who were not licensed life agents.

399 (d) Dealing in bad faith with viators.

400 Section 12. Section 626.777, Florida Statutes, is amended
 401 to read:

402 626.777 Scope of this part.--This part applies only to
 403 agents of life insurers, ~~and to~~ agents who are appointed by the
 404 same insurer as to both life insurance and health insurance, and
 405 agents who perform the functions of a viatical settlement broker
 406 as defined in s. 626.9911.

407 Section 13. Subsection (2) of section 626.7845, Florida
 408 Statutes, is amended to read:

409 626.7845 Prohibition against unlicensed transaction of
 410 life insurance.--

411 (2) Except as provided in s. 626.112(6), with respect to
 412 any line of authority specified in s. 626.015(10), no individual
 413 shall, unless licensed as a life agent:

414 (a) Solicit insurance or annuities or procure
 415 applications; ~~or~~

416 (b) In this state, engage or hold himself or herself out
 417 as engaging in the business of analyzing or abstracting
 418 insurance policies or of counseling or advising or giving

419 opinions to persons relative to insurance or insurance contracts
 420 other than:

- 421 1. As a consulting actuary advising an insurer; or
- 422 2. As to the counseling and advising of labor unions,
- 423 associations, trustees, employers, or other business entities,
- 424 the subsidiaries and affiliates of each, relative to their
- 425 interests and those of their members or employees under
- 426 insurance benefit plans; or

427 (c) In this state, from this state, or with a resident of
 428 this state, offer or attempt to negotiate on behalf of another
 429 person a viatical settlement contract as defined in s. 626.9911.

430 Section 14. Section 626.9911, Florida Statutes, is amended
 431 to read:

432 626.9911 Definitions.--As used in this act, the term:

433 (1)~~(14)~~ "Financing entity" means an underwriter, placement
 434 agent, lender, purchaser of securities, or purchaser of a policy
 435 or certificate from a viatical settlement provider, credit
 436 enhancer, or any entity that has direct ownership in a policy or
 437 certificate that is the subject of a viatical settlement
 438 contract, but whose principal activity related to the
 439 transaction is providing funds or credit enhancement to effect
 440 the viatical settlement or the purchase of one or more
 441 viaticated ~~viatical~~ policies and who has an agreement in writing
 442 with one or more licensed viatical settlement providers to
 443 finance the acquisition of viatical settlement contracts. The
 444 term does not include a nonaccredited investor, ~~a viatical~~
 445 ~~settlement purchaser~~, or other natural person. A financing
 446 entity may not enter into a viatical settlement contract.

447 (2)~~(1)~~ "Independent third-party trustee or escrow agent"
 448 means an attorney, certified public accountant, financial
 449 institution, or other person providing escrow services under the
 450 authority of a regulatory body. The term does not include any
 451 person associated, affiliated, or under common control with a
 452 viatical settlement provider or viatical settlement broker.

453 (3) "Life expectancy" means an opinion or evaluation as to
 454 how long a particular person is to live, or relating to such
 455 person's expected demise.

456 (4) "Life expectancy provider" means a person that
 457 provides to a viatical settlement provider or viatical
 458 settlement broker a life expectancy.

459 (5)~~(2)~~ "Person" has the meaning specified in s. 1.01.

460 (6)~~(12)~~ "Related form" means any form, created by or on
 461 behalf of a licensee, which a viator ~~or viatical settlement~~
 462 ~~purchaser~~ is required to sign or initial. The forms include, but
 463 are not limited to, a power of attorney, a release of medical
 464 information form, a suitability questionnaire, a disclosure
 465 document, or any addendum, schedule, or amendment to a viatical
 466 settlement contract ~~or viatical settlement purchase agreement~~
 467 considered necessary by a provider to effectuate a viatical
 468 settlement transaction.

469 (7) "Related provider trust" means a titling trust or
 470 other trust established by a licensed viatical settlement
 471 provider or financing entity for the sole purpose of holding the
 472 ownership or beneficial interest in purchased policies in
 473 connection with a financing transaction. The trust must have a
 474 written agreement with a licensed viatical settlement provider

475 or financing entity under which the licensed viatical settlement
 476 provider or financing entity is responsible for insuring
 477 compliance with all statutory and regulatory requirements and
 478 under which the trust agrees to make all records and files
 479 relating to viatical settlement transactions available to the
 480 office as if those records and files were maintained directly by
 481 the licensed viatical settlement provider. This term does not
 482 include an independent third-party trustee or escrow agent or a
 483 trust that does not enter into agreements with a viator. A
 484 related provider trust shall be subject to all provisions of
 485 this act that apply to the viatical settlement provider who
 486 established the related provider trust, except s. 626.9912,
 487 which shall not be applicable. A viatical settlement provider
 488 may establish no more than one related provider trust, and the
 489 sole trustee of such related provider trust shall be the
 490 viatical settlement provider licensed under s. 626.9912. The
 491 name of the licensed viatical settlement provider shall be
 492 included within the name of the related provider trust.

493 (8)~~(13)~~ "Special purpose entity" means an entity
 494 established by a licensed viatical settlement provider or by a
 495 financing entity, which may be a corporation, partnership,
 496 trust, limited liability company, or other similar entity formed
 497 solely to provide, either directly or indirectly, access to
 498 institutional capital markets to a viatical settlement provider
 499 or financing entity. A special purpose entity shall not enter
 500 into a viatical settlement contract ~~or a viatical settlement~~
 501 ~~purchase agreement.~~

502 (9)~~(3)~~ "Viatical settlement broker" means a person who, on
503 behalf of a viator and for a fee, commission, or other valuable
504 consideration, offers or attempts to negotiate viatical
505 settlement contracts between a viator resident in this state and
506 one or more viatical settlement providers. Notwithstanding the
507 manner in which the viatical settlement broker is compensated, a
508 viatical settlement broker is deemed to represent only the
509 viator and owes a fiduciary duty to the viator to act according
510 to the viator's instructions and in the best interest of the
511 viator. The term does not include an attorney, licensed
512 Certified Public Accountant, or investment adviser lawfully
513 registered under chapter 517, who is retained to represent the
514 viator and whose compensation is paid directly by or at the
515 direction and on behalf of the viator.

516 (10)~~(4)~~ "Viatical settlement contract" means a written
517 agreement entered into between a viatical settlement provider,
518 or its related provider trust, and a viator. The viatical
519 settlement contract includes an agreement to transfer ownership
520 or change the beneficiary designation of a life insurance policy
521 at a later date, regardless of the date that compensation is
522 paid to the viator. The agreement must establish the terms under
523 which the viatical settlement provider will pay compensation or
524 anything of value, which compensation or value is less than the
525 expected death benefit of the insurance policy or certificate,
526 in return for the viator's assignment, transfer, sale, devise,
527 or bequest of the death benefit or ownership of all or a portion
528 of the insurance policy or certificate of insurance to the
529 viatical settlement provider. A viatical settlement contract

530 also includes a contract for a loan or other financial
 531 transaction secured primarily by an individual or group life
 532 insurance policy, other than a loan by a life insurance company
 533 pursuant to the terms of the life insurance contract, or a loan
 534 secured by the cash value of a policy.

535 (11)~~(5)~~ "Viatical settlement provider" means a person who,
 536 in this state, from this state, or with a resident of this
 537 state, effectuates a viatical settlement contract. The term does
 538 not include:

539 (a) Any bank, savings bank, savings and loan association,
 540 credit union, or other licensed lending institution that takes
 541 an assignment of a life insurance policy as collateral for a
 542 loan.

543 (b) A life and health insurer that has lawfully issued a
 544 life insurance policy that provides accelerated benefits to
 545 terminally ill policyholders or certificateholders.

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

550 (d) A trust that meets the definition of a "related
 551 provider trust."

552 (e) A viator in this state.

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

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

555 (12)~~(11)~~ "Viaticated policy" means a life insurance
 556 policy, or a certificate under a group policy, which is the
 557 subject of a viatical settlement contract.

558 ~~(13)~~(6) "Viator" means the owner of a life insurance
 559 policy or a certificateholder under a group policy, which policy
 560 is not a viaticated policy, who enters or seeks to enter into a
 561 viatical settlement contract. This term does not include a
 562 ~~viatical settlement purchaser or a viatical settlement provider~~
 563 or any person acquiring a policy or interest in a policy from a
 564 viatical settlement provider, nor does it include an independent
 565 third-party trustee or escrow agent.

566 ~~(8)~~ "Viatical settlement purchase agreement" means a
 567 contract or agreement, entered into by a viatical settlement
 568 purchaser, to which the viator is not a party, to purchase a
 569 life insurance policy or an interest in a life insurance policy,
 570 which is entered into for the purpose of deriving an economic
 571 benefit. The term also includes purchases made by viatical
 572 settlement purchasers from any person other than the provider
 573 who effectuated the viatical settlement contract.

574 ~~(9)~~ "Viatical settlement purchaser" means a person who
 575 gives a sum of money as consideration for a life insurance
 576 policy or an equitable or legal interest in the death benefits
 577 of a life insurance policy that has been or will be the subject
 578 of a viatical settlement contract, for the purpose of deriving
 579 an economic benefit, including purchases made from any person
 580 other than the provider who effectuated the viatical settlement
 581 contract or an entity affiliated with the provider. The term
 582 does not include a licensee under this part, an accredited
 583 investor as defined in Rule 501, Regulation D of the Securities
 584 Act Rules, or a qualified institutional buyer as defined by Rule
 585 144(a) of the Federal Securities Act, a special purpose entity,

586 ~~a financing entity, or a contingency insurer. The above~~
 587 ~~references to Rule 501, Regulation D and Rule 144(a) of the~~
 588 ~~Federal Securities Act are used strictly for defining purposes~~
 589 ~~and shall not be interpreted in any other manner. Any person who~~
 590 ~~claims to be an accredited investor shall sign an affidavit~~
 591 ~~stating that he or she is an accredited investor, the basis of~~
 592 ~~that claim, and that he or she understands that as an accredited~~
 593 ~~investor he or she will not be entitled to certain protections~~
 594 ~~of the Viatical Settlement Act. This affidavit must be kept with~~
 595 ~~other documents required to be maintained by this act.~~

596 ~~(10) "Viatical settlement sales agent" means a person~~
 597 ~~other than a licensed viatical settlement provider who arranges~~
 598 ~~the purchase through a viatical settlement purchase agreement of~~
 599 ~~a life insurance policy or an interest in a life insurance~~
 600 ~~policy.~~

601 Section 15. Paragraph (f) of subsection (3) and subsection
 602 (4) of section 626.9912, Florida Statutes, are amended to read:

603 626.9912 Viatical settlement provider license required;
 604 application for license.--

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

607 (f) All applications, viatical settlement contract forms,
 608 ~~viatical settlement purchase agreement forms,~~ escrow forms, and
 609 other related forms proposed to be used by the applicant.

610 (4) The office may not issue a license to an entity other
 611 than a natural person if it is not satisfied that all officers,
 612 directors, employees, stockholders, partners, and any other
 613 persons who exercise or have the ability to exercise effective

614 control of the entity or who have the ability to influence the
 615 transaction of business by the entity meet the standards of this
 616 act and have not violated any provision of this act or rules of
 617 the commission related to the business of viatical settlement
 618 contracts ~~or viatical settlement purchase agreements.~~

619 Section 16. Section 626.9913, Florida Statutes, is amended
 620 to read:

621 626.9913 Viatical settlement provider license continuance;
 622 annual report; fees; deposit.--

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

625 (2) Annually, on or before March 1, the viatical
 626 settlement provider licensee shall file a statement containing
 627 information the commission requires and shall pay to the office
 628 a license fee in the amount of \$500. The annual statement shall
 629 include audited financial statements prepared in accordance with
 630 generally accepted accounting principles by an independent
 631 certified public accountant as of the last day of the preceding
 632 calendar year. A viatical settlement provider shall include in
 633 all statements filed with the office all information requested
 634 by the office regarding a related provider trust established by
 635 the viatical settlement provider. The office may require more
 636 frequent reporting. Failure to timely file the annual statement
 637 or to timely pay the license fee is grounds for immediate
 638 suspension of the license.

639 (3) To ensure the faithful performance of its obligations
 640 to its viators in the event of insolvency or the loss of its
 641 license, a viatical settlement provider licensee must deposit

642 and maintain deposited in trust with the department securities
 643 eligible for deposit under s. 625.52, having at all times a
 644 value of not less than \$100,000, provided a viatical settlement
 645 provider in this state licensed prior to June 1, 2004, that has
 646 deposited and maintains continuously deposited in trust with the
 647 department securities in the amount of \$25,000 and which posted
 648 and maintains continuously posted a security bond acceptable to
 649 the department in the amount of \$75,000, has until June 1, 2005,
 650 to comply with the requirements of this subsection. As an
 651 alternative to meeting the \$100,000 deposit requirement, the
 652 provider may deposit and maintain deposited in trust with the
 653 department such securities in the amount of \$25,000 and post
 654 with the office a surety bond acceptable to the office in the
 655 amount of \$75,000.

656 (4) There shall be no additional annual license fee or
 657 deposit requirements under this act for a related provider trust
 658 established by a viatical settlement provider.

659 (5) A judgment creditor or other claimant of a viatical
 660 settlement provider may not levy upon any of the assets or
 661 securities held in this state pursuant to this section.

662 (6) The annual statement shall also contain the following
 663 information in electronic format as set forth by the office:

664 (a) For each viatical settlement contract entered into
 665 during the reporting period:

666 1. A unique identifying number or other consistent
 667 identifier that corresponds to each viator in the statement, as
 668 a means of identifying the viator in a manner that does not
 669 reveal any confidential information.

- 670 2. The date, month, and year the viatical settlement
671 contract was signed by all necessary parties.
- 672 3. The insurance carrier's name.
- 673 4. The age and each life expectancy, in months, of the
674 insured at the time the viatical settlement contract was entered
675 into.
- 676 5. The viator's state of residence at the time of
677 contract.
- 678 6. The face amount of policy purchased.
- 679 7. The net death benefit purchased.
- 680 8. The estimated total premiums to keep the policy in
681 force for life expectancy, any waiver of premium in effect, or
682 whether the premium is not applicable because the policy is paid
683 up or no premiums are due.
- 684 9. The net amount paid to the owner, less any outstanding
685 debts or liens.
- 686 10. The source of the policy, whether broker, direct
687 purchase, or secondary market, previously purchased by another
688 person.
- 689 11. The type of policy, individual or group.
- 690 12. The age of the policy at the time the viatical
691 settlement contract was effected.
- 692 13. The primary International Classification of Diseases
693 diagnosis code, if applicable, in numeric format, as defined by
694 the International Classification of Diseases as published by the
695 United States Department of Health and Human Services.

696 14. The type of funding, whether institutional, such as a
 697 bank, corporation, company, or nonindividual entity, or private,
 698 such as an individual.

699 15. The status as of ending date. Allowable status codes
 700 are death, if applicable; not applicable, if the date of death
 701 has not been determined or verified; or sold, if the settlement
 702 contract has been sold.

703 (b) For each viatical settlement contract where death has
 704 occurred during the reporting period:

705 1. A unique identifying number or other consistent
 706 identifier that corresponds to each viator in the report, as a
 707 means of identifying the viator in a manner that does not reveal
 708 any confidential information.

709 2. The date, month, and year the viatical settlement
 710 contract was signed by all necessary parties.

711 3. The age and each life expectancy, in months, of the
 712 insured at time the viatical settlement contract was entered
 713 into.

714 4. The viator's state of residence at the time of
 715 contract.

716 5. The net death benefit collected under the policy.

717 6. The amount of total premiums paid, any waiver of
 718 premium in effect, or whether the premium is not applicable
 719 because the policy is paid up or no premiums are due.

720 7. The net amount paid to the owner, less any outstanding
 721 debts or liens.

722 8. The Primary International Classification of Diseases
 723 diagnosis code, in numeric format, if applicable, as defined by

724 the International Classification of Diseases as published by the
725 United States Department of Health and Human Services.

726 9. The date of death.

727 10. The amount of time, in months, between the date the
728 viatical settlement contract was signed by all necessary parties
729 and the date of death.

730 11. The difference between the actual number of months the
731 insured lived after the date the contract was signed by all
732 necessary parties and the life expectancy used by the reporting
733 viatical provider.

734 (c) For each viatical settlement contract in which the
735 insured has not died and that was not entered into in the
736 reporting period:

737 1. A unique identifying number or other consistent
738 identifier that corresponds to each viator in the report as a
739 means of identifying the viator in a manner that does not reveal
740 any confidential information.

741 2. The date, month, and year the viatical settlement
742 contract was signed by all necessary parties.

743 3. The insurance carrier's name.

744 4. The age and each life expectancy, in months, of the
745 insured at the time the viatical settlement contract was entered
746 into.

747 5. The viator's state of residence at the time of
748 contract.

749 6. The face amount of policy purchased.

750 7. The net death benefit purchased.

751 8. The estimated total premiums to keep the policy in
752 force for life expectancy, any waiver of premium in effect, or
753 whether the premium is not applicable because the policy is paid
754 up or no premiums are due.

755 9. The net amount paid to the owner, less any outstanding
756 debts or liens.

757 10. The source of the policy, whether by broker, direct
758 purchase, or the secondary market, previously purchased by
759 another person.

760 11. The type of policy, whether individual or group.

761 12. The age of the policy at the time the viatical
762 settlement contract was effected.

763 13. The primary International Classification of Diseases
764 diagnosis code, if applicable, in numeric format, as defined by
765 the International Classification of Diseases as published by the
766 United States Department of Health and Human Services.

767 14. The type of funding, whether institutional, such as a
768 bank, corporation, company, or nonindividual entity, or private,
769 such as an individual.

770 15. Whether the insured has outlived the life expectancy.
771 If the insured has outlived the life expectancy, the number of
772 months by which the insured has outlived the life expectancy.

773 (d) The name and address of each life expectancy provider
774 used by the licensee since becoming licensed.

775 (e) The name and address of any person whom the viatical
776 settlement provider uses or employs to monitor or track an
777 insured's health status after a viatical settlement contract has

778 been signed by all necessary parties and payment has been made
779 to the owner.

780 Section 17. Subsection (1) of section 626.9914, Florida
781 Statutes, is amended to read:

782 626.9914 Suspension, revocation, or nonrenewal of viatical
783 settlement provider license; grounds; administrative fine.--

784 (1) The office shall suspend, revoke, deny, or refuse to
785 renew the license of any viatical settlement provider if the
786 office finds that the licensee:

787 (a) Has made a misrepresentation in the application for
788 the license;

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

792 (c) Demonstrates a pattern of unreasonable payments to
793 viators;

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

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

800 (f) Has failed to honor contractual obligations related to
801 the business of viatical settlement contracts;

802 (g) Deals in bad faith with viators;

803 (h) Has violated any provision of the insurance code or of
804 this act;

805 (i) Employs any person who materially influences the
 806 licensee's conduct and who fails to meet the requirements of
 807 this act; or

808 (j) No longer meets the requirements for initial
 809 licensure.

810 Section 18. Section 626.9916, Florida Statutes, is amended
 811 to read:

812 626.9916 Viatical settlement broker license required;
 813 ~~application for license.--~~

814 (1) After October 1, 2005 ~~July 1, 1996~~, a person, other
 815 than a life agent licensed under this chapter, may not in this
 816 state, from this state, or with a resident of this state perform
 817 the functions of a viatical settlement broker ~~as defined in this~~
 818 ~~act without first having obtained a license from the department.~~

819 (2) Before performing the functions of a viatical
 820 settlement broker, a life agent shall appoint himself or herself
 821 with the department and pay applicable fees pursuant to s.
 822 624.501(7)(a). ~~Application for a viatical settlement broker~~
 823 ~~license must be made to the department by the applicant on a~~
 824 ~~form prescribed by the department, under oath, and signed by the~~
 825 ~~applicant. The application must be accompanied by a \$50 filing~~
 826 ~~fee. If the applicant is a corporation, the application must be~~
 827 ~~under oath and signed by the president and the secretary of the~~
 828 ~~corporation.~~

829 (3) Each natural person who on July 1, 2005, held a
 830 viatical settlement broker's license and self-appointment may,
 831 upon obtaining a life agent license on or before October 1,
 832 2005, transfer an existing broker self-appointment to such

833 license. ~~In the application, the applicant must provide all of~~
834 ~~the following:~~

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

841 ~~(b) A copy of the applicant's basic organizational~~
842 ~~documents, if any, including the articles of incorporation,~~
843 ~~articles of association, partnership agreement, trust agreement,~~
844 ~~or other similar documents, together with all amendments to such~~
845 ~~documents.~~

846 ~~(c) If the applicant is not a natural person, a list~~
847 ~~showing the name, business and residence addresses, and official~~
848 ~~position of each individual who is responsible for conduct of~~
849 ~~the applicant's affairs, including, but not limited to, any~~
850 ~~member of the applicant's board of directors, board of trustees,~~
851 ~~executive committee, or other governing board or committee and~~
852 ~~any other person or entity owning or having the right to acquire~~
853 ~~10 percent or more of the voting securities of the applicant.~~

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

856 ~~1. A sworn biographical statement on forms supplied by the~~
857 ~~department.~~

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

861 ~~3. Authority, if required by the department, for release~~
 862 ~~of information relating to the investigation of the individual's~~
 863 ~~background.~~

864 ~~(c) Such other information as the department deems~~
 865 ~~necessary to determine that the individual applicant and the~~
 866 ~~individuals identified under paragraph (c) are competent and~~
 867 ~~trustworthy and can lawfully and successfully act as a viatical~~
 868 ~~settlement provider.~~

869 (4) All viatical settlement broker licenses shall
 870 terminate on October 1, 2005, and shall not be subject to
 871 continuation or renewal. ~~Any natural person who is employed by~~
 872 ~~or otherwise represents a viatical settlement broker licensee,~~
 873 ~~which broker licensee is not a natural person, must also be~~
 874 ~~licensed as a viatical settlement broker if such employee or~~
 875 ~~other representative performs the functions of a viatical~~
 876 ~~settlement broker as defined in this act.~~

877 (5) Notwithstanding the manner in which the viatical
 878 settlement broker is compensated, he or she is deemed to
 879 represent only the viator and owes a fiduciary duty to the
 880 viator to act according to the viator's instructions and in the
 881 best interest of the viator. ~~The department may not issue a~~
 882 ~~license to an applicant if it is not satisfied that the~~
 883 ~~applicant, if a natural person, or all officers, directors,~~
 884 ~~employees, stockholders, and partners who exercise or have the~~
 885 ~~ability to exercise effective control of the applicant or who~~
 886 ~~have the ability to influence the transaction of business by the~~
 887 ~~applicant, if the applicant is not a natural person, meet the~~
 888 ~~standards of this act and have not violated any provision of~~

889 ~~this act or rules of the department related to the business of~~
 890 ~~viatical settlement contracts.~~

891 (6) The compensation received by a life agent for
 892 activities performed as a viatical settlement broker may not be
 893 divided or shared with another person unless such other person
 894 is a life agent licensed under this chapter and appointed as
 895 provided in this part. ~~The department may specify the form of~~
 896 ~~the license and may require photographing of the applicant as~~
 897 ~~part of the application process.~~

898 ~~(7) Upon the filing of a sworn application and the payment~~
 899 ~~of the license fee and all other applicable fees under this act,~~
 900 ~~the department shall investigate each applicant and may issue~~
 901 ~~the applicant a license if the department finds that the~~
 902 ~~applicant:~~

903 ~~(a) Is competent and trustworthy and intends to act in~~
 904 ~~good faith in the business authorized by the license applied~~
 905 ~~for.~~

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

909 ~~(c) Except with respect to applicants for nonresident~~
 910 ~~licenses, is a bona fide resident of this state and actually~~
 911 ~~resides in this state at least 180 days a year. If an applicant~~
 912 ~~holds a similar license or an insurance agent's or broker's~~
 913 ~~license in another state at the time of applying for a license~~
 914 ~~under this section, the applicant may be found to meet the~~
 915 ~~residency requirement of this paragraph only after he or she~~
 916 ~~furnishes a letter of clearance satisfactory to the department~~

917 ~~or other proof that the applicant's resident licenses have been~~
 918 ~~canceled or changed to nonresident status and that the applicant~~
 919 ~~is in good standing with the licensing authority.~~

920 ~~(d) Is a corporation, a corporation incorporated under the~~
 921 ~~laws of this state, or a foreign corporation authorized to~~
 922 ~~transact business in this state.~~

923 ~~(e) Has designated the Chief Financial Officer as its~~
 924 ~~agent for service of process.~~

925 ~~(f) If a natural person, is at least 18 years of age and a~~
 926 ~~United States citizen or legal alien who possesses work~~
 927 ~~authorization from the United States Bureau of Citizenship and~~
 928 ~~Immigration Services.~~

929 ~~(8) An applicant for a nonresident viatical settlement~~
 930 ~~broker license must, in addition to designating the Chief~~
 931 ~~Financial Officer as agent for service of process as required by~~
 932 ~~this section, also furnish the department with the name and~~
 933 ~~address of a resident of this state upon whom notices or orders~~
 934 ~~of the department or process affecting the applicant or licensee~~
 935 ~~may be served. After issuance of the license, the licensee must~~
 936 ~~also notify the department of change of the person to receive~~
 937 ~~such notices, orders, or process; such change is not effective~~
 938 ~~until acknowledged by the department.~~

939 ~~(9) The department may, by rule, specify experience,~~
 940 ~~educational, or other training standards required for licensure~~
 941 ~~under this section.~~

942 ~~(10) Except as otherwise provided in this section,~~
 943 ~~viatical settlement brokers shall be licensed, appointed,~~
 944 ~~renewed, continued, reinstated, and terminated in the manner~~

945 ~~specified in this chapter for insurance representatives~~
 946 ~~generally; however, viatical settlement brokers are not subject~~
 947 ~~to continuing education requirements.~~

948 Section 19. Section 626.9919, Florida Statutes, is amended
 949 to read:

950 626.9919 Notice of change of licensee address or
 951 name.--Each viatical settlement provider licensee, ~~viatical~~
 952 ~~settlement broker licensee, and viatical settlement sales agent~~
 953 licensee must provide the office ~~or department, as applicable,~~
 954 at least 30 days' advance notice of any change in the licensee's
 955 name, residence address, principal business address, or mailing
 956 address.

957 Section 20. Section 626.992, Florida Statutes, is amended
 958 to read:

959 626.992 Use of licensed viatical settlement providers and
 960 ~~viatical settlement licensed brokers, providers, and sales~~
 961 ~~agents~~ required.--

962 (1) A licensed viatical settlement provider may not use
 963 any person to perform the functions of a viatical settlement
 964 broker as defined in this act unless such person holds a
 965 current, valid life agent license and has appointed himself or
 966 herself in conformance with this act ~~as a viatical settlement~~
 967 ~~broker. Salaried individuals employed by viatical settlement~~
 968 ~~providers shall engage in viatical settlement broker activities~~
 969 ~~only when accompanied by a viatical settlement broker who holds~~
 970 ~~a current valid license issued under this act. A viatical~~
 971 ~~settlement provider may not use any person to perform the~~

972 ~~functions of a viatical settlement sales agent unless the person~~
 973 ~~holds a current, valid license as provided in subsection (4).~~

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

978 ~~(3) A viatical settlement sales agent may not use any~~
 979 ~~person to perform the functions of a viatical settlement broker~~
 980 ~~unless such person holds a current, valid license as a viatical~~
 981 ~~settlement broker.~~

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

985 Section 21. Subsections (1) and (2) of section 626.9921,
 986 Florida Statutes, are amended to read:

987 626.9921 Filing of forms; required procedures; approval.--

988 (1) A viatical settlement contract form, viatical
 989 ~~settlement purchase agreement form~~, escrow form, or related form
 990 may be used in this state only after the form has been filed
 991 with the office and only after the form has been approved by the
 992 office.

993 (2) The viatical settlement contract form, viatical
 994 ~~settlement purchase agreement form~~, escrow form, or related form
 995 must be filed with the office at least 60 days before its use.
 996 The form is considered approved on the 60th day after its date
 997 of filing unless it has been previously disapproved by the
 998 office. The office must disapprove a viatical settlement
 999 contract form, viatical settlement purchase agreement form,

1000 escrow form, or related form that is unreasonable, contrary to
 1001 the public interest, discriminatory, or misleading or unfair to
 1002 the viator ~~or the purchaser~~.

1003 Section 22. Subsection (2) of section 626.9922, Florida
 1004 Statutes, is amended, and subsections (5), (6), and (7) are
 1005 added to said section, to read:

1006 626.9922 Examination.--

1007 (2) All accounts, books and records, documents, files,
 1008 contracts, and other information relating to all transactions of
 1009 viatical settlement contracts or viatical settlement purchase
 1010 agreements made before July 1, 2005, must be maintained by the
 1011 licensee for a period of at least 3 years after the death of the
 1012 insured and must be available to the office or department for
 1013 inspection during reasonable business hours.

1014 (5) The office has jurisdiction over all viatical
 1015 settlement purchase agreements made before July 1, 2005,
 1016 including, but not limited to, the authority to examine persons
 1017 in possession of records relating to viatical settlement
 1018 purchase agreements made before July 1, 2005, and that authority
 1019 set forth in s. 624.319.

1020 (6) If the office makes the determination that a provider
 1021 does not have the financial ability to perform its present or
 1022 future obligations under the viatical settlement purchase
 1023 agreements made before July 1, 2005, the office shall make a
 1024 referral to the United States Securities and Exchange Commission
 1025 or the Office of Financial Regulation for further administrative
 1026 action pursuant to s. 517.191, including, but not limited to,
 1027 the appointment of a receiver by the court.

1028 (7) Subsections (1), (2), (3), and (4) apply to life
 1029 expectancy providers providing life expectancies in the state
 1030 and providing life expectancies to viatical settlement providers
 1031 in the state, as if life expectancy providers were licensees.

1032 Section 23. Section 626.99245, Florida Statutes, is
 1033 amended to read:

1034 626.99245 Conflict of regulation of viaticals.--

1035 ~~(1) A viatical settlement provider who from this state~~
 1036 ~~enters into a viatical settlement purchase agreement with a~~
 1037 ~~purchaser who is a resident of another state that has enacted~~
 1038 ~~statutes or adopted regulations governing viatical settlement~~
 1039 ~~purchase agreements, shall be governed in the effectuation of~~
 1040 ~~that viatical settlement purchase agreement by the statutes and~~
 1041 ~~regulations of the purchaser's state of residence. If the state~~
 1042 ~~in which the purchaser is a resident has not enacted statutes or~~
 1043 ~~regulations governing viatical settlement purchase agreements,~~
 1044 ~~the provider shall give the purchaser notice that neither~~
 1045 ~~Florida nor his or her state regulates the transaction upon~~
 1046 ~~which he or she is entering. For transactions in these states,~~
 1047 ~~however, the viatical settlement provider is to maintain all~~
 1048 ~~records required as if the transactions were executed in~~
 1049 ~~Florida. However, the forms used in those states need not be~~
 1050 ~~approved by the office.~~

1051 (1)(2) A viatical settlement provider who from this state
 1052 enters into a viatical settlement contract with a viator who is
 1053 a resident of another state that has enacted statutes or adopted
 1054 regulations governing viatical settlement contracts shall be
 1055 governed in the effectuation of that viatical settlement

1056 contract by the statutes and regulations of the viator's state
 1057 of residence. If the state in which the viator is a resident has
 1058 not enacted statutes or regulations governing viatical
 1059 settlement agreements, the provider shall give the viator notice
 1060 that neither Florida nor his or her state regulates the
 1061 transaction upon which he or she is entering. For transactions
 1062 in those states, however, the viatical settlement provider is to
 1063 maintain all records required as if the transactions were
 1064 executed in Florida. The forms used in those states need not be
 1065 approved by the office.

1066 (2)~~(3)~~ This section does not affect the requirement of ss.
 1067 626.9911~~(11)~~(11)~~(5)~~ and 626.9912(1) that a viatical settlement
 1068 provider doing business from this state must obtain a viatical
 1069 settlement license from the office. As used in this subsection,
 1070 the term "doing business from this state" includes effectuating
 1071 viatical settlement contracts ~~and effectuating viatical~~
 1072 ~~settlement purchase agreements~~ from offices in this state,
 1073 regardless of the state of residence of the viator ~~or the~~
 1074 ~~viatical settlement purchaser.~~

1075 ~~(4) The offer, sale, and purchase of viatical settlement~~
 1076 ~~contracts, and the regulation of viatical settlement providers~~
 1077 ~~shall be within the exclusive jurisdiction of the Office of~~
 1078 ~~Insurance Regulation under the provisions of this part.~~

1079 Section 24. Section 626.9925, Florida Statutes, is amended
 1080 to read:

1081 626.9925 Rules.--The commission may adopt rules to
 1082 administer this act, including rules establishing standards for
 1083 evaluating advertising by licensees; rules providing for the

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1084 collection of data, for disclosures to viators ~~or purchasers,~~
 1085 and for the reporting of life expectancies; and rules defining
 1086 terms used in this act and prescribing recordkeeping
 1087 requirements relating to executed viatical settlement contracts
 1088 ~~and viatical settlement purchase agreements.~~

1089 Section 25. Section 626.9926, Florida Statutes, is amended
 1090 to read:

1091 626.9926 Rate regulation not authorized.--Nothing in this
 1092 act shall be construed to authorize the office or department to
 1093 directly or indirectly regulate the amount paid as consideration
 1094 for entry into a viatical settlement contract ~~or viatical~~
 1095 ~~settlement purchase agreement.~~

1096 Section 26. Subsection (1) of section 626.9927, Florida
 1097 Statutes, is amended to read:

1098 626.9927 Unfair trade practices; cease and desist;
 1099 injunctions; civil remedy.--

1100 (1) A violation of this act is an unfair trade practice
 1101 under ss. 626.9521 and 626.9541 and is subject to the penalties
 1102 provided in the insurance code. Part X of this chapter applies
 1103 to a licensee under this act or a transaction subject to this
 1104 act as if a viatical settlement contract ~~and a viatical~~
 1105 ~~settlement purchase agreement~~ were an insurance policy.

1106 Section 27. Paragraph (b) of subsection (1) of section
 1107 626.99275, Florida Statutes, is amended to read:

1108 626.99275 Prohibited practices; penalties.--

1109 (1) It is unlawful for any person:

1110 (b) In issuing a life expectancy, to ~~In the solicitation~~
 1111 ~~or sale of a viatical settlement purchase agreement:~~

1112 1. Issue a life expectancy that is not based upon
 1113 generally accepted medical or actuarial practices ~~To employ any~~
 1114 ~~device, scheme, or artifice to defraud;~~

1115 2. Agree to be compensated or receive compensation which
 1116 is contingent upon providing a specifically designated life
 1117 expectancy ~~To obtain money or property by means of an untrue~~
 1118 ~~statement of a material fact or by any omission to state a~~
 1119 ~~material fact necessary in order to make the statements made, in~~
 1120 ~~light of the circumstances under which they were made, not~~
 1121 ~~misleading; or~~

1122 3. Knowingly understate or overstate a life expectancy
 1123 with the intent to defraud ~~To engage in any transaction,~~
 1124 ~~practice, or course of business which operates or would operate~~
 1125 ~~as a fraud or deceit upon a person.~~

1126 (2) A person who violates any provision of this section
 1127 commits:

1128 (a) A felony of the third degree, punishable as provided
 1129 in s. 775.082, s. 775.083, or s. 775.084, if the insurance
 1130 policy involved is valued at any amount less than \$20,000.

1131 (b) A felony of the second degree, punishable as provided
 1132 in s. 775.082, s. 775.083, or s. 775.084, if the insurance
 1133 policy involved is valued at \$20,000 or more, but less than
 1134 \$100,000.

1135 (c) A felony of the first degree, punishable as provided
 1136 in s. 775.082, s. 775.083, or s. 775.084, if the insurance
 1137 policy involved is valued at \$100,000 or more.

1138 Section 28. Section 626.99278, Florida Statutes, is
 1139 amended to read:

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1140 626.99278 Viatical provider anti-fraud plan.--Every
 1141 licensed viatical settlement provider ~~and viatical settlement~~
 1142 ~~broker~~ must adopt an anti-fraud plan and file it with the
 1143 Division of Insurance Fraud of the department ~~on or before~~
 1144 ~~December 1, 2000~~. Each anti-fraud plan shall include:

1145 (1) A description of the procedures for detecting and
 1146 investigating possible fraudulent acts and procedures for
 1147 resolving material inconsistencies between medical records and
 1148 insurance applications. ~~+~~

1149 (2) A description of the procedures for the mandatory
 1150 reporting of possible fraudulent insurance acts to the Division
 1151 of Insurance Fraud of the department. ~~+~~

1152 (3) A description of the plan for anti-fraud education and
 1153 training of its underwriters or other personnel. ~~+~~ ~~and~~

1154 (4) A written description or chart outlining the
 1155 organizational arrangement of the anti-fraud personnel who are
 1156 responsible for the investigation and reporting of possible
 1157 fraudulent insurance acts, and investigating unresolved material
 1158 inconsistencies between medical records and insurance
 1159 applications.

1160 (5) A process by which the provider will perform initial
 1161 and continuing review of the accuracy of its life expectancies,
 1162 whether such life expectancies are performed in house or by a
 1163 contracted life expectancy provider, and ensure compliance with
 1164 s. 626.99275(1) by its life expectancy providers.

1165 Section 29. Section 626.9928, Florida Statutes, is amended
 1166 to read:

1167 626.9928 Acquisitions.--Acquisition of interest in a
 1168 viatical settlement provider ~~or viatical settlement broker~~ is
 1169 subject to s. 628.4615.

1170 Section 30. Section 626.99285, Florida Statutes, is
 1171 amended to read:

1172 626.99285 Applicability of insurance code.--In addition to
 1173 other applicable provisions cited in the insurance code, the
 1174 office or department, as appropriate, has the authority granted
 1175 under ss. 624.310, 626.901, and 626.989 to regulate viatical
 1176 settlement providers, viatical settlement brokers, ~~viatical~~
 1177 ~~settlement sales agents~~, viatical settlement contracts, ~~viatical~~
 1178 ~~settlement purchase agreements~~, and viatical settlement
 1179 transactions.

1180 Section 31. Section 626.99295, Florida Statutes, is
 1181 amended to read:

1182 626.99295 Grace period.--Any person who, on July 1, 2005,
 1183 is effectuating a viatical settlement purchase agreement made
 1184 before July 1, 2005, under provisions of law in effect before
 1185 such date, which viatical settlement purchase agreement was not
 1186 registered pursuant to chapter 517, must proceed within 30 days
 1187 after July 1, 2005, to conclude all viatical settlement purchase
 1188 transactions in progress, provided, if funds have not been
 1189 matched with a viaticated policy, such funds, or any unmatched
 1190 portion of such funds, shall be returned to the viatical
 1191 settlement purchaser within 30 days after July 1, 2005. The
 1192 provider may not solicit, negotiate, advertise, or effectuate
 1193 new viatical settlement purchase agreements after July 1, 2005.
 1194 ~~An unlicensed viatical settlement provider or viatical~~

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1195 ~~settlement broker that was legally transacting business in this~~
 1196 ~~state on June 30, 2000, may continue to transact such business,~~
 1197 ~~in the absence of any orders by the office, department, or the~~
 1198 ~~former Department of Insurance to the contrary, until the office~~
 1199 ~~or department, as applicable, approves or disapproves the~~
 1200 ~~viatical settlement provider's application for licensure if the~~
 1201 ~~viatical settlement provider or viatical settlement broker filed~~
 1202 ~~with the former department an application for licensure no later~~
 1203 ~~than August 1, 2000, and if the viatical settlement provider or~~
 1204 ~~viatical settlement broker complies with all other provisions of~~
 1205 ~~this act. Any form for which former department approval was~~
 1206 ~~required under this part must have been filed by August 1, 2000,~~
 1207 ~~and may continue to be used until disapproved by the office or~~
 1208 ~~department.~~

1209 Section 32. Sections 626.9917, 626.9918, 626.99235,
 1210 626.99236, and 626.99277, Florida Statutes, are repealed.

1211 Section 33. This act shall take effect July 1, 2005.